

## Main Changes & New issues in Czech Inheritance Law

rutland ježek, a Prague law firm on main changes and catches in Czech inheritance law

As of January 1, 2014, the new Civil Code (act No. 89/2012 Coll.) is effective. One of the major changes brought by the new Civil Code relates to the inheritance law. The primary purpose of the new inheritance legislation is to strengthen "rights of the deceased person"; in a sense that the new law brings new instruments how the person can influence the disposition of his assets after his/her death. Among the most notable new institutes belongs in particular the (i) new approach to the liability for debts of the deceased person, (ii) possibility to execute an inheritance agreement, (iii) possibility to make a bequest, (vi) possibility to include conditions under which the inheritance shall be distributed.

### Liability for debts

Probably the most important principle of new inheritance law includes the universal succession of heir into the position of the deceased person. That means that **the heir is liable for all the debts of the deceased person** irrespective of the value of the acquired inheritance. It is not unusual that the debts relating to the inherited estate exceed the value of the inheritance itself. In such cases the heir, unless he refuses the inheritance, is liable for debts of the deceased person in full even by his/her own property. If there is more than one heir, the heirs will be liable jointly and severally. Nevertheless, in order to avoid the risk of paying the debts exceeding the inheritance, the heir may exercise the right to make an inventory of inherited assets in front of the notary public (such inventory shall limit the heir's liability only to the amount equaling the value of the inherited assets stated thereon). The inventory of inherited estate must be conducted by each heir separately.

### Disclaimer of interest

In many cases when the testator donated to his/her prospective heir certain assets during his/her life time, the testator does not wish that such donee would inherit some further assets after his/her death. In such cases it is newly possible that the testator and the donee conclude an agreement on the basis of which the donee will renounce his/her right to the inheritance for the future. Unless stated otherwise in such agreement, the renunciation is effective even for descendants of the donee. Conclusion of this kind of agreement may avoid future conflicts among testator's heirs after the death; nonetheless, such agreement must be executed in a form of a public deed in front of the notary public.

### Waiver of right in favor of another heir

Newly, the heir may waive its right to the inheritance or any part thereof in favor of another heir. This heir, however, cannot waive its right to the inheritance in favor of a person who is not an heir to any assets of the inheritance.

### Bequest

The traditional concept of the institute of bequest is newly incorporated into the law of the Czech Republic. The testator can at his/her last will and testament establish a bequest in favor of a legatee. That means that the testator orders his/her heirs to hand over to the legatee certain asset (*e.g.* a painting), to establish certain right in favor of the legatee (*e.g.* lease) or to assign to the legatee certain receivable of the testator. After the death of the testator, the legatee does not become the heir of testator, so he/she cannot in general be liable for the testator's debt in the same extent as the heir.

### Inheritance Agreement

The new Civil Code introduces a new title on the basis of which a person may become a heir; the inheritance agreement. Within the course of the testator's lifetime the testator and third person may enter into a inheritance agreement by which such person becomes testator's heirs or legatees. The inheritance agreement must be executed in a form of public deed in front of a notary public, otherwise it might be considered to be a last will of the testator. The significant advantage of the inheritance agreement is that it cannot be unilaterally terminated by the testator without the heirs' or legatees' consent granted in a form of public deed. The testator is however, not entitled to dispose of all his/her assets by the inheritance agreement; only three fourths of the assets can be subject of such agreement.

### Substitute heirs

At the time of executing the last will, nobody can really know whether persons designated by the testator as his/her heir will be at the time of the testator's death eligible to acquire the inheritance, whether they recall the inheritance or not, or whether they will be still alive. For that purpose, the testator may decide and determine that a substitute heir shall become a heir instead of formerly determined heirs.

### Estate succession

In addition to the substitution of heirs, the testator can also limit the freedom of the heir on how to dispose with the inheritance by determining the heir's heir. The estate succession may pursuant to the law last only for one hundred years.

### Conditions, time limitation and the testator's orders

Under the previous law, any condition incorporated in the last will and testament was not effective irrespective whether it might be accomplished by the heir or not. The condition was always deemed only as a wish of the testator. The Civil Code changed the situation dramatically. The testator may at his/her discretion set forth in his/her last will conditions, time limitations or orders. Hence, the testator may for example impose upon the heir that he/she must first graduate before acquiring the inheritance or take care about the testator's favorite pet. Please note, that some conditions are not effective such as conditions interfering with personal rights of the heir (*e.g.* right to marry or divorce someone), conditions which are obviously consequence of the testator's arbitrariness or impossible conditions.

### Inheritance Issues

The recodification of the Civil Code also brings substantial changes with respect to the expats residing temporarily or permanently in the Czech Republic. The new Act on International Private Law relinquished the concept of citizenship for governing law of the inheritance and replaces it with **concept of habitual residence at the time of death**. Despite the fact that the term habitual residence is not defined in the laws of the Czech Republic, it is generally interpreted as a place where a person resides with the intent to grant such place a permanent character. The decisive circumstances in order to assess the habitual residence of person are term of residence, family, employment etc. Therefore, in many cases expats living in the Czech Republic may be deemed to have habitual residence here and their inheritance disposition might be divided in accordance with Czech Civil Code.

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