



Family agreements

a France perspective

Family Agreements - Introduction

- Recall of basic principles of French inheritance law (“*Droit des successions*”)

The rules of inheritance in France are affected by the fact that French law does not have testamentary freedom for all, meaning a person may not leave assets to who ever and in whatever proportions they please, if they have children.

- “*Saisine héréditaire*”

The mechanism of the saisine vests in some of the heirs the right of possession of the succession, while other heirs do not have this right and must request delivery of their share.

- Principle of equality between the heirs

Family Agreements - Introduction

- Principle of equality between the heirs

- Article 912

The reserved portion (“*Réserve héréditaire*”) refers to the portion of the estate reserved for the heirs by law which cannot be disposed of by the will maker.

In France, a person's children are considered reserved heirs (“*Héritiers réservataires*”) and have the option of accepting or renouncing their successoral rights.

Whatever is left after the applicable reserve is called the “*quotité disponible*” (disposable portion), which may be freely disposed of by will.

Family Agreements - Introduction

- Recall of basic principles of French inheritance law
 - “*Saisine héréditaire*”
 - Principle of equality between the heirs
 - Any agreement on a future succession is forbidden.
 - It is not possible to depart from the French estate law (A will cannot override the law of reserved heirs).

Family Agreements - Introduction

- Main demographic and sociological evolutions
 - Aging French population, increasing life expectation
 - Weakening institution of marriage, increasing number of divorces, expanding reconstituted families
 - Increasing part of professional assets in patrimonies

Family Agreements - Introduction

- Inheritance law is turning to “*contractualisation*”, a notion that refers to the process of designing and implementing contracts
 - Law of 3rd July 1971 implementing the “*donation-partage*” (lifetime gifts)
 - 1975 Deauville Congress
 - Law of 5th January 1988
 - Law of 23rd June 2006 reforming inheritance and gifts

Family Agreements – Management of family companies

- Risks
- Solutions
 - “*Convention d’indivision*” (Joint possession convention)
 - “*Mandat à effet posthume*”(Trust to administrate assets posthumously)

Article 812

This mandate allows a person to organise the administration of his/her estate and assets after his/her death. The estate will be inherited by the heirs but administrated by a mandatee who can be a natural or legal person.

Family Agreements – Transfer of family companies

Transfer of family companies to grandchildren

- Risks
- Solutions
 - “*Donation-partage transgénérationnelle*”(gifts to grandchildren)
Article 1078-4
The “*Donation-partage transgénérationnelle*” provides the opportunity for grandparents to organise the division of their estate between their children and grandchildren to avoid later conflicts and uncertainty. If grand-parents wish to make a gift to their grand-children beyond the amount that is freely disposable (as of course their own children are protected heirs) then the consent of their children is necessary.
 - Reform of the rules of representation

Family Agreements – Transfer of family companies

Transfer of family companies to third parties

- Risks
- Solutions
 - “*Donation-partage avec présence d’un tiers*”(Gifts in the presence of a third person)

Article 1075-2

The will maker can transfer companies or shares of companies (in fields of industry, commerce, craft industry, agriculture or liberal professions) in which he/she is manager to non-family members, in accordance with the by-laws provisions of these companies.

Family Agreements – Transfer of family companies

Transfer of family companies to third parties

- Risks
- Solutions
 - “*Renonciation anticipée à l’action en réduction*” (Renunciation during the parents' lifetimes)

Article 929

The reserved heirs retain a right known as an “*action en réduction*” to claim their “*réserve*” – that share of the estate to which they are entitled under French succession law. This is the case even where this would entail claiming gifts which the deceased had made during his lifetime. However, an “*héritier réservataire*” may during the parents' lifetimes, formally renounce their right to inherit in favour of a third party.

The renunciation becomes effective once it has been accepted by the person in whose estate it applies.

Family Agreements – Transfer of family companies

Transfer of family companies to third parties

- Risks
- Solutions
 - “*Cantonnement*” (Restriction)

Article 1094-1

A surviving spouse may renounce his/her rights to part of the estate, unless the will maker wishes to the contrary. This decision is not treated as a “*libéralité*” (gift) to the other heirs.

Family Agreements – Transfer of family companies

Transfer of family companies to third parties

- Risks
- Solutions
- Tax planning
 - From a tax point of view, the “*renonciation anticipée*” (renunciation during the parents' lifetimes) and the “*cantonnement*” (restriction) are not treated as “*libéralités*” and therefore there are not taxed as though the “*renonçant*” had made a gift to the beneficiary.
 - The “*donation-partage*” (gift) can be partially exonerated (Dutreil convention)

Family Agreements – Transfer of family companies

Transfer of family companies to children from a previous marriage

- Solutions

- “*Donation-partage conjonctive*” (Joint gift)

Article 1076-1

A couple can make a joint gift to a child from a previous marriage, although the spouse cannot be considered joint donee of the joint estate.

Family Agreements – Transfer of family companies

Transfer of family companies to the surviving spouse in the presence of children from a previous marriage

- Risks
- Solutions
 - “*Libéralité graduelle*” (Gradual donation)

Article 1048

The will maker may leave an asset to a particular person, but with instructions that the asset, or its equivalent value, will be returned to a second person. This is commonly used in the case of the protection of the surviving spouse, with the children ultimately inheriting the asset.