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PROBATE/LITIGATION/TAXATION /FAMILY/COMMERCIAL LAW/PROPERTY



SPANISH PROBATE PRACTICE AND PROCEDURE

A) Death Certificate

If the deceased died in Spain, the relevant Death Certificate will be issued by the Civil Registrar but if the deceased died in England the Death Certificate is to be legalised with the Apostille of The Hague in accordance to The Hague Convention of 5 October 1961.

Once the Certificate has been legalised it should be translated into Spanish language by a translator who is officially recognised in Spain.

B) Obtaining a valid copy of the Will

Upon the death of the testator/testatrix it is important to find out the last testamentary disposition made in Spain. For this purpose, a search is to be made at the Central Wills Register kept by the Ministry of Justice in Madrid, which will reveal details of the last will made and registered. If the deceased did not make a will in Spain, then the search will disclose the fact that no will has been registered in Spain.

The Certificate from the Wills Registry in Spain is always necessary to complete the probate procedure.

C) Collecting information about the estate.

The same procedure should be followed as if you were dealing with the administration of an English estate. A search of the deceased documents should give an indication of the assets which form part of the Spanish estate. This task is often carried out by the beneficiaries as under Spanish law is not necessary to appoint an executor in the will.

D) The Deed of Declaration of Inheritance

Once the supporting documentation is available, a Deed known as Deed of Declaration of Inheritance is to be prepared and signed by the beneficiaries and the appointed executors, if any. The Deed is a formal declaration of the deceased's death and disclosure of his/her estate. The Deed states the capacity in which the parties are acting such as beneficiaries, executors or attorneys for the beneficiaries or executors, then it recites the facts relating to the deceased's death and his/her succession through the testamentary dispositions made by him/her and in addition will contain a full inventory of the assets which form the estate disclosing the value of the same for inheritance tax purposes. The liabilities of the estate for which a tax deduction is claimed have to be equally detailed in this Deed.

Please note that under Spanish Inheritance tax the beneficiaries and not the estate are liable for the payment of the tax.

E) Registration of the Deed of Declaration of Inheritance

Once the tax has been paid, the Deed of Declaration of inheritance is to be lodged with the local Land Registry for registration purposes.

A copy of the Deed is to be presented to the local Town Hall for the assessment and payment of the *Plusvalia* tax due on the transfer of ownership from the deceased to the beneficiaries.

To deal with bank accounts, the Deed is to be presented to the bank together with the original receipt showing that the Inheritance tax has been paid, then the bank will proceed to close the deceased accounts, open new ones in the name of beneficiaries, deal with shares deposited with them etc.

These are only general guidelines and not definitive statements of the law, all questions about the validity of testamentary dispositions, the law applicable to the succession etc. shall be directed to a Spanish lawyer when there is a Spanish element in your client's estate.