

Inheritance Law in Switzerland and Australia (NSW)

1. Introduction

This article gives an overview of inheritance law in Switzerland and Australia. It also highlights various aspects of the inheritance laws of both countries, and indicates how these laws may affect, for example, Swiss citizens or expatriates living in Australia as well as Australian residents with assets in both Switzerland and Australia and also people living in Australia with relatives in Switzerland.

This article also provides a general comparison of Swiss and Australian inheritance laws. It does not deal with specific issues, but outlines some of the basic principles of both systems. The following areas are dealt with in the article:

- 1.1. Statutory Inheritance;
- 1.2. Forms of Wills and Making Wills;
- 1.3. Executors;
- 1.4. Statutory or Compulsory Portions;
- 1.5. Taxes; and
- 1.6. International Aspects.

Inheritance or succession law is not uniform throughout Australia because different legislation applies in each state and territory. Nevertheless, succession law regimes throughout Australia are largely similar, and the law in New South Wales (“NSW”) and in the other states and territories in Australia is generally uniform. Accordingly, any reference in this article to Australian inheritance law means the law in NSW unless stated otherwise. The specific character of the Australian legal system, which is based on common law rather than civil law, confers a range of discretions and powers in the Court and on judges which, under Swiss law, would be mainly dealt with by legislation.

In Australia, reference is often made to trusts. A trust is a common law concept. Under Australian law, a trust exists where a party (a trustee) who, despite being registered or recorded as the proprietor or owner of the relevant property (trust property), holds that property on behalf of another person or entity (beneficiary) or other legally recognised purpose (object). The trustee accordingly has a duty to administer the trust property for the benefit of the beneficiary or for the specific object.

The common law concept of a trust is unknown to the Swiss legal system. A *Treuhandverhältnis* under Swiss law is based on a contractual relationship established pursuant to a specific mandate (Article 394 of the Swiss Code of Obligations). The so-called *Treuhänder* must agree to accept the mandate in order for the contractual relationship between the parties to be established. Such formal approval by the trustee is not necessary in all cases for the existence of a trust at common law.

2. Statutory Inheritance

In this article, statutory inheritance law refers to the legal rules applying under Swiss and Australian law if a person dies intestate (i.e. wholly or partly without a legally effective Will or a Testamentary Contract under Swiss Law).

Note:

The term “THE intestate” when used in this article means a deceased person who has died intestate. If a person has made a legally effective Will or a Testamentary Contract under Swiss Law then he or she is referred to as the “testator”.

2.1. Switzerland

2.1.1. Fundamental aspects

A system of family relationships to the deceased (called *Parentele*, being the Latin word for relationship) is used to determine the order of inheritance under Swiss law pursuant to the Swiss Civil Code. Three different *Parentele* (which are generally called “orders” in this article) exist under the Code (see section 2.1.3 of this article). If there are no members of any of the orders living at the date of the deceased’s death then the estate devolves to the canton of the deceased’s last domicile or to the municipality designated by that canton’s legislation.

The deceased’s surviving spouse or a registered partner are not part of the above system of orders. However, both of them are statutory beneficiaries. A surviving spouse’s or registered partner’s entitlement to receive a share of an estate arises only from the fact of the marriage or registered relationship, and not from their “Parentele” relationship to the deceased.

2.1.2. Time limits

As a fundamental principle, it should be noted that the community of heirs directly and automatically inherits all the deceased’s estate at the time of the deceased’s death. The heirs or beneficiaries therefore also “inherit” all the rights and obligations of the deceased. The deceased’s debts accordingly become personal debts of the beneficiaries for which the beneficiaries are jointly and severally liable (Article 560 para. 2 and Article 603 para. 1 of the Swiss Civil Code).

Beneficiaries who are entitled to a share in an estate have the right to renounce the inheritance (Article 566 para. 1 of the Swiss Civil Code). The time limit for renunciation is three (3) months. For statutory beneficiaries, the period begins on the date that they became aware of the deceased’s death unless they can prove that they became aware of the death at a later date. For nominated beneficiaries, the period begins on the date that they were officially informed of the disposition in their favour (Article 567 of the Swiss Civil Code).

2.1.3. Statutory inheritance and shares in estates

As mentioned above, Swiss inheritance law imposes a statutory order of inheritance. However, this is only applicable in so far as the deceased did not make any testamentary provision. The first order constitutes the issue or direct descendants (children, grandchildren, great-grandchildren, etc.) of the deceased. Parents of the deceased and their issue (e.g. the deceased's siblings) constitute the second order. Grandparents and their issue form the third order.

As indicated above, the spouse of the deceased or the registered partner of the deceased inherit outside the system of orders. Their proportion of the estate, however, depends on whether or not the deceased left relatives of the first and/or second order. The third order does not inherit if the deceased left a surviving spouse or registered partner.

Article 462 of the Swiss Civil Code stipulates the following statutory quotas or shares for the deceased's surviving spouse or registered partner:

- 2.1.3.1. one-half of the estate if there are descendants of the deceased;
- 2.1.3.2. three-quarters of the estate if there are no descendants but there are "Parentele" beneficiaries; and
- 2.1.3.3. the entire estate if there are no "Parentele" beneficiaries.

A diagrammatic overview of the respective entitlements in various situations appears at the end of this article.

2.2. Australia

2.2.1. Fundamental aspects

Statutory inheritance in NSW also follows a system of orders in a similar manner to Switzerland. As a result, the NSW statutory rules in case of intestacy and the system of orders which apply in codified civil law countries are similar. Since March 2010, the basic principles of statutory inheritance have been found in the *Succession Act 2006* (NSW) which replaced the intestacy provisions of the *Probate and Administration Act 1898* (NSW) ("PAA").

2.2.2. Time limits for claims against the estate

The application of time limits for beneficiaries' claims on estates, whether pursuant to a Will or in the case of intestacy, is treated fundamentally differently under the Australian and Swiss legal systems. As indicated in section 2.1.2 above, a beneficiary of an estate in Switzerland has a certain time limit within which to waive or renounce his or her claim on the estate. However, in Australia, beneficiaries have a certain time after publication of a particular notice in which to notify the executor or administrator of their claim. Moreover, beneficiaries, creditors and other persons having a claim on the estate are all treated in the same way in relation to giving notification of their claims. The obligation to notify the executor or administrator about

a claim is, however, moderated by two factors: firstly, the executor's or administrator's obligation to inform himself about likely beneficiaries of, and other claimants on the estate, and secondly, the need to only give notification if the executor or administrator is not otherwise aware of the claim or did not have previous notice of the claim.

In Australia, if an executor or administrator publishes a notice giving beneficiaries (as well as creditors or other persons having a claim on an estate) at least thirty (30) days in which to notify the executor or administrator about the claim and then distributes the estate at least six (6) months after the death of the deceased, the executor or administrator will not be liable for failing to make distributions to beneficiaries (or creditors or other persons having a claim on the estate) of which he did not have notice. If a person believes that he or she is a rightful beneficiary of an estate (whether pursuant to a Will or on intestacy) and the executor or administrator is not otherwise already aware of the person's claim or has not previously had notice of the person's claim then the person must give notice of the claim within thirty (30) days after publication of a Notice of Intention to Distribute the estate by the executor or administrator. If the person claiming an interest in the estate does not give notice to the executor or administrator within that time limit and the estate is distributed more than six (6) months after the death of the deceased without regard to the person's claim then the executor or administrator will not be liable to the claimant (section 92 PAA). The Notice of Intention to Distribute must be published in a newspaper circulating in the district where the deceased resided or, if the deceased was not resident in NSW at the date of his death, in a Sydney daily newspaper.

The position overall is, in Switzerland, a person who *does not want* to become a beneficiary must act within a certain time limit while, in Australia, a person who *wants* to claim on an estate must act within a certain time limit if the executor or administrator of the estate does not otherwise have notice of the claim.

2.2.3. Statutory inheritance and shares in estates

A distinction should be made between estates that are wholly regulated by Will on the one hand, and estates that are partly regulated by Will (partial intestacy) or wholly unregulated by Will (total intestacy) on the other.

Generally, Australian law allows for absolute freedom of disposition by Will. If no Will exists, or if a Will exists but only disposes of part of the real and personal property of the deceased then the statutory provisions applicable on intestacy will govern that portion of the estate which is not regulated by Will.

In the case of full intestacy (i.e. where the deceased did not leave a valid Will), the entire estate passes under the rules of intestacy. In the case of partial intestacy (i.e. where the deceased left a valid Will, but the Will does not dispose of the entire estate), the undisposed portion of the estate passes under the rules of intestacy.

Different alternatives for the distribution of an estate are presented by the Succession Act depending on who the deceased is survived by. The order in which the intestate's relatives will take, and the amount or portion of the estate which they will respectively be entitled to, depends on where those relatives rank in the order of priority set out in the Succession Act. The order of priority generally is:

- 2.2.3.1. spouse;
- 2.2.3.2. children (or the issue of children, if a child predeceases the intestate);
- 2.2.3.3. parents;
- 2.2.3.4. siblings;
- 2.2.3.5. nieces and nephews;
- 2.2.3.6. grandparents; and
- 2.2.3.7. aunts and uncles (or their children, if an aunt or uncle predeceases the intestate).

Under the intestacy rules, a spouse has priority. Accordingly:

- 2.2.3.8. if the deceased is survived by a spouse, the surviving spouse inherits the entire estate. This remains the case even if the intestate left a spouse and issue. Accordingly, the intestate's children would receive no share of the intestate's estate, irrespective of the size of the estate, if there is a surviving spouse;
- 2.2.3.9. if the deceased is survived by children from a prior relationship, the surviving spouse will be entitled to the intestate's personal effects, a legacy of \$350,000.00 (increased in proportion to increases in the CPI) (the "statutory legacy") and a half share of the balance of the estate. The children from the prior relationship or relationships will be entitled to the remaining half share of the estate in equal shares; and
- 2.2.3.10. if the deceased is survived by more than one spouse (e.g. by both someone to whom the deceased was legally married as well as another person with whom the deceased was in a domestic partnership at the time of his or her death), the estate will be divided between the spouses in accordance with the mechanism for determining priority between competing spousal interests set out in Division 3 of the Succession Act. Surviving children from a prior relationship will also be entitled to a share of the estate if the value of the estate (excluding the deceased's personal effects) exceeds the statutory legacy amount.

3. Forms of Wills

3.1. Switzerland

3.1.1. Forms and formal requirements

The Will (*Testament*) and the Testamentary Contract are both covered by the term “*Verfügungen von Todes wegen*“. If the statutory inheritance rules do not correspond with the testator’s expectations or requirements then the testator has the opportunity to make his or her own arrangements concerning the distribution of some or all of his or her assets after death. However, the testator must also take the statutory restrictions into consideration when doing so (Article 470 of the Swiss Civil Code).

3.1.2. Will (Testament)

Whoever is capable of making rational judgments and is over 18 years of age is entitled, subject to the statutory restrictions, to make provisions concerning the distribution of some or all of his or her assets at death (Art. 467 Swiss Civil Code). People under a legal guardian’s supervision are also able to dispose of their assets by a last Will. The legal guardian’s agreement or acceptance is not necessary. Last Wills always have to be made by the testator himself or herself. They cannot be made by a representative or an attorney.

Swiss law recognises three different forms of testamentary disposition, namely:

3.1.2.1. Will drawn up and certified by a notary (also known as Will by public deed or in public form);

3.1.2.2. holographic Will; and

3.1.2.3. oral Will (in case of emergency).

A Will by public deed must be prepared and certified by a notary (private or public notary) in accordance with the applicable cantonal law where the document is to be executed. The document must be signed by the testator in the presence of two witnesses and must also be signed by them. The document contains confirmation in the form of a public deed of the testator’s capacity to make rational judgment. This is an advantage when compared with a holographic Will.

It is quite easy to make a holographic Will. A holographic Will must be entirely handwritten by the testator and signed by him or her. It must include the date (day, month and year) and place of execution. No witnesses are necessary and the testator’s signature need not be witnessed or legalised by a notary.

An oral Will can only be made if the testator is hindered from using another form of Will due to extraordinary circumstances such as imminent death,

communication breakdown, epidemic or war. The testator has to declare his Will before two witnesses whom he directs to have the Will prepared as a public deed at the earliest opportunity. One of the witnesses must then immediately write out the Will, date it (indicating place, day, month and year), sign it and have it signed by the other witness. The two witnesses must then submit the document without delay to a judicial authority, confirming that the person declaring the Will appeared to them to be capable of disposing of his or her estate and declared his last Will to them under extraordinary circumstances. An oral Will ceases to be valid 14 days after the testator had an opportunity to make use of another form of Will. Oral Wills made by testators in hospital are somewhat delicate since Wills are only valid if the testator is capable of disposing of his or her assets at the time of its execution (Article 519 para 1 Swiss Civil Code). Under such circumstances, it is always better to contact a notary.

The revocation of a Will is simple (Article 509 Swiss Civil Code) since the testator only has to destroy the relevant document. However, it is also possible to revoke a Will by making a new one. A new Will replaces the previous Will unless it constitutes, without any doubt, a mere amendment to the previous document. In such circumstances, the risk of unclarity and misunderstandings is clearly present. It is therefore preferable to destroy all previous Wills and for the last Will to revoke all previous testamentary dispositions.

3.1.3. Testamentary Contract

In contrast to Wills, a Testamentary Contract is an agreement made between the testator and one or several contractual parties with the participation of a notary. For a Testamentary Contract to be valid, it must be in the form of a Will by public deed. The contracting parties must simultaneously declare their Will to the notary and sign the deed in his presence and in the presence of two witnesses (Article 512 of the Swiss Civil Code). The Testamentary Contract offers the parties to the document the opportunity to deal with their assets on death, and only to take into consideration the individual needs of the parties to the document. This means that the Testamentary Contract operates independently of statutory inheritance law.

For a Testamentary Contract to be valid, the testator must have testamentary capacity. Again, a Testamentary Contract cannot be made by a representative or an attorney.

In contrast to a Will, a Testamentary Contract cannot be revoked by one party unilaterally. A Testamentary Contract may be cancelled by the contracting parties in the form of a written agreement at any time (Article 512 ff. of the Swiss Civil Code). An amendment can only itself be made in the form of a Testamentary Contract.

3.2. Australia

3.2.1. Wills

3.2.1.1. Wills

The most common method of dealing with assets after death is to make a Will. The Will itself may be simple or complex, depending on many factors.

3.2.1.2. Mutual Wills

An essential aspect of the agreement or contract accompanying Mutual Wills is that there is an agreement between both testators to the effect that one party will not revoke or alter his or her Will without the consent of the other. However, if one party nevertheless revokes the Mutual Will, the later Will would be valid. In that case, in accordance with the principles of equity, the executor of the later Will would nevertheless be obliged to administer the estate on trust for the beneficiaries under the Mutual Will.

3.2.2. Formal requirements

The following minimum requirements are necessary in order to ensure that a Will is validly made under Australian law (section 6 Succession Act):

3.2.2.1. the Will must be in writing; and

3.2.2.2. the testator must sign the document in the presence of two witnesses who are both present at the same time and in the presence of the testator.

The Will need not, but is usually signed by the testator at the foot of each page of the document.

It is important to ensure that no witness is a beneficiary under the Will otherwise any gift to that witness will generally fail (section 10 Succession Act).

4. **Executors**

4.1. Switzerland

A testator may in his or her Will (but not in a Testamentary Contract) nominate one person or several people to have legal capacity as executor(s) of the Will (called *Willensvollstrecker*). After the death of the testator, the executor must be notified of his or her appointment by the responsible cantonal authority. The nominated executor then has to declare whether or not he or she accepts the appointment within 14 days after notification. If a person does not declare that he or she does not accept the appointment within 14 days after notification then the appointment

will be deemed to be accepted. An executor also has the right to adequate compensation.

The executor has the following specific duties:

- 4.1.1. administer the estate;
- 4.1.2. collect debts due to the deceased;
- 4.1.3. pay the debts of the estate; and
- 4.1.4. distribute the estate.

The executor does not inherit or become the owner of the deceased's estate himself or herself. However, he or she does occupy a special position which allows him or her to take possession of the estate and to administer and deal with the estate.

In Switzerland, the appointment of an executor for the administration of the estate is not a legal requirement. However, it is advisable to appoint an executor if the beneficiaries are not in a position to distribute the estate, be it as a result of a dispute, beneficiaries living in another country or the complexity of the estate. In these cases, the appointment of an executor accelerates and simplifies the administration and distribution of the estate. The executor has an important duty. He is obliged to seek to uphold the Will and to make sure that distribution of the estate is made correctly.

4.2. Australia

In Australia, almost every Will nominates or should nominate an executor. Indeed, if an executor is not named or has died or is not willing to accept the appointment then another person or institution (e.g. a relative or the NSW Trustee and Guardian) must seek to be appointed either as executor of the Will or as administrator of the estate, and apply for a grant of administration in order to deal with the assets in the estate.

An executor has a far more important and powerful position in Australia than in Switzerland. In fact, the choice of executor is a critical estate planning issue. The role of an executor entails considerable responsibilities. An executor is able to do all that is legally necessary in order to achieve the due and proper administration of the estate. In particular, an executor is required to attend to the following matters in the administration of the estate:

- 4.2.1. organise any funeral or related service;
- 4.2.2. collect, maintain and protect assets pending the final distribution of the estate;
- 4.2.3. apply for probate of the Will;
- 4.2.4. invest estate assets pending distribution of the estate;

- 4.2.5. pay all debts, funeral and testamentary expenses of the deceased and the estate;
- 4.2.6. if the estate has earned income, obtain a tax file number and lodge any tax returns;
- 4.2.7. establish and administer any trusts created by the Will for minors; and
- 4.2.8. distribute the estate in accordance with the provisions of the Will.

In Australia, on the death of the testator, all the deceased's assets pass to, or vest in the executor (section 44 PAA) who is responsible to deal with them and distribute them in accordance with the Will. The transfer of ownership is, in effect, only confirmed by the grant of probate or administration.

5. **Statutory Shares or Compulsory Portions**

The term statutory or compulsory portion (Pflichtteil) refers to the share of the estate that must be left to certain members of the deceased's family under Swiss law.

5.1. Switzerland

As mentioned above, the deceased can make decisions which are wholly or partly regulated by Will or Testamentary Contract. If a legally effective Will or a Testamentary Contract exists then the order or manner of inheritance follows the scheme described by the deceased in the relevant document which takes precedence over the statutory order of inheritance. The deceased's ability to freely dispose of all of his or her assets is, however, limited by the statutory or compulsory portions that certain members of the deceased's family are entitled to.

Article 470 of the Swiss Civil Code stipulates three categories of statutory or compulsory beneficiaries, namely: the descendants (not only the children), the spouse or registered partner and the parents of the deceased. Whoever leaves descendants, a spouse or a registered partner or a parent may only dispose of his assets to the extent that the disposition does not contravene or reduce these beneficiaries' respective statutory or compulsory portions. These are:

- 5.1.1. the descendants have a statutory portion equivalent to three quarters of the statutory right of succession;
- 5.1.2. the parents have a statutory portion equivalent to one-half of the statutory right of succession; and
- 5.1.3. the surviving spouse or registered partner has a statutory portion of one-half of the estate.

If the testator is married and has children, the statutory or compulsory portion which must be left to the members of the deceased's family is five eighths of the estate, and the testator may therefore only freely dispose of three eighths of his or her estate. The attached diagrammatic overview also shows the respective compulsory portions and free quotas in various circumstances.

The statutory or compulsory beneficiaries can renounce their compulsory portion in the case of a Testamentary Contract. The renunciation of a statutory share can be declared before the inheritance becomes effective. If potential beneficiaries in return for benefits from the testator, declare their renunciation while the testator is still alive, such a contract is called a Waiver of Inheritance for Consideration.

5.2. Australia

Australian inheritance law does not recognise fixed statutory shares as provided for under Swiss law. As Australian law is founded on the English common law system, “family provision” (similar in some respects to statutory share) claims by “eligible persons” are dealt with by the Supreme Court under the Succession Act, but only if a claim is made. It remains within the Court’s discretion to determine whether, to what extent and on what basis, family provision claims are to be provided for out of the estate.

6. **Taxes**

6.1. Switzerland

6.1.1. General introduction

Due to Switzerland’s federal structure there is no centralized tax system. The Swiss tax system is characterized by various levels of direct taxes, namely direct federal taxes, cantonal and municipal taxes. Tax legislation is also often very different from canton to canton. Although the cantons were required to harmonize their tax legislation with the federal law by 1 January 2001 pursuant to the tax harmonisation law, this harmonization law did not aim to make every canton adopt exactly the same tax legislation. Important aspects, such as tax rates and tariffs, have remained under the authority of each canton and, as a result, vary widely.

6.1.2. Inheritance tax and gift tax

Gifts made during the deceased's lifetime and transfers of assets in the deceased's estate after the deceased's death are both taxed or exempted from tax on the same principles. From a fiscal point of view, there should be no difference whether a person transfers assets during his or her lifetime or the assets in the estate are transferred after his or her death.

Inheritance taxes and gift taxes are not regulated on a federal basis. Inheritance taxes and gift taxes are levied at cantonal levels, however, inheritance taxes and gift taxes are constantly changing. The transfer of the estate to the surviving spouse is completely tax free. The transfer of an estate to children is also tax free in most cantons. In all other cases, the transfer of assets in the estate is taxable.

Taxes in most cantons are progressive and based on the relationship between the deceased and the beneficiaries (the closer the relationship, the lower the tax levied) and the value of the deceased's estate.

6.1.3. Capital gains tax on real estate transactions

Capital gains tax is levied on transactions involving privately owned real estate (i.e. when an individual sells a property). The tax is levied at a cantonal level and varies from canton to canton.

No capital gains tax is payable on the distribution of real property out of an estate. However, the beneficiary who receives the property bears the risk of incurring a tax liability at a later point in time. This may be regarded as a latent capital gains tax liability. Potential capital gains tax should accordingly be taken into account when calculating the division of the deceased's assets among the beneficiaries. The potential capital gains tax is regarded as a reduction in the value of the property concerned. Therefore, real property should not be valued for estate purposes at current market value but at its value after the potential capital gains tax on a transaction involving the real property has been taken into account.

6.1.4. Wealth tax

This tax is imposed on the aggregate value of the net assets of an individual and is based on the value of all assets (gross assets [e.g. money, property and cars] less debts). Wealth tax is levied at a cantonal level. The federal government does not impose a wealth tax. Wealth tax varies between the cantons. Individuals, the value of whose assets is below a certain threshold, are exempt from the tax.

6.2. Australia

6.2.1. Inheritance tax and death duties

There is no inheritance tax or death duty payable in Australia or in any state or territory of Australia. This means that all estate assets in Australia may be

transferred to beneficiaries without incurring any duties or taxes. Australia does, however, impose capital gains tax in the case of many dispositions. In some instances this can operate as a de facto or delayed death duty (see section 6.2.2 below).

6.2.2. Capital gains tax

Capital gains tax (CGT) is a federal tax and accordingly applies throughout Australia. The rate of CGT is generally dependent on the taxpayer's marginal income tax rate for the financial year during which the relevant capital gains tax event (CGT event) occurs. CGT is not, however, payable on the transfer of assets under a Will. Accordingly, estate assets may be transferred to beneficiaries (at least those resident in Australia) without either the estate or the beneficiaries thereby becoming liable for CGT. If beneficiaries resident overseas are involved then gifts to them are deemed to be a CGT event which occurred immediately before the deceased's death and, as a result, CGT may be imposed on the estate in respect of the gift.

CGT is generally payable on the disposal of an asset. There are numerous technical rules relating to when CGT arises and what constitutes a disposal or deemed disposal of an asset. As a result, the subsequent disposal of estate assets by beneficiaries who have inherited the assets may give rise to CGT liability in certain circumstances. The liability would, however, only be payable on the disposal of the asset.

Liability for, and the amount of CGT payable depends on a number of factors including the nature of the asset concerned, when the asset was originally acquired by the testator, when the testator died, when the asset is subsequently disposed of by the beneficiary, whether the beneficiary is a natural person or, for example, a corporate entity or a trust, and the marginal tax rate of the beneficiary at the time of disposal. Certain assets, such as the testator's family home, may remain permanently CGT exempt in the hands of the estate and the beneficiary provided certain residence rules are met or the home is disposed of within a particular period after the testator's death (generally 3 years).

If an executor or administrator disposes of an estate asset in the course of administration of the estate (e.g. because the executor or administrator is directed to do so under the Will or in order to distribute proceeds to or among beneficiaries), CGT may also be payable on the disposal of the asset. Liability for the CGT (i.e. whether it is payable by the estate or the beneficiary(ies)) depends on the wording of the Will.

6.2.3. Tax on assets

Generally there is no tax on assets in Australia except for land tax and/or landholder duty payable on certain classes of real property in certain states.

Because of the different taxes levied and not levied in Switzerland and Australia, estate planning for people whose estates are affected by both systems involves

careful thought being given to arranging the testator's financial affairs and estate matters in a tax effective way.

7. International Aspects

7.1. Switzerland

The IPRG (*Gesetz über das Internationale Privatrecht*) is the relevant Swiss law that regulates whether a court has jurisdiction in a matter as well as the applicable law in international cases.

7.2. Australia

Australia does not have a single federal law regulating international conflict of laws or "private international law" as it is also called in common law countries; every state and territory has its own common law rules.

8. Glossary

Erbschaftsverwalter	administrator (of the inheritance)
Parentele	order (of inheritance)
Pflichtteil	statutory or compulsory share
Pflichtteilsrecht	law governing statutory or compulsory share
Schweizerisches Zivilgesetzbuch	Swiss Civil Code
Testament	Will
Treuhänder	A person who acts in favour of and as representative of the legal owner
Treuhandverhältnis	Swiss trust concept
Willensvollstrecker	executor

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Disclaimer

This article contains comments of a general nature only and is provided as an information service only. The article also reflects the law as at the date it was written and may not take into account any recent or subsequent developments in the law. The article is not intended to be relied upon, nor is it a substitute for specific professional advice. No responsibility can be accepted by Schweizer Kobras, Lawyers & Notaries or the author(s) for any loss occasioned to any person doing anything as a result of anything contained in the article.

Further Information

For further information please contact:

Norbert Schweizer

Partner

Michael Kobras

Partner

Schweizer Kobras

Lawyers & Notaries

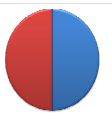









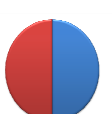

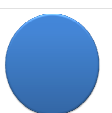







Level 5, 23 - 25 O'Connell Street

Sydney NSW 2000

Telephone: +61 (0) 2 9223 9399

Facsimile: +61 (0) 2 9223 4729
Email: mail@schweizer.com.au
Website: www.schweizer.com.au

Statutory Shares under Swiss Succession Law

Succession Law Aspects/Personal Circumstances (Relatives)	Statutory Share (deceased died intestate and without Testamentary Contract)	Statutory Share/Free Quota (to be considered when drafting a Will /Testamentary Contract)														
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Spouse* and both parents (no issue)	 <table style="display: inline-table; vertical-align: middle;"> <tr><td>Spouse</td><td>3/4</td></tr> <tr><td>Father</td><td>1/8</td></tr> <tr><td>Mother</td><td>1/8</td></tr> </table>	Spouse	3/4	Father	1/8	Mother	1/8	 <table style="display: inline-table; vertical-align: middle;"> <tr><td>Spouse</td><td>3/8</td></tr> <tr><td>Father</td><td>1/16</td></tr> <tr><td>Mother</td><td>1/16</td></tr> <tr><td>Free quota</td><td>1/2</td></tr> </table>	Spouse	3/8	Father	1/16	Mother	1/16	Free quota	1/2
Spouse	3/4															
Father	1/8															
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Spouse* and one parent (no siblings)	 <table style="display: inline-table; vertical-align: middle;"> <tr><td>Spouse</td><td>3/4</td></tr> <tr><td>Parent</td><td>1/4</td></tr> </table>	Spouse	3/4	Parent	1/4	 <table style="display: inline-table; vertical-align: middle;"> <tr><td>Spouse</td><td>3/8</td></tr> <tr><td>Parent</td><td>1/8</td></tr> <tr><td>Free quota</td><td>1/2</td></tr> </table>	Spouse	3/8	Parent	1/8	Free quota	1/2				
Spouse	3/4															
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Spouse* and one parent and siblings	 <table style="display: inline-table; vertical-align: middle;"> <tr><td>Spouse</td><td>3/4</td></tr> <tr><td>Parent</td><td>1/8</td></tr> <tr><td>Siblings</td><td>1/8</td></tr> </table>	Spouse	3/4	Parent	1/8	Siblings	1/8	 <table style="display: inline-table; vertical-align: middle;"> <tr><td>Spouse</td><td>3/8</td></tr> <tr><td>Parent</td><td>1/16</td></tr> <tr><td>Siblings</td><td>0</td></tr> <tr><td>Free quota</td><td>9/16</td></tr> </table>	Spouse	3/8	Parent	1/16	Siblings	0	Free quota	9/16
Spouse	3/4															
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Free quota	9/16															
Issue only	 <table style="display: inline-table; vertical-align: middle;"> <tr><td>Issue</td><td>1</td></tr> </table>	Issue	1	 <table style="display: inline-table; vertical-align: middle;"> <tr><td>Issue</td><td>1/2</td></tr> <tr><td>Free quota</td><td>1/2</td></tr> </table>	Issue	1/2	Free quota	1/2								
Issue	1															
Issue	1/2															
Free quota	1/2															
Both parents only	 <table style="display: inline-table; vertical-align: middle;"> <tr><td>Father</td><td>1/2</td></tr> <tr><td>Mother</td><td>1/2</td></tr> </table>	Father	1/2	Mother	1/2	 <table style="display: inline-table; vertical-align: middle;"> <tr><td>Father</td><td>1/4</td></tr> <tr><td>Mother</td><td>1/4</td></tr> <tr><td>Free quota</td><td>1/2</td></tr> </table>	Father	1/4	Mother	1/4	Free quota	1/2				
Father	1/2															
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Mother	1/4															
Free quota	1/2															
One parent only (no siblings)	 <table style="display: inline-table; vertical-align: middle;"> <tr><td>Parent</td><td>1</td></tr> </table>	Parent	1	 <table style="display: inline-table; vertical-align: middle;"> <tr><td>Parent</td><td>1/2</td></tr> <tr><td>Free quota</td><td>1/2</td></tr> </table>	Parent	1/2	Free quota	1/2								
Parent	1															
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Siblings only	 <table style="display: inline-table; vertical-align: middle;"> <tr><td>Siblings</td><td>1</td></tr> </table>	Siblings	1	 <table style="display: inline-table; vertical-align: middle;"> <tr><td>Siblings</td><td>0</td></tr> <tr><td>Free quota</td><td>1</td></tr> </table>	Siblings	0	Free quota	1								
Siblings	1															
Siblings	0															
Free quota	1															
Parents and Partner* (de-facto partnership)	 <table style="display: inline-table; vertical-align: middle;"> <tr><td>Father</td><td>1/2</td></tr> <tr><td>Mother</td><td>1/2</td></tr> <tr><td>Partner</td><td>0</td></tr> </table>	Father	1/2	Mother	1/2	Partner	0	 <table style="display: inline-table; vertical-align: middle;"> <tr><td>Father</td><td>1/4</td></tr> <tr><td>Mother</td><td>1/4</td></tr> <tr><td>Reg. Partner</td><td>0</td></tr> <tr><td>Free quota</td><td>1/2</td></tr> </table>	Father	1/4	Mother	1/4	Reg. Partner	0	Free quota	1/2
Father	1/2															
Mother	1/2															
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Reg. Partner	0															
Free quota	1/2															
Siblings and Partner* (de-facto partnership)	 <table style="display: inline-table; vertical-align: middle;"> <tr><td>Siblings</td><td>1</td></tr> <tr><td>Partner</td><td>0</td></tr> </table>	Siblings	1	Partner	0	 <table style="display: inline-table; vertical-align: middle;"> <tr><td>Siblings</td><td>0</td></tr> <tr><td>Reg. Partner</td><td>0</td></tr> <tr><td>Free quota</td><td>1</td></tr> </table>	Siblings	0	Reg. Partner	0	Free quota	1				
Siblings	1															
Partner	0															
Siblings	0															
Reg. Partner	0															
Free quota	1															

* claim under matrimonial property regime must be met prior to distribution.