
Latvia

International Estate Planning Guide

Individual Tax and Private Client Committee

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I. Wills and disability planning documents

A. Will formalities and enforceability of foreign wills

A will is any unilateral instruction that a person has given in the event of his or her death regarding all or part of his or her property. A will can include instructions regarding immovable and movable property, as well as transferable rights and obligations.

Any person is capable of making a will, other than those who are unable to express their intent. Persons under trusteeship are also capable of making a will, provided that they are capable of expressing intent. Moreover, minors who have reached the age of 16 may make a will with respect to their independent property, that is, all the property given free of charge to the minors to be used independently by the respective minor, or everything that the minors have acquired by their personal work.

A testator may revoke, amend or supplement a will at any time. A person may revoke a previous will either by making a new will or by simply revoking the previous will. A will must be made and further amended or revoked by the testator personally. A testator cannot authorise someone else to make his or her will.

The content of a will must express the true intent of the testator. A will shall be made without duress, mistakes or fraud. If the intent of the testator is clear, then a will does not become invalid because of a mere mistake in a name or description.

1. LATVIAN WILLS

a. Form of wills

Wills may be either private or public. Private wills may also be submitted to the notary public for safekeeping, and in such cases, private wills are requalified as public wills, provided that certain procedures are complied with. Additionally, two or more testators may make reciprocal wills, appointing one another as heirs. Reciprocal wills may be made either in the form of private or public wills.

b. Private wills

Currently, legal regulation provides for only one type of valid private will: a holographic will. A holographic will is a private will written and signed by the testator with his or her own hand. A private will can be made in any language.

Until 30 June 2014, the law recognised additional forms of private wills, such as wills written using technical means such as computers, and signed by a testator by hand in the presence of witnesses, or, if a testator cannot sign by himself or herself, signed by another person in the presence of witnesses. However, if such a private will was made before 30 June 2014, a testator must submit it in person to the notary public for safekeeping in order to ensure that the will remains in effect. For the avoidance of doubt, holographic wills made before 30 June 2014 remain valid and effective.

A private will must clearly indicate the identity of the testator and heirs. However, the appointment of an heir does not require a particular form, provided that the testator expresses his or her will about it clearly and unambiguously.

For a private will to be valid, there must be certainty that it was prepared by the testator and that it correctly reflects his or her last intent. If a testator corrects or amends a will with his or her own hand, or corrections have been made reflecting the intent of the testator, the will remains valid. The testator must himself or herself indicate in the will everything that has intentionally been crossed out or erased. If the erasing and crossing is not properly addressed, it will not affect the unaltered parts of the will and they will remain valid. If a will is evidently not finished and not completed, then it does not have any validity. However, if a testator has promised in the will to supplement it later with new instructions but did not do so

before his or her death, this does not affect the validity of the will, provided that the will can be exercised without the additionally intended instructions.

c. Private wills submitted to the notary public for safekeeping

In order to ensure certainty, a testator may submit a private will to the notary public for safekeeping. In exceptional cases, the will can also be submitted to the Orphans' and Custody Court (the 'Custody Court'). Since 30 July 2014, this service is no longer available at Latvian consulates abroad.

When private wills are deposited for safekeeping, they become valid as a public will, subject to compliance with special formalities. Deposited private wills are registered in the Public Wills Register.

If during the depositing process a testator does not indicate to the notary public that the envelope contains his or her last will, then the will does not become valid as a public will. Nonetheless, a will that is not valid as a public will shall not be invalidated as a private will if the requirements regarding private wills have been complied with.

The authenticity of a public will may not be challenged; only a claim of forgery may be raised against such a will. The testator may request the notary public with whom the will was deposited to return the will, either personally or by authorising a representative with special power of attorney.

d. Public wills

Public wills, unlike private ones, must be made before a notary public, or before the Custody Court. The notary public assists and ensures that the content of the will complies with the legal regulation and represents the true intent of the testator. All public wills must be registered in the Public Will Register.

A will that is entered in the Public Will Register must be deemed to be the original of a public will. After registration, public wills cannot be challenged, as long as the legal capacity of the testator and its intent was verified by the notary public. After the original is signed, the testator receives a copy. The copy that is given to the testator is of equal validity as the original will. While the testator is still alive, a second copy and subsequent copies of the public will may be issued only to the testator himself or herself, or to the testator's authorised representative authorised by a special power of attorney.

A testator may change or revoke a public will by notifying the notary or making a new will. Note that an older public will is revoked by a private will drafted at a later date.

e. Reciprocal wills

Reciprocal wills are a type of will whereby two or more persons in the form of one joint document reciprocally appoint each other as heirs. As mentioned above, this type of will may be made in the form of a private or public will.

2. ENFORCEABILITY OF FOREIGN WILLS

Latvia is not a party to the Hague Conference on Private International Law (HCCH) Convention on the Conflicts of Law Relating to the Form of Testamentary Dispositions 1961 (The Hague Testamentary Dispositions Convention). Therefore, the validity of a will written in another state depends on the requirements of the applicable law. The Latvian Civil Law sets principles for how to determine the applicable law; namely, either the law of the place where a will was made or the law of the place where it is to be carried out may be applied. Inheritance rights regarding an inheritance located in Latvia must be adjudged in accordance with Latvian law.

Latvia is a European Union Member State. Therefore, EU Regulation No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and the acceptance and enforcement of authentic

instruments in matters of succession and on the creation of a European Certificate of Succession applies to Latvia.

Latvia has also entered into international agreements on judicial cooperation regarding civil, criminal and family matters with Russia, Ukraine, Belarus, Uzbekistan, Kyrgyzstan, Moldova, Poland, Lithuania and Estonia. Generally, these agreements provide that the form of will is determined by the law of the state of which the testator was a citizen while making the will. However, the form of will is also valid if the testator complied with the legal requirements of the state in whose jurisdiction the will was made.

In any event, the determination of the applicable law will depend on the specific circumstances of each matter and is usually not a straightforward exercise in cases where the testator has assets in several jurisdictions.

B. Will substitutes (revocable trusts or entities)

1. HCCH CONVENTION

Latvia does not have trust law nor it is a party to the HCCH Convention on the Law Applicable to Trusts and on Their Recognition 1985 (the 'Hague Trusts Convention'). Thus, persons cannot set up a trust in Latvia as an instrument of property transfer in the event of death.

2. INHERITANCE CONTRACT

Besides wills, another legal institute for leaving an estate to a certain person or group of persons is an inheritance contract pursuant to which one party grants the rights to his or her future inheritance or part of it to another party, or several parties grant such rights to each other. In an inheritance contract, one party may also grant a legacy (ie, an item separate from the estate) to another party or a third person.

An inheritance contract establishes not only a personal obligation, but the inheritance right itself. Unlike a will, an inheritance contract is a multilateral transaction, therefore it cannot be unilaterally revoked or altered by the estate-leaver unless such a right has been agreed. A contractual right to inherit has priority over a right derived from a will. However, contract, will and intestate (inheritance under the provisions of the law) succession can exist simultaneously.

Being a contract, inheritance contracts must also incorporate all provisions that the law requires in general for a contract to be valid. Additionally, inheritance contracts must be certified by a notary public. If the inheritance contract concerns immovable property, then, for it to be valid against third persons, it must be registered in the Land Register.

An inheritance contract may be entered into only by a person who has the capacity to make wills and to inherit pursuant to a will. If an heir appointed in a contract is a minor, then, for the transaction to have legal effect, the consent of a guardian is necessary; but if the estate-leaver is a minor, then the inheritance contract which has been entered into shall be binding only if it concerns his or her independent property.

Considering that an inheritance contract establishes only a future invitation to inherit, it does not restrict the right of an estate-leaver to take actions related to his or her movable property during his or her lifetime, or even to make a gift of it, in reasonable quantities. However, if an estate-leaver alienates something with the manifest intent of depriving the heir of granted rights, then this heir may, while the estate-leaver is still alive, contest such an alienation.

The contractual heir may renounce the inheritance only if such a right has been provided for him or her in the contract. If a contractual heir dies before the estate-leaver, the inheritance right granted to the former is terminated.

It must be noted that inheritance contracts cannot restrict rights to preferential shares (see II.B.3 below). Otherwise, the persons entitled to preferential shares may make a request to distribute their preferential shares.

C. *Powers of attorney, directives and similar disability documents*

1. GENERAL RULES ON POWERS OF ATTORNEY

The regulation of powers of attorney is set by the Civil Law. General principles applicable to lawful transactions (including agreements) may also apply to the issuing of powers of attorney to another person. Latvian law does not allow a testator to authorise a third person to make a will in his or her name. However, the Civil Law allows an authorised person to revoke the public will. The power of attorney regarding inheritance matters must define the scope of authorisation precisely and specifically; universal authorisation is not permitted.

The power of attorney terminates:

- by mutual agreement;
- upon completion of the particular assignment given;
- when the authorising person withdraws his or her authorisation;
- when the authorised person gives notice regarding authorisation;
- upon the death of either party; or
- upon expiration of the period of authorisation.

Under Latvian law, powers of attorney are revocable.

2. FUTURE AUTHORISATION

The Latvian Civil Law recognises a special type of authorisation: future authorisation. With a future authorisation an authorising person entrusts an authorised person to conduct his or her matters in cases when the authorising person, due to health disorders or for other reasons or conditions, is not able to understand the meaning of his or her actions and is not able to control his or her actions. A future authorisation agreement must be made in the form of a notarial deed in a special procedure in the personal presence of an authorising person and authorised person.

An authorised person becomes authorised to commence his or her activity at a time when in accordance with the procedures laid down in special laws, it is established that the authorising person is temporarily or permanently unable to understand the meaning of his or her actions or to control his or her actions. An authorised person must act in the interests of the authorising person. A future authorised person has the right to revoke other authorisations issued by the authorising person to such extent that the future authorised person is entitled to act. It is prohibited to transfer a future authorisation to someone else.

While the authorising person is alive, the grounds for termination of a future authorisation are the same applicable to termination of the power of attorney indicated above. A court may suspend the right of an authorised person if the authorised person does not perform his or her duties at all or performs them in a way that is contradictory to the interests of the authorising person.

3. TRUSTEESHIP

A future authorisation allows the person to choose a representative before the person becomes unable to act and express his or her will, ensuring his or her interests will be protected. In the absence of a future authorisation, the involvement of a court or an orphan's court is required to establish trusteeship and appoint a trustee who will represent the person's interests.

Trusteeship means that a person's capacity to act is restricted due to health disorders of a mental nature or otherwise, and a trustee is appointed. Trusteeship is established only if it is necessary in the interests of the person and it is the only way to protect the person.

The capacity to act may be fully or partially restricted for a person with health disorders of a mental nature or otherwise. A court, when assessing the abilities of a person, first determines whether and to what extent a trustee may act together with the person under trusteeship and only after that whether and to what extent the trustee may act independently. A person cannot have his or her personal non-financial rights restricted, and also has the right to defend his or her rights and lawful interests before institutions and in court in relation to restrictions on his or her freedoms and capacity to act, as well as disagreements, disputes with the trustee, and the appointment and removal of the trustee.

II. Estate administration

A. Overview of administrative procedures

A will that has come into legal effect must be executed by the executor of the will who has been appointed in the respective will or by another special testamentary instrument. If an executor of the will has not been appointed, then the heir must execute the will. If there is also no direct testamentary heir, then a trustee of the estate appointed by the Custody Court executes the will. If the executor that has been appointed in the will rejects this duty or his or her duty is revoked upon request of the interested persons, then the Custody Court appoints a trustee to execute the will.

Nobody is bound to undertake the duty of executor of a will, but if someone has already undertaken it, he or she no longer has the right to withdraw without good cause. Moreover, if the person appointed as executor of a will has accepted a legacy from the testator, then he or she may no longer withdraw from the duties of executor of the will. The executor of a will may transfer his or her duties to someone else only if this is specifically permitted in the will. Nevertheless, the right of the executor to act through an authorised representative in case of necessity is not limited. Additionally, a person to whom the heirs themselves entrusted the execution of a will is the authorised representative of the heirs, not the executor of the will.

The tasks of the executor of a will are defined by the intent of the testator expressed in the will. The will shall be instructions from which the executor may not deviate. The executor of the will should consider the opinion of the heirs; however, in case there is a dispute between the executor of the will and the heirs, then the matter is reviewed and determined by the Custody Court. Expenditures associated with the execution of a will must be reimbursed from the estate; but the executor may not request remuneration for his or her efforts if nothing is specified in the will concerning such. The testator may appoint more than one executor. If the testator has given some separate instruction to a particular executor of the will, the latter must act only within the scope of the duties and rights imposed upon him or her. If the testator has not divided the duties between the executors, then they can mutually agree on the division of tasks, but they are liable jointly and severally.

An executor of a will must execute the duties which have been entrusted to him or her as quickly as possible and with the same amount of care that the executor would take with his or her own matters. Regarding liability, an executor is liable for ordinary negligence to the heirs and other persons who have an interest in the estate only if appropriate remuneration has been specified for the efforts of the executor.

The estate may be divided in a private manner or at a notary public, except for cases when there is a dispute regarding division of the estate. In case of disputes, the estate is divided by the court.

B. Intestate succession and forced heirship

Intestate succession or inheritance pursuant to law occurs when there is no inheritance contract or will. As explained earlier, inheritance pursuant to will, contract and law may exist simultaneously. If the will or inheritance contract captures only a part of the estate, the remaining part of the estate is inherited in accordance with the procedures of intestate

succession. Pursuant to law, the spouse, kin or adoptees are invited to inherit. A natural person has the capacity to inherit after he or she has been conceived, even before birth.

1. PROPERTIES WITHOUT HEIRS

When there are no surviving heirs or such heirs either refused to inherit or have not proven their right to inherit, then the property of the estate-leaver becomes 'a property without heirs' (*bezmantnieku manta*). Properties without heirs belong to the state. The liability of the state for debts in such cases is limited.

2. THE SURVIVING SPOUSE IN INTESTATE SUCCESSION

The surviving spouse inherits from the deceased regardless of the form of property relationship that was in effect between the spouses during their marriage. If the marriage has ended in divorce or has been declared annulled, the former spouses shall not inherit from each other. The share of the estate inherited by the spouse depends, first, on whether there are other heirs, and, second, on how many children the deceased had. If the deceased spouse had no surviving descendants, adoptees, ascendants, or brothers or sisters of whole blood or their children, or stepbrothers or stepsisters or their children, or if any of above refuses from the right to inherit, then the surviving spouse receives the whole estate.

In the case in which the deceased had children, then the surviving spouse's share depends on the number of children. The spouse receives a child's share if the number of children who have expressed the intent to inherit is less than four, but if there are four or more children who have expressed the intent to inherit, then the spouse receives a one-quarter share. If the deceased spouse has neither surviving descendants nor adoptees, the surviving spouse receives half the estate, and, in addition, the furnishings of the dwelling.

3. OTHER HEIRS WHO ARE KIN OR ADOPTEES IN INTESTATE SUCCESSION

Other heirs who are kin or adoptees inherit according to a specific order, which is based partly on the type of kinship and partly on the degree of kinship. All the kin and adoptees are divided into classes. An heir of a lower class cannot inherit if an heir of a higher class has expressed his or her intention to inherit.

If, in any class, an invited heir with priority status drops off, the estate devolves to his or her co-heirs who have the same right of inheritance. If the co-heirs also drop-off, then the estate devolves to those persons who, in this same class, are invited to inherit from the estate-leaver. If there is no one in this class who is entitled to inherit or if all heirs in this class have dropped-off, then the estate devolves to heirs in the next class; namely, if there are no heirs in the first class, only then does the right to inherit transfer to the second class. Likewise, if there are no heirs in the second class, the right to inherit transfers to the third class, and so on.

With respect to the order of succession, four classes of heirs are set out:

1. *Descendants*: in the first class are, without distinction as to degree of kinship, all those descendants of the estate-leaver between whom, on the one part, and the estate-leaver on the other part, there are no other descendants who would be entitled to inherit. Adoptees inherit as the children of the deceased.
2. *Ascendants and siblings*: in the second class are the ascendants of the nearest degree of kinship to the estate-leaver, as well as the estate-leaver's brothers and sisters of whole blood and the children of those brothers and sisters of whole blood who had predeceased the estate-leaver. This means that the nearest ascendant inherits, that is, a parent, or if there is no parent, a grandparent.
 - (i) If the estate-leaver is survived by ascendants of the second class and by siblings of whole blood, as well as children of brothers and sisters of whole blood who predeceased the estate-leaver, then the estate is divided into two halves: half the estate goes to the ascendants, while the other half goes to the

brothers and sisters of whole blood or the children of such deceased brothers and sisters. The ascendants as well as the brothers and sisters divide their halves into equal shares, that is, *per capita*, while the children of deceased brothers and sisters divide their halves *per stirpes*.

3. *Half-siblings*: in the third class are the estate-leaver's half-brothers and half-sisters and the children of those half-brothers and half-sisters who had predeceased the estate-leaver.
 - (i) Third degree heirs inherit following these rules: when applying the right of representation, the estate must be divided not according to the number of persons, but rather, according to the number of stirps, that is, all of the descendants of the person represented together receive that share of the estate which would have been the share of the deceased father or mother if he or she had still been alive at the time the succession was opened; namely, the estate is not shared equally among all the half-siblings and children of the deceased half-sibling, but first among all of the half-siblings (including those who are deceased and had children), and then at the next level the children of the deceased parent divide his or her share.
4. *Other kin*: in the fourth class are the remaining collateral kin of the nearest degree of kinship, without distinction between full and partial consanguinity. In the fourth class there is no right of representation. Heirs of a nearer degree of kinship exclude those of more remote degree from inheriting, but if there are several kin with an equal degree of kinship, they all share the estate between themselves *per capita*.

Ascendants and descendants have right of representation regarding intestate succession. This right means that when inheriting from an ascendant, the more remote descendants take the place of their parent who predeceased the estate-leaver, without limitation as to the nearness of the degree of kinship and with right of representation. In compliance with the right of representation, the descendants receive that share of the estate that their parent would have received if he or she had survived the estate-leaver and had inherited from him or her. The right of representation also belongs to the children of the predeceased brothers and sisters of whole blood to the estate-leaver, as well as to the children of the predeceased half-brothers and half-sisters.

No matter the contents of the will or inheritance contract, the testator's spouse and descendants (including adoptees) – or in the case where there are no children, the spouse and ascendants of the nearest degree of kinship (including adoptive parents) – have the right to a preferential share of the estate that cannot be restricted or omitted. The preferential share is half the value of that share of the estate which a person entitled to a preferential share inherits pursuant to instate succession. Persons entitled to a preferential share have the rights to request transfer of the preferential share only in money.

C. *Marital property*

Latvian international private law determines that personal and property relations of spouses must be determined in accordance with Latvian law, if the place of residence of the spouses is in Latvia. If property of the spouses is located in Latvia, they, in respect of such property, must be subject to Latvian law regardless of whether they themselves have a place of residence in Latvia. Additionally, Latvia is a Member State of the EU, therefore the EU legal regime applies to Latvia as well, including the Council Regulation (EC) No 2201/2003 of 27 November 2003 Concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and the Matters of Parental Responsibility, repealing Regulation (EC) No 1347/2000 (Brussels II Bis).

Under Latvian private law, before dividing the estate of the deceased spouse, the surviving spouse may request to separate his or her share of the joint property from the whole. After

the share of the surviving spouse is split off, the share of the deceased spouse shall pass to his or her heirs.

If spouses have not defined their marital property regime by entering into a marriage contract (a prenuptial or postnuptial contract), then the statutory regime applies. Under Latvian law, the default marital property regime is joint community property; however, each spouse has his or her own separate property.

1. LAWFUL PROPERTY RELATIONS OF THE SPOUSES

Under Latvian law, spouses have both separate property and joint property. Each spouse retains the property which belonged to him or her before the marriage, as well as the property he or she acquires during the marriage as a separate property. By contrast, everything acquired during the marriage by the spouses together, or by one of them but using the resources of both spouses, or with the assistance of the actions of the other spouse, is the joint property of both spouses. In case of uncertainty, it is presumed that such property belongs equally to both spouses. However, the prevailing presumption is a joint property regime. The burden of establishing that certain property is separate lies upon the spouse who asserts such.

The spouses must jointly administer and act in regard to the joint property of both spouses, but upon the agreement of both spouses it may also be administered by one of them. Any acts regarding such property by one of the spouses requires the consent of the other spouse. If the joint immovable property of the spouses is recorded in the Land Register in the name of one of the spouses, it is presumed that the other spouse has assigned his or her share of such property to be administered by his or her spouse. Additionally, the fact that immovable property is the separate property of one spouse must be recorded in the Land Register.

Each spouse has the right to administer and use all of his or her own separate property. The separate property of each spouse especially is:

- property owned by a spouse before the marriage, or property the spouses have, by contract, designated as separate property;
- articles which are suitable only for the personal use of one spouse, or are required for his or her independent work;
- property which was acquired *gratis* during the marriage by one of the spouses;
- income from the separate property of a spouse that is not assigned to the needs of the family and joint household finances; and
- property that replaces the separate property.

The legal property relations of spouses are terminated: (1) on the basis of an agreement between the spouses; (2) if one of the spouses dies; or (3) on the basis of a request from one of the spouses if the debts or actions of the other spouse may significantly reduce the joint property.

If, in an existing marriage, the joint property of the spouses has been divided, then their property relations will be governed by the provisions setting the regime for the division of all the property of the spouses. Contracts and court judgments regarding the separate property of spouses acquire binding effect against third persons only after they are recorded in a public register.

2. MARRIAGE CONTRACTS

The spouses may establish, alter or terminate their property rights in a marriage contract before marrying, as well as during marriage. In a marriage contract, the parties may stipulate one of two regimes: *separate ownership* or *joint ownership* of all property of the spouses. Marriage contracts, which contain instructions in the event of death, are subject to the general provisions regarding inheritance contracts.

Marriage contracts may be signed only by the parties themselves. Additionally, notarial procedures apply to such contracts, such as the personal presence at the same time of both spouses and the contract must be registered in the public register.

a. Separate ownership of all property of the spouses

If a marriage contract provides for the separate ownership of all the property of the spouses, each of the spouses not only retains the property which belonged to him or her prior to the marriage, but also, during the time of the marriage, may independently acquire, use and act in regard to it independently of the other spouse. A spouse may not administer, use or in any other way act regarding the property of the other spouse without his or her consent. Each spouse is liable for his or her own debts, to the extent of his or her own property, and he or she must share family and joint domestic financial expenses commensurately with his or her financial state.

If, during the marriage, the separate ownership of all the property of the spouses has been terminated and the spouses have not provided in a contract for joint ownership of property in its place, the rules on the lawful property relations of the spouses apply.

b. Joint ownership of the property of the spouses

If the marriage contract provides for joint ownership of the property of the spouses, the property which belonged to them prior to marriage, as well as the property which has been acquired during the marriage, except for their separate property (see II.C.2 above), must be combined into one joint, indivisible whole, which, during the duration of the marriage, does not belong to either of the spouses as separate parts. The spouses have the right to specify in a marriage contract the property that will remain as the separate property of each spouse. The fact that immovable property rights are included in the joint property must be entered in the Land Register.

In the marriage contract, when providing for the joint ownership of their property, the spouses must agree which of them is the administrator of the property in joint ownership (the husband, the wife or both jointly). If the administrator of the property in joint ownership is one of the spouses, this spouse may act with the property in his or her own name, and it is his or her duty to cover family and joint domestic financial expenses.

The alienating, mortgaging or encumbering with property rights of immovable property included in the joint property, when done by one spouse, requires the consent of the other spouse. The consent of the other spouse is also required for a gift of movable property included in property in joint ownership, if the amount of such a gift exceeds that of an ordinary, small gift.

The joint ownership of the property of the spouses provided for by a marriage contract is terminated:

- when one of the spouses dies;
- when the marriage is dissolved or declared annulled;
- when one of the spouses is declared insolvent; or
- by agreement of the spouses regarding the termination of joint ownership of their property.

Additionally, the spouse who is not administering the property may request the court to terminate the joint ownership of property in cases specified by law, such as that the spouse who is administering the property is not providing means for the family and their joint domestic financial needs, the spouse who is administering the property has been placed under trusteeship, and similar. Where, during the marriage, the spouses voluntarily terminate the joint ownership of the property of the spouses and in its place, in the marriage contract, do not provide for the division of all marital property, rules of the lawful property relations of the spouses apply.

D. Tenancies, survivorship accounts and payable on death accounts

Usually, the term 'joint tenancy' refers to a legal arrangement in which two or more people own a property together, each with equal rights and obligations. This legal relationship creates a right of survivorship: if one owner dies, their interest in the property is directly passed on to the surviving party(s) without having to go through probate or court system. Latvian law does not provide joint tenancies as instruments to avoid probate. Before dividing the estate, the share of the joint property of the spouse is separated and the remaining property becomes the estate.

Latvian law does not recognise survivorship accounts. The term 'survivorship account' is used to describe a joint bank account that carries an automatic right to survivorship. Similarly, as in the case of joint tenancy, this means that, upon the death of one account holder, the assets are transferred to the surviving account holder. In case of intestate succession, all the jointly owned assets must be added to the entirety of the property of an estate after the share of the joint property of the spouse has been divided.

Since Latvian law recognises inheritance contracts, persons may make their instructions in the event of death in the form of this contract. However, as stated above, a testator may freely determine the disposition of his or her whole estate in case of his or her death, but only provided that the rights of the persons entitled to preferential shares are observed.

III. Trusts, foundations and other planning structures

A. Common techniques

1. TRUSTS

Latvia is a civil law country and accordingly the trust as a common law institute is not regulated under Latvian law. The only exception where the concept of trust is mentioned is special rules issued by the Latvian Financial and Capital Market Commission dealing with banks managing monetary funds and other assets owned by their clients based on authorisation issued by those clients. These rules apply to banking operations and are not directly related to inheritance or estate planning.

Latvia has not ratified the Hague Trust Convention of 1 July 1985.

2. FOUNDATIONS

The civil law country alternative to trusts is the creation of a foundation, however, in Latvia, foundations are used for achieving goals related to public functions, for example, different charity or sponsorship organisations. To ensure that foundations in Latvia could be used for private purposes in a similar manner as in other European countries, amendments to the Latvian law are needed.

In terms of inheritance planning the foundation can be created on the basis of the instructions expressed in the will (the foundation can be established during the lifetime of the testator or already after his or her death by the executor of the will). A testator has the right to leave all of his or her assets or only part of them to a foundation.

A foundation has a separate legal personality and its assets are segregated from the assets of the founders. The foundations are registered in the Associations and Foundations kept by the Register of Enterprises.

The foundation is managed by a management board that must consist of at least three members. If there is another managerial institution for the foundation with at least three members, then the foundation can have one formal management board member.

The rights of the foundation to pursue commercial activities are limited. The foundations can engage in commercial activities as ancillary activities only with the aim to maintain and use the assets of that foundation or to the extent needed to achieve the goals of the respective

foundation. The law does not provide an exhaustive list of the goals that can be pursued by a foundation, however, the overall aim of foundation regulation in Latvia is to strengthen democratic and civic society. Therefore, the limitation on the goals of the foundation should be factored in when considering the use of the foundations. There is an additional set of stricter rules applicable to foundations that qualify as an organisation established for the general good.

In any case, it is important to bear in mind that according to Latvian law, a foundation may not grant monies, provide guarantees, issue promissory notes to, or otherwise finance, founders, members of the board and other administrative bodies (if such have been established), as well as other persons who have a similar economic interest, especially spouses, relatives and brothers-in-law, sisters-in-law, counting kinship up to the second degree and affinity up to the first degree. The same rule applies when a foundation is being liquidated and its property is being divided.

3. OTHER INSTRUMENTS

Latvian inheritance law gives a testator the right to designate another successor in case the successor appointed by the will died before the testator. Also, testators could use legacies for inheritance planning, such as leaving certain assets to the designated person or persons.

B. Fiduciary duties (trustees, board members directors etc)

1. EXECUTOR OF THE WILL

The executor of the will has to perform all tasks entrusted to him or her in accordance with the provisions of the will.

An executor of a will must execute the duties that have been entrusted to him or her as quickly as possible and with such care as with which the executor would act in his or her own matters. Regarding liability, an executor is liable even for ordinary negligence to the heirs and other persons who have an interest in the estate only if appropriate remuneration has been specified for the efforts of the executor.

2. MANAGEMENT BOARD MEMBER OF A FOUNDATION

The law simply states that the management board members of foundations are jointly and severally liable for the damage they may have caused to the respective foundation. The law does not tie the manager's duties to a certain standard of care, as it is described above in the case of executors of a will. The claim against the management board member of a foundation lapses after five years have passed from the breach of duties (causing of damages) or the day when the breach of duty was discovered.

The board members do not have a right to participate in the decision-making or voting in case there is a conflict of interests between the interests of the foundation on one side and the management board members or his or her spouse or relatives interests on the other. Failure to comply with this obligation serves as a basis for a damage claim.

C. Treatment of foreign trusts and foundations

Due to the lack of trusts in Latvia, there is a high probability that Latvian public authorities will be sceptical regarding trust arrangements. Accordingly, use of a foreign trust in Latvia is not recommended.

Latvian tax law does not provide guidance on the income tax treatment of income realised from foreign trusts and foundations, and there is also no official guidance on establishing under what conditions such entities should be considered as fiscally transparent or non-transparent. Therefore, if a Latvian individual or legal entity is a beneficiary of a foreign trust or foundation, taxation of income should be analysed in each case individually. Therefore, it is highly recommended to contact a Latvian tax advisor and, if necessary, confirm the tax treatment with Latvian tax authorities.

IV. Taxation

A. Domicile and residency

Latvia taxes individuals on the basis of tax residence and domicile status. An individual is considered to be a resident of Latvia if:

- the individual's permanent place of abode (ie, registered address) is in Latvia;
- the individual is physically present in Latvia for at least 183 days in any 12-month period beginning or ending in the tax year in question; or
- the individual is a citizen of Latvia employed abroad by the government of Latvia.

The State Revenue Service has announced that in the absence of a statutory rule regarding application of the 183-day rule, it will apply the physical presence tests recommended in the Organisation for Economic Co-operation and Development (OECD) Model Convention. The determination of an individual's permanent place of abode in Latvia is governed by the provisions of Article 7 of the Civil Code, which basically states that the place of abode (domicile) is the place where a person has voluntarily settled with the express or implied intent to live or work there permanently.

B. Gift, estate and inheritance taxes

1. GIFT TAX

Gifts from individual persons are exempt from personal income tax in the following cases:

1. *In full*: if the gift is received from a spouse or relative up to the third degree within the meaning of the Civil Law. This exemption does not apply if the gift is provided within the framework of economic activity.
2. *Up to €1,425 per tax year*: if the gift is received from a natural person other than those referred to in point (1) above. This exemption does not apply if the gift is provided by a natural person within the framework of his or her economic activity, or if the natural person has received a gift with the nature of remuneration within the meaning of the Civil Law.
3. *In full*: a gift from any individual person, if the gift is intended for and the payer uses it to cover his or her higher education and all levels of professional education, as well as costs of getting specialisation (for a profession or position) at a state-accredited Latvian educational institution, or at an educational institution in any of the EU Member States or European Economic Area countries or by enrolling in a state-accredited educational programme.
4. *In full*: a gift from any individual person, if the gift is intended for and the payer uses it to cover his or her medical expenses other than cosmetic surgery.

Any other gifts which are not mentioned above, including gifts from companies, gifts with a value over €15 from employers, and gifts from other enterprises are subject to personal income tax.

2. INHERITANCE TAX

There is no inheritance tax in Latvia.

3. REAL ESTATE TAX

A flat 1.5 per cent tax is imposed on the cadastral value of land and buildings that do not constitute residential property or are otherwise exempt. The tax is calculated and collected by municipalities.

Residential building/apartment tax is levied at the following progressive rates:

- 0.2 per cent, for a cadastral value not exceeding €56,915;

- 0.4 per cent, for a cadastral value from €56,915 to €106,715; and
- 0.6 per cent, for a cadastral value exceeding €106,715. Local municipalities have the power to grant taxation reductions to specific categories of individuals.

Local municipalities may impose an additional property tax ranging from 0.2 per cent to 3.0 per cent in accordance with regulations that must be issued by the municipality no later than 1 November of the prior tax year. If no regulations are issued, tax is imposed at the default statutory rates.

Families with three or more children may, under certain conditions, reduce the amount of real estate tax calculated by 50 per cent, but not by more than €500. For individuals, immovable property tax paid is deductible for income tax purposes if the immovable property is used for business purposes.

4. LAND TAX

A flat 1.5 per cent tax is imposed on the cadastral value of land. The tax is calculated and collected by municipalities.

C. *Taxes on income and capital*

1. PERSONAL INCOME TAX

Latvia applies a progressive personal income tax system. The tax rates are as follows:

- income up to €20,004: 20 per cent;
- income exceeding €20,004, but not exceeding €62,800: 23 per cent; and
- income exceeding €62,800: 31 per cent.

Dividends, interest and other income from capital (other than capital gains – eg, income from life insurance, income from private pension funds, investment of contributions, return on annuity insurance contracts and income from financial instruments) received by resident individuals are generally taxed at the 20 per cent rate. No personal income tax applies to dividends received by an individual where corporate income tax (CIT) has been paid already by the company which paid those dividends. Income from forest disposals and the lease of an individual's own property without registration with the State Revenue Service as a business activity is taxed at a rate of ten per cent.

A 20 per cent rate applies to income from the sale of capital assets. Capital gains realised on the disposal of capital assets such as real estate, stock, bonds, short-term debt instruments, other securities and intellectual property are generally taxed at 20 per cent. However, gains on the sale of real property held for longer than five years may be exempt under certain conditions (where it has been the taxpayer's principal residence for a year or has been the taxpayer's only real property asset for five years).

As of 1 January 2016, Latvia has a 'solidarity tax' on highly paid employees. The solidarity tax is applicable to income exceeding €62,800, at a rate of 25 per cent, but payable at the same rate for mandatory social security contributions as applied to a person's income. The difference between the actually paid solidarity tax (eg, at the rate of 34.09 per cent) and the calculated solidarity tax (at the rate of 25 per cent) is regarded as an overpayment and refunded to the employer.

2. CIT

Latvian resident companies are taxed on dividends, deemed dividends and expenses comparable to dividends with the aim of actual profit distribution. Thus, the CIT rate for reinvested profit is nil per cent. Business income earned (including interest, royalties and inbound dividends) is taxed not on receipt but when the profits are distributed.

Deemed dividends are defined as an increase in share capital from profits generated after 1 January 2018, followed by a share capital decrease.

The following positions are considered deemed profit distributions:

- non-business expenses;
- certain bad debts;
- interest expenses exceeding the thin capitalisation limits;
- certain loans to related parties;
- transfer pricing adjustments;
- benefits provided by non-residents to employees and/or board members if such benefits are attributed to a Latvian permanent establishment; and
- the liquidation quota.

The Latvian CIT system does not provide the opportunity to accumulate tax losses. There are, however, transitional period rules for using tax losses generated up until 31 December 2017 when the previous CIT law was in force.

In general, all types of income are subject to CIT upon distribution, except:

- distribution of profit generated before 31 December 2017;
- dividends received by a domestic or foreign company can be distributed without CIT liability if CIT is paid in the country of origin (except dividends from blacklisted offshore jurisdictions); and
- capital gains from the sale of shares held for at least three years are exempt from CIT (except participation in companies established in blacklisted offshore jurisdictions).

Similar tax treatment applies to permanent establishments of foreign entities. A non-resident company is subject to CIT with respect to Latvian-sourced income and capital gains (constituting income attributable to a permanent establishment in Latvia). A permanent establishment is treated as a separate resident taxpayer.

As of 1 January 2018, the CIT taxation period is one month. CIT payers must submit their tax returns for each month by the 23rd day of the following month. Taxpayers are not obliged to submit tax returns for months in which there is no taxable base. However, a mandatory tax return must be submitted for the final month of the reporting year. The tax return for the final reporting month may be submitted up until the submission deadline for financial statements.

Non-resident companies without a permanent establishment in Latvia are subject only to withholding taxes on certain types of payments received from Latvian residents or Latvian permanent establishments, such as:

- the disposal of immovable property located in Latvia;
- management and consultancy fees; and
- payments made to residents of low-tax or non-tax countries or territories.