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REFORM OF THE SWISS SUCCESSION LAW: IN LINE WITH THE MODERN FAMILY AND THE BUSINESS SUCCESSION NEEDS

The current law of succession, apart from a few amendments, dates back to 1912. The reality of families has drastically changed over the years, with families taking on different forms, but the economic and social importance of inheritances is remaining unchanged: according to the year 2015 estimates, inheritances amount to a total of CHF 63 billion.

The new provisions on inheritance law, which will come into force on 1 January 2023, will increase the possibilities for testators to plan their assets and beneficiaries (who will be able to have a larger share of their estate available than under current law) while retaining scope of the legitimate portion of inheritance under current law and thus protecting the family.

The most important new feature of the reform concerns the reduction of the legal reserves or reserved portions (guaranteed minimum inheritance) of descendants from the current 3/4 to 1/2 of the right of inheritance, and the abolition of the reserved portion of parents.

The legal portion of the surviving spouse and registered partner remain unchanged.

However, by reducing the legal portion of the other heirs, it is intended to allow the testator to leave a larger share to, for example, a stepson or a cohabiting partner.

The result is greater flexibility to favor life partners, the partner's children or other close relatives, or to allocate a larger share of one's assets (real estate, businesses, etc.) to other beneficiaries. Obviously in the latter case the inheritance tax consequences are potentially higher, in relation to the inheritance tax rate as currently provided for by each canton.

It will be very necessary to accompany and adapt the inheritance and gift fiscal law to the new provisions of the law of succession.

Furthermore, in the event of death during divorce proceedings or at the time of dissolution of a registered partnership, the surviving spouse loses (under certain conditions) his or her status.

The revision of the succession law may also facilitate (by increasing the available quota) the transfer of family businesses, allowing the entrepreneur as testator greater freedom to favor certain persons in the family as suitable heirs to ensure business continuity, and therefore facilitate the transfer of a company, ensuring greater stability in the management of the business.

In this respect, the Federal Council has already proposed additional legislative measures and committed itself to revising the chapter of the Private International Law Act relating to succession in order to minimize the risk of conflicts of jurisdiction and diverging decisions in relations with the majority of EU states and therefore to offer citizens greater legal certainty and predictability in the fate of their assets after their death.

It is therefore recommended that existing provisions (wills and matrimonial agreements as to succession already concluded) be revised in order to make the most of the increased flexibility of the new rules of the Swiss succession law.

For further information on the above, please do not hesitate to contact us

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