

11/06/2018

Market: Belgium



## Reform of belgian inheritance law, a few months before its effective date









The reform of the law of inheritance in Belgium, adopted on 31 July 2017, will come into effect on 1 September 2018. Among the changes adopted: greater flexibility and freedom of transfer; the ability to set up family agreements; and greater security for donees.

Please find the main changes below, just a few months before they come into force.

### Changes affecting the reserved portion of the estate

Currently, the children, the surviving spouse and (in the absence of children) the grandparents, are entitled to a fixed share of a deceased person's estate. They are also protected against any excessive gifts by the deceased.

Today the shares of the children, as heirs to the reserved portion, differ according to how many they are. Starting on 1 September 2018, the portion reserved for the children is fixed, however many they are.

	Today	Starting on 1 September 2018
  <b>1 child</b>	 <b>1/2 of the estate</b>	 <b>1/2 of the estate</b> (shared equally between the children)
 <b>2 children</b>	 <b>2/3 of the estate</b> (1/3 each)	
 <b>3 children and more</b>	 <b>3/4 of the estate</b> (shared equally between the children)	



Currently, the surviving spouse or legal partner has a life interest in half the deceased's estate. In future, he/she will benefit from what is called a "continued life interest" in that half of the estate which is a priority encumbrance over the disposable portion and, for the rest, in the children's share in the estate, as well as the family home and its furniture.

Note that, at present, the disposable reserve of a deceased person without children, which represents half the estate's assets, is shared between his/her maternal and paternal branches; and that the parents (and grandparents) cannot be disinherited.

From now on, and in order to favour a de facto cohabitant with no rights over the disposable reserve of the deceased person's estate, the legislation permits the latter to disinherit his/her parents (or grandparents) by means of a will. The entire estate of the deceased may then be transferred to the companion (or any other third party) without fear of a request, by a parent (or grandparent) of the deceased, for the entire estate to be brought into hotchpot.

In addition to the above, the legislation removes the possibility of a request for hotchpot by and for the surviving spouse in respect of gifts made after 1 September 2018.

These new rules apply to gifts made by a deceased after September 1, 2018, for all gifts (before or after September 1, 2018) with the exception of the following two cases:

- If the gift is made before the effective date of the new legislation AND an express provision in the deed of gift specifies that it may be accounted for in kind.
- If the gift is made before the effective date of the new legislation AND the donor appears before his/her notary prior to 1 September 2018 to specify that the gift remains subject to the current regime.

In future, all deductions from the heir's (or heirs') share of the estate shall be based on the value of the assets of the whole estate.

## Valuation of gifts

As a reminder, and unless otherwise stated, a gift is an advance on inheritance. This means that when probate is granted to an estate, the gift will be deducted from the heir's (or heirs') share in the estate. However, a gift may have been made many years before the death of the donor. In such a case, it is necessary to assess the value of the asset given, in order to deduct it from the reserve.

Until now, when a donor makes a gift of a sum of money or of other movable property, the value of the gift is assessed at the time when the gift is made. Whereas, in the case of immovable property, its value is the increase in value between (i) the day when the gift was made and (ii) the day when probate is granted and the donor's/deceased person's estate passes to the heir(s).

For the sake of simplification and consistency, the value of gifts of both movable and immovable property is valued on the date when the gift was made but is indexed to inflation on the day of his/her death. Please note that there may be exceptions to this principle.

For the donor who wishes to apply the current regulation concerning the assessment of the value of gifts, the legislation allows him to make a request to apply it, before his/her notary, prior to 31 August 2018. Failing this, gifts will be subject to this new legislation.

In contrast to the above-mentioned gift in advance (i.e. as an advance on inheritance), Belgian law recognises gifts which are not subject to, and are excluded from, hotchpot. These latter gifts come directly from the disposable reserve because they are gifts unrelated to the inheritance provided for by the reserve, and could not, until now, be reclassified as a gift in the form of an advance, whereas the opposite was always possible.

From this coming 1 September, it will be possible to reclassify gifts in both directions.

At the moment, and without any provision to the contrary, the gift of a life insurance policy is imputable to the estate of the deceased/policyholder and is therefore not attributed to the reserved portion of the estate.

In future, after the reform and unless otherwise stipulated, it will be presumed that the gift of a life insurance policy may be taken into hotchpot with the estate of the policyholder and shall therefore be considered to be an advance on inheritance.

## Inheritance agreements

This is the big new change to the Belgian civil code.

The future deceased and his/her estate may, for example, enter into family inheritance agreement for the purpose of: skipping a generation where the son of the deceased accepts that his share should be directly attributed against his inheritance; making an arrangement on the value of the given goods; or, giving an extra share to a child in need, etc.

The legislation distinguishes between: on the one hand, an overall or family inheritance agreement, being a contract entered into by the parents and their presumptive heirs in direct line, in order to establish a balance between each of them and to reset the counters to zero; and, on the other hand, a specific inheritance agreement, being a contract between future heirs making arrangements for future gifts and/or inheritance. The latter does not require the agreement of all members of the family but must still be a specific legal deed or document.



## Conclusion

This new regulation will apply to all estates granted probate, and to all gifts made, on or after 1 September 2018, unless a request to apply the old regulation is made before a notary prior to the effective date.

Given these new and more flexible options, life insurance contracts are becoming more of an estate planning tool, enabling the client to optimise the transfer of his/her estate and to pass on a larger inheritance to one or more third parties, if this is his/her wish.

Every situation should be examined on a case by case basis to align the above with your personal circumstances. If you would like to find out more about our life insurance solutions, please feel free to contact us.

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