

Information guide on estate administration in France

When someone has lost a close relative and has to deal with the estate administration, it can be a very stressful time for them, even more so when there are assets in another jurisdiction.

This is why having a bilingual solicitor who specialises in French law can really help the matter progress not only by overcoming the language barrier but also the many complex differences in the legal system.

Below is a brief summary of the differences in the French legal system that are encountered when administering an estate with a cross border element.

1) French inheritance rules:

The French inheritance rules are relevant as soon as one owns a property in France irrespective of whether they are French domiciled or not due to the rules of private international laws.

Immovable assets (ie: land and property) are dealt with under the laws of the country where the land is situated whereas movable assets (bank accounts, shareholdings, personal items) are dealt with under the laws of the country of domicile.

Under English law, you can leave your assets to whomever you choose. There is an exception to this rule of testamentary freedom as certain people can make a claim against the estate under the Inheritance (Provision for Family and Dependents) act 1975 if they feel they have not been adequately provided for and they fall within a category of people. It is up to the individual concerned to make a claim against the estate.

If you do not have a will or the will does not deal with some of the assets, English intestacy rules will apply and will dictate who will inherit these assets. It is therefore advisable to have an English will to make use of this testamentary freedom.

Under French law, there are strict rules which prevent complete testamentary freedom as a certain class of individuals are automatically protected from being disinherited. These are the

children of the deceased, whether from a current relationship or previous relationship or adopted. If there is no beneficiaries within this class, then the surviving spouse falls within the next protected class, followed by any surviving parents, then siblings, aunts and uncles etc. If the French will or English will disposes of assets in contradiction to these strict rules, French law will override the provisions contained in the will. These types of protected beneficiaries are called Reservataires.

The Reserve is calculated on the basis of the number of Reservataires who fall within the same category. For instance, if there is one surviving child, then the reserve is $\frac{1}{2}$; if there are two surviving children, then the reserve is $\frac{2}{3}$; if there are three or more children, then the reserve is $\frac{3}{4}$. The testator is then free to dispose of the remainder of the estate as he or she wishes under a will.

If there are no surviving children, then the surviving spouse can inherit the total estate with the exception that any surviving parents have the right to claim back assets which have been gifted to their deceased child to the maximum value of one quarter of the total value of the estate for each surviving parent.

If you need to establish the entitlement of a particular individual, please do not hesitate to contact French Law Matters for further details as the rules are too complex to list in this guide.

2) The general administration process:

It is important to note that the Reservataires have the automatic duty to deal with the estate administration unless an executor has been named in a French Will. If an English will names executors, their duties do not in fact extend to the asset in France and so it is the responsibility of the beneficiary to appoint a notaire to deal with the estate administration on their behalf as the notaire cannot accept instructions on behalf of anyone else.

These are the steps to be taken when dealing with the estate administration in France:

1) All beneficiaries (children and spouse) need to provide certified copies of the birth certificates, passports, marriage certificates, divorce papers if applicable, change of name deeds if applicable in order to establish the full identity of the individuals entitled to inherit.

2) Locate any English and/or French wills and provide copies; there is a central will register in France which is checked by the notaire. It is important to also establish if the wills are valid in their form.

3) It is also important to establish if there was a French marriage contract in the case of spouses as it will dictate the distribution of the assets covered by the contract.

4) The beneficiaries must give written authority to the notaire to commence the estate administration on behalf of the reservataires in order to start the process of collecting information on assets and liabilities.

5) Establish where the deceased was domiciled immediately before death so as to determine the extent of the jurisdiction as explained above. This is an academic question left for solicitors and notaires to decide using the internal laws on the definition of domicile. The solicitor will want to know where was the last habitual residence of the deceased, where his main source of

income came from, where he paid his taxes, where his immediate family lived and his/her nationality.

6) Carry out a full inventory within 6 months of the date of death of all moveable assets in the succession so as to give the flexibility of the beneficiaries to accept their inheritance subject to the value of the net assets. Under French law, beneficiaries take on the liabilities as well as the assets of the succession so it is important to limit the liabilities to the value of the total assets received under the inheritance. ("acceptation a concurrence de l'actif net") so that any creditors cannot years later demand payment of their debts if this was not discovered at the time of the acceptance of the succession.

7) Provide copies of bank statements and any other papers relating to assets and liabilities. Up to date balances will be obtained by the solicitor and notaire.

8) The notaire will then prepare a Declaration of succession (which is a tax document showing any inheritance tax due), an acte de notoriété (which is equivalent to grant of probate as it will list the beneficiaries entitled in the succession and as a result can deal with contacting various organisations directly) and the attestation immobilière (which is the assent transferring the title of the property to the beneficiaries). These documents are usually signed at the notaires' office but if this is not practical, a power of attorney can be out in place for the notaire to sign the documents on the client's behalf.

Please note that it is at this stage that it is most important to seek legal advice so as to establish what the best options are for the beneficiaries. The surviving spouse may for instance have several options if she wishes to accept her inheritance such as perhaps to take a life interest. The choice should be made taking into account both the UK and French inheritance tax positions.

It is also imperative to fully understand the content of these documents prepared by the notaire to ensure that the acceptance of the inheritance is qualified or limited.

9) A payment to the tax authority is highly recommended within 6 months of the date of death if the deceased is French domiciled or within 12 months if he or she is non-French domiciled in order to freeze any late payment of tax penalties. This is not necessary if it is clear at the outset that no inheritance tax will be due.

10) The declaration of succession once signed will be lodged with the tax authority and any tax due will be paid at the same time. The tax authority will then submit a tax clearance certificate. A specific form will need to be completed by them as well as if the double taxation treaty is to be used in England to set off any tax paid in France against the tax due in the UK.

11) The notaire will register the assent and the estate administration in France is then complete.

12) The acte de notoriété is necessary in the event that shares need to be transferred rather than sold and it is the beneficiaries responsibility to do this.

3) Inheritance tax (IHT)

Inheritance Tax is more complicated in France. Each beneficiary accepting their share of the inheritance will be personally responsible for paying the inheritance tax due. The rate payable depends on the proximity of the relationship between the testator and the beneficiary and the amount being bequeathed. Tax-free allowances are given to certain beneficiaries, with close relatives receiving higher allowances.

The rates of tax are as follows:

Transfers Between Spouses

Spouse Exemption applies for deaths post 22nd August 2007

For deaths prior to this date the following rates apply:

Value transferred	Rate %
Up to 7,699	5
From 7,699 to 15,195	10
From 15,195 to 30,390	15
From 30,390 to 526,760	20
From 526,760 to 861,050	30
From 861,050 to 1,722,100	35
1,722,100 upwards	40

Transfers In Direct Line (children and parents)

NIL RATE BAND 156 974 euros for 2010

Value transferred	Rate %
Up to 7953	5
From 7 953 to 11 930	10
From 11 930 to 15 697	15
From 15 697 to 544 173	20
From 544 173 to 889 514	30
From 889 514 to 1 779 029	35
1 779 029 upwards	40

Other Transfers

Relationship	Nil Rate Bands	Rate
Brothers and Sisters	15 697 euros	35% up to 24,069 euros 45% from 24,069 euros
Relatives to 4th degree	1,520 euros 7,598 euros for nieces and nephews	55% flat rate
Relatives above 4th degree and non Relatives	1,520 euros	60 % flat rate
Co-Habitee	57,000 euros	40% up to 15,000 euros 50% from 15,000 euros

In addition to inheritance tax, there may be transfer tax if there is a marriage contract or capital gains tax if there is a delay in selling assets and a gain is made.

I hope that you will see from this guide that it is highly recommended that specialist advice is sought from a qualified solicitor in order to avoid expensive mistakes which may not be rectifiable.

If you need help with any of the above steps, please do not hesitate to contact me as I will be pleased to carry any of these preliminary steps for you and liaise with the notaire at any stage of the estate administration process.

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