On 20 July 2017, the bill concerning the reform of Belgian inheritance law has been adopted by parliament. The reform is intended to update the inheritance law, in line with the needs and aspirations of modern society.

1 Scope

The inheritance law determines who inherits what part of the estate of a deceased person, if there is no will. The law also determines the limitations of a will. It gives certain persons 'forced heirship'-rights.

The new law only concerns provisions on the civil inheritance law and does not change fiscal provisions in the inheritance tax legislation.

First, the amendment is important for residents of Belgium who do not have a will, regardless their nationality. Their estate will be inherited according to Belgian inheritance law, if they are residing in Belgium upon their demise. Further, the amendment is important for residents of Belgium who drafted a will governed by Belgian law, and for Belgians who are not residing in Belgium with a will governed by Belgian law.

Belgian residents who are not Belgian nationals can draft a valid will governed by the law of their nationality. The amendment does not change the possibility to opt for another inheritance law than the Belgian inheritance law. However, the amendment can be an opportunity for Belgian residents who have a will governed by a foreign inheritance law to reassess their choice of law and to opt in a new will for the new Belgian inheritance law.

The new inheritance law remains highly technical. Hereafter, we outline the main features of the adjustments.

2 Main features

2.1 Agreements as to succession

Agreements as to succession are agreements that are concluded before demise with regard to the division of the estate by the future testator and his future heirs.

According to current Belgian inheritance law such agreements as to succession are in principle null and void (except for strict exceptions).

The new Belgian inheritance law foresees in new forms of permitted agreements as to succession. Parents can enter into binding agreements over their estate with their children. Such an agreement can avoid disputes between children after the demise of their parents. The new inheritance law makes such an agreement valid and enforceable (under conditions).

2.2 ‘Forced heirship’ or the ‘legitimate portion’ of children

2.2.1 Extent of the ‘forced heirship’

In principle, according to Belgian inheritance law, each child receives an equal part of the estate, if there is no will. Therefore, each child in a family of three children will receive in principle a third part of the estate.
According to Belgian inheritance law, children cannot be disinherited. Children have ‘forced heirship’ rights. According to current Belgian inheritance law, the extent of the ‘forced heirship’ depends on the number of children. If the testator has one child, the ‘forced heirship’ equals half of the estate. If the testator has two children, the ‘forced heirship’ is 2/3rds part of the estate. If the testator has three or more children, the ‘forced heirship’ is 3/4ths part of the estate. Therefore, the ‘forced heirship’ of a child in a family of three children is, according to the current Belgian inheritance law, in principle one quarter of the estate. In principle, the testator can dispose without restrictions of the remainder of the estate.

New Belgian inheritance law limits the ‘forced heirship’-rights to half of the estate, regardless the number of children. Therefore, the ‘forced heirship’ of a child in a family of three children will be limited to a sixth part of the estate, according to new law. The other half of the estate can be used by the testator to favor other persons or entities.

2.2 ‘Forced heirship’ in value
The current Belgian inheritance law foresees a ‘forced heirship’ in assets. In principle, every child needs to receive his ‘forced heirship’ in the assets of the estate, for example a part in the house and a part of the securities account.

When the testator gifted too much to certain children, but not to all children, or gifted too much to others than children, the deprived children can claim ‘abatement’ of gifts.

According to current inheritance law, the calculation to check whether the testator gifted too much (or not), is made on the basis of the value of the gift(s) per the date of the testator’s demise, whereby cash does not change in value.

Example in the current inheritance law: in a family of three children, one child received real estate by gift, and the other children cash. On the date of the gift, the value of the real estate was equal to the value of the cash. Upon the demise of the donor, the value of the real estate has more than doubled. According to current inheritance law, the two children who received the cash can claim from the third child a part of the real estate. The third child needs to allow the ‘abatement’ of the gift.

The new inheritance law values all gifts as per the date of the gift, indexed until the date of demise.

According to current inheritance law, deprived children can claim a part in the gifted assets.

The new inheritance law limits the claim to a compensation in value (cash).

2.3 ‘Bringing in’ of gifts in value
To determine whether the testator gifted too much (or not), the heirs need to ‘bring in’ their gifts.

The current inheritance law states that gifts are ‘brought in’ at their value per the date of demise for immovable assets and at their value per the date of the gift for all movable assets (cash, a securities account or an art collection).

In the example of the three children where the value of the real estate has more than doubled, this leads to unfavorable consequences for the child who received the real estate.

The new inheritance law abolishes this difference in valuation. Henceforth, all gifts will be ‘brought in’ in value, at their value per the date of the gift, indexed until the day of demise.

In the example of the three children, the value per the date of the gift, indexed until the day of demise, will be taken into account, regardless increases in value. The three gifts will be ‘brought in’ at the same value.

2.4 Gifts as advance portion in the estate or not
2.4.1 Gifts to children
The current inheritance law presumes that parents have the intention to leave an equal part of their estate to each child. A gift to one of the children is presumed to be an advance portion of their share in the estate.

According to the current inheritance law, if parents want to favor one of their children, this needs to be stated explicitly in the deed of gift.

The new inheritance law does not change this principle.

2.4.2 Gifts to heirs other than children
The current inheritance law presumes that donors have the intention to leave an equal part of their estate to each of their future heirs. A gift to one of the future heirs is presumed to be an advance portion of their share in the estate.

According to the current inheritance law, if donors want to favor one of their future heirs, this needs to be stated explicitly in the deed of gift.

The new inheritance law alters this presumption. Henceforth, the donor is presumed to favor the heir other than a child with a gift.

If the latter is not the case, the donor needs to mention explicitly that a gift is an advance portion of the share of the beneficiary in the estate.

The new presumption is important for a donor who has no children and whose parents deceased. Due to the high inheritance tax rates, a brother or sister, or a child of a deceased brother or sister, often receives a gift. Under the new law, these gifts will no longer be presumed to be gifts as an advance portion of the share in the estate.

3 Entry into force
The bill has been adopted on 20 July 2017 by parliament. The bill is not yet published in the Belgian Official Gazette. The publication is foreseen for August.

In principle, the new Belgian inheritance law enters into force one year after the publication in the Belgian Official Gazette, presumably in August 2018.

Between the publication in the Belgian Official Gazette and the entry into force, transitional rules will apply. For certain aspects of gifts that have already been made, the donor can opt for the current or the new version of the law.

Donors can opt for the current rules of valuation for the ‘abatement’ or ‘bringing in’ of gifts as described under
point 2.2.2 and 2.3. They can also opt for the new legislation of 'abatement' or 'bringing in' of gifts. If donors take no action, the new rules will apply on old gifts. If the application of the current rules is preferred, donors need to declare this explicitly in a declaration before the notary public. This can only be done for all gifts.

As mentioned in point 1, the reassessment of old gifts only needs to be made when Belgian inheritance law will be applicable on the estate.

4 Conclusion

1. The new inheritance law allows to draft an agreement as to succession with the children, to avoid disputes after the demise.
2. The 'forced heirship' of the children is limited to half of the estate. The testator can freely dispose of the other half.
3. Parents are presumed to leave an equal part of their estate to each of their children. If they want to favor a child this needs to be stated explicitly in the deed of gift. The new inheritance law alters the presumption for the heirs other than children.
4. When various assets were gifted before the demise, the beneficiaries are protected against differences in value between the date of the gift and the date of the demise of the donor, on the basis of the new inheritance law.

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Do not hesitate to contact us to reassess your current planning or if you have questions with regard to the new inheritance law. We will keep you informed of further developments.