

FRENCH
DEPARTMENT
**FRENCH INHERITANCE
LAW BROCHURE**

FRENCH INHERITANCE LAW The Law relating to succession and Inheritance tax in France is very different from that in England. We set out below a brief guideline to some aspects of this.

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French Law will govern your French Real Property. It may therefore be advisable to make a French Will. You should also be aware that, even if you die domiciled in England, your French Real Property will be subject to the rules of French Succession Law, which essentially provides that children automatically inherit part of their parents' Estate. You cannot, in France, disinherit your children.

A recent law (law 2006-728 of 23 June 2006) provides that the beneficiaries of a succession can surrender their rights in advance by signing a deed before two French Notaires. However, as this law only entered into force on 1st January 2007, its practicality remains uncertain and our first information is that Notaires are extremely reluctant when dealing with this major breach of the French Civil Code principles. Therefore you should consider that the following still applies.

The Civil Code imposes limits upon how much may be left by Will to a particular person. In France, you are not free to dispose of your Estate as you wish. Your children (BUT NOT YOUR SPOUSE) have an absolute right to inherit part of your Estate. The part which must go to your children called the *réserve légal* (legal reserve) and the children are called *héritiers réservataires*. ("Reserved heirs").

The rules relating to the legal reserve and the portion of a French Estate on death which must be left to the children on death are as follows:

- a) one half of the Estate if there is only one child;
- b) two thirds of the Estate to be shared equally if there are two children;
- c) three quarters of the Estate to be shared equally if there are three or more children.

This means that the *quotité disponible* (freely disposable portion) will be one half, one third, and one quarter as the case may be.

Once the reserved portion of the Estate has been calculated, the remaining portion is freely disposable to the spouse or any other person. The reserved portion of the Estate will vary according to the number of children.

Note that neither wives or husbands, nor brothers or sisters or parents, are reserved heirs. All a surviving spouse is entitled to under French Law where there is no Will is one quarter of the deceased's Estate absolutely when the deceased has children from a previous marriage/relationship. If the children are all born from the same marriage, the surviving spouse may instead receive a usufruct (life interest) in the whole Estate or that one quarter in full ownership.

However, the surviving spouse's position may be improved by making a Will taking advantage of Article 1094-1 of the Civil Code.

Article 1094-1 of the Civil Code provides that, where a testator leaves children, the surviving spouse may:

- a) benefit from that part of the Estate which the testator may freely dispose of, i.e. one half, one third or one quarter as described above, or
- b) take one quarter of the Estate absolutely and enjoy a life interest in the other three quarters, or
- c) have a usufruct (life interest) in the whole Estate.

The testator may himself make the choice in his Will or may delegate by Will the choice to the surviving spouse, which is the usual French practice.

You will therefore see that it is possible to benefit a spouse, and care should be taken to ensure a valid Will is drawn up in his or her favour, without which the surviving spouse might receive considerably less.

French Inheritance Law can leave English Purchasers in a difficult position. This is especially the case where there is a dispute between children and parents, where a husband or a wife or both have children by a previous relationship and where the children are minors. Under French Law, children can hold land, which is not possible under English Law. This means that the surviving spouse will be left owning land in France jointly with minors and will need to obtain an order for sale from the English Courts before the land can be sold.

FRENCH WILLS

In France there are three types of Wills. Article 969 of the French Civil Code provides that a Will may be holographic (handwritten) or made by *Acte authentique* (before a French Notaire) or in *secret form* (sealed envelope remitted to a French Notaire). The simplest and most common form is a holographic Will. A holographic Will is only valid if it is written in its entirety, dated and signed by the hand of the testator; it is not subject to any other formality. It will be invalid if it is typed even if signed and dated in the hand of the testator. Under French Law, no witnesses are required for a holographic Will.

A French Will can be registered at the French Wills Registry at Aix-en-Provence. However, the register does not keep a copy of the Will and will only mention where the Will is being kept (usually at a French Notaire's office). There are no legal requirements for the location where a Will must be kept however. You may choose to keep it or leave it for safe keeping with a third party. We recommend however that a French Will be kept together with any English Will.

FRENCH INHERITANCE TAX

Inheritance tax is payable in France by each beneficiary on the share that they inherit and not by the Estate.

The rate of inheritance tax differs according to the relationship between the deceased and the beneficiary. The schedule below applies to the net amount received by each beneficiary to which must be added all previous gifts received from the deceased during the last 6 years.

1. Relationship: children and parents
Each child/parent has a 156,359 Euros nil-rate band from each child/parent, then:

| Estate | % |
|-------------------------------|----|
| Not exceeding 7,922 | 5 |
| Between 7,922 and 11,883 | 10 |
| Between 11,883 and 15,636 | 15 |
| Between 15,636 and 542,043 | 20 |
| Between 542,043 and 886,032 | 30 |
| Between 886,032 and 1,772,064 | 35 |
| Above 1,772,064 | 40 |

2. Relationship: spouses / partners with a French "PACS"
The surviving spouse / partner with a French Pacte Civil de Solidarité (PaCS) benefits from a total exemption.

3. Relationship: siblings
Each beneficiary has a nil rate band of 15,636 Euro, then:

| Estate | % |
|----------------------|----|
| Not exceeding 23,975 | 35 |
| Above 23,975 | 45 |

Note: cohabiting siblings may benefit from a total exemption under certain conditions.

4. Relationship: others
Each nephew has a nil rate band of 7,818 Euro. Each other beneficiary has a nil-rate band of 1,564 Euro, then:

| Relationship | % |
|-------------------------|----|
| Relatives to 4th degree | 55 |
| Others | 60 |

Therefore, if you own a property as an unmarried couple or as two unconnected persons, French Inheritance tax will be levied at 60% on the first death with a nil band rate of 1,596 euros. However, various alternatives do exist which can in some cases help to alleviate the problem.

ENGLISH ASPECTS

As it is not possible to estimate the value of your French property at the date of your death and hence know how much French Inheritance tax will be payable by the beneficiaries, you may wish this to be paid out of your English Estate.

If you have an English Will you can make a Codicil Will in which the definition of testamentary expenses is expanded to include the payment of duties payable in France on or by reason of your death. This Codicil should also make it quite clear that the English Will is limited in scope and excludes your French immovable assets.

Note that whilst your French real property will pass according to French Law, your French personalty, i.e. money in the bank and furniture will pass according to the Law of England, provided you die domiciled in the UK which means that you do not have to leave any of these assets to your children. You should also consider how you would like to dispose of the furniture and personal possessions in the house and any money in any French bank account.

Please note however that there are several methods of purchase and a choice has to be made as to which may be the most suitable depending on your personal circumstances. Please seek advice in this respect.

This memorandum sets out general points only which should be borne in mind when considering French Inheritance Law. It should not be relied upon in specific cases for which detailed advice should be taken. If you would like this firm to protect your interests, please speak to Dawn Alderson or your usual contact partner.

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