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Luxembourg

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SECTION A: BRIEF SURVEY OF THE LOCAL SYSTEM

1. Type of System

The Grand Duchy of Luxembourg is a constitutional monarchy and parliamentary democracy under a civil law system. **32.01**

Although it has been an independent nation since 1839, Luxembourg's judicial system has its origins in the Napoleonic Code, which was imposed upon the country during its annexation by the French (1795–1815) and from which it never materially departed. **32.02**

Nestled in the heart of Europe and influenced by various political and territorial ties, Luxembourg has—like its neighbours France, Germany, and Belgium—its roots in Roman law, and applies a system of largely codified rules. **32.03**

Luxembourg is not a federal system. **32.04**

2. Wills

Under Luxembourg law, a will must take one of the three following forms in order to be valid: **32.05**

- *Holographic (handwritten) wills*: Pursuant to Article 970 of the Civil Code, a holographic will must be completely handwritten by the testator/trix, as well as dated[1] and signed by him.
- *Authentic wills by notarial deed*: Introduced by Article 971 of the Civil Code, an authentic will is executed in the presence of two notaries, or of one notary assisted by two witnesses.[2] The testator/trix dictates his testamentary provisions to the attesting notary, who records them or has them recorded in a deed. The notary then reads them aloud to the testator/trix in the presence of the second notary, or of the two witnesses, so that the testator/trix can confirm that the content of the will is in line with his last wishes. Once the will has been prepared in this way, it is signed by the testator/trix, and by either the two notaries or the notary and the two witnesses. The will must be drafted

[1] Day, month, year.
[2] For more information on witnesses, see paragraphs 32.69 to 32.71.

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in one of the national languages: Luxembourgish, German, or French. It may be dictated in any of these languages, or in another language that is understood by the two notaries or by the notary and the two witnesses, in which case the notary will produce a faithful translation of the testator/trix's statements in one of Luxembourg's official languages. If the testator/trix does not speak any of the official languages or any language that is understood by the notaries and witnesses, he must seek the assistance of a sworn translator.[3]

- *'Mystic' wills*: The testator/trix must hand his will over to two notaries, or to one notary and two witnesses.[4] It must be in paper form, and may have been handwritten or typed by the testator/trix, or typed by a third party. The will must be handed over in a sealed envelope to which a stamp or seal has been applied, or the testator/trix may proceed to stamp or seal it in front of the notaries or in front of the notary and the witnesses. The testator/trix must then declare that the sealed envelope contains his last will and testament and that he has signed it by hand, and must also state how it was written (whether the testator/trix hand-wrote it himself, used word processing technology or had someone else write out the will). If the will was drafted by a third party, the testator/trix must also declare that he has subsequently verified its contents. Provided all these conditions have been met, the notary will immediately proceed to write up a deed (the *acte de suscription*) directly on the envelope containing the will. The resulting document will either be kept at the notary's office or given back to the testator/trix (depending, respectively, on whether it is made *en minute* or *en brevet*). In particular, the deed will describe the envelope presented by the testator/trix, give specific details about the seal which marks it, and outline all of the formalities that were followed as described above. The date of the will is that applied by the notary to the deed containing the will. Once the notarial deed has been thus prepared in accordance with Article 976 of the Civil Code, it is signed by the testator/trix and by the notaries, or by the notary and the two witnesses.

32.06 Amendment, revocation, and revival:

32.07 If the testator/trix wishes, the will can be supplemented or amended later using a document called a codicil, and can also be revoked by drafting a new will containing unambiguous provisions to that effect.

32.08 The formal requirements for revoking an authentic will by notarial deed used to be a matter for debate, with some arguing that such revocation would also have to use the authentic form by notarial deed. However, a decision by the Court of Cassation (Supreme Court) of 5 July 2018 has now settled the issue, relying in particular on a rule enacted under Article 1035 of the Civil Code in holding that "a testator/trix may revoke a previous will, in any form, by means of a subsequent will, in any form".[5]

32.09 Thus, an authentic will can legitimately be revoked by a subsequent holographic or mystic will. There is no requirement that a single form be used throughout.

[3] Article 980 of the Civil Code.
[4] For more information on witnesses, see paragraphs 32.69 to 32.71.
[5] Court of Cassation, 5 July 2018, roll number 77/2018.

In addition, a will or a particular testamentary provision may also be revoked; for example, if the assets it bequeaths have been sold, lost, or destroyed in the meantime, or if a legatee passes away before the testator/trix does. **32.10**

A last will and testament is neither revoked nor amended automatically by operation of law if the testator/trix marries after having made it. **32.11**

It should be noted, therefore, that the surviving spouse could be excluded from inheriting—for example, if the will makes a universal legacy in favour of another person, and the testator/trix does not amend this. **32.12**

Divorce does not automatically amend a will either. The testator/trix should remember to amend his will when the content fails to reflect his wishes. Divorce does however extinguish the inheritance rights the ex-spouse will have had during the marriage by operation of law. **32.13**

It is possible for the testator/trix to 'revive' provisions that were previously revoked by indicating this explicitly in the new testamentary provisions, or by amending existing testamentary provisions by means of a codicil, for instance. This is tantamount to making a new will, in whole or in part. **32.14**

Registered civil partners do not automatically inherit from one another under Luxembourg law. The Civil Code does not contain provisions conferring an inheritance entitlement of any kind upon them. However, either civil partner may draft testamentary provisions in favour of the other provided all legal requirements are respected, e.g. those concerning the portion of the estate which is legally reserved for any descendants. **32.15**

Mutual wills are not allowed under Luxembourg law.[6] **32.16**

The authority of a third party to determine the identity of a beneficiary has not emerged as a recognised practice under Luxembourg law, in particular because the legal system lacks an equivalent concept to that of trust and due to the fact that the estate devolves to the heirs by virtue of the death alone. **32.17**

Luxembourg law does not provide for the concept of trust. However, Luxembourg does recognise trusts under foreign law, having ratified the Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. **32.18**

The notarial deed for an authentic will is always prepared *en minute*, and this type of will is thus kept on file at the notary's office. **32.19**

For a mystic will, the deed can also be prepared *en minute*, in which case it will also be kept with the notary. But if the deed is prepared *en brevet*, the will is returned to the testator/trix, and the notary will not keep it on file. **32.20**

A holographic will can be left with the notary if the testator/trix so wishes. **32.21**
Any will, no matter the form, can be registered in the Register of Wills and Testaments maintained by the Registration Duties, Estates and VAT Authority (*Administration de l'Enregistrement, des Domaines et de la TVA*).

[6] Article 968 of the Civil Code.

32.22 However, the will itself cannot be kept on file there. The Register of Wills and Testaments only contains information about the testator/trix[7] and where the will is kept.[8]

3. Intestacy

32.23 The order of succession by operation of law is as follows, with each category of heir precluding any heirs in lower categories from inheriting automatically:

(i) Descendants (children, and grandchildren where children are already deceased) and the surviving spouse.[9] A special regime applies for surviving spouses (see paragraphs 32.25 to 32.37). All descendants have the same inheritance rights, whether they are legitimate children, born out of wedlock or adopted. Note, however, that a distinction is made with respect to children adopted under the simple adoption procedure (*adoption simple*). They are not forced heirs of the ascendants of their adoptive parents (Article 363 of the Civil Code).
(ii) Parents and full or half-siblings of the deceased are legal heirs in one category, and will inherit provided there are no descendants and no surviving spouse. (However, full and half-siblings have different rights; see 4(d) below.)
(iii) Ascendants other than parents (i.e. grandparents and great-grandparents).
(iv) Collateral relatives other than siblings and their descendants (aunts and uncles, cousins and their descendants up to and including the sixth degree of kinship).
(v) The State.

32.24 There is no difference between movable and immovable property with respect to the division of the estate.

4. Freedom of Testation

32.25 Under Luxembourg law, the children of the deceased, whether they are legitimate, born out of wedlock,[10] adopted, or even the issue of an adulterous union[11] are all forced heirs, meaning they are automatically entitled to inherit a specific portion of the deceased's estate.

32.26 The proportion to be reserved for each child is set out in Article 913 of the Civil Code, and its size will depend on the number of children of the deceased:

- One child: half of the deceased's estate is reserved, while the testator/trix can dispose of the other half as he chooses.

[7] Full name, date and place of birth, address, profession, and social security number (*matricule*).
[8] Date of the will, plus the name and address of the person or institution entrusted with the will, or the place where the will is stored.
[9] To be an heir by operation of law, the surviving spouse must not be divorced or legally separated from the deceased—Article 767 of the Civil Code.
[10] Provided the deceased's parentage has been established.
[11] Provided the deceased's parentage has been established.

- Two children: two thirds (i.e. one third per child) of the deceased's estate are reserved, leaving one third that the testator/trix can dispose of as he chooses.
- Three or more children: three quarters are reserved (to be divided equally), leaving one quarter that the testator/trix can dispose of as he chooses.

The unreserved part of the deceased's estate is referred to as the "disposable part". **32.27**

Where there are forced heirs, any bequests and *inter vivos* gifts to third parties must be made from the disposable part of the estate. **32.28**

When the estate is being settled, the reserved part is calculated in order to ensure that no forced heir is adversely affected by bequests or *inter vivos* gifts by the deceased. **32.29**

If this is found to be the case, such bequests are declared lapsed, and any *inter vivos* gifts which prejudice forced heirship rights may become the object of an action for reduction (*action en réduction*) brought by an injured forced heir. **32.30**

Pursuant to the terms of such claim, an inheriting party who is not a forced heir will have to return the property to the estate, while one who is a forced heir will have to deduct the property from his own reserved part and, if necessary, pay an indemnity (*indemnité de réduction*). **32.31**

The surviving spouse does not belong to a particular rank in the order of succession, and his inheritance rights will primarily depend on whether the deceased is survived by any descendants. **32.32**

If the deceased has no descendants, the surviving spouse will be entitled to full ownership of the entire estate, except where the deceased has provided otherwise in his will. Thus, the surviving spouse is not a forced heir under Luxembourg law. **32.33**

By contrast, if the deceased has children, the surviving spouse can only choose between the following two options: **32.34**

- the equivalent of a child's part (but which may not be less than one quarter of the estate, no matter how many children there are), or
- usufruct of the marital home (including any furniture contained therein), provided that the home in its entirety belonged to the deceased or was jointly owned by the deceased and the surviving spouse.

However, the surviving spouse's entitlement may be increased by an *inter vivos* gift between spouses (*donation entre époux*), wherein it is stipulated that the surviving spouse is entitled to choose at the time of the death of the first spouse between either full ownership of the disposable part and usufruct of the rest of the estate, or usufruct of the entire estate.[12] **32.35**

The registered civil partner of the deceased is not his heir by operation of law. A civil partner has the status of a third party, and will therefore only inherit if he has been expressly included in the will. **32.36**

Cohabitants receive the same treatment under inheritance law as civil partners. **32.37**

[12] Article 1094 of the Civil Code.

32.38 As a rule, succession agreements (*pacte sur succession future*) are not permitted under Luxembourg law. Here it should be noted, for example, that Luxembourg law does not permit heirs to waive their right to bring an action for reduction.

32.39 As noted under (i), succession agreements are generally not permitted. However, it is possible to make a specific *inter vivos* gift (a *donation-partage*) of all or some of the assets of the donor's estate. This will effectively transfer the gifted property to the desired donees, and in some cases will also fix the value of the property as at the date when the *donation-partage* occurred.[13]

32.40 Luxembourg law further recognises two types of *inter vivos* gift made to heirs: advances against the estate (*donation en avancement d'hoirie*) and advances that necessarily come out of the disposable part of the estate (*donation par préciput et hors part*).

32.41 The *donation en avancement d'hoirie* is an advance made against the estate—specifically, against the part to be legally inherited by the heir in question. It therefore does not interfere with the equality among heirs, unlike the *donation par préciput et hors part*.

32.42 Finally, it should be noted that assets in the estate may be bindingly allocated through a variety of will called a *testament-partage*. A testator/trix's heirs will not be able to derogate from the wishes of the deceased except in the event of prejudice to the rights of a forced heir who has not been allocated the full value of his reserved part of the estate (thus warranting an action for reduction—see paragraphs 32.25 to 32.37).

32.43 Beyond the action for reduction described in paragraphs 32.25 to 32.37, an heir injured by the unlawful concealment of inheritance assets may bring an action to have his rights enforced.

32.44 Article 792 of the Civil Code referring to the concealment of inheritance assets (*recel successoral*) makes it an offence for an heir to divert or conceal assets of the estate, as this constitutes an interference with the principle of equality among heirs.

32.45 Adopted children and children born out of wedlock have the same rights as legitimate children, except for children adopted under the simple adoption procedure (*adoption simple*), who are not forced heirs of their adoptive parents' ascendants.[14]

32.46 In addition, it should be noted that where there are siblings who share only one parent with the deceased (half-siblings), the entitlement of each may be calculated by dividing all siblings into three groups: full, or whole blood siblings (born to the same parents as the deceased); uterine half-siblings (sharing a mother with the deceased); and consanguine half-siblings (sharing a father with the deceased).

32.47 Inheritance rights will then be divided between the two lineages (one on the mother's side and one on the father's side).

32.48 In equal proportions, whole blood siblings share in both sides, uterine siblings share only in the mother's side, and consanguine siblings share only in the father's side.[15]

[13] Article 1075 *et seq.* of the Civil Code.
[14] Article 363 of the Civil Code.
[15] Article 752 of the Civil Code.

5. Maintenance

32.49 Children have a duty to maintain their parents and ascendants when in need. They are also obliged to make maintenance payments to the surviving spouse of the deceased in the event of need (even if the two were legally separated).[16]

6. Community Property between Husband and Wife

32.50 Under Luxembourg law, when a married person dies, his assets will initially be allocated in accordance with the applicable matrimonial property regime.

32.51 Here, it will be determined which of the assets will go to the deceased's estate, and which will go to the surviving spouse.

32.52 Then the surviving spouse, who will generally figure among the deceased's heirs, will also be entitled to inherit and can exercise his rights as heir to the deceased's estate.[17]

32.53 Thus, before the inheritance is settled, division of the matrimonial assets among the spouses as per the applicable regime should already have occurred.

32.54 Under Luxembourg law, matrimonial regimes are sets of rules that apply to every married couple. In particular, they govern each spouse's rights and obligations with respect to the other, principally as concerns each individual's personal property and rights.

32.55 Four main matrimonial regimes exist under Luxembourg law:

- community of acquests (a joint property regime), which is the regime that applies by default
- the separation of property regime
- the universal community of property regime
- participation in acquests.

32.56 For example, someone married under the separation of property regime who uses his own personal funds to acquire an item of movable property during the marriage will have full ownership and right of disposal of that item, and will not have to account for it to the other spouse.

32.57 Things will be different for someone married under the community of acquests regime, as the item acquired will become joint property in which each spouse is deemed to have a half share.

32.58 In addition, Luxembourg law allows for the allocation of matrimonial benefits by agreement. As a rule, such agreements take effect on the date of the dissolution of matrimonial ties. For example, they might allocate all property formerly held in common to the surviving spouse, or confer the right to a particular item of property. However, as a rule, they cannot violate forced heirship rules where there are descendants.[18]

[16] Article 205 of the Civil Code.
[17] As indicated in paragraphs 32.25 to 32.37.
[18] Article 1527 of the Civil Code.

7. Joint Property

32.59 As a rule, when a joint owner dies, their share of their jointly owned property devolves to their heirs.

8. Gifts (*Inter Vivos*)

32.60 An *inter vivos* gift may be granted to an heir in the form of an advance against the estate (*en avancement d'hoirie*) or an advance against the disposable part of the estate (*par préciput et hors part*).

32.61 When the donor dies, an *inter vivos* gift made as an advance against the estate (*en avancement d'hoirie*) will be deducted from the relevant donee's part of the inheritance, as this type of advance does not interfere with the equality among the heirs.

32.62 *Inter vivos* gifts that necessarily come out of the disposable part of the estate (*par préciput et hors part*) will not be offset against the donee's legal inheritance entitlement. They will be treated as non-recoverable, and the gifted assets will be seen as having been removed from the estate of the deceased. Such gifts advantage the donee over the other heirs.

32.63 However, it should be noted that if there are forced heirs, *inter vivos* gifts which are granted *par préciput et hors part* will be included in the calculation of the reserved part of the estate, and in any assessment of prejudice to it.

32.64 An *inter vivos* gift *en avancement d'hoirie* to a forced heir will be deducted from that heir's reserved share, and if it is larger, from the disposable part of the estate as well. If such an advance were to consume the whole disposable part, the amount that exceeded the disposable part would then be subject to reduction.

9. Capacity

32.65 In order for a person's will to be valid, he or she must have had mental capacity (have been *sain d'esprit*) when he or she wrote it.

32.66 Furthermore, a testator/trix must be at least 18 years of age to be able to dispose of his or her entire estate. A minor under 16 years of age cannot draft a valid will.

32.67 A minor aged 16 or 17 may dispose of half of the assets that the law allows an adult to dispose of by means of a will.[19]

32.68 For persons lacking capacity, a distinction must be made with respect to the degree of protection they receive under the law. Persons under guardianship for the severely incapacitated (*tutelle*) are prohibited from making testamentary dispositions once their incapacity has been declared in court.[20] However, persons under welfare guardianship (*curatelle*) can

[19] Article 904 of the Civil Code.
[20] Article 504 of the Civil Code.

generally make their own wills[21] (unless it has been established that they lack the requisite mental capacity).

32.69 Where a will is made in the presence of two witnesses (see paragraphs 32.05 to 32.22) and pursuant to Article 975 of the Civil Code, the witnesses may not be any of the following:

- legatees or their spouses, or relatives of either, by blood or marriage, up to and including the fourth degree of kinship
- relatives of the notary or testator/trix by blood or marriage, up to and including the third degree of kinship
- spouses, employees, or domestic workers of the notary or testator/trix.

32.70 In addition, pursuant in particular to Article 25 of the law of 9 December 1976 on the organisation of the profession of notary, as amended, the witnesses

> must be legal adults, know how to sign their name, be resident in the Grand Duchy of Luxembourg, speak the language in which the notarial deed is drafted as well as the language in which the will has been dictated or translated by a certified translator, have enjoyment of their civil rights, and not be subject to judicial interdiction or judicial guardianship for reason of reduced mental ability.

32.71 Furthermore,

> two relatives by blood or marriage up to and including the second degree of kinship cannot be witnesses to the same will, nor can a married couple.
>
> Any of the foregoing will render the will invalid.[22]

32.72 A person who was still in the womb at the time of the deceased's passing may still be the beneficiary of a testamentary disposition, but the transfer of property will only occur if the beneficiary is born alive and viable.[23]

32.73 However, it is prohibited for doctors, health practitioners (*officiers de santé*), and pharmacists who treated the deceased during the period in which he had the illness that was the cause of his death, or for ministers of religion, to be beneficiaries of testamentary dispositions provided for by the testator/trix during the course of his illness.[24]

32.74 Exceptions to this rule are made for the following:

- remuneratory dispositions for a specific purpose, having regard for the testator/trix's financial means and for the services rendered
- dispositions of universal legacy in favour of relatives up to and including the fourth degree of kinship, provided that the testator/trix does not have any direct ascendant or descendant heirs, or that the beneficiary in question is such an heir.

32.75 Moreover, the notary attesting a will cannot be its beneficiary, nor can his spouse or relatives by blood or marriage, or his spouse's relatives by blood or marriage, of any degree of kinship

[21] Article 513 of the Civil Code.
[22] Article 25 of the law of 9 December 1976 on the organisation of the profession of notary, as amended.
[23] Article 906 of the Civil Code.
[24] Article 909 of the Civil Code.

for direct ascendants and descendants, or up to and including the fourth degree of kinship for collateral relatives.[25]

32.76 Adults lacking capacity may be beneficiaries of testamentary dispositions provided that the legal requirements are met (i.e. approval of the guardian, potentially with the authorisation of the court or, for those under welfare guardianship, participation of the legal representative of the person lacking capacity).

32.77 Finally, a testamentary disposition to a legal entity may only be made if the entity has legal personality.

10. Authority (Court, Notarial, or Other)

32.78 The document drafted for the purposes of estate settlement which, in particular, serves to govern the devolution of the assets, is an official notarial deed (*acte authentique*) that is prepared by a notary, known as an *acte de notoriété*. It states the hereditary status of the heirs and their entitlements to the inheritance in the absence of contrary proof.

32.79 In addition, the notary is competent to prepare a European Certificate of Succession (see section B).

32.80 The heirs provide the notary with the death certificate along with any other documents helping to establish the succession entitlements, as well as the last will and testament, if any.

32.81 The notary will also proceed to query the Register of Wills and Testaments, and will then prepare the *acte de notoriété* in the presence of the heirs and/or witnesses who generally must have known the deceased personally.

32.82 The fees for the *acte de notoriété* come to around 300 euros.

32.83 As a rule the *acte de notoriété* must be challenged in court, and is rebuttable by evidence to the contrary.

11. Invalidity of Will

32.84 The grounds for invalidity of all or part of a will include, among others:

- non-compliance with the requirements for a will in terms of form or substance, where failure to comply with the requirement in question would render the will invalid
- the testator/trix's lack of capacity
- ineligibility to inherit (*incapacité de recevoir*)
- insanity
- the will being challenged on grounds of deceit (*dol*), duress, undue influence, error, or fraud.

[25] Article 24(1) of the law of 9 December 1976 on the organisation of the profession of notary, as amended.

As a rule, an invalid will is void. **32.85**

A will may be rectified, for example, if the designation of a legatee is insufficient, inaccurate, or even erroneous, and the identity of the legatee can be confirmed through extrinsic evidence. **32.86**

The court may even proceed to interpret the provisions of a will where the testator/trix's wishes are unclear or give rise to confusion. **32.87**

However, as a rule, a will which is invalid for reasons of non-compliance with a requirement in terms of form or substance will not be rectified by the court. **32.88**

Generally, the onus of proof falls on the person asserting the claim of invalidity. **32.89**

12. Simultaneous Death

The deceased persons do not inherit from one another. **32.90**

Since 1977, Luxembourg's Civil Code has provided in Article 721 that in the event of the simultaneous death of persons who would otherwise have inherited from one another, where the order in which the deaths occurred cannot be established, the deceased persons shall be treated as having died at the same time, and their estates shall devolve irrespective of their mutual heirship. **32.91**

Where a person has been missing for more than 10 years and provided that an *in absentia* procedure has been followed, the person will be presumed dead (see paragraph 32.93). **32.92**

13. Presumption of Death

Where a person's death cannot be proven, a procedure for declaration of death *in absentia* (*procédure en présomption d'absence*) will be initiated, and can generally be closed 10 years later by a judgement declaring the person's death *in absentia*. Once registered, such declaration will have all of the same effects that the declaration of death would have had if the death had been established by conventional means.[26] **32.93**

14. Estate Taxes

Inheritance tax (*droits de succession*) does exist in Luxembourg. **32.94**

However, a surviving spouse, or a civil partner who had been registered as such for at least three years, and any direct descendants,[27] are exempt from such tax.[28] **32.95**

[26] Article 112 *et seq.* of the Civil Code.
[27] On the part of the estate inherited by operation of law.
[28] Article 24 of the law of 27 December 1817 on the collection of inheritance tax—privilege of the Public Treasury.

32.96 Descendants may be liable to pay inheritance tax of 2.5% on the disposable part bequeathed, and/or of 5% on any portion in excess (in particular one conferred by testamentary disposition) that puts them in a better position than their coheirs.[29]

32.97 In cases of the simple adoption procedure (*adoption simple*), the adoptive parents and the adoptee are subject to tax at a rate of 9% on their legal part of the estate and 15% on any amount in excess. Descendants of the adoptee by simple procedure are liable for tax of 10% on their legal part of the estate and 15% on any amount in excess.

32.98 The other heirs are liable for varying rates between 6% and 15%, depending on their kinship with the deceased.[30]

32.99 Finally, the tax rate applied on the net value[31] of the assets in the estate is subject to a surcharge over the base rate of tax of between 1/10 (10%) and 22/10 (220%) for an inheritance valued at more than 10,000 euros,[32] bringing the total rate of tax to between 2.75% and 48%.

32.100 Inheritance tax is normally levied on all of the assets contained in the estate, at their market value. However, the following assets are exempted from the tax base: those removed from the estate by operation of a conventional return (*retour conventionnel*); those added to it following the return or reduction of an *inter vivos* gift; immovable property located abroad;[33] and movable property located abroad to the extent that such property was subject to foreign inheritance tax levied solely by reason of the deceased's nationality.

32.101 *Inter vivos* gifts made in the year leading up to the death which were not duly registered are to be included in the tax base.[34]

32.102 In Luxembourg, inheritance tax is levied on the deceased's assets worldwide (except for immovable property located abroad) if Luxembourg was his last residence at the time of his death.

32.103 If the deceased did not have his last residence in Luxembourg and it was not the seat of his wealth (*siège de la fortune*), only his immovable property located in Luxembourg will be subject to estate tax (*droits de mutation par décès*).[35]

[29] Article 1, third sub-paragraph of the law of 31 January 1921 on amending Art. 22 of the law of 7 August 1920 on increasing registration duties, succession stamp duty, etc.

[30] For siblings, a rate of 6% applies to the part inherited by operation of law, and 15% to any amount in excess.
For aunts, uncles, nieces and nephews, a rate of 9% applies to the part inherited by operation of law, and 15% to any amount in excess.
For great-aunts, great-uncles, grand-nieces and grand-nephews, a rate of 10% applies to the part inherited by operation of law, and 15% to any amount in excess.
For more distant relatives and non-relatives, the rate of 15% applies. Here, please note that civil partners who have been registered as such for less than three years, and cohabitants for any length of time, are viewed as third parties and are therefore taxable at the rate of 15%.

[31] Article 18, first sub-paragraph of the law of 27 December 1817 on the collection of inheritance tax—privilege of the Public Treasury.

[32] Article 1 of the law of 18 August 1916 increasing the rates of inheritance and estate tax, as amended.

[33] Article 61, first and second sub-paragraphs of the law of 23 December 1913 on the amendment of legislation governing taxes to be collected by the Registration duties and Estates authority (*Administration de l'Enregistrement, des Domaines et de la TVA*).

[34] Article 25 of the law of 7 August 1920 increasing the rates of registration duties, stamp duties, inheritance tax, etc.

[35] Article 1 of the law of 27 December 1817 on the collection of inheritance tax—privilege of the Public Treasury.

Each heir must file a declaration of inheritance (*déclaration de succession*) with the Registration Duties, Estates and VAT Authority (*Administration de l'Enregistrement, des Domaines et de la TVA*). They may all do this together. Each heir will be taxed individually on the portion that he inherits.[36] **32.104**

There is no other tax as a result of transfer of assets to the heirs. **32.105**

15. Administration of Estates

Under Luxembourg law, title to the deceased's estate vests automatically upon his death in his living heirs by operation of law, thereby authorising those heirs to administer the estate (doctrine of *le mort saisit le vif*). However, a distinction must be made between the seized heirs (*héritiers saisis*), i.e. the legal heirs who from the outset are vested of the power and rights that formerly belonged to the deceased, and the legatees, who are not otherwise legal heirs and who may have to obtain legal authorisation to exercise ownership powers (particularly in the case of holographic wills). **32.106**

It is possible to appoint an executor for the estate, but his roles and duties are different to what would be seen under common law systems. Under Luxembourg law, the executor has to a large extent a conservatory role, but also the duty to ensure that the deceased's will is effectively respected and executed. **32.107**

Estate reports do not have to be submitted. **32.108**

No systematic supervision is conducted by the authorities. **32.109**

The only requirement is that the heirs file a declaration of inheritance (*déclaration de succession*) concerning the estate of the deceased and their heirship rights within a specified time frame[37] to enable the tax authorities to verify whether any inheritance tax is due, and collect it if necessary. **32.110**

Any heir with a legitimate interest has the right to query and object, as do creditors of the estate. **32.111**

Usually, estate assets are distributed to the heirs by means of a deed of partition (*acte de partage*). **32.112**

Heirs who accept the deceased's succession are obliged to pay any creditors to the estate. **32.113**

Luxembourg law applies the doctrine of *le mort saisit le vif*, meaning that the authority to administer and dispose of the assets of the estate vests in the heirs automatically. Testator/trixs rarely appoint an executor. **32.114**

As a rule, partition of the estate is made with the mutual consent of the heirs.[38] **32.115**

[36] Article 4, first sub-paragraph, part 1 of the law of 27 December 1817 on the collection of inheritance tax—privilege of the Public Treasury.

[37] The following time limits apply for filing the declaration of inheritance: 6 months if the death occurred in Luxembourg; 8 months if the death occurred elsewhere in Europe; 12 months if the death occurred in the Americas; 24 months if the death occurred in Africa or Asia.

[38] Note, however, that if there is any immovable property to be distributed, a notary's assistance will be required to validly and effectively allocate it.

32.116 Where they cannot reach consensus, a court partition procedure (*procédure de partage judiciaire*) can be initiated. Broadly speaking, the notary who facilitates this procedure will divide the assets of the estate into allotments, which will then be allocated to each heir by random drawing. A decision may also be made to sell all of the assets and to divide the proceeds among the heirs.

32.117 As a rule, heirs cannot derogate from the provisions of the will.

32.118 However, if the legatees are legal heirs (*héritiers légaux*) of the deceased, they could theoretically refuse their bequests, provided that (i) no other heirs are named in the will and (ii) the testator/trix has not himself divided the allotments to be distributed after his death by way of *testament-partage*. In this case, the assets would remain part of the estate to be inherited, and the heirs could come to their own agreement about how they should be divided up.

32.119 If any of the heirs were to transfer estate assets between themselves after each of them had taken possession of his part, such transfers would be subject to tax in addition to any that might be due on the transfer of assets from the deceased to the heirs.

32.120 The distribution of assets among heirs of an estate is, in principle, a process executed among themselves by virtue of their mutual consent (which, however, must be recorded by a notary where the body of assets to be distributed contains any immovable property). Under certain conditions, a dissatisfied heir may challenge a deed of partition; for example, on grounds of duress, deceit (*dol*), or prejudice to his interests resulting in a loss of more than 25%.

16. Domicile/Nationality

32.121 The information above applies under the assumption that the succession is governed by Luxembourg law.

32.122 Pursuant to Regulation (EU) 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 acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (the "EU Succession Regulation 2012"), a succession will be governed by Luxembourg law provided that either the deceased had his habitual residence in Luxembourg at the time of his death,[39] or that the deceased had Luxembourg nationality and chose Luxembourg law to apply to the succession in his will.

32.123 Another situation in which Luxembourg law would apply is if the settlement of the deceased's estate operated in a jurisdiction to which international private law states that Luxembourg law applies (e.g. in the event of immovable property located in Luxembourg), or if the deceased had closer ties to Luxembourg despite being a resident elsewhere.[40]

[39] Provided that the testator/trix did not choose the law of a foreign country of his nationality to apply to the succession.

[40] Under certain conditions and in the absence of a choice of applicable law. Article 21(2) of the EU Succession Regulation 2012.

Therefore, the above information relates to these situations. **32.124**

The Luxembourg authorities – in practice, the notary – will issue an *acte de notoriété* and/or a European Certificate of Succession provided that they are competent to do so. **32.125**

In Luxembourg, a notary is competent to do so where the deceased had his habitual residence in Luxembourg at the time of his death.[41] **32.126**

17. Charitable Giving

A bequest can be made to a charity in a will, provided that the organisation has legal personality. **32.127**

A bequest to a charity could also be made indirectly, e.g. by making a bequest to a specific person who would then transfer a part of it to the organisation. In our system, however, little reason can be found to proceed in this way. **32.128**

There is no requirement for a person to bequeath part or all of his estate to a charity outright (see paragraph 32.128 above). **32.129**

In addition, the will could include a provision to incorporate a charitable foundation (*fondation d'utilité publique*) whose endowment would come from the deceased's estate, for example. **32.130**

The testator/trix is free to make bequests to any charity with legal personality. **32.131**

Bequests to charities, provided the charity meets certain conditions, are taxed under a preferential regime at a rate of 4%.[42] **32.132**

SECTION B: APPLICABLE LAW/PROCEDURE WHERE FOREIGN ELEMENTS ARE INVOLVED

1. Jurisdiction

As a rule, the Luxembourg authorities will have jurisdiction if the deceased had his habitual residence in Luxembourg at the time of his death. **32.133**

The same will apply even if the deceased did not have his habitual residence in Luxembourg at the time of his death if he formally chose Luxembourg law to apply to the succession, provided that the previous competent court has declined its jurisdiction, the parties to the estate proceedings have agreed to transfer jurisdiction to the Luxembourg courts, or the parties to the estate proceedings have expressly accepted the jurisdiction of the Luxembourg courts. **32.134**

[41] Article 4 of the EU Succession Regulation 2012.

[42] Article 23 of the law of 7 August 1920 increasing the rates of registration duties, stamp duties, inheritance tax, etc.

32.135 The Luxembourg authorities can also have jurisdiction in certain exceptional cases, e.g. where no other legal jurisdiction applies and the succession has sufficient ties with Luxembourg; for example, in terms of nationality, a past habitual residence, or the location of the estate assets.[43]

32.136 Since the EU Succession Regulation 2012 came into force on 17 August 2015, the principle of unitary succession has applied, meaning there is one approach to the entire estate irrespective of asset type.

32.137 No distinction is made between movable and immovable property.

32.138 The ordinary court having jurisdiction in civil matter is the district court of either Luxembourg or Diekirch, depending on residence.

2. Applicable Law

32.139 Pursuant to the EU Succession Regulation 2012 (Articles 21 and 22), the law applicable to the succession will be the law of the deceased's last habitual residence, or the law of another country of which the deceased has nationality if he made such choice while alive.

3. Foreign Succession/Inheritance Orders

32.140 The EU Succession Regulation 2012 has universal application. For this reason, provided that the foreign law applicable to the succession is the law of the deceased's last habitual residence or of a country of which he has nationality, the foreign decisions should be recognised and enforced in Luxembourg regardless of the nature of the assets and regardless of whether the applicable law is that of a Member State of the European Union or of a third country, provided that the provisions of the applicable law are not contrary to Luxembourg public policy (*ordre public*) and that a certain procedure is followed.

32.141 Decisions given in a Member State which is a party to the EU Succession Regulation 2012 will be recognised in other Member States without the need to follow any special procedure,[44] except in cases of violation of international public policy, breach of the adversarial principle, or incompatibility with a decision given in the Member State of origin or given previously in a third State.

32.142 To enforce the decision, the Member State that issued it will need to declare its enforceability in an attestation,[45] and the Member State of enforcement will need to attest to its enforcement on its territory. The decision on the application for a declaration of enforceability will be brought to the notice of the applicant, and served on the party against whom enforcement is sought. It may be appealed against by either party.[46]

[43] Article 10 *et seq.* of the EU Succession Regulation 2012.
[44] Article 39 of the EU Succession Regulation 2012.
[45] Article 43 *et seq.* of the EU Succession Regulation 2012.
[46] Articles 50 and 51 of the EU Succession Regulation 2012.

For decisions given by countries which are not party to the EU Succession Regulation 2012, there are no provisions for a simplified mechanism for recognition or enforcement. One should refer to general law procedures such as exequatur. **32.143**

An authentic instrument[47] issued by an EU Member State which is a party to the EU Succession Regulation 2012 will have the same evidentiary effects and legal consequences as in any other Member State, provided it is not contrary to public policy in the Member State of enforcement and no challenge to it is pending before the courts having jurisdiction in the Member State in which it was issued. **32.144**

As with decisions, the enforceability of authentic instruments must be declared by the issuing Member State by way of an attestation.[48] The procedure is also the same as for that mentioned above for decisions given by Member States. **32.145**

Finally, the EU Succession Regulation 2012 introduced the European Certificate of Succession, in particular to facilitate the recognition of the rights and powers of heirs, legatees, and testamentary executors from one Member State to another. **32.146**

The European Certificate of Succession is effective in Member States which are party to the EU Succession Regulation 2012 without any special procedure being required.[49] However, it should be noted that certified copies of the European Certificate of Succession issued to persons demonstrating a legitimate interest by the competent authority are only valid for six months.[50] This is to ensure integrity of the process, especially with regard to potential challenges to a European Certificate of Succession[51] or the suspension of its effects.[52] **32.147**

With regards to local succession/inheritance order to be obtained or other local procedure to be followed in order to give effect to a foreign order, two situations must be distinguished here. **32.148**

The first is where the foreign order comes from an EU Member State which is a party to the EU Succession Regulation 2012. In this case, the competent foreign authority will issue a European Certificate of Succession, the full effects of which will be produced in Luxembourg without the need for any additional procedures, provided no challenge is pending. **32.149**

The second situation is one in which (i) the foreign order comes from an EU Member State which is not a party to the EU Succession Regulation 2012 (Denmark, Ireland) or (ii) it comes from a third country. **32.150**

In this case, private international law rules come into play and a certified copy of the order will most likely have to be obtained. In addition, it will usually need to be accompanied by an affidavit of law (*certificat de coutume*) certifying that the succession order in question is truly the one that would customarily be issued in an estate settlement in the relevant country, need to be apostilled, or need to have been subject to an exequatur procedure. **32.151**

[47] Article 59 *et seq.* of the EU Succession Regulation 2012.
[48] Article 43 *et seq.* of the EU Succession Regulation 2012.
[49] Article 69(1) of the EU Succession Regulation 2012.
[50] Article 70(3) of the EU Succession Regulation 2012.
[51] Article 72 of the EU Succession Regulation 2012.
[52] Article 73 of the EU Succession Regulation 2012.

32.152 A deed of partition may also be required if the heirs do not wish to remain joint owners.

32.153 The concept of trust does not exist under Luxembourg law.

32.154 However, in ratifying the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition, Luxembourg has recognised trusts under foreign law.

32.155 In the settlement of an estate, the law of a foreign jurisdiction will be recognised and applied if it is the law of the deceased's last habitual residence or of a country of his nationality, and if the relevant provisions do not run contrary to Luxembourg public policy (*ordre public*) (see section B2).

32.156 Thus, the law which is duly applicable to the succession may lack the principle of forced heirship, but that law will nonetheless be recognised and accepted under Luxembourg law, even for estate assets located in Luxembourg or should the heirs be Luxembourg residents or nationals.

32.157 It would thus appear that forced heirship does not form part of Luxembourg public policy.[53] Luxembourg law will not have the effect of displacing duly applicable foreign law. The same will apply for a trust formed within a succession subject to foreign law: the trust will be recognised in Luxembourg.

32.158 However, if the law which is applicable to the succession contains provisions on forced heirship, e.g. as provided for by Luxembourg law, it will not be possible to circumvent them by means of a trust or any other legal mechanism.

4. Two or More Succession or Probate Orders

32.159 Under Luxembourg law, the prevailing authority will theoretically always be that of the country where the deceased had his last habitual residence (see section B1).

5. Assets

32.160 Under Luxembourg law, jurisdiction does not depend on where the estate assets are located. Rather, it is determined by the deceased's habitual residence at the time of his passing.[54]

6. Expert Evidence

32.161 It may be necessary for a foreign lawyer (or other type of professional) to give evidence regarding a foreign will which has been recognised by a foreign court, or regarding that country's inheritance laws.

[53] Court of Appeal, 6 June 2007, Pas. Tome 34 (2008–2010) page 109 *et seq*.
[54] Article 4 of the EU Succession Regulation 2012.

Generally speaking, an affidavit of law (*certificat de coutume*) will need to be issued, especially for successions governed by the law of a third country that is not a party to the EU Succession Regulation 2012. **32.162**

An exequatur may also be required. **32.163**

7. Unity of Succession

Since the EU Succession Regulation 2012 came into force, Luxembourg law has applied the principle of unitary succession with respect to the law to be applied to an inheritance. **32.164**

8. Formalities

In order for a will executed in a foreign country to be recognised and enforced in Luxembourg, certain aspects must be adhered to in terms of both form and substance. **32.165**

With respect to form, the will must take a form authorised by the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions (B9). With respect to substance, the will must comply, in particular, with the law applicable to the succession. In addition, any foreign will governing estate assets located in Luxembourg will have to be registered with the tax authorities in order to be executed.[55] **32.166**

9. The Hague Convention

On 7 December 1978, Luxembourg ratified the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, which came into force on 5 February 1979. **32.167**

10. Wills

The law which governs the legal requirements for execution of wills depend on whether the conflict is one of form or substance. (See section B8.) **32.168**

The law which governs construction and interpretation depends on the applicable law of succession. **32.169**

The law which governs the rights of heirs depends both on the applicable law of succession and on the public policy (*ordre public*) of the country in which the will is enforced. **32.170**

The law which governs the capacity to inherit depends on the applicable law of succession. **32.171**

[55] Article 1000 of the Civil Code.

32.172 The law which governs the capacity to make a will can depend on the law governing the capacity of the testator/trix, the applicable law of succession, or the law governing the form a will must take.

32.173 The law which governs the essential or material validity of a will depends both on the applicable law of succession and on the public policy (*ordre public*) of the country in which the will is enforced.

32.174 The law which governs powers of appointment depends primarily on the applicable law of succession.

32.175 The law which governs amendment, revocation and revival of a revoked will depends primarily on the applicable law of succession, and on the law governing the form a will must take.

32.176 Forced heirship rules under Luxembourg law apply to any heir,[56] no matter his place of residence or nationality and irrespective of the nature of the estate assets, provided that Luxembourg law applies to the succession and barring any conflicts between legal systems. (See section B2.)

11. Domicile/Nationality

32.177 The deceased's last habitual residence or his nationality may impact the legal requirements for the execution of the will such as the validity of the will on the substance or on the form, the interpretation of the will and the rights of the heirs, the capacity to inherit. In addition, the amendments of the will since the law of the last habitual residence or of the nationality may govern (i) the settlement of the estate and/or (ii) the form of the will. Both these factors can be grounds for a particular legal system to apply to the succession, both in terms of the substance and form of the will.

32.178 The form taken by the will may in particular be that required under the law of the testator/trix's place of domicile, or his country of nationality—either at the time the will was made, or as of the date of the deceased's passing.

32.179 The law of succession governing the substance of the will[57] may be (i) that of the testator/trix's nationality at the time the will was made, or at the time of his death; or (ii) that of his habitual residence at the time of his death.

32.180 As a rule, the domicile of a beneficiary will not have any impact on the settlement of the estate under Luxembourg law.

32.181 If domicile/nationality is unclear, reference should be made to European Union laws and rules, as well as international private law.

[56] Who is a forced heir under Luxembourg law, e.g. descendants of the deceased.
[57] Article 23 of the EU Succession Regulation 2012.

12. Taxation

32.182 The applicable tax rates will be the same whether or not a taxable heir is a Luxembourg resident.

32.183 However, which estate assets are subject to Luxembourg inheritance tax will vary depending on whether the deceased was a Luxembourg resident at the time of his death. (See paragraphs 32.102 to 32.103.)