

RUSSELL-COOKE SOLICITORS

**THE
FRENCH LAW
DEPARTMENT**

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.

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 new law (law 2006-728 of 23 June 2006) provides that the beneficiaries of a succession can surrender their rights to the "legal reserve" in advance. This requires a deed drawn up by two French Notaires. However, as this law only entered into force on 1st January 2007, its practically 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. Certain members of your family, such as children, (**BUT NOT SPOUSE**), have an absolute right to inherit certain parts of your assets. The part which must go to these members of the family is called the legal reserve (*réserve légale*) and the persons so entitled are reserved heirs (*héritiers réservataires*).

Note that neither wives nor husbands, nor brothers nor sisters nor 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 share in the estate in full ownership when the deceased has children from a previous marriage/relationship. If the children are all of the marriage/relationship, the surviving spouse may instead receive a life interest in the whole of the property or that one quarter in full ownership. It is left to the testator to decide whether he wishes to make extra provision for the surviving spouse so far as permitted by French Law by making a Will. The Will must respect the rules which set out the minimum (the legal reserve) which must be left to children or parents.

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.

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

This means that the freely disposable portion will be one half, one third, and one quarter as the case may be.

The surviving spouse's position may be imposed by taking advantage of Article 1094 of the Civil Code.

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

- a) benefit from that part of the share of the deceased 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 share of the deceased absolutely and enjoy a life interest in the other three quarters, or
- c) have a life interest in the whole share of the deceased.

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 marriage 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 English Courts before the land can be sold.

You will observe from the above that if you die leaving children or parents alive at the date of your death you will only be able to leave your spouse the freely disposable portion.

FRENCH WILLS

In France there are three types of Wills. Article 969 of the French Civil Code provides that a Will may be holographic or made by Public document or in secret form. The simplest and most common form is a handwritten 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 for a French Will to be kept together with any English Will.

FRENCH INHERITANCE TAX

Inheritance tax is payable in France by each beneficiary and not by the estate. This means that on your death, inheritance tax will be payable by each child and by your spouse on the share that they inherit.

Note the rate of tax your spouse would be liable for in France would be based on the net sum received less an abatement of 76,000 Euros. The amount your children would be required to pay on their share would be based on the net sum less an abatement of 50,000 Euros each. The same nil rate band applies to parents also.

Please note that since 1st January 2005, if the beneficiaries are the spouse and the children only, the global French estate of the deceased benefits from an additional nil rate band amounting to 50,000 Euros which is shared between the beneficiaries in proportion to their respective legal rights as provided under French Law.

The rate of inheritance tax differs according to the relationship between the deceased and the person inheriting. The rates of tax between parents, children and spouses are as follows, (where the thresholds differ for spouses this is indicated in brackets):

Band of value			Rate of tax (%)		
Less than		€	7,600		5%
€	7,600	To	€	11,400 (7,600 and 15,000)	10%
€	11,400	To	€	15,000 (15,000 and 30,000)	15%
€	15,000	To	€	520,000 (30,000 and 520,000)	20%
€	520,000	To	€	850,000	30%
€	850,000	To	€	1,700,000	35%
€	1,700,000	Upwards			40%

Rates between more distant relatives, e.g. brothers and sisters are higher. In this case, the nil rate band is only 5,000€ and the rate is either 35% or 45%.

Band of value	%	
Not exceeding € 23,000	35	€ 8,050
Above € 23,000	45	

You should be aware if you are purchasing as an unmarried couple or as two unconnected persons, that French Inheritance tax will be levied of 60% on the first death with a nil band rate of 1,500€. However, various alternatives do exist which can in some cases help to alleviate the problem.

ENGLISH ASPECT

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 consider also 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 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.

Please note that this is an advisory document and it is not intended to be relied on. No liability is accepted for its content.

April 2007

RUSSELL-COOKE SOLICITORS
2 PUTNEY HILL, PUTNEY, LONDON SW15 6AB
T 020 8394 6374 - F 020 8780 1679

CONTACT
DAWN ALDERSON dawn.alderson@russell-cooke.co.uk
PATRICK DELAS patrick.delas@russell-cooke.co.uk

RUSSELL-COOKE SOLICITORS

2 PUTNEY HILL, PUTNEY, LONDON SW15 6AB

T 020 8789 9111 **F** 020 8780 1679

CONTACT

DAWN ALDERSON ALDERSOND@RUSSELL-COOKE.CO.UK