



ProsperoScope Prospects, comments, solutions

Succession law reform New legacy planning mechanisms

The succession law reform is picking up pace, with two new arrangements introduced to the Russian legislation in addition to the existing mechanism of the estate fund — a contract of succession and a joint will of spouses. The Law* instituting them is in force since 1 June 2019.

The new arrangements are aimed at expanding property disposition rights for Russian citizens, improving succession planning procedures and simplifying the process of accession to the heirship.

* Federal Law No. 217-FZ of 19 July 2018 *On Amendments to Part I of Article 256 and Part III of the Russian Civil Code* (hereinafter, the "Law")

A joint will of spouses: general information

Summary

This new legislative arrangement enables spouses in a lawful marriage to jointly define the order of succession.



How to set up a joint will

Setting up a joint will requires a visit to the notary's for certification. The Law provides that this process may be recorded on video where neither spouse has objected.

Joint will of spouses: cancellation and nullification

Legislators have established several grounds for the cancellation of a joint will where:

- there is a new will executed by any spouse;
- there is a instruction to cancel the joint will;
- the spouses have become party of a contract of succession.

The spouses who have executed a joint will may also challenge it at court during their lifetime. In addition, third parties may go to court where a joint will encroaches on their rights and interests.

As is the case with an ordinary will, a court claim may also be filed by third parties that are entitled to a statutory share in the spouses' inheritance property.



Deep-dive view

A married couple may use a joint will to:

- demise their joint or personal estate;
- define a share of each heir;
- disinherit one or multiple legal heirs;
- define assets in each spouse's estate;
- make other testamentary disposition.



What do you need to know?

Importantly, a joint will is subject to the restrictions related to an statutory share in the inheritance and the disqualification of unworthy heirs.



In addition to the cancellation, a joint will may be considered null and void where:

- the marriage has been terminated or recognised as invalid;
- a joint will has been drawn up under extraordinary circumstances or placed in a sealed envelope.



How you can know that a joint will has been cancelled

When certifying a subsequent will or a subsequent instruction from a spouse for cancellation, the notary must notify the other spouse of the cancellation of the joint will.



While the key advantage of a joint will is that it eliminates the need for redistributing the joint estate when one of the spouses dies, it also involves a significant disadvantage where a joint will may be cancelled without a prior notice to the other spouse.

A contract of succession: general information

Summary

A contract of succession is a new succession arrangement that comes in addition to a will and legal succession. It is a contractual arrangement entered into by and between a testator and the heirs.

The rights and obligations of the parties to the contract of succession are inalienable and unassignable.

After the death of the testator, the heirs, executor, the parties to the contract of succession and the notary become entitled require the fulfillment of the obligations under the contract of succession.



How to draw up a contract of succession

A contract of succession must be signed by each party and certified by a notary with the process recorded on video if agreed to by all parties.



What do you need to know?

It is important to note that the terms and conditions of a contract of succession are valid to the extent that they do not contradict the rules regulating an statutory share of an heir and the disqualification of unworthy heirs.

A contract of succession: amendments and termination

The Law provides for amending or terminating a contract of succession subject to an agreement by the parties to the contract during their lifetime or subject to a resolution by court.

The Law also provides a testator and an heir with the opportunity for a unilateral repudiation of a contract of succession.

Where repudiating a contract of succession, the testator must:

- have the repudiation notarised, with the notary having an obligation to notify the repudiation to the other parties to the contract of succession;
- compensate the parties to the contract for losses incurred as a result of the performance of the contract.



Deep-dive view

The parties to a contract of succession may:

- define circle of heirs;
- define a succession procedure for third parties or parties under the contract of succession;
- appoint the executor;
- establish an obligation to perform certain legitimate actions of property or non-property nature, including actions for a common benefit (testamentary burden);
- establish an obligation to use the inheritance to perform an action of property-related nature for the benefit of one or more persons (testamentary gift).



A contract of succession allows a testator to define any actions to be performed by an heir, including actions such as making regular payments to the testator, providing care for his or her pets, etc. The right of the testator to define such actions is only limited by the laws.



While the Law does not set forth any specific requirements for a unilateral repudiation by an heir, it provides that a repudiation procedure for an heir may be defined by law or in a contract of succession itself.

The Law does not provide clear guidelines on how to apply general unilateral repudiation provisions of the Russian Civil Code to a contract of succession.

A contract of succession: practical issues

It is important to note that executing a contract of succession does not impose any restrictions on the testator to dispose of his or her estate or enter into any transactions involving the estate even where such actions may result in disinheritance of the heirs.

For example, the testator may sell his or her car and spend the money received, which means that the heir's entitlement to inherit is not guaranteed in any way.

While guaranteeing the ownership of a testator, who may dispose of his or her estate at own discretion, this arrangement in the Law limits heirs' rights to inherit such estate.

Contract of succession in which the spouses act as a party thereto

The Law allows entering into a contract of succession where the spouses act as a party thereto. When entering into a contract of succession, the spouses may act jointly as a testator.

With a contract of succession, the spouses may define terms and conditions similar to those in a joint will. In doing so, they may:

- define the future of their joint and personal estate;
- indicate what assets form the estate of each spouse;
- make any other arrangements and/or instructions.

The termination or invalidation of a marriage constitute a ground for nullifying a contract of succession in which the spouses act as a party thereto.

To address this issue, some countries have established the following mechanisms to guarantee and protect the heirs' rights:

- a testator must obtain a consent from an heir as regards disposing of the estate dealt with in a contract of succession;
- an heir may contest dispositive actions by a testator.

We believe that, while the Russian legislation does not contain any provisions specifically protecting the heirs' rights, it is possible to rely on the general mechanisms to ensure the discharge of obligations. However, given the absence of pertinent provisions in the Law, we assume that further clarifications by the government authorities may be made.



We believe that a contract of succession with the spouses acting as a party thereto may be considered an alternative to a joint will; unlike a contract of succession, a joint will is free from any termination restrictions. This allows for a conclusion that the unilateral repudiation mechanism provided for by a contract of succession guarantees the rights of the parties to the contract by enabling them to recover losses from the testator and establishing a unilateral repudiation mechanism as part of the contract.

New legislative arrangements:
pros and cons



- Updated succession laws, including the introduction of the legislative arrangements that have long been part of the similar practices in other countries
 - More flexible approach to succession
 - Simplified and improved succession process
 - Mechanisms for defining the inheritance process as part of a contract of succession
 - Addressing the inheritance issue related to the joint estate of a couple
 - Obligation for a notary to record on video the execution of a will or a contract of succession where neither party has objected
- The Law lacks clear guidance on how a contract of succession deals with previous or subsequent wills (this arrangement only addresses contracts of succession where spouses act as party to the contract)
 - No restrictions for spouses repudiating a joint will in a unilateral manner
 - No additional guarantees to protect the heirs' entitlement to inherit under a contract of succession
 - No mechanisms preventing the transfer of the same estate under multiple contracts of succession

Despite some imperfections, the succession law reform is a huge step forward in the evolution of legislative mechanisms for succession laws, with the legislative arrangements such as an estate fund, a joint will and a contract of succession providing the Russians with more flexibility to dispose of their estate and build a legacy plan.

Our professionals at Deloitte CIS will be glad to assist you with developing a tailored legacy plan that could also be based on the new legislative arrangements. We use our extensive expertise and flexible approach to help you design an optimal solution to pass your assets across generations and preserve your estate.

Contacts

We hope that you have found this issue of ProsperoScope to be both informative and useful. Please feel free to contact us should you have any questions.

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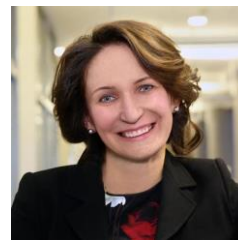
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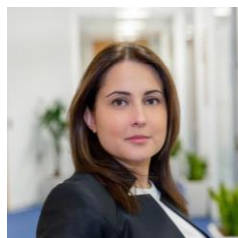
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