G7:

Greece

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Fixed rights of inheritance

Statement of succession laws and rights of inheritance

G7.1

The basic regulatory framework of Greek succession law is to be found in articles 1710–2035 of the Greek Civil Code (GCC) together with the following laws:

(*a*) Law 3950/1911;

(*b*) Law 2310/1920;

(*c*) Law 2783/1941;

(*d*) Law 1329/1983;

(*e*) Presidential Decree 456/1984.

Upon the death of an individual, his estate (comprising of movable and immovable assets and any rights and obligations) passes by operation of law or under the terms of the deceased's will to his heirs. Where the deceased died intestate, or where his will does not dispose fully of his estate, succession to the deceased's estate is determined by operation of the law of intestate succession (art 1710 GCC).

According to Greek law, a testator may nominate an heir in his will. An individual can only be an heir if, at the time of the death of the deceased, he was either alive or had been conceived or was born after post mortem in vitro fertilization (art 1711 GCC). Apart from the deceased's spouse and certain other relatives who are entitled to a compulsory share of the estate (ie half the estate), a testator can leave his estate by will to any heir he wishes.

Lifetime gifts

G7.2

Lifetime gifts (donations) are taken into account when calculating the value of the deceased's estate. Where the deceased's estate at the time of death is insufficient to cover the compulsory portion, such lifetime donations are subject to rescission. An heir (or his successors in title) may take legal action, if necessary, to recover from the recipient of the gift (or his heirs) the amount of shortfall in the compulsory portion. Legal action is restricted to the amount outstanding from the compulsory portion, and must be initiated within two years from the deceased's death. The recipient may avoid rescission of the donation by making payment of a sum equivalent to the value of the outstanding amount.

Assets belonging to the succession

G7.3

In his capacity as heir, an individual can recover various assets which are perceived under Greek law as belonging to the deceased's succession. Such assets include the following:

(*a*) assets in which, at the time of his death, the deceased had rights of possession or retention;

(*b*) any assets acquired by an individual using funds from the deceased's estate. When the heir receives his inheritance, the original transfer is treated as valid.

Donationes mortis causa

G7.4

Under Greek law a *donatio mortis causa* is a gift that is made by the donor in contemplation of his death, with the intention that the donee should only have enjoyment of the gift after the death of the donor. The donor can freely revoke such a gift. Revocation must be effected by deed and notified to the donee.

Property under administration (not a trust)

G7.5

The Greek Civil Code covers properties under administration in the tenth chapter (arts 1923–1941) of its fifth Book, entitled Law of Succession.

A testator may impose on an heir the obligation to surrender as from a certain event or a certain moment the inheritance or a portion thereof acquired by such heir to another beneficiary under article 1923. For example, if a testator wishes to benefit an individual who is unborn at the time of his death, such unborn person is treated as a beneficiary under article 1923. The same rule applies to legal entities instituted as heir that, at the time of the death of the testator, had not been constituted. Where the deceased has not prescribed an event or date upon which the devolution should take place, the beneficiary under article 1923 inherits upon the death of the heir.

Succession by will

Types of wills

G7.6

If the deceased's estate is transferred by virtue of a testament to one or more persons (heirs), this testament is only valid if drawn up by the testator personally, in conformity with the formalities laid down in the law (art 1716 GCC). More than one person cannot draw a common will (art 1717 GCC). The Civil Code recognises four types of will, each with different formal requirements:

(*a*) *The holograph will* (art 1721 GCC) – The only formalities provided by law for this type of will to be valid is that it is wholly written by the hand of the testator and signed and dated by him. Deviation from these formalitites causes the invalidity of the will. The signature of the testator must be handwritten. Greek case law has accepted that the will is void if the signature is by seal or derived from a computer.

Although a genuine mistake when writing the date will not cause the invalidity of the will, total lack of the date or the inability for it to be concluded from the body of the will results in it being void.

A postscript and any additions in the margin of the will must be signed; failure to sign means that such additions have no effect. It is in the court's discretion to determine whether a will containing crossings out, insertions and any other defects is valid. The court may invalidate a will in whole or in part.

The testator can write his will in any language he wishes. If he is unable to read, he lacks the necessary capacity to make a holograph will (art 1723 GCC).

Having written the will, the testator may take it to a notary for safekeeping (art 1722 GCC).

(*b*) *The public will* (art 1724 GCC) – The public will shall be drawn up by a testator declaring his last will before a notary public, in the presence of three witnesses or a second notary and one witness. The following people may not act as a witness or as a notary public to a public will:

(i) the testator's spouse or former spouse (even if there has been a divorce or a declaration of nullity of marriage), relatives of the testator with direct lineal ties of blood up to the third degree (including parents, children, adopted children, grandchildren) and all the relatives of the testator with collateral ties through marriage up to the third degree (art 1725 GCC). If anyone in this category helps to draw up the will, or acts as a witness, the will is rendered null and void.

(ii) anyone who is mentioned as a beneficiary in the will, or who is appointed executor, or who is a relative of a beneficiary or executor to the degree set out in (i) above. If anyone of this class acts as a witness or a notary public, only the provisions in the will concerning that witness are rendered invalid, not the will as a whole (art 1726 GCC).

(iii) a second notary or a witness who is a relative of the notary to the degree set out in (i) above may not assist in the drawing up of a holographic will or act as witness. However, should this provision not be complied with, the will is not considered invalid (art 1727 GCC). There is only disciplinary liability of the notary public.

(iv) anyone who is wholly blind, wholly deaf, a minor, or a clerk or servant of the notary public. If any person from this category acted as a witness, the entire will would be rendered null and void (art 1728, para (a) GCC).

(v) foreign people and people who are not allowed to act as witnesses in contracts (as set out in Law 670/1977). However, should this provision not be complied with, the will is not considered invalid (art 1728, para (b) GCC).

The testator states his will to the notary public verbally (art 1730 GCC). The witnesses, who have to be present during the whole procedure, solemnly swear to secrecy (art 1731 GCC). A testament deed drawn by the notary public is signed by the testator and the witnesses (art 1732–1733 GCC).

(*c*) *The secret will* (art 1738 GCC) – The secret will shall take effect through the handing by the testator to a notary public in the presence of three witnesses or a second notary public and one witness, a document accompanied by an oral declaration that the document contains his last will.

The will can be written by either the testator or by someone else, but must bear the signature of the testator in order for it to be valid (art 1740 GCC). If the testator is unable to sign the will, for example due to his inability to write, he must make a declaration in the presence of the notary public and witnesses that he has read the will and must also indicate the reason why he was unable to sign. Furthermore, an attestation regarding the above must be inserted in the deed (art 1744 GCC). The document or its envelope must be sealed in the presence of the testator and witnesses (art 1741 GCC).

It may be possible that a secret will which is void as a result of the breach of any of the formalities is instead treated as a valid holograph will under the condition that it meets the requirements set for holograph wills (art 1747 GCC).

(*d*) *The extraordinary will* – This type of will generally includes any will that has been made under emergency circumstances. The three main categories provided by the Greek Civil Code are the following:

(i) *a will made on board a vessel* (art 1749 GCC) – a person on board a Greek vessel can make a will by oral declaration in the presence of two witnesses. However, an extraordinary will cannot be made by a person on board a vessel that is docked at a national port where a notary public can be found, unless the testator is unable to leave the vessel (art 1752 GCC). Such inability of the testator must be declared in the will, otherwise the will is void.

(ii) *a will in the course of a campaign* (art 1753 GCC) – military personnel, or in general those who fall under the jurisdiction of martial courts, may in the event of a campaign, blockade, siege or captivity, declare orally their last will before an officer with either another officer or two witnesses present.

(iii) *a will in case of shut-out* (art 1757 GCC) – persons who reside in places that are shut-out due to epidemic or other extraordinary conditions can make testimonies under the requirements set out in (i) above.

Revocation of a will

G7.7

Any will may be revoked:

(*a*) by a declaration to this effect contained in a subsequent will. Where such subsequent will has been revoked, the former will shall take effect as if it had never been revoked (art 1763 GCC).

(*b*) by a declaration made before a notary in the presence of three witnesses and in accordance with the other formalities pertaining to notarial needs. Where such declaration has been revoked the former will shall take effect as if it had never been revoked (art 1763 GCC).

(*c*) by a subsequent will that abrogates the former will by content. The former will is revoked only with regard to such part of the subsequent one that is in opposition to the respective part of the former will. Where the subsequent will has been revoked, the former will takes effect as if it had never been revoked (art 1764 GCC).

The Greek Civil Code sets special provisions as follows:

(*a*) revocation of holograph will – by spoliation of the document of the will by the testator on purpose or by alteration of the document by the testator which can be considered as revocation of the will of the testator (art 1765 GCC).

(*b*) revocation of secret will – if the testator retrieves the document of the will which had been handed to the notary public as mentioned above in G7.6(*c*).

Publication of the will

Public and secret wills

G7.8

When a notary public with whom a will has been deposited, receives knowledge of the testator's death, the procedure is as follows:

In the case of a public will, a copy of the will must be sent to the County's Court judge without culpable delay. In cases concerning secret or extraordinary wills, the notary must deliver in person the original will to the County's Court judge. (art.1769 GCC).

The judge verifies, in the presence of the notary public, that the seals on the will are intact before proceeding with breaking the seals and the publication of the will. This applies particularly in the case of secret wills. Any person with an interest in the will may attend the court and, if they wish to do so, may examine the seals. Before proceeding to break the seals, the court may-upon request or acting *ex officio*-hear the individuals who acted as witnesses to the execution of the will (art 1770 GCC). The court produces minutes of the publication process (art 1771 GCC); the will is reproduced in the minutes along with an attestation verifying the existence or non-existence of any external defects.

Holograph wills

G7.9

On learning of the death of the testator of a holograph will, the person holding the will must present it, without culpable delay, for publication before the County Court of the last residence of the testator, or before the County Court of his own residence.

Since a holograph will is more likely to be the subject of a dispute, the person presenting the will for publication may call two witnesses in order that they testify under oath that the handwriting or signature is genuine (art.1776 GCC). Where a person residing outside Greece is holding the holograph will of a Greek resident, he can present the will for publication, he can present the will for publication to the person in charge of the relevant Greek consular authority. Upon receiving notice of the death of the testator whose holograph will it is holding, a consular authority must proceed with the publication of the will at a public hearing of the consular court. In the case of a will other than a holograph will, the publication of the will may take place at the consular office before two witnesses and the secretary of the consulate. Relevant minutes are 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, Transparency and Human Rights. (art.1775).

Publication of foreign wills

G7.10

Copies of wills or revocations made in another country may be deposited with any Greek consular authority, or with the registrar of any court of first instance. The consular authority or registrar, upon receipt of the copy will, must record on the will exactly what has been deposited, the name of the person and the exact date (art 1773 GCC and art 808 of the Greek Code of Civil Procedures (GCCP)).

If a will is written in a language other than Greek, the Ministry for Foreign Affairs, any consular authority, or a lawyer must officially translate it. Any documents deposited with a Greek consular authority or with the registrar of any court of first instance must be sent immediately to the registrar at the court of first instance in Athens.

Abrogation of the will

G7.11

Anyone who may benefit from the will being abrogated is entitled to ask for such abrogation before the competent court in the following cases:

(i) the will has been made as a result of the testator having been threatened or deceived in fallacy (art 1782–1783 GCC);

(ii) the will includes the deceased's spouse as an heir and the marriage between them is invalid or has been dissolved before the testator's death (art 1785 GCC);

(iii) any of the mandatory heirs has been excluded from the will (art 1786 GCC).

Executors

G7.12

A testator may appoint in his will one or more physical or juristic persons as executors. The testator may also entrust to the appointed executor the task of appointing co-executors or successors (art 2017 GCC). The appointment of an executor is rendered void if, at the time of accepting his position, he lacks the necessary legal capacity or enjoys only a limited legal capacity to effect legal acts (art 2018 GCC). The office of an executor commences from the time of his acceptance. The acceptance or renunciation of the executor is made by a formal declaration addressed to the registrar of the competent court for the succession. The declaration is void if it is made before the devolution of the succession or under condition or term (art 2019 GCC).

The task of an executor is to implement the dispositions contained in the will. His authority extends to performing any act which is either expressly authorised by the testator or is necessary for the implementation of the testamentary dispositions. Under the same conditions, an executor may be appointed to administer the estate in whole or in part (art 2020 GCC). During his period of appointment, an executor is liable in regard to the heir for any prejudice caused to the estate through his actions (art 2023 GCC).

Local recognition of foreign court orders

G7.13

Foreign court orders are recognised in Greece, subject to a public hearing in the court of first instance, provided that the following conditions have been met (art 323 GCCP):

(*a*) the court order applied the proper law, according to Greek law;

(*b*) according to Greek law, the case comes under the jurisdiction of the court of the foreign country;

(*c*) the court order is *res judicata* according to the law of the country that has issued it;

(*d*) the person who lost the case had not been deprived of his rights to make a defence;

(*e*) the court order does not conflict with an order issued by a Greek court in the same case;

(*f*) it is not illegal under Greek law and is not in breach of the public interest, i.e. it is not immoral or unethical.

Heirs

G7.14

On devolution of the succession, an heir acquires his inheritance *ipso iure* (art 1846 GCC). However, after the death of the testator, the heir may renounce his inheritance within four months of learning of its devolution and the reason for such devolution. In the case of devolution by will, the time period commences from the date of publication of the will. Where the deceased had his last residence abroad, or the heir learns of his inheritance while resident abroad, the time period to renounce the inheritance is extended to a year (art 1847 GCC).

Renunciation is made by a declaration addressed to the registrar of the competent court for the succession and concerns the whole of the inheritance. An heir may appoint a representative to renounce his inheritance on his behalf, in which case a special mandate in the form of a notarial deed is required. Upon renunciation by an heir, the devolution of the succession to him is deemed never to have taken place.

An acceptance or renunciation of an inheritance is irrevocable.

Tax

G7.15

Under Greek law, succession and donation tax is payable on inheritance. This is a capital tax based on the principle that tax should be payable on property acquired without consideration.

Greek succession tax legislation was radically reformed by the 118/1973 Legislative Decree (LD), as amended by the 81/1974 LD. The basic tax provisions can be found in 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, 2961/2001, 3427/2005, 3554/2007, 3634/2008, 3815/2010, 3842/2010, 3943/2011.

Succession and donation tax is levied on all property that devolves as a lifetime gift or as an inheritance, bequest or life insurance. For tax purposes an inheritance may devolve to the beneficiary as a consequence of a will or by operation of the law.

Article 3 of 118/1973 LD defines as follows the three basic principles on which the devolution of the inheritance is established for tax purposes:

(*a*) the principle of territory – tax is levied on every asset held in Greece that belonged to the testator;

(*b*) the principle of citizenship – tax is levied on the worldwide movable assets that belonged to a Greek citizen irrespective of his place of residence, unless he resided abroad for the ten years preceding his death;

(*c*) the principle of residence – tax is levied on the worldwide property that belonged to a foreigner if he had his residence in Greece.

An acquisition by donation is deemed to have occurred in any case where the donation falls within the provisions of the Civil Code, and in any case where an asset has been transferred without consideration. The principles forming the basis on which the donations tax is levied are scheduled in article 35 of the 118/1973 LD, and are as follows:

(i) the principle of territory – tax is levied on every donated asset that is situated in Greece;

(ii) the principle of citizenship – tax is levied on all the movable assets worldwide that have been donated by a Greek citizen;

(iii) the principle of residence – tax is levied on any property donated to a person whose residence is in Greece.

The beneficiary of the acquisition (ie the heir, legatee, or recipient) is liable for payment of the tax. Succession tax is payable at the time of the devolution of the succession, ie at the time of the death of the testator. In exceptional cases the devolution of the succession may be delayed to a future date. This can either be done *ex officio* (art 7) or by virtue of a decision to that effect by the competent tax authority's supervisor (art 8). Liability for tax on donations arises from the time of execution of the contract for the transfer of the property or, in the case of an informal donation, from the time of delivery of the donation.

Succession and donation tax is levied on the value of the inheritance at the time of devolution (or, in the case of a lifetime donation, at the date when the donation was made). In order to assess this value the following must be taken into account:

(*a*) *immovable assets* – the assessment of the value of immovable assets is an objective assessment. In exceptional circumstances the value of a similar asset is taken into account;

(*b*) *demands* – the amount of existing demands is taken into account (art 11);

(*c*) *furniture* – it is presumed that part of the succession consists of furniture and that its value is equivalent to one-thirtieth of the net value of the succession (art 13). This presumption is rebuttable;

(*d*) *payments* – payments in perpetuity are valued as being worth 20 times the value of the annual payment, payments for fixed periods are valued as a multiple of the annual payment with a maximum of 18, and payments for life or other indefinite periods are valued, depending on the age of the beneficiary, between 2 and 18 times the value of the annual payment (art 14);

(*e*) *usufruct, occupation or use* – in the case of usufruct, occupation or use for a fixed period, the value is assessed at being one-twentieth of the value of the absolute title for every year of its duration, with a maximum of the 80 per cent of the value of the absolute title. In the case of usufruct, occupation or use for life or other indefinite period, reference must be made to a sliding scale set out in the legislation which produces an assessment of its value according to the age of the beneficiary (art 15);

(*f*) *naked ownership* – naked ownership is not taxed immediately. It only becomes subject to tax when the usufruct is united with the ownership.

The inheritance or bequests are not subject to succession tax if the beneficiary is one of the following:

— the Greek State, the Greek Church and any entity of public law;

— non-profit making legal entities, whether foreign or Greek, which have been legally constituted and whose purposes are philanthropic, educational, artistic or otherwise for the public benefit;

— funds for the benefit of workers and employees;

— foreign legal entities exempt from the tax by virtue of provisions agreed in international contracts;

— properties listed in article 96 of 2039/1939 LD;

— political parties that are legally constituted and recognised by parliamentary regulations.

Properties acquired by one of the following are exempt from donation tax:

— the Greek state, the Greek Church and any entity of public law;

— non-profit making legal entities, whether foreign or Greek, whose purpose is for the public benefit;

— free transfers of movable or immovable assets to third parties by the Greek state, Greek municipalities or entities of public law;

— insurance compensation paid on the death of the insured to the children, widower/widow, parents or unmarried sisters of the insured;

— funds for the benefit of workers and employees;

— foreign legal entities exempt from the tax by virtue of provisions agreed in international contracts;

— properties listed in article 96 of 2039/1939 LD;

— political parties that are legally constituted and recognised by parliamentary regulations.

If the testator's residence is occupied by his spouse and children, or by the spouse or minor children (or children under the age of 25 who are students) of the heir or legatee, and they do not have an absolute title, usufruct or right of occupation to another residence that covers their housing needs (see art 1 of 1078/1980 LD), or an absolute title to a building site, in a city of at least 3,000 residents, the property is excluded from the tax.

After the deduction of debts, burdens and exemptions, the remainder of the property is subject to the succession and donations tax. The tax is calculated on the basis of the nature of the transferred property and the relationship between the beneficiary and the transferor. The beneficiaries are classified into four categories according to their relationship with the donor; for each category, different tax-free amounts and differently scaled tax factors are prescribed. The heir, legatee or their rightful representatives are liable for the submission of the tax declaration. The submission of the tax declaration must take place within six months if the testator died in Greece, and twelve months if the testator died abroad or the heirs/ legatees were living abroad at the time of the death, beginning from the time of death of the deceased or of the publication of the will. The deadline may be extended by three months in exceptional circumstances. The declaration is submitted to the supervisor of the tax authority of the district where the testator had his residence or, for foreign estates, the supervisor of the tax authority for foreign residents. If the testator had his residence abroad but died in Greece, the declaration should be submitted to the supervisor of the tax authority of the place where he died.

If a donation is drawn up by a notarial document, both of the contracting parties (i.e. the recipient and the donor) are liable for the submission of the tax declaration. If a donation is informal or a *donatio mortis causa*, submission of the declaration should take place within six months from the time of delivery of the donation or from the time of death of the donor. In the case of a *donatio mortis causa*, the recipient is liable for the submission of the tax declaration. The tax declarations must be submitted to the supervisor of the tax authority in the donor's place of residence.

A taxpayer may revoke his submitted tax declaration, either in part or in its entirety, if there has been a confirmed error of fact or a mistaken interpretation of the tax regulations. Such revocation may be made until

the taxpayer is notified of the imposition of the tax by the supervisor of the relevant tax authority. Revocation takes place on the submission of a new declaration. Although the supervisor of the tax authority has the power to decide whether or not to accept the newly submitted tax declaration as a revocation of the previous declaration, his decision is subject to appeal.

The submission of the tax declaration is followed by a certification of the tax, an inspection of the accuracy of the contents of the declaration including a report of the results, and notification of the imposition of the tax (arts 76, 77 and 79). The taxpayer has 60 days from the notification of the tax imposition in which to submit a petition, which may include an application for an out of court resolution of the dispute.

The tax must be paid in equal instalments paid every two months – no interest is charged on the payment. Each payment cannot be less than €500, with the exception of the last payment. If the taxpayer pays the total amount in the first instalment, a deduction of five per cent of the total amount of tax is allowed.

The deduction of legally certified taxes may be made for one of the following reasons:

(*a*) the revocation of the declaration;

(*b*) the correction of an accounting error in the declaration;

(*c*) the handing down of a decision by a court of administration that amends or cancels the action of the supervisor of the tax authority;

(*d*) the revision or correction of the decision of the court of administration; or

(*e*) the handing down of a Court of Appeal decision that amends or reverses the decision at first instance.

Readers should please note that the text above has been contributed by Stamatia Giouni. The text that follows, on intestate succession, has been contributed by Assistant Professor Eugenia Dacoronia.

Intestate succession

Introduction

G7.16

The Greek Civil Code (GCC) covers intestate succession in the fourth chapter (arts 1813–1824) of its fifth Book, entitled Law of Succession.

The GCC adopts the system of generations (‘classes’). There are six classes of intestate heirs: the heirs designated in the first five classes are either relatives or the surviving spouse. Thus parentage and marriage are essential for the designation of an intestate heir. In the sixth and last class, where the deceased died without any relatives or spouse, the state of which the deceased was a national is called to the inheritance.

Greek law treats the various assets of the estate as constituting a single estate. It is not relevant whether an asset belonged to the family of the deceased or was acquired by the deceased himself.

Articles 1813–1824 of the GCC

Article 1813

G7.17

Article 1813 provides as follows:

> ‘**First class.** As heirs in an intestate succession shall be called in the first class the descendants of the deceased. The nearer descendant shall exclude the more remote of the same stirps.
>
> In the place and stead of a descendant who is not living at the time of devolution, shall be called the descendants thereof who are connected by relationship through him to the deceased (succession *per stirpes*).
>
> The children shall inherit by equal portions.’

The first class of heirs includes the descendants of the deceased (children, grandchildren, great-grandchildren) without any restriction or distinction of sex or primogeniture. The descendant of the nearest degree excludes all other descendants of a more remote degree belonging to the same root.

If the nearest descendant of the deceased has forfeited his inheritance, the descendant of a more remote degree is called to the inheritance *jure proprio* and not as a mere representative of the person forfeited. Thus the descendant of a more remote degree inherits, even if the nearest descendant has been disinherited.

A child born out of wedlock is a relative only of his mother and of her relatives and succeeds her in the first class. If the child born out of wedlock is acknowledged by his natural father, he enjoys the right of a child born in marriage and inherits as a legitimate child of the father. If the natural parents of a child born out of wedlock marry and the father has acknowledged or acknowledges the child, the child has the same rights as a child born in wedlock (art 1473 of the GCC) and inherits from his parents as an heir of the first class. Adopted children are also included among the relatives of the first class by virtue of article 1584 of the GCC, which provides that as from the completion of the adoption the adopted child and the descendants thereof, who were born after the adoption, shall take the position of a common child and common descendants of the two spouses.

The surviving spouse is also called to the estate as an intestate heir together with the other relatives of the first class. The surviving spouse is entitled to a portion comprising one-quarter of the estate (see art 1820 of the GCC). He also receives, as legacy, an extra portion (*preciput*) consisting of the furniture, houseware, clothing etc used by him or by both spouses. Immovable property is not included in the extra portion. As this extra portion is classed as a legacy, the surviving spouse is not liable to pay for the charges and liabilities of the succession out of this extra portion. According to Greek jurisprudence, the family car falls within this extra portion as well as the television set, expensive carpets and paintings by well-known artists. The spouse receives the extra portion only if he is called to the estate as an intestate heir; if the spouse is mentioned as an heir in the deceased's will, or if he has renounced the inheritance, then he is not entitled to the extra portion.

The duration of the marriage is not relevant to the inheritance right of the spouse. The marriage, however, must be existent and valid. If the marriage was void or voidable and has been annulled irrevocably whilst both spouses were alive, the effects of the marriage are cancelled according to article 1381 of the GCC, and the surviving spouse enjoys no inheritance rights.

Article 1814

G7.18

Article 1814 provides as follows:

> '**Second class.** In the second class shall be called together the parents of the deceased, his brothers and sisters, as well as children and grandchildren of his predeceased brothers and sisters. Parents as well as brothers and sisters shall inherit by equal portions, while the children or grandchildren of predeceased brothers and sisters shall inherit *per stirpes*. Children of a predeceased brother or sister shall exclude grandchildren of the same stirps.'

The second class of heirs includes the parents of the deceased, his brothers and sisters, as well as children and grandchildren of the brothers and sisters who have died before the deceased.

Parents as well as brothers and sisters of the deceased shall inherit by equal portions. Therefore, if the two parents are alive and there are two brothers, each inherits in co-ownership with the others one-quarter of the estate. If one of the parents and two brothers survive, each inherits one-third; and if no parent survives, only the brothers are called to the inheritance. If a brother of the deceased, who predeceased him, had children, then his children, i.e. the nephews of the deceased, are called to the estate in his place. Such nephews do not inherit in equal shares with the parents and brothers, but *per stirpes*, i.e. they are called to the portion that the predeceased brother would have taken.

Children of a predeceased brother or sister shall exclude grandchildren of the same stirps. This means that the child of a predeceased brother excludes his own children, i.e. the grandchildren of the said brother or sister, but does not exclude the grandchildren of another brother, who himself, as well as his child, had died before the deceased. Nephews of the deceased and their children are called to the estate not only if the parent that links them to the deceased dies, but also if the said parent has forfeited his inheritance in any manner whatsoever, i.e. if he has been disinherited, has been judged unworthy or has renounced the estate. The calling to the estate of the descendants of the forfeited brother stops at his grandchildren, i.e. at relatives of the fourth degree of the deceased.

Article 1815

G7.19

Article 1815 provides as follows:

‘**Half-brothers and half-sisters.** Half-brothers and half-sisters, when concurring with parents or full brothers and sisters or children or grandchildren of the latter (of full brothers and sisters), shall receive one half of the portion that belongs to full brothers and sisters. Children or grandchildren of predeceased half-brothers and half-sisters shall also receive one half portion.’

Half-brothers and half-sisters are:

(*a*) the children of the parents of the deceased from another marriage;

(*b*) the children of the mother born out of wedlock; and

(*c*) the children, born out of wedlock, who have been acknowledged by the father.

For those half-brothers and half-sisters the above article states that they receive one half of the portion that belongs to full brothers and sisters. Two views have been expressed about the meaning of this article. According to the first one, half-brothers and half-sisters take one half of the portion that they would have taken, had they been german brothers (‘the hypothetical or abstract calculation’). According to the second view, half-brothers and half-sisters take one half of the portion that german brothers actually take (‘the actual calculation’). For the actual calculation we calculate two portions for every german brother, or parent, and one portion for every half-brother and half-sister.

The Greek Court of Cassation (called in Greek *Areios Pagos*) follows the hypothetical calculation. The majority of scholars, however, consider that the actual calculation is the most appropriate because, when following this calculation, the relationship is always 1 to 2, whilst, when following the hypothetical calculation, the portion of the half-brother and half-sister depends on how many german brothers and half-brothers and half-sisters co-inherit.

If the deceased’s only relatives are half-brothers and half-sisters, their hereditary portion is not restricted, of course, as they are not called as co-heirs with parents and german brothers.

Article 1816

G7.20

Article 1816 provides as follows:

‘**Third class.** In the third class shall be called the grandfathers and grandmothers of the deceased and among the descendants of such grandparents their children and grandchildren.

Where, at the time of devolution, the grandfathers and grandmothers in both lines are living, they alone shall inherit in equal shares. Where, at the time of devolution, the grandfather and grandmother in the line of the father or of the mother is not living, his or her children and grandchildren shall be called in his or her place and stead. Where, upon the devolution, both the grandfather and the grandmother in the line of the father or in the line of the mother are not living and the said deceased have not left children and grandchildren, the grandfather or the grandmother in the other line or children and grandchildren thereof shall alone inherit.

Children inherit by equal portions and exclude grandchildren of the other stirps. Grandchildren inherit *per stirpes*.’

Article 1816 calls to the estate, in the third class, the grandparents of the deceased. This means that if the four grandparents of the deceased are alive and there are no relatives of the first or second class, they are the only persons called to the inheritance and they inherit in equal shares, i.e. one-quarter each. If the deceased is born out of wedlock and has not been acknowledged by his father, then only his grandfather and grandmother from the mother’s line is called to the inheritance.

According to paragraph 2 of article 1816, the portion of grandparents already deceased goes to their children and grandchildren, rather than increasing the portion of the other grandparents who are still alive. Only if there are no children or grandchildren from forfeited children, i.e. uncles or first cousins of the deceased, will the portion of the already deceased grandparent be added to increase the portion of the other grandparents who are still alive.

Intestate succession is limited to first cousins of the deceased. Other collateral relatives are not called as intestate heirs.

Article 1817

G7.21

Article 1817 provides as follows:

‘**Fourth class.** In the fourth class shall be called the great-grandfathers and the great-grandmothers of the principal.

Great-grandfathers and great-grandmothers living at the time of devolution shall inherit by equal portions, irrespective of whether or not they belong to the same or to different lines.’

The fourth class includes the great-grandparents of the deceased, who inherit *per capita* irrespective of line. It is, of course, extremely rare to find someone who is three generations above the deceased still alive. The fourth class does not include the descendants of the great-grandparents.

The surviving spouse, when called as an heir with relatives of the second, third or fourth class, receives one half of the estate as well as the extra portion (*preciput*) referred to above at G7.17.

Article 1818

G7.22

Article 1818 provides as follows:

‘**Rights deriving from several *stirpes*.** In the case of succession *per stirpes* a person who belongs to several *stirpes* shall receive the portion belonging to each stirps. Each portion shall be considered as a distinct hereditary portion.’

This article applies when both the following conditions apply:

(*a*) the heir is connected to the deceased by virtue of a multiple relationship, and

(*b*) succession *per stirpes* within the same class takes place.

For example, article 1818 applies when an uncle of the deceased marries an aunt of his. In these circumstances their child will be doubly connected to the deceased, through his uncle and through his aunt, and will receive the portion belonging to each stirps.

Article 1818 does not apply when, for example, the sister of the deceased is married to his uncle. In such a case their child will be connected to the deceased not only through the latter’s sister (the child is the nephew of the deceased) but also through his uncle (the child is the first cousin of the deceased). Although such a child has a multiple relationship to the deceased, his parents belong to different classes (the mother and sister of the deceased to the second class, and the father and uncle of the deceased to the third class). According to article 1819 of the GCC, the existence of a relative of a higher class excludes the inheritance of heirs of the following classes. Consequently, the third class is excluded, and the said child is called as an heir in the second class and takes the portion of his mother (the sister of the deceased).

Article 1819

G7.23

Article 1819 provides as follows:

‘**Order of priority of classes.** A relative shall not be called to inherit, so long as there exists another relative of a preceding class called as heir.’

Although article 1819 provides that a relative is called to the inheritance only if another relative of a preceding class does not exist, this article also applies to cases where the intestate heir forfeits the succession for whatever reason. Therefore, if all the relatives of a preceding class have forfeited their inheritance because they have renounced the succession (arts 1847–1859 of the GCC), or because they have been judged unworthy to inherit due to a reason mentioned in article 1860 of the GCC, or even because they have been excluded from the intestate succession by will, then relatives of the next class will be called to the inheritance, provided that these relatives had at least been conceived at the moment of the death of the deceased and had not predeceased him (art 1711 of the GCC). It is therefore of no importance whether or not they were alive at the time of the forfeiture.

Article 1820

G7.24

Article 1820 provides as follows:

‘**Surviving spouse.** A surviving spouse shall be called as an heir in an intestacy together with the other relatives of the first class for one-quarter, and with the relatives of the other classes for one half,

of the estate. He shall in addition receive as an extra portion (*preciput*), independently of the class of his calling, the furniture, houseware, clothing and other similar domestic objects that were being used either by the surviving spouse alone or by both spouses. However, where there are children of the deceased spouse, the needs of such children shall also be taken into consideration, in so far as this is prescribed by special circumstances or on grounds of indulgence.'

The spouse inherits, as a co-owner together with the other co-heirs, one-quarter or one half of the estate, depending on whether he is called as an heir with relatives of the first class or with relatives of the other classes. The spouse inherits the extra portion as an exclusive owner.

It must be noted here that article 1400 of the GCC provides that 'if a marriage is dissolved or annulled and the property of one of the spouses has since the celebration of marriage increased, the other spouse, provided he contributed in whatever manner to such increase, shall be entitled to claim the attribution to him of that part of the increase which is due to his contribution. It shall be presumed that such contribution amounts to one-third of the increase, except if a greater or lesser contribution or no contribution at all can be proved.'

The claim of the surviving spouse to participate in the increase in value under article 1400 is attributed by law to the spouse on top of the right under article 1820 to inherit, in an intestacy, as a co-owner together with the other relatives.

Article 1821

G7.25

Article 1821 provides as follows:

> '**Fifth class.** Where there are no relatives of the first, second, third and fourth class, a surviving spouse shall be called as an heir in an intestacy for the whole of the estate.'

In the fifth class, where there are no relatives of the first, second, third and fourth class, the spouse inherits all the estate. Although the spouse is called in the fifth class, he is taxed at the same rate as is provided for children of the deceased in the first tax category, i.e. at the lowest tax scales. The reason for this is that, although the spouse is not a relative of the deceased, he is a member of the family of the deceased.

Article 1822

G7.26

Article 1822 provides as follows:

> '**Exclusion of spouse.** Where the deceased relying on a justified ground of divorce had commenced a legal action for divorce against his spouse, the right of inheritance and the additional extra portion (preciput) of the surviving spouse shall be excluded.'

Though the wording of article 1822, saying that the right of the spouse is excluded when a legal action for divorce for a justified ground had commenced, might give the impression that it refers to articles 1439 and 1440 of the GCC (divorce due to an irretrievable breakdown of the bond of the matrimony or because one of the spouses has been declared absent, *in absentia*), it is being accepted that it also applies in the case of unopposed divorce, often called divorce 'by consensus', provided that the consenting statement, i.e. the relative agreement of the spouses for the divorce has been declared in the second hearing of the Court, required, according to article 1441 of the GCC, for the granting of the divorce.

Article 1823

G7.27

Article 1822 provides as follows:

> '**Accretion.** Where an intestate heir has been forfeited of his rights either before or after devolution and as a result the portion of another intestate heir has been increased, the part whereby the said portion is increased shall be considered as a distinct hereditary portion with regard to legacies or charges burdening the person who acquired or who has been forfeited as well as with regard to the obligation of collation.'

Forfeiture of the heir means the cancellation of his coming into the inheritance, for any reason whatsoever. Forfeiture may take place for more than one reason. Some reasons, such as the death of the heir before the deceased or the disinheritance of the heir, refer to a time before the death of the deceased. Others, such as

the renunciation of the estate by the heir, his judgment as unworthy and the interruption of the pregnancy when the heir is a *nasciturus* (arts 1711, 36 of the GCC) refer to a time after the death of the deceased.

The consequences of the forfeiture in an intestate succession are as follows:

(*a*) In the three first classes, in the place and stead of the heir who has been forfeited, the legislator calls his descendants (arts 1813, 1814, 1816 of the GCC). More particularly, in the first class, if e.g. the child of the deceased, i.e. a relative of first degree, has been forfeited, then the child of the forfeited, grandchild of the deceased, i.e. a relative of second degree to the deceased, is called as an heir. This calling as an heir to the inheritance of a relative of a remoter grade is called succession of degrees or by roots, *successio graduum* or *per stirpes*.

(*b*) If an heir of the three first classes has been forfeited without descendants or if an heir of the fourth class has been forfeited, and there are other co-heirs in the same class, then the portion of the heir that has been forfeited accrues to the portion of his co-heir/s. This is called accretion, *jus accrescendi*.

(*c*) If all heirs of the preceding class have been forfeited, then the next class is called to the inheritance. This is called succession of classes.

By accretion, the law means the *ipso jure* increase of the hereditary portion of the new heir from the hereditary portion of the heir who has been forfeited before or after the calling to the succession. Presuppositions for such an accretion are as follows:

(*a*) The forfeiture of one or more heirs who are called in the same class, before or after the death of the deceased.

(*b*) The heir who has been forfeited, as long as he is called in the three first classes, should not have descendants, because, then, instead of accretion we will have succession of degrees.

(*c*) The heir who takes advantage of the accretion must have been called as an heir by his own hereditary right, independently from the right of the person forfeited. So, for example, if K (the deceased) had three children, A, B and C, who did not have descendants, and A has been forfeited from his right, his portion accrues to the portions of B and C, who have been called to K's inheritance. If B, however, had renounced K's estate, then he does not participate to the accretion.

Although article 1823 of the GCC does not specify which co-heirs shall benefit from accretion, undoubtedly the intention of the legislators was that the criterion for determining whose portions are increased by accretion should be the rank by which the persons of each class are called to the inheritance.

The effect of this is that, in many cases, not every co-heir's portion is increased, but only the portions of either the heirs of the same stirp, or, in the third class, of the heirs of the same line. For example, if K (the deceased) had two children, A and B, and A had died before K leaving also two children, C and D, who inherited from K together with B, and C renounced the succession, from his portion only the portion of D accrues and not the portion of B who does not belong in the same stirp.

Accretion also applies within the same stirp in the second class, e.g. for the children of a brother who has been forfeited.

In the third class, from the portion of the grandfather or the grandmother who has been forfeited, the portions that increase are those of the heirs of the line to which the forfeited person belonged.

Accretion is not treated as a new calling to the succession: the person who takes the place of the one forfeited is considered to have been called to the estate from the moment of the death of the deceased. Accretion is thus of retroactive effect, so that it is not necessary that the person who benefits from it was alive when his co-heir was forfeited; it is enough that he was alive when the deceased died. There is only one calling to the succession – it includes the initial portion, as well as the portion accrued.

From the wording of article 1823 it is clear that, as a rule, the initial portion and the portion accrued consist of one, united portion. As a consequence a new acceptance is not required, nor can the accrued portion, that is added to the initial portion, be renounced.

However, there is an exception where a person's initial portion is increased by a portion which is burdened with legacies or other charges, as well as an obligation of collation. Article 1823 provides that in these cases the portion accrued consists of a distinct hereditary portion. This exception aims at avoiding any prejudice to the heir whose initial portion is increased by a portion that is burdened with legacies or other charges.

As already mentioned, the surviving spouse inherits one-quarter or one half of the estate, depending on whether he/she is called as an heir together with relatives of the first class or together with relatives of the second, third or fourth classes. If the surviving spouse is forfeited from the estate, then his/her portion accrues to the portions of the relatives of the class with which he/she is called, in proportion to the portion of

each heir. If, however, one of the relatives is forfeited from the estate, the portion of the spouse does not increase, as this portion is a certain fixed percentage.

When all the heirs of the first class have forfeited, then the second class is called to the inheritance. In such a case the percentage of the spouse increases from one-quarter to one half. The spouse is considered to have been called to this increased percentage retroactively from the moment of the death of the deceased, and there is no need for a new acceptance of the increased percentage; the acceptance by the spouse of the initial percentage suffices. In addition, if the spouse had accepted the one-quarter share under the benefit of inventory (arts 1902–1912 of the GCC), this way of acceptance also applies to the half-share that the spouse inherits by the succession of classes. But even in this case of forfeiture of all the heirs of the first class and the increase of the spouse's portion from one-quarter to one half, there is no doubt that the bigger portion of the spouse does not constitute an accretion to the initial one, in the technical meaning of the term.

Article 1824

G7.28

Article 1824 provides as follows:

> '**Sixth class.** Where upon devolution of the estate there exists neither a relative among those called by the law nor a spouse of the deceased, the state shall be called as an intestate heir.'

In the sixth and last class, the state of the nationality of the deceased inherits. This is quite rare as, even if there is no spouse, a relative belonging to one of the preceding classes will usually exist. If this is not the case, however, the deceased usually makes a will if he has an important estate. Accordingly, the value of article 1824 lies mainly in that it confirms the maxim that 'no estate is left without an heir'.

Cohabitation Pact

G7.29

The recent Law 3719/2008 on reforms regarding the family, the child, society and other provisions, which introduced the Cohabitation Pact, gives a right of inheritance to the survivor of a pact. In particular, article 11 of this law reads as follows:

> '**Right of Inheritance**
>
> 1. After the dissolution of the cohabitation pact, because of death, the party who survives has the right to inherit as an intestate heir; the said right amounts to one sixth of the inheritance, if the person who survives inherits together with heirs of the first class, to one third if he inherits together with heirs of the other classes, and to the whole of the inheritance, if there is no relative of the deceased who can be called as an intestate heir.
> 2. The party who survives is entitled to a forced heirship share of the inheritance, which amounts to one half of the intestate share the said party would get. He participates in that percentage as an heir.
> 3. Articles 1826 ff., 1839 ff. and 1860 of the GCC apply by analogy also to this case.'

Article 1 of Law 3719/2008 defines the Cohabitation Pact as the agreement by which two adults of different gender organise their cohabitation. The said agreement is executed in person, is vested in the notarial deed and enters into validity after a copy of the deed is presented to the Registrar of the place of residence of the parties to the Pact.

Taxation issues

G7.30

Tax imposed on succession is regulated by article 29 of the Legislative Decree (LD) 118/1973, which, as subsequently amended, has been codified with Law 2961/2001. Amendments also took place after the codification.

Article 29, as replaced by Law 3634/2008, article 1, paragraph 1, and amended by Law 3815/2010, article 1, has been replaced by Law 3842/2010, article 25, paragraph 14. Article 29, Part A now reads as follows:

"1 The heirs or legatees, depending on their relationship to the deceased, are classified in the following three categories:

Category A

To this category belong:

(*a*) the spouse of the deceased;

(*b*) the person who had contracted a cohabitation pact with the deceased according to the provisions of Law 3719/2008 and which has been dissolved because of the death, provided that the cohabitation had lasted for at least two years;

(*c*) his descendants of the first degree (children of a legitimate marriage, children born out of wedlock with regard to their mother, children acknowledged by a voluntary acknowledgment or by a court decree with regard to their father, children legitimated by the subsequent marriage of their parents or by a court decree to that effect with regard to both parents);

(d) his blood descendants of the second degree;

(*e*) his blood ascendants of the first degree.

Category B

To this category belong:

(*a*) descendants of the third and following degrees;

(*b*) ascendants of the second and following degrees;

(*c*) children acknowledged by voluntary acknowledgment or by a court decree with regard to the ascendants of the father that acknowledged them;

(*d*) descendants of the child acknowledged with regard to the person who acknowledged him and his ascendants;

(*e*) brothers (german or half-brothers);

(*f*) blood relatives of the third degree in a collateral line;

(*g*) stepfathers and stepmothers;

(*h*) children from a previous marriage of the spouse;

(*i*) children-in-law (sons-in-law, daughters-in-law); and

(*j*) ascendants-in-law (fathers-in-law, mothers-in-law).

Category C

To this category belong any other relative of the deceased related to him by blood or by marriage or any third person.

In the case of adoption, the classification in the relevant category of the person adopted or of his relatives with regard to the adoptive parent or the relatives of the latter is made on the basis of the relationship created among them according to the provisions of the Greek Civil Code. As an exception to this rule, the Head of the Tax Department may, when calculating the tax, ignore the degree of relationship created by the adoption if he finds out that the adoption has been manifestly made for the violation of the provisions of the taxation law.

In the case of an estate in abeyance, the tax is calculated on the totality of the value of the estate, according to the tax rate of category C, subject to the application of article 101 of the codified Law 2961/2001 regarding the new tax clearance of an estate in abeyance.

2 The *mortis causa* acquisition of any kind of assets, is submitted to tax, calculated for each category according to the following tax scales:

Category A

#TableB

Scale (in Euros)	*Tax Rate (%)*	*Maximum tax of scale (in Euros)*	*Amount subject to tax (in Euros)*	*Corresponding amount of tax (in Euros)*
0–150,000	–	–	–	–

150,001–300,000	1	1,500	300,000	1,500
300,001–600,000	5	15,000	600,000	16,500
Over 600,000	10			

#Table E

Category B

#TableB

Scale (in Euros)	*Tax Rate (%)*	*Maximum tax of scale (in Euros)*	*Amount subject to tax (in Euros)*	*Corresponding amount of tax (in Euros)*
0–30,000	–	–	–	–
30,001–70,000	5	3,500	100,000	3,500
70,001–200,000	10	20,000	300,000	23,500
Over 200,000	20			

#Table E

Category C

#TableB

Scale (in Euros)	*Tax Rate (%)*	*Maximum tax of scale (in Euros)*	*Amount subject to tax (in Euros)*	*Corresponding amount of tax (in Euros)*
0–6,000	–	–	–	–
6,001–66,000	20	13,200	72,000	13,200
66,001–195,000	30	58,500	267,000	71,700
Over 195,000	40			

#TableE

3 When the heir or legatee has a disablement of at least 67 per cent, the corresponding tax according to the previous paragraphs is reduced by ten per cent.

4 If the same person meets the presuppositions for tax reduction, tax deduction and tax exemption provided by the provisions of the previous paragraph and of unity A of article 26 of the codified Law 2961/2001 (as subsequently amended), the lowest amount of tax that derives from the application of the said provisions is due.

5 The *mortis causa* acquisition of amounts of money by the persons named in article 25, paragraph 3 is submitted to tax, independently calculated at a tax rate of 0.5 per cent. The *mortis causa* acquisition of other assets by the said persons is submitted to tax, independently calculated at a tax rate of 0.5 per cent.

6 For the acquisition of rights on minerals and of rights that derive from a mineral research licence, the tax amounts to 500 Euros per square kilometre or a fraction thereof of the surface of the mine or of the space designated by the mineral research licence.

7 The provisions of articles 4 and 36 of Law 2961/2001 do not apply to assets, for which the tax is independently calculated.

8 The amount of tax to be paid according to the above paragraphs includes three per cent in favour of municipalities and seven per cent for the amelioration of provincial roads.”

Article 25, Parts B and C of Law 3842/2010 provide that deductions and exemptions from tax imposed on succession and gifts not included in articles 25 and 43 of the Code, as amended with Law 3842/2010, have no force, as from the publication of the Law at the Official Gazette and that the provisions of article 25 of Law 3842/2010 apply to cases for which the tax obligation arises after the publication of the Law in the Official Gazette.

The date of publication of Law 3842/2010 at the Official Gazette: 23 April 2010.

Exemption from inheritance tax

G7.31

Article 25 of Law 2961/2001, as subsequently amended, defines the persons and legal entities that are exempted from inheritance tax. Among them is the state when called, in accordance with article 1824 of the Greek Civil Code (see G7.28 above), as an heir in the sixth class.

Paragraph 3 of article 25 of Law 2961/2001, added to Law 3842/2010, article 25, paragraph 9, enumerates the persons that are submitted to independent taxation according to the above-mentioned article 25, paragraph 5 of Law 2961/2001. Such persons are, among others: legal entities of public law, communities and municipalities, churches, monasteries, and legal entities of non-profitable character.