

**Spanish Succession Law**

**General Overview**

**STEP SEMINAR – London, 3 July 2007**

## **1. Applicable Law on Succession**

- Spanish Civil Code: transfers by reason of death are governed by the law of the country of citizenship of the deceased at the time of death
- Interacting provisions:
  - The rights of the surviving spouse, governed by the law applicable to the marriage, if not colliding with forced heirship rules
  - Validity of wills granted under prior citizenships
- Reenvoi situations possible under Spanish law in certain circumstances, but never to third country laws

## **2. Spanish Forced Heirship Provisions**

- Only applicable to successions regulated by Spanish law
- Estates to be divided in three equal shares:
  - One third to be distributed among children, in equal shares
  - One third for further distribution among descendants, in the proportion set out under the will
  - One third to be freely distributed according to will provisions
- If no descendants, the ascendants will become forced heirs:
  - Of one half of the estate if no surviving spouse
  - Of one third of the estate if surviving spouse
- Forced heirship rights of the surviving spouse:
  - If remaining heirs are descendants of the deceased: usufruct over one third of the estate
  - If remaining heirs are ascendants of the deceased: usufruct over one half of the estate
  - Otherwise, usufruct over two thirds of the estate
- Special provisions: accumulation rules and regional laws

### **3. Intestate Successions**

- Intestate rules apply in situations of lack of valid will
- Without prejudice to forced heirship provisions applicable, heirship rights are conferred to the following, on a successive basis:
  - Descendants
  - Ascendants
  - Surviving spouse
  - Next of kin, up to 4th grade
  - The Kingdom of Spain

## **4. Valid Wills**

Spain is a signatory party to the La Hague Convention of 5 October 1961. Consequently, the following wills are deemed valid under Spanish law:

- Wills granted under the domestic law of the jurisdiction where signed
- Wills granted under the domestic law of the country of citizenship of the deceased, at the time of grant or at the time of death
- Wills granted under the domestic law of the place of domicile of the deceased, at the time of grant or at the time of death
- Wills granted under the domestic law of the jurisdiction of habitual residence of the deceased, at the time of grant or at the time of death
- Wills regulating death transfers of real estate granted under the domestic law of the jurisdiction where sited

## 5. Procedures to Grant Wills

- Most usually, public wills granted before public notary
- Alternatively:
  - Hand-written wills
  - Private wills granted before public notary
- Generally speaking, joint and several wills are not permitted under Spanish law
- New valid wills automatically revoke prior wills. Possibility to override this provision if expressly stated in the will, to the extent prior wills do not collide with the rules of the latest will granted
- Specific provisions may apply in certain Spanish regions

## 6. Dual Wills

- Non-Spanish citizens investing in Spanish real estate usually set up a dual will structure:
  - Granting a will in Spain regulating the transfer of Spanish situs assets (real estate) upon death
  - Granting a will in their country of citizenship regulating the succession for all remaining worldwide assets
- Although not prohibited legally, it is important to coordinate the process adequately to avoid risks arising out of contradictions or vacuums between different wills granted in different jurisdictions

## 7. Probate Process

- Main actions involved:
  - Heirs need to obtain a death certificate
  - Heirs also need to obtain a certificate of last wills
  - If there is a valid will governing the succession, heirs will grant a public deed of acceptance and partition of the estate, generally before a public notary
  - If intestate provisions apply, heirs will need to sign off a “Declaration of Heirs Ab Intestato”:
    - Before a public notary if the heirs are descendants, ascendants or surviving spouse of the deceased
    - Before a court judge otherwise
- Relevant issues:
  - Practical complexities and difficulties to register deeds granted in territories outside Spain in the Spanish Property Register
  - Strongly recommended to avoid “Ab Intestato” procedures in Spanish successions involving non-Spanish citizens



## **8. Law Applicable to Donations**

- Under the Rome Convention, the law governing donations may be freely adopted
- If no express choice is made, it will be the one most closely connected to the donation:
  - Generally that of the jurisdiction of the habitual residence of the donor
  - General presumption for donations of real estate: law of the jurisdiction where the asset is located
- Reenvoi provisions are not allowed on donations
- Interactions between laws governing donations and successions give rise to complex situations which must be carefully analysed

## **9. Law Applicable to Marriage**

- The law governing marriage will generally be that of the common citizenship of the spouses at the time of marriage
- Otherwise, the marriage will be governed by the law of the jurisdiction of citizenship or domicile of one of the spouses, specifically agreed by the spouses by means of a public deed granted before marriage
- Otherwise, by the law of the jurisdiction of habitual residence of the spouses immediately following marriage
- Failing this, by the law of the jurisdiction where the marriage has taken place

## 10. Spanish Economic Regimes on Marriages

- Only relevant to the extent the law governing the marriage is Spanish
- Generally, spouses may freely choose between the regimes available
- Unless otherwise stated, the marriage will generally be governed by the community property regime (“sociedad de gananciales”), except in certain Spanish regions
- Under the community property regime:
  - Spouses share joint ownership of assets acquired after marriage, except those acquired by reason of donation or succession
  - Each spouse will generally retain individual ownership of assets acquired before marriage and any asset acquired by reason of donation or succession. Special rules apply to the habitual residence of the spouses
  - But both spouses will be economically entitled to income and gains deriving from assets individually owned by each spouse

## **12. Spanish Inheritance Tax**

- Levied on the heir, or the donee
- Triggered by reason of death or donation:
  - If the heir or donee is Spanish tax resident, on worldwide assets acquired
  - If the heir or donee is non resident, on Spanish assets acquired
- Acquisitions are taxed on a progressive scale, with a marginal tax rate of 34% for assets acquired with a value in excess of €797,555.08, further indexed up by reference of the kinship between the parties and the pre-existing wealth of the recipient - non resident recipients only take into account the pre-existing wealth located in Spain

## **13. Practical Example**

Mr and Mrs Rainmaker, UK citizens and residents, own a property in Malaga with a market value of €500,000. Mr Rainmaker dies in June 2007. In accordance to the Spanish will granted, the heirs to his Spanish property are Mrs Rainmaker and their son, a 21 year old UK resident individual

- Law applicable to the succession: UK
- Law applicable to the marriage: UK
- Probate procedures: will need a UK death certificate and a Spanish certificate of last wills. Spanish public deed of acceptance and partition will be required in order to get the property registered under the names of Mrs Rainmaker and her son in the Spanish Property Register
- Spanish total inheritance taxes payable (Mrs Rainmaker and her son): €81,120 (16.22%)