

Greece

International Estate Planning Guide Private Client Tax Committee

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I. Wills and disability planning documents

A. *Will formalities and enforceability of foreign wills*

The Hellenic Civil Code recognises both ordinary types of wills and extraordinary types of wills relating to special cases. The most common types of wills are holographic wills (Article 1721 of the Hellenic Civil Code), public wills (Article 1724 of the Hellenic Civil Code) and mystic wills (Article 1738 of the Hellenic Civil Code).

The holographic will (Article 1721 of the Hellenic Civil Code) is the simplest way of expressing the last statement of the testator's intentions since it is prepared by the testator him or herself without the presence of witnesses. In order to be valid, it must: (1) be written (and therefore be recorded in writing) in full and exclusively by the testator him or herself; (2) necessarily contain the date on which it was prepared, namely the date, month and year, or such can be deduced from the content of the will; and (3) bear the handwritten signature of the testator (and therefore it must not be affixed using mechanical means, such as a seal). Although a holographic will is the easiest and most accessible form of will, its authenticity can be challenged and its validity contested. Anyone who is not able to read handwritten documents cannot prepare a holographic will.

A public will (Article 1724 of the Hellenic Civil Code) is the most formal transaction available in contemporary law and is the will with the most formalities, and the fact that it is prepared before a notary public gives it added evidentiary value as a public document. More specifically, the testator states orally his or her last will before the notary public and three witnesses or a second notary public and one witness must necessarily be present. They must be present during the entire proceedings and take an oath in advance that they will observe with the secrecy of the contents of the will. The notary public then prepares a deed, the so-called testamentary report which contains: (1) the date, month, year and place of its drafting; (2) the precise details of the testator so that there is no doubt about his or her identity; (3) the name and surname of the notary public and witnesses; (4) a statement of the testator's last will; and (5) an indication that the testator's intention was stated orally and that the persons assisting in the drafting of the will were present. Lastly, the deed is read to the testator and signed by him or her and the witnesses.

The mystic will (Article 1738 of the Hellenic Civil Code) is an intermediate form of will that lies between public and holographic wills. In the first stage, the testator prepares his or her final will either him or herself or via a third party. In the second stage, the testator signs and hands the document to a notary public in the presence of three witnesses (or a second notary public and one witness), which is then sealed so that at the time of opening there is no damage to it. Additionally, on the document itself or enclosure thereof, the notary public notes the testator's name and surname, and the date of delivery. That note is then signed by the testator and the persons who are assisting him or her in the preparation of the will. The notary public then prepares a deed relating to this specific process.

II. Rules governing the publication of wills

From the moment the testator passes away, there is a need to obtain probate for any will he or she may have left behind. This is a public policy requirement, and the reasons that require probate for the testator's last will relate to the security of transactions and the fate of individual assets. Grant of probate for the will is in the public interest, and for that reason, any provision of the will that precludes the granting of probate is null and void.

Articles 1769, 1774 and 1775 of the Hellenic Civil Code establish a public law obligation for the holder of a will to hand it over to the authority competent to grant it probate once he or she learns about the death of the testator.

The obligation to hand over the will held to the authority competent to grant it probate lies in particular with a notary who holds a public or extraordinary will in his or her archives that was prepared by said notary, or a mystic or extraordinary will delivered to the notary by the testator (Article 1769 of the Hellenic Civil Code) and any person holding, or having, a holographic will (Articles 1774 and 1775 of the Hellenic Civil Code).

In order to grant probate to the will, in the case of a public will, once the notary public learns of the death of the testator, he or she shall send a copy thereof to the justice of the peace of the competent court within whose territory the estate is located. In the case of a mystic will, the notary public shall hand over the will in person to the justice of the peace, who shall, having confirmed that the seals are intact, open it and grant it probate. In the case of a holographic will, the holder thereof shall present it for probate before the competent court of the peace.

In order to obtain probate for the will, no application from a party is required and, in particular, no application from the holder of the will is required. The procedure is initiated ex officio in accordance with Articles 747(4) and 748(5).

The procedure for granting probate for the will entails entering the entire text in the transcript prepared that confirms the existence or non-existence of external defects in the will. It must then be dated and signed by the justice of the peace and kept on file by the court of the peace.

III. Conditions for the validity of a will that has been made abroad

In the case of a will that was prepared in a country other than Greece, what needs to be clarified is the applicable law under which the validity of the will is ascertained.

According to Article 11 of the Hellenic Civil Code, a legal transaction is formally valid in procedural terms if it is in accordance with either the law governing its content or the law of the place where it is entered into or the national law of all the parties. An example of such a transaction is a will. Under the provisions of Article 28 of the Hellenic Civil Code, relations arising from inheritance are governed by the law of the nationality that the deceased had when he or she died, and therefore testate inheritance. Consequently, in the Greek legal order, the law of nationality that the deceased had at the time of his or her death applies to the validity of a will.

This issue is also addressed in European law via Regulation (EU) No 650/2012 of the European Parliament and of the Council (the 'EU Regulation'), which regulates matters of succession and takes precedence over national law. More specifically, Article 24 of the EU Regulation states that the law of the deceased's last residence or, by way of exception, the law of the state with which the deceased had closer ties is applicable to the issue of the admissibility and substantive validity of the will, while the testator has the ability to choose the law governing his or her entire succession as the law governing the law of the state of which he or she is a national at the time of his or her choice or at the time of his or her death. More specifically, Article 27 of the EU Regulation attempts in any way to save the validity of the will because it characteristically states that a 'disposition of property upon death made in writing' (including a will) must be considered formally valid if it is in line with either the law of the state in which the will was prepared or the law of the testator's nationality; the law of the state in which he or she was domiciled; the state of his or her habitual residence at the time of its drafting or at the time of his or her death; or lastly, the law of the state in which the property is located.

There are several ways of recognising wills drafted outside of Greece. First, under Article 807 of the Hellenic Code of Civil Procedure, if a public will has been prepared before a consular authority or if a mystic will has been lodged for safekeeping, the competent authority for granting probate is that consular authority. Consular authorities shall be competent to grant probate for holographic wills that are presented to them. In all events, the competent consul prepares a report signed by him or her (in the case of a holographic will, the person who delivered it to the consular authority also affixes his or her signature) and grants probate for the will. Copies of the probate transcript are then sent to the registry of the Athens Court of First Instance and the registry of the Court of First Instance at the testator's last place of residence or domicile. Moreover, Article 808(6) of the Hellenic Code of Civil Procedure states that, in the case of wills that have been granted probate abroad, in order to recognise them, copies may be submitted to a Greek consular authority or the secretariat of any court of the peace certified by the foreign public authority that granted them probate, and officially translated into the Greek language. The competent body (consulate or court of the peace) then prepares a filing decision and sends copies thereof to the registry of the Athens Court of First Instance.

IV. When is an executor of a will appointed, who can this person be and what are his or her powers?

Article 2017 of the Hellenic Civil Code states that an executor for the will is only to be appointed by the testator and only if there is a will. The appointment is made exclusively by the testator of the estate and cannot be dependent on the opinion of a third party (eg, an heir). The appointment of the executor of the will cannot be done by means of an *inter vivos* deed entered into by the testator, but only by the will and, consequently, in that regard it follows the terms and conditions under which a will is valid.

Article 2018 of the Hellenic Civil Code sets out the only condition that a person must meet in order for an executor of the will to be appointed. In particular, a person who is incapable of entering into legal transactions or has limited legal capacity cannot take up the post of executor of a will. Moreover, all persons who assist in the preparation of the will and any persons who are in one of the relationships specified in Article 1725 of the Hellenic Civil Code to the parties involved cannot be appointed as executor (Article 1726 of the Hellenic Civil Code).

The powers held by the executor shall be determined solely by the content of the testator's last will. The role of the executor is to carry out the will of the testator and, to that end, he or she alone has been authorised by the testator to engage in all necessary acts. Depending on the content of the will, an executor may oversee the management of the estate by the heir to check whether the latter is observing the dispositions made by the testator or management of the estate may be assigned to him or her (the executor) in order to carry out his or her task. The heir shall be liable for the obligations lawfully assumed by the executor when carrying out his or her task, while the executor shall be liable to the heir for all losses to the estate due to his or her own fault.

V. Legal guardianship: When is it proclaimed? What is the procedure?

Legal guardianship is regulated by Articles 1666 to 1694 of the Hellenic Civil Code and is defined as the responsible handling of issues of legal importance for an adult who has such a manner of disease (mental or intellectual disorder, or physical disability) that makes him or her de facto unable to handle his or her own affairs. It must be ordered by a court (and therefore no person can be placed in legal guardianship on the basis of the private will/intention of another), which alone can determine its form and extent. The Single-Member Court of First Instance at the assisted person's normal place of residence is competent to appoint a legal guardian (combined reading of Article 121 of the Law Introducing the Hellenic Civil Code, and Articles

739, 740 and 801(1) of the Hellenic Code of Civil Procedure) who shall try the matter in non-contentious proceedings. The court may declare the person to be under privative legal guardianship, in which case, it considers that he or she is unable to act for him or herself in relation to (full) or certain (partial) legal transactions, and therefore he or she must enter into legal transactions concerning those matters via his or her legal representative/legal guardian. The court may declare the person to be under assistive legal guardianship, in which case, in order for the assisted person to enter into all (full) or certain (partial) legal transactions, the consent of the legal guardian is required. Lastly, a combination of privative and assistive legal guardianship can be ordered.

VI. The rules of intestate succession under Greek law

When there is inheritance under Greek law without a will (intestate succession), six ranks are used to determine who is called upon to inherit the estate, that is, first, second, third, fourth, fifth and sixth, so that they can either accept or relinquish the inheritance.

Rules for intestate succession

- If the first rank is called, the ranks below will be disqualified. In other words, if the heirs of the first class are called upon to inherit, the heirs in second, third, fourth, and other ranks are excluded.
- If the heirs of one rank decline or forfeit their inheritance in any manner, the heirs of the next rank shall follow.

A. First rank

The descendants of the testator are called upon to join the first rank. In other words, the first rank consists of the children of the deceased who are called upon to either accept or renounce the inheritance. Children inherit in equal portions. In other words, they each receive the same percentage.

If at the time of death of the deceased one of his or her children is no longer alive, but that person has children who are alive (who are the grandchildren of the deceased), the grandchildren shall assume the position of the child no longer alive (succession *per stirpes*).

The surviving spouse of the deceased shall be in the first rank, and shall join the other heirs and inherit one-quarter of the estate of the deceased. In other words, three-quarters goes to the children and one-quarter to the surviving spouse.

B. Second rank

If there are no heirs at the first rank (children and grandchildren of the deceased), then heirs in the second rank are called upon to inherit.

The second rank relates to the parents and siblings of the deceased. However, if the siblings have died before the deceased, the children of the siblings (nephews and nieces) and their grandchildren, respectively, are called upon to inherit, but they are precluded from inheriting where there are children of siblings (nephews and nieces).

Half-siblings in the estate, alongside parents, full siblings, or the children or grandchildren of the latter shall receive half the portion corresponding to full siblings. The children or grandchildren of half-siblings who died before the testator also receive a half portion.

The surviving spouse of the deceased in the second rank inherits half the estate of the deceased.

C. *Third rank*

The third rank consists of the grandfathers and grandmothers of the deceased, and their descendants, children and grandchildren, namely, uncles (children of grandparents) and cousins (grandchildren of grandparents) of the deceased.

If the grandfathers and grandmothers from both lines are alive, they alone inherit in equal portions. This excludes the uncles and cousins of the deceased, and the grandfathers and grandmothers from both lines (paternal and maternal) inherit in equal portions.

If the grandfather or grandmother from the paternal or maternal line is not alive, said person's children and grandchildren take up the position of the deceased grandfather or grandmother. Only if the grandfather or grandmother has died will the uncles and cousins appear (in the line of succession).

If there are no children or grandchildren (uncles and cousins of the deceased testator), the portion of the person who has died shall devolve to the grandfather or grandmother in the same line, and if there is no such person, to his or her children and grandchildren.

If the grandfather and grandmother from either the paternal or maternal line is not alive, and there are no children or grandchildren of those persons who have died, only the grandfather or grandmother or their children and grandchildren from the other line inherit.

How do they inherit and to what extent?

- The children inherit in equal portion and exclude the grandchildren of the other branch.
- Grandchildren inherit *per stirpes*.

The surviving spouse of the deceased in the second rank inherits half the estate of the deceased.

D. *Fourth rank*

The fourth rank consists of the great-grandfathers and great-grandmothers of the deceased who are alive, and they inherit in equal portions, irrespective of whether they belong to the same or different lines.

The surviving spouse of the deceased in the fourth class inherits half the estate of the deceased.

Moreover, the surviving spouse of the deceased takes the furniture, utensils, clothing and other household effects that were being used by the surviving spouse alone or both spouses; this is a *preciput*, and is irrespective of the rank in which he or she is called.

However, if there are children of the deceased spouse, regard shall be had to their needs where special circumstances so require on grounds of clemency.

E. *Fifth rank*

If there are no relatives in the first, second, third and fourth ranks, the surviving spouse shall be called as the intestate heir for the entire estate.

F. *Sixth rank*

If at the time of devolution of the estate, there is no relative among the persons who can be called upon in law to inherit, nor is there any spouse of the testator, the state shall be called as the intestate heir.

VII. Are prenuptial agreements provided in the Greek jurisdiction?

Prenuptial agreements have no legal effect and are not provided for in Greece. Where one is entered into, it is null and void as contrary to public policy and morality.

VIII. The legal treatment of joint bank accounts for inheritance law purposes under Greek law

The joint bank account is an account with several joint beneficiaries who retain some degree of autonomy so that each of them can withdraw and deposit monies themselves, without the consent of the other joint beneficiary.

Under Articles 2 and 3 of Law 5638/1932, Law 2961/2001 and Law 117 of the Law introducing the Hellenic Civil Code, and Article 488 of the Hellenic Civil Code, when one of the joint beneficiaries of the joint bank account passes away, the amount remaining is not inherited by the heirs of the deceased but goes to the joint beneficiary of the joint account, without any inheritance tax being imposed. However, if the internal relationship between the joint beneficiaries of the joint account – or to put it differently, if the reason the testator placed his or her money in the joint bank account – is an *inter vivos* donation or a donation *mortis causa*, the provisions on the lawful portion will apply where such portion has been affected (Article 2035 of the Hellenic Civil Code).

A. An example

Assume that K has a car, property and joint bank account No 2 with a balance of €50,000 together with his partner, while at the time of his death, his sole heir was his son C. Article 1846 of the Hellenic Civil Code on *ipso jure* acquisition applies to the car. Articles 1193, 1198 and 1199 of the Hellenic Civil Code on the transcription of acceptance of inheritance and so on, apply to the property. However, the deposits in joint bank account No 2 automatically pass to the joint beneficiary, K, as a non-taxable non-inheritance relationship, unless K had deposited the monies in the bank account by way of donation, which affects the lawful portion to which C is entitled. These comments only apply to joint accounts marked 2, which insinuates that the term in Article 2 had been added to the joint account (ie, 'These deposits may be supplemented by the term that upon the death of any of the beneficiaries the deposit shall automatically devolve to the others right down to the last of them. In this case, the deposit passes to them free of any inheritance tax or other duties. On the contrary, this exemption does not extend to the heirs of the last remaining beneficiary') (see Law 5638/1932 read in conjunction with Article 117 of the Law introducing the Hellenic Civil Code, but not Article 488 of the Hellenic Civil Code).

On the contrary, where the joint bank account has not been opened under the term in Article 2, if the heirs can prove the level of amounts deposited by the testator (and not his joint beneficiary) in the joint account, they will have a right of recourse against the joint beneficiary based on the internal relationship that tied the testator to the joint beneficiary (and not due to an inheritance right over the joint account that does not exist). For example, if they can prove that of the €50,000, €30,000 was placed in the joint account by K (and not by his partner) as a contribution to the company, then they can claim the relevant amount on the basis of the internal legal relationship within the company.

IX. The operation of a trust under Greek law

Article 1923(1) of the Hellenic Civil Code states that the testator may oblige the heir to surrender the inheritance acquired or a percentage thereof to another (the beneficiary under trust) after a specific event or specific point in time. As is clear from this provision, in addition to making a person his or her direct heir who immediately acquires the inheritance after the testator's death,

the testator can also designate an indirect general successor, the beneficiary under trust, who is heir subject to a deadline/condition precedent, which is met after the death of the testator, which corresponds to a deadline/condition subsequent for installing the initial direct heir. In order to establish the trust, as is clear from the said provision, it is not necessary to use standard phrases, nor even the word 'trust'; that can be done by the testator making an indirect declaration, provided that the will shows the intention of the testator for someone to become his or her heir, only for a specific time period and then for another person to become his or her heir. That intention of the testator may also be expressed in the form of an obligation that requires the encumbered heir to bestow the inheritance or a percentage thereof on another (the beneficiary under trust) provided it is clear that the testator wanted the latter as his general successor, on whom the inheritance will be automatically bestowed at a specific point in time or following an event specified by the testator. Moreover, the content of the will must show the person who is the beneficiary under trust, who may be any person capable of becoming a beneficiary under trust, who at the discretion of the testator is designated as the beneficiary under trust. Moreover, the provisions of Articles 1924–1928 of the Hellenic Civil Code establish interpretative rules under which, in the case of doubt, the persons specified therein are deemed to be beneficiaries under trust.

However, the cases cited in these provisions are indicative only. That is why it is a matter of interpreting the will in each case, to determine from the way in which the last will was worded, whether there is a general trust contained within it and who the beneficiary under trust is. Besides, as is clear from a combined reading of the provisions of Articles 173 and 1781 of the Hellenic Civil Code, in order to interpret the will, the true intention of the testator must be sought, without sticking to the literal meaning of the words, such intention being viewed in the subjective sense, not in the objective sense in which the third parties would perceive it, in accordance with transactional good faith. These interpretative rules apply when, in the view of the court, the content of the will does not show the intention of the testator either because it was not clearly expressed, creating a corresponding doubt, or because it was expressed incompletely, thereby presenting a corresponding void, so in order to find the testator's true intention, the court can even use evidence from texts other than the will itself.

The ruling of the court trying the merits that the provision of the will is clear or, on the contrary, that it is vague and needs to be interpreted, which requires an assessment of the content of the will, is an assessment of the facts and consequently is not subject to review by the Hellenic Supreme Court (Article 56(1) of the Hellenic Code of Civil Procedure). Article 1935(1) of the Hellenic Civil Code states that devolution of the inheritance to the beneficiary under trust occurs once the heir dies, if the testator did not specify any other event or point in time. It is clear from these provisions that from the moment the inheritance is made to the heir, in other words, from the death of the testator, then the beneficiary under trust acquires a right of expectation, under a condition precedent, that the inheritance will devolve to him or her, which could be the subject of a declaratory action under Article 70 of the Hellenic Code of Civil Procedure, if the existence of that inheritance is contested by the trustee (Hellenic Supreme Court Judgment No 617/86 Nomiko Vima Law Review 35.540).

Lastly, it is clear from the provisions of Article 1937(2) of the Hellenic Civil Code that, in the case of inheritances that are subject to a trust, the trustee is not entitled to dispose of the estate for such time as the trust is 'in existence', and, in particular, until the inheritance devolves to the beneficiary under trust under the relevant provisions of the will, unless that is required by the rules of ordinary management of the estate (see Hellenic Supreme Court Judgment No 931/2005 EEN Law Review 2006.2641, in the sense that under the provisions of Article 818 of the Hellenic Code of Civil Procedure and Article 1937(2) of the Hellenic Civil Code, the relevant decision lies with the court to which the trustee is obliged to seek recourse. In light of the

purpose of the provisions of Article 1923(1) of the Hellenic Civil Code, the power to dispose of the inheritable estate is limited by law, but such disposal is permitted in the case of the provisions of Article 1930 of the Hellenic Civil Code on restitution of the residuary legacy. Consequently, in the case of a beneficiary under trust who takes up the residuary estate (a *'fidei commissum de eo quod supererit'*) at the time of the devolution to him or her (namely from the time the heir died) or in the case where the testator allowed the heir to freely manage the estate, the trustee is entitled to freely dispose of the inheritable assets, in which case the beneficiary under trust will receive from the estate anything left of the estate following management thereof by the heir.¹

A. Tax burden

The tax burden in the case of a trust can be summarised as follows (Article 17 of Legislative Decree 118/1973):

- The heir who is trustee has a tax liability from inheriting the inheritance as usufructuary of the estates covered by the trust.
- The beneficiary under trust has a tax liability from devolution of the trust as owner of the assets devolving to him.

B. The provisions of Article 1939 of the Hellenic Civil Code provide for the case of a residuary legacy

The conditions for the existence of such a type of trust include: (1) the beneficiary under trust receives anything found in the estate at the time of devolution of the estate to him or her; and (2) the heir is granted a right to freely manage the assets. A consequence of that freedom of the trustee is the right to dispose of inherited assets without discrimination as to the grounds for doing so, even by means of gratis acts. However, in transactions entered into relating to the trustee's right to dispose of assets, there is no need to include the provision of the last will and testament because the law considers such disposal to be an act of management of the assets.²

The testator may include a provision in his or her last will binding the trustee to hand over the inheritance acquired or a percentage thereof to another (the beneficiary under trust) after a specific event or point in time, without that form of the inheritance losing, in accordance with the provisions of Article 1939 of the Hellenic Civil Code, its character, when the testator permits free management of the assets by the heir or the beneficiary of the estate receives whatever is left of the estate at the time of its devolution to him or her (residuary trust).³

Assume that there is a testator D, trustee A and person in whose favour a residuary trust has been established, B. Where D: (1) makes A his general trustee; and (2) established a residuary legacy in his will (Article 1939 of the Hellenic Civil Code) in favour of B, the trustee A is entitled to dispose of the assets he inherits in any manner even by means of gratis acts (eg, deeds of sale or donation), but the ability to dispose of the assets inherited from the testator via a final testamentary disposition is precluded (ie, he cannot dispose of the inherited assets via a will).⁴

It is worth noting that if there is a will made by the trustee who wishes to dispose of the inherited assets to another person (of his or her own choosing), it is null and void vis-à-vis the beneficiary under trust and does not generate any legal consequences whatsoever in relation to the devolution of inheritance rights, which are left at the time of the trustee's death which pass *de jure* (mandatorily) only to the person in whose favour the residuary legacy was established.

In a series of judgments (in which the author appeared and successfully represented the defendant association in whose favour a residuary legacy had been established),⁵⁵ the courts have ruled, inter alia, that: '... Where there is a trustee for which there is a residuary legacy, even when the testator expressly permits the unrestricted and unlimited management of the

estate by the trustee in his will, the trustee shall not be entitled to dispose of the inheritable items by a disposition in his own last will and testament...'

Notes

¹ See Apostolos Georgiadis, Michalis P Stathopoulos, *Civil Code, Article-by-Article interpretation*, vol X, *Inheritance Law*, Art 1937, p 397, para 1.

² See Vathrakokilis, *Interpretation of the Hellenic Civil Code*, 1939, p 2417; Papachristou, *Inheritance Law*, 1983, p 442; and Balis, *Inheritance Law*, 1961, para 291, p 493. Hellenic Supreme Court Judgment No 595/1952, *ThXD Law Review* 61; Athens Court of Appeal Judgment No 45/57 *Nomiko Vima Law Review* 5.184; Athens Court of Appeal Judgment No 3096/1951 *ArxN Law Review* III.191; Athens Court of Appeal Judgment No 3274/1985; Hellenic Supreme Court Judgment No 1747/1990, *D/NH Law Review* 1992.540; Athens Court of Appeal Judgment No; 2210/2004, among others.

³ See Hellenic Supreme Court Judgment No 681/1996 *Dikeosini Law Review* 1998, 1585; *EEN Law Review* 1998/45. Moreover, as the case law has ruled: 'The trustee is a true and perfect heir, and the beneficiary in trust is the direct general successor of the same testator but subject to a condition precedent (Georgios Balis, *Inheritance Law*, paras 284, 285 and 291)', see Athens Court of Appeal Judgment No 3142/2003, *Dikeosini Law Review* 2004, 1485.

⁴ See Hellenic Supreme Court Judgment No 1451/1998, *Elliniki Dikeosini Law Review* 1999, p 799; Hellenic Supreme Court Judgment No 1747/1990, *Elliniki Dikeosini Law Review* 1992, 540; Athens Court of Appeal Judgment No 2210/2004, *Elliniki Dikeosini Law Review* 2006, 265.

⁵ See Piraeus Multi-Member Court of First Instance Judgment No 982/2008; Hellenic Supreme Court Judgment Nos 1158/2013, 1159/2013 and, most recently, 2012/2017.