# INTERNATIONAL SUCCESSION LAWS

## GREECE

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Fixed Rights of Inheritance

- Statement of succession laws and rights of inheritance

In relation to the succession law the basic Greek legislative framework includes:

- Greek Civil Code section 1710 up to 2035 and the following Laws
- Law Number ΓΨΠ'/1911.
- Law Number 2310/1920.
- Law Number 2783/1941.
- Law Number 1329/1983.
- Presidential Decree nr 456/1984.

In Greece, succession law is the specific part of the Civil Code (as mentioned above) that regulates all the consequences that the death of a person can induce to all the rights and obligations that the specific person might have when was alive. Upon the demise of a person (principal) his patrimonium as a whole (movable and immovable assets and even rights and obligations), shall be transmitted by virtue of the law or of a testament to one or more persons (heirs). A devolution by succession in virtue of the law, intervene in cases that there is no testament or in cases that a devolution by virtue of a testament has been frustrated in whole or in part.

According to the Greek Law, a principal may institute a heir by a disposition mortis causa (testamentary disposition by last will) and may become a heir, only the person who at the time of the death of the principal and therefore the devolution of the estate, was alive or at least conceived. Furthermore a principal may, (in cases that a written will exists) without instituting a heir by that will, exclude by will from an intestate succession, a certain relative or his spouse, under reserve of the provisions relating to

compulsory portions. According to the law, the descendants and parents of a principal, as well as the surviving spouse, who would have been called as heirs in an intestacy shall be entitled to a compulsory portion in the estate. That compulsory portion shall consist of one half of the portion devolving in an intestacy.

- Treatment of lifetime donations in calculating inheritance rights

Any donation made when the principal was alive must be taken into account for the computation of the value of an estate shall be subject to rescission to the extent that the estate as existing at the time of demise of the principal will not suffice to cover the compulsory portion. The legal action may be introduced by the beneficiary of the compulsory portion or his successors in title against the recipient or his heirs for the rescission of the donation solely to the extent of the part missing from the compulsory portion. The recipient may avoid rescission by paying the equivalent of the missing part. The above – mentioned legal action shall be extinguished at the lapse of two years as from the demise of the principal.

- Donations mortis causa

Donation mortis causa according to the Greek law, is any donation that has been concluded under the dilatory condition of predecease of the donor or of the concomitant death of both the parties to the act of donation without in the meantime the recipient to have the enjoyment of the things donated. That type of donation can freely be revoked by the donor. The declaration of revocation shall be made in the form of the notarial deed and must be notified to the recipient.

CROSS BORDER ISSUES

- Trusts under local law

A testator may impose on a heir the obligation to surrender as from a certain event or a certain moment the inheritance or a portion acquired by such heir to another (beneficiary under trust). If the testator has instituted as heir a person not conceived at

the time of the testator's death such person must be considered beneficiary under trust. The same rule shall apply in regard to a legal person which is instituted as heir and at the time of the demise of the testator had not been constituted yet. Up to the point that a testator has not prescribed another event or exact time the devolution of the succession of the beneficiary under a trust shall take place upon the demise of the heir.

- Choice of law to govern succession

All the above mentioned Greek laws govern succession in Greece.

- Local recognition of foreign court orders

In accordance to the relevant international conventions between countries, a foreign court order is recognised in Greece and is valid as res judicata, without any further procedures, except from a public hearing at the Court of first instance, under the following conditions:

1. The court order applied the proper law according to Greek law.
2. It is res judicata according to Law of the country that has been released.
3. The case according to Greek law comes under the jurisdiction of the courts of the foreign country.
4. The person who lost the case have not deprived his privilege of defense.
5. The court order is not opposed to a similar order that has been released by Greek courts, on the same case.
6. It is not opposed to virtuously morals, ethics and Greek law.

FORMALITIES

- Types of wills and formalities required for a valid local will.

According to the law, as aforesaid a principal can transmit his holdings as a whole, by virtue of the law or of a testament to his heirs. In any case we must point that a will may only be drawn up in person and solely in conformity with the formalities laid down in Law. Additionally more than one person may not draw up a will in the same

deed. As the Civil Code defines, there are four types of wills, with different formalities:

1. The holograph will, that must be written by the hand of the testator, dated and signed by him and is not subjected to any other formality. It is the simplest form of a will, yet very strict, from the aspect that every infraction of the form may cause the nullity of the will. We must point here that in case that the date is false or mistaken, shall not in itself, entail the nullity of the will, but in cases that the date is missing and cannot be concluded from the script, the will is void. The testator can write his will in any language he wants. It may be deposited by the testator for safekeeping in a notary, or in anyone the testator thinks that will be safe. Any additions in the margin or in the form of post scriptum must be signed by him, otherwise these shall be deemed not written. Relatively to the signature of the testator, that must be by his hand and not by seal, or written in a computer, otherwise the will is void. Crossings out, intercalation, scratching and any other similar external defects, after being ascertained by the Court that proceeded with the publication of the will, are at the Court's appreciation to entail invalidity of the will, in whole or in part. A person who cannot read manuscripts lacks the capacity to make a holograph will, but has the opportunity to make any other will he wishes.

2. The public will, that shall be drawn up by the testator declaring his last will before a notary (who represents the State and justifies the characterization public) and in the presence of three witnesses or a second notary and one witness. As a notary or witness may not concur in the drawing up of the will the following persons: Firstly the spouse or former spouse of the testator (even if they had been divorced or their marriage had been cancelled) all the relatives of the testator in direct lineal relationship by ties of blood (parents, children, adopted children, grandchildren) up to the third degree and all the relatives of the testator in collateral relationship through marriage up to the third degree and if any of the above mentioned concur in drawing up of the will, then the will is void. Secondly, anyone who is mentioned as beneficiary in the will, or who is appointed Executor, or who has a relationship as mentioned above with the beneficiary or the Executor. In that case, the concurrence of a person excluded on the grounds referred to in the preceding

paragraph shall entail solely the nullity of the testamentary disposition favoring the beneficiary or appointing the Executor. Thirdly, as a second notary or witness, may not concur in the drawing up of the will anyone who has relationships as described above with the notary, however non observance of this provision shall not entail the nullity of the will. Finally, as witnesses in the drawing up of the will, may not concur people wholly deprived from the sense of sight or hearing, the clerks or servants of the notary and people under age. In that case, the concurrence of a person excluded on the grounds referred to in the preceding paragraph shall entail solely the nullity of the will.

3. The mystic will, which shall take effect through the handing by the testator to a notary in the presence of three witnesses or of a second notary and one witness of a document accompanied by an oral declaration that the specific document, contains his last will. The document handed whether written by the testator or another person must bear the sign of the testator. In the case that the testator has declared that though he can read manuscripts he cannot write or that he was unable to affix his signature on the document containing his last will he must in addition declare in the presence of the notary and the persons concurring that he read the document and also indicates the reason for which he was impeded from signing the document. Furthermore an attestation regarding the above must be inserted in the deed otherwise the will is void. The document or its envelope, if it has not been sealed so that it could not be opened without breach or deterioration of the seal, must be sealed in the presence of the testator and the persons concurring. Any mystic will that is null can be effective as a holograph will if it would be valid as such. Anyone who lacks the ability of reading manuscripts cannot compose a mystic will.

4. The extraordinary will and as such wills considered wills on board vessel (which practically is an oral declaration) and wills in the course of a campaign (which refers to military personnel during campaigns) and generally every will that has been composed under state of emergency.
   Will on board vessel: A person on board on a Greek vessel, during a travel by the sea is possible to make a will by an oral declaration in the presence of two witnesses. All the provisions relating to a will made during a travel by the sea

shall not be applicable in the case that the vessel is inside a national port where a notary can be found, except if the testator is unable to leave the vessel. Such inability must have been attested through an insertion in the will by the person who draws up such will, otherwise the will is void.

Will in the course of a campaign: Military personnel and generally persons coming within the jurisdiction of martial courts during a campaign according to the provisions of military criminal law may in the event of campaign blockage, siege or captivity, declare orally their last will before an officer and in the presence of another officer or two witnesses.

- Recognition of foreign wills

Copies of wills, or revocations that have been published abroad, may be deposited in any Greek consular authority, or to the registrar of any Court of first instance. The consular authority or the registrar that is receiving the copies must write on them in every detail what exactly have been deposited, the name of the person and the exact date. All the copies must be notarised and appostilled from the competent foreign Court that published the will. If the wills are written in a language other than Greek, they must also be officially translated by the Ministry of foreign affairs, any consular authority, or a lawyer. If the documents are deposited in any Greek consular authority, or to the registrar of any Court of first instance then must be deposited immediately to the registrar of the Court of first instance of Athens.

- Probate formalities

A notary to whom a will was been deposited shall be bound as soon as he got knowledge of the demise of the testator to proceed as follows:

In the case of a public will to dispatch a copy of the will, to the registrar of the competent Court of first instance and in cases concerning mystic or extraordinary will, to attend personally and hand over the original to the Court of first instance during a public hearing. Particularly as regards a mystic will, the Court shall verify in the presence of the notary that the seals are intact before proceeding with the breaking of the seals for the purpose of publication. Any person having a lawful interest may

attend during the verification of the seals and request that he should examine such seals. The Court may upon request or acting ex officio, hear the witnesses who concurred in the drawing up of the will, before proceeding with the breaking of the seals. In that cases of publication, minutes shall be drawn up in which shall be reproduced the whole of the will and also an attestation verifying the existence or non existence of any external defects as above mentioned. As regards holograph will, any person having in his possession such will, must upon getting knowledge of the demise of the testator, to present the will for publication either to the competent Court of the last domicile of the testator or to the respective Court of his own residence. Because the validity of a holograph will, can be disputed the person who applied for the publication of a holograph will, may during the proceedings of publication call three witnesses in order to testify under oath about the genuineness of the writings or the signature of the testator. When a person having in his possession a holograph will resides abroad, he can present the will for publication to the person in charge of the consular authority. Especially for publication of a will by the consular authority, when a will is deposited there, must upon getting knowledge of the demise of the testator, proceed with the publication of the will, at a public hearing of the Consular Court; in any other case the publication shall be done at the Consular office before two witnesses and the secretary of the Consulate and relevant minutes shall be drawn up and signed by the head of the Consular authority, the witnesses and the secretary. The consular authority must forward two copies of the minutes to the Ministry of Justice.

- Issues regarding revocation

Any will can be revoked as follows:

1. By a declaration to this effect contained in a subsequent will. In cases that such a subsequent will has been revoked the former will shall produce its effects as if it had never been revoked.
2. By a declaration made before a notary in the presence of three witnesses. In cases that such declaration has been revoked in the same way the former will, shall produce its effects as if it had never been revoked.
3. By a subsequent will that by its contents shall abrogate the former, only with regard to the part that is opposite to the former will. If the subsequent will has

been revoked, the former will, shall produce its effects as if it had never been revoked.

- Position of executor of a will

A testator may appoint in his will as Executors one or more persons or legal entities and he also can entrust to the appointed Executor the task to appoint co – Executors or successors. The above mentioned appoint is void in cases that the appointed Executor at the time of the acceptance of his office lacked the capacity or enjoyed only a limited capacity to effect legal acts. The office of an Executor commences from his acceptance. The acceptance or renunciation of the office shall be made by a formal declaration addressed to the registrar of the competent Court for the succession, who shall draw up the relevant minutes. Such declaration shall be void if made prior to the devolution of the succession or under condition of terms.
The task of an Executor shall be the implementation of the dispositions of the will. H e is entitled to perform any act either expressly authorised by the testator or indispensable for the implementation of his testamentary dispositions. The Executor shall be entitled under the same conditions, to administer the succession in whole or in part. During the performance of his obligations an Executor is liable in regard to heirs, for any prejudice caused to the succession, by his fault.

- Position of heirs

The heir shall acquire a succession ipso iure upon its devolution, but has also the right to renounce the succession within a time period of four months from the time he got knowledge of the devolution. In case of devolution by will the time period shall not commence to run before the publication of the will. In cases a principal had his last domicile abroad or if a heir got knowledge of the devolution while he was residing abroad, the time period shall be of one year. The renunciation takes place by a declaration which is addressed to the registrar of the competent Court for the succession. In cases of renunciation by representative a special mandate in the form of a notarial deed is necessary. When a renunciation is made, the devolution of the

succession shall be deemed not to have taken place. An acceptance or renunciation of succession is irrevocable.

## THE SUCCESSION AND DONATION TAX LEGISLATION IN GREECE

The succession and donation tax is a personal and direct tax, classified in the category of capital taxes, based on the perception that the acquisition of Property without consideration, renders the beneficiary able to pay to the State a part of the inheritance or the donation as a tax.

The Greek succession tax legislation was radically reformed with the 118/1973 Legislative Decree (L.D.), which abolished every former arrangement, as was amended by the 81/1974 L.D. Furthermore the basic Greek legislative framework includes the following Laws: 12/1975, 231/1975, 542/1977, 814/1978, 1041/1980, 1160/81, 1249/1982, 1326/1983, 1329/1983, 1473/1984, 1563/1986, 1591/1986, 1731/1987, 1828/1989, 1882/1990, 1914/1990, 1947/1991, 1954/1991, 1967/1991, 2020/1992, 2065/1992, 2120/1993, 2166/1993, 2187/1994, 2214/1994, 2362/1995, 2386/1996, 2396/1996, 2459/1997, 2520/1997, 2523/1997, 2538/1997, 2556/1997, 2557/1997, 2648/1998, 2676/1999, 2682/1999, 2753/1999, 2873/2000, 2892/2001.

The tax is levied in every form of property that is transmitted due to a causa mortis acquisition or a donation. Causa mortis acquisition happens due to an inheritance, bequest or a life insurance. The inheritance devolves to the beneficiary either due to a will or intestate succession or involuntarily by the law. The third article of the 118/1973 P.D defines the principles on the basis of which the devolution of the inheritance is established. These principles are directly connected to the testator and are the following:

a) The principle of territoriality, according to which the tax is levied to every asset that is found in Greece.
b) The principle of citizenship, according to which the tax is levied to every movable asset that belongs to a Greek citizen and found abroad, wherever he might had his residence while he was alive, unless if the testator, before his death, was living abroad for ten consequent years.
c) The principle of domicile, according to which the tax is levied to every property of a foreigner found abroad, if he had his domicile in Greece.

Acquisition by donation exists in the cases of donations that comply with the regulations of the Civil Code as well as in every case of concession, provision, transmission of every asset without price. The principles on the basis of which the donations tax is levied are scheduled in article 35 of the 118/1973 P.D. as hereinafter:

d) The principle of territoriality, according to which the tax is levied to every asset donated and found in Greece.
e) The principle of citizenship, according to which the tax is levied to every movable asset that belongs to a Greek citizen, found abroad.
f) The principle of domicile, according to which the tax is levied to every property of a foreigner found abroad and donated to a Greek or a foreigner who has his domicile in Greece.

The subject of the tax is the beneficiary of the acquisition (heir, legatee, donee) and the time that the succession tax is levied coincides with the time of the devolution of the succession, i. e. the time of death of the testator. The time of the devolution of the succession may be transferred exceptionally to a future point either ex officio (article 7) or with a decision of the competent Tax Authority's supervisor (article 8). For taxes of donations the time of the instruction of the contract, or the time of delivery of the donation, if informal, is considered the time of creation of the obligation.

As value for the imposition of the succession-donation tax the value of the inheritance at the time of the devolution of the succession or the value of the donation is considered. In order to assess this value the following must be taken into account.

a) Immovable assets: The assessment of the value of the immovable asset corresponds to the system of the objective assessment of the value of the asset or, exceptionally, the value of the asset or of a similar one is taken into account (system of comparison of criteria).
b) Demands: the amount of the existing demands is taken into account (article 11).
c) Furniture: It is taken for granted that furniture exists and that their value numbers 1/30 of the net value of the succession in every inheritance (article 13). This resumption is rebuttable.
d) Payments: payments are devised to perpetual payments, which are assessed as 20 times the value of the annual payment, payments of definite time, which are assessed to the multiple of the annual payment wit a maximum of 18 times this

payment, and lifetime or indefinite time payments, which are assessed from 2 up to 18 times the value of the payment depending on the age of the beneficiary (article 14).

e) Usufruct, habitation, use: We distinguish between definite time usufruct, habitation or use that are assessed as the 1/20 of the absolute title for every year of their duration with a limit of the 8/10 of the value of the absolute title, and lifetime or indefinite time, which scales according to the age of the beneficiary (article 15).
f) Naked ownership: The naked ownership is non taxed immediately but only when the usufruct is united with the ownership.

The inheritance or the bequest are not subjected to succession taxes if the beneficiary is one of the following:

a. The Greek State, the Greek Church and every legal entity of public law.
b. Legal entities of non-lucrative purpose, legally constituted in Greece that have provenly useful philanthropic, educational, artistic or beneficial to the public purposes and foreign legal entities of the same purposes.
c. The relief funds of workers and employees
d. The foreign legal entities that are exempted by the tax due to international contracts.
e. Properties of the article 96 of the 2039/1939L
f. The political parties that are legally constituted and recognised by the Parliament Regulation.

Properties that have been acquired by one of the following are exempted from the donation tax:

a. The Greek State, the Greek Church and every legal entity of public law.
b. Legal entities of non-lucrative purposes, that have provenly beneficial to the public purposes and foreign legal entities of the same purposes.
c. Every, without price, concession of movable of immovable assets to third parties by the Greek state, Greek municipalities or legal entities of the Public Law.
d. Every compensation by insurance funds due to the death of the insured, to the children, the widower or the widow, his parents and his unmarried sisters.
e. The relief funds of workers and employees

f. The foreign legal entities that are exempted by the tax due to international contracts.
g. Properties of the article 96 of the 2039/1939L
h. The political parties that are legally constituted and recognised by the Parliament Regulation.

The residence of the spouse or the children of the testator, if the heir or the legatee, his spouse and his juvenile children, or children under the age of 25 that study, do not have an absolute title or usufruct or habitation to another residence that covers their housing needs, as described in article 1 of the 1078/1980L, or an absolute title to a building site, in a city of at least 3000 residents is also excluded from the tax.

After the deduction of depts, burdens and exemptions, the rest of the property is subjected to the succession-donations tax, which is computed by the level of the transferred property in connection to the relationship between the beneficiary and the transferor. The beneficiaries are classified in four categories, according to their relationship with the testator, and, for every of the above categories, different tax-free amounts and differently scaled tax factors are provided. The currently in force scales are regulated by article 1, par.9 of the 2892/2001L and are in force from March the 9$^{th}$ 2001.

Liable for the submission of the tax declaration is the heir, legatee or their rightful representatives. The deadline for the submission of the declaration is six months (if the testator died in Greece) and 12 months (if the testator died abroad or the heirs/ legatees were living abroad on the time of death). The deadline may be extended up to three months and it begins from the time of death of the testator or the publication of the will or the publication of the declaration of the absence of the testator. The declaration is submitted to the supervisor of the Tax Authority of the district where the testator had his residence or, for foreign successions, the supervisor of the Tax Authority of foreign residents is competent. If the testator, however, had his residence abroad but died in Greece, the supervisor of the Tax Authority of the locus of death is competent.
If the donation is drawn up by a notarial document, liable for the submission of the declaration are both the contracting parties, that is both the donee and the donor. If the

donation is informal or a causa mortis donation the declaration is submitted within six months from the time of deliver of the donation or from the time of death of the donor and liable for this declaration is the donee. The above declarations are submitted to the supervisor of the Tax Authority of the place where the donator has or had his residence.

The taxpayer has the right to revoke entirely or partially the declaration of the tax that has submitted until the notification of the imposition of the tax by the supervisor either due to confirmed fundamental error of facts or a mistaken interpretation of the regulations of the tax legislation. The revocation takes place with the submission of a new declaration. The supervisor of the competent Tax Authority has the jurisdiction to decide for the approval or the rejection of the revocation and his decision is subjected to a petition and legal remedies.
The submission of the declaration is followed by the certification of the tax, the inspection of the accuracy of the contents of the declaration, the report of the results of the inspection and the edition and notification of the act of tax imposition (articles 76,77,79). Within sixty days from the notification of the act the taxpayer has the right of a petition, which may also include an application for an out of Court resolution of the dispute.

The tax must be paid in 24 equal and without interest monthly instalments, each one of which cannot be less than 100.000dr, with the exemption of the last one. The tax that is determined by a court decision or a court settlement must be paid in six equal and without interest monthly instalments, each one of which cannot be less than 100.000dr, with the exemption of the last one. A 5% of the total amount of the tax is deducted if the taxpayer pays the total amount within the first term of the instalments.

Legally certified taxes may be deducted for one of the following reasons:

a. Revocation of the declaration.
b. Correction of accounting errors of the declaration.
c. Issue of a decision that amends or cancels the act of the supervisor by a Court of Administration.
d. Revision or correction of the decision of the Court of Administration.

e. Issue of a Court of Appeal decision that amends or eliminates the first degree decision
f. A new liquidation of the tax according to articles 100 and 101 of the ……..