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ACCEPTANCE OF AN INHERITANCE –
FORM AND TERMS

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Introduction

Inheritance law is an important segment of the civil law regulating procedures for the transfer of assets, rights and obligations of the deceased to his/her successors. Acceptance of the inheritance, probably, is the most important stage of the inheritance process. At this stage the potential successors having expressed their intent to accept the inheritance according to the procedures and within the term set forth by the law get the opportunity to receive inheritance. "In order to receive inheritance heirs on intestacy, as well as testamentary and contractual heirs, must be alive at the time of the devolution of an inheritance [...] and simultaneous invitation to inherit [...] but heirs designated conditionally must be alive at the time of performance of the respective condition",

However, "[i]invitation to inherit establishes only an opportunity to become a heir. Acquisition of inheritance is subject to expression of intent by the invited to accept the inheritance he/she is entitled to". Accordingly, acceptance of the inheritance in compliance with the procedures and deadlines established by the law has a decisive role in the acquisition of the inheritance. Thus, it can be concluded that if a person expresses intent to accept the inheritance it does not mean that he/she will certainly become a heir and as such will substitute the deceased in his rights and commitments. The Civil Law provides for the procedures and sequence which shall be used to determine which one of all the persons invited to inherit will actually receive the estate or part thereof and will become a heir. It should be noted, however, that the Civil Law is somewhat inconsequent with the use of concepts of "person invited to inherit" (mantot aicinātāis) and "heir" (mantinieks).

Form for the Acceptance of Inheritance

Article 689 of the Civil Law (hereinafter "CL") entitles the person invited to inherit either to accept or decline the inheritance. The only exception is the contractual heir who has not contracted to himself or herself a right to decline the inheritance.

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2 Ibid., Article 688.
According to the first clause of Article 690 of CL, the intent to accept the inheritance may be expressed in person or via substitute. Currently, CL provides that substitution is necessary if the person invited to inherit lacks legal capacity – it is stated that "the intent of minors shall be expressed on their behalf by parents or guardians, on behalf of the mentally ill – by the trustees, and on behalf of legal entities – their legal representatives. Persons, for whom a trusteeship has been established because of their dissolute or spendthrift lifestyle, need the consent of the trustee to accept an inheritance." It should be noted, however, that currently Saeima reviews amendments to the Civil Law regarding amendments to the concept of legal capacity (the bill is subject to be reviewed in the 3rd reading). Inter alia, it is planned to amend also regulation of substitution in Article 690 of CL to the effect that "such substitution is necessary when the person invited to inherit himself or herself has legal capacity limitations, or is a minor. The intent of minors shall be expressed on their behalf by parents or guardians, on behalf of the mentally ill – by the trustees, and on behalf of legal entities – their legal representatives." Thus, according to the planned amendments, depending on the extent of legal capacity limitations, the intent to accept an inheritance may be expressed by the person invited to inherit jointly with the trustee, or by the trustee acting alone on behalf of such person, whereas, according to the currently still effective wording of Article 690 of CL, the intent to accept inheritance on behalf of the legally incapacitated shall be expressed by the trustee only.

As of the 1st January 2003 the following are the forms for the acceptance of inheritance in Latvia:

- expression of intent to accept the inheritance in the form of notarial deed prepared and certified by notary public;
- taking actual possession of the estate with intent to possess and use it as one's own estate.

The first clause of Paragraph 1 of Article 254 of the Notary Act determines that "[i]nheritance application comprising intent to accept or decline the inheritance shall be executed by notary public in the form of a notarial deed." At the same time Article 691 of CL actually does not provide for the necessity of such special form; instead, it is determined that "the intent to accept inheritance may be expressed either explicitly, orally or in writing, or also implicitly but with such actions that in the relevant circumstances can only be interpreted in such a way that a certain
person acknowledges himself or herself as a heir. Thus, a potential heir may express his intent orally or in writing, however, as long as the special form of notarial deed requested for such expression of intent will not be complied with, it shall have no legal effect. It leads us to question what is the reasoning of such provision of the Notary Act, effectively introducing special form requirement for the acceptance (or declining) of inheritance.

Acceptance or declining of the inheritance are unilateral transactions of the heir and, same as with any other transaction, the main requirement for the acceptance of inheritance is free will to enter the transaction – without mistake, fraud or duress. The notary public executing a notarial deed "[…] shall determine the intent of the participants to the notarial deed and the terms and conditions of the transaction, shall clearly and unmistakably transcribe the statements of the persons, shall explain to the participants potential legal consequences of the transaction to make sure that unawareness of the law and lack of experience will not be used to their detriment". "Notarial deed is […] approval of the expression of intent having legal meaning […]", thus, it shall secure compliance with the provisions of the Civil Law regulating expression of intent, as it is recognized that "notarial deed is indispensable evidence. It ensures legal certainty and time economy." Accordingly, it can be concluded that the form of notarial deed ensures proper confirmation of the expression of intent by the person invited to inherit. Moreover, the notary public executing notarial deed shall have explained to the person consequences of acceptance (or declining) of the inheritance, thereby informing the person on his/her rights and obligations incurred as of the acceptance of inheritance (for example, liability for the debts of the deceased where such form part of the estate). Thus, compliance with respective form requirement is in the best interests of the person invited to inherit. However, we must also consider a situation which may occur if the person invited to inherit, being unaware of the requirements of the Notary Act, expresses his/her intent in free form, e.g., sending a letter to the notary public with a statement of his/her intent to accept the inheritance. Let's assume that the letter has been sent by post on the last date of term set for the acceptance of the inheritance. According to Article 256 of the Notary Act "[i]f the inheritance application has not been certified as required by the law notary public shall immediately notify the applicant on the necessity to submit a new, properly certified,
inheritance application”. According to Section 23 of the Regulations of the Cabinet of Ministers No. 618 “On the Procedures for Inheritance Registry and Inheritance Cases”, “[i]f the inheritance application submitted to the notary public has not been certified in accordance with requirements set in Article 254 of the Notary Act, there is no basis for the initiation of the inheritance case. If such application has been received by mail, notary public shall in written explain to the applicant necessity to submit a new, properly certified, inheritance application”. Nevertheless, in case of a later potential dispute, such circumstance may not serve as the basis for conclusion that the person invited to inherit has not expressed his/her intent within the term prescribed by the law. The intent was expressed on time but it just did not comply with the requirements set by the Notary Act. In such circumstances it is essential to establish that the person invited to inherit expressed intent in the form set by Article 691 of CL, which qualifies the expression of intent as timely.

Neither law, nor court practice or legal doctrine provide a single clear uniform explanation and guidance for the interpretation of concept used in Article 691 – action that in the relevant circumstances can only be interpreted in such a way that a certain person acknowledges himself or herself as a heir. The legislator has not listed any examples of such actions in the relevant legal provision. It means that the interpretation of this concept may differ from case to case. Potentially, in different cases one and same action will be evaluated differently or even contrary, but in any case it is essential to conclude that the person invited to inherit would not have taken the particular action if he/she would not be willing to accept the inheritance. Legal doctrine indicates that “an action to be considered as an implicit expression of intent must be such to lead to safe conclusion on the existence of respective intent. Only such action can be considered acceptance of the inheritance which by logical certainty leads to conclusion that in the particular case person invited to inherit would not have acted so in absence of intent to accept the inheritance”. In the court practice following actions have been recognized as serving such purpose:

- collection of documents proving kinship for filing to the court;
- payment of the land taxes, performance of economic works.

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- masonry works at the wall of barn forming part of the household and construction works in the house.\(^\text{19}\)

The actions which were recognized as proving intent of the person invited to inherit to accept the inheritance were not identical but the court in all those cases ruled that such actions certify the person’s intent to accept the inheritance, although taken separately it might seem that such actions have nothing in common.

Terms for the Acceptance of Inheritance

According to Article 693 of CL, “[i]f the deceased has specified a deadline for accepting the inheritance, the appointed heir shall observe it. If such a deadline has not been specified but the heirs have been invited, then those invited to inherit must express their intent to accept the inheritance by the deadline specified in the invitation. If there has not been an invitation, then the heir shall within a period of one year express his or her intent to accept the inheritance, calculating the term from the day of devolution of an inheritance, if the estate is in the actual possession of the heir (Article 692, Paragraph 2), but otherwise, from the time when information was received on the devolution of an inheritance.\(^\text{20}\) The Civil Law provides for the terms for acceptance of the inheritance but it does not provide for the terms for requesting allocation of the legacy\(^\text{21}\) or the preferential share\(^\text{22}\). In practice it is assumed that allocation of legacy, as well as preferential share, must be requested within the term set for the acceptance of inheritance, however, it does not correspond to the legal nature of these institutes. Preferential share is not an inheritance as, according to Article 382 of CL, the inheritance shall comprise also liabilities of the deceased, whereas the preferential share shall be determined “based on the composition and value of the assets they had at the time of death of the testator”\(^\text{23}\) and shall be calculated from “the net assets of the testator, subtracting all his debts”\(^\text{24}\). The legacy also does


\(^{21}\) Article 500 of CL – “If someone has been bequeathed not the whole estate, nor a share in relation to the whole of the estate, but only a separate inheritance object, then the bequest is called a legacy, but the person to whom it has been bequeathed, a legatee”. Civil Law [Civillikums]: LR law 28.01.1937. Ziņotājs, No. 1, January 14, 1993. Available: http://www.likumi.lv/doc.php?id=90222 [viewed 29 June 2012].

\(^{22}\) Paragraph 1 of Article 422 of CL – “A testator may freely determine the disposition of his or her whole estate in case of his or her death, with the restriction that his or her forced heirs shall be bequeathed their preferential shares”. Civil Law [Civillikums]: LR law 28.01.1937. Ziņotājs, No. 1, January 14, 1993. Available: http://www.likumi.lv/doc.php?id=90222 [viewed 29 June 2012].


not correspond to the definition of the inheritance on the part of liabilities of the deceased. The legacy is a separate asset of the estate which means that the legatee is not a heir and he should not settle the liabilities of the deceased\(^\text{25}\). Therefore, there must be separate terms set for the acceptance of the legacy, as well as for the request to allocate preferential share. At the same time it would be appropriate to resolve here also the question on substantiation of applicability of term for bringing inheritance claim to the claim for the allocation of preferential share, whereas the Civil Law does not set separate terms for bringing claim to the court for the allocation of preferential share. Considering the substantive protection system for the forced heirs\(^\text{26}\), stipulated by the Civil law, the procedure for request of the preferential share should not be correlated and tied to the terms set for bringing the inheritance claim. The necessity to set forth separate terms for the acceptance of legacy, as well as for the request to allocate preferential share, has been also recognized within the scope of initiative for the modernization of the Civil Law\(^\text{27}\), however, as it can be seen from the current wording of the proposed amendments to the Inheritance Law section of CL, respective additions to the law have not been covered so far\(^\text{28}\).

Inter alia, as regards the terms, it must be also indicated that it would be suitable to determine in the Civil Law sequence for the settlement of encumbering commitments and claims to the effect that claims of forced heirs shall be satisfied after the claims of creditors but before the claims of legatees for the distribution of respective legacies (except for legacies distribution or performance of which has been charged to the particular heir personally). Currently, there are few indications on the potential sequence for settlement of encumbering commitments and claims in some provisions of the Civil Law (e.g., Article 424 of CL regulating distribution of the preferential share), however, the Civil Law does not resolve dispute situations between legatees and creditors. Article 583 of CL provides that "[[l]egatees do not have to participate in payment of the debts of the deceased. However, if the legacies exceed the value of the estate, and, furthermore, there is no direct heir, then a proportional deduction shall be taken from the legatees to pay the aforementioned debts\(^\text{29}\), however, it does not "comprise indication as was included in Article 2666 of V.C.L. as the creditors of the deceased in any case have priority over legatees. Provisions of Article 2313 were also not included providing for the distribution of the legates from the net asset balance.

\(^{20}\) Please see the first clause of Article 583 of CL.


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(remaining after the debts have been settled and the claims of the forced heirs have been satisfied)\(^\text{30}\).

According to Articles 709 and 711 of CL, the person invited to inherit may restrict his liability for the debts of the deceased with the amount of inherited assets if he/she accepts the inheritance with inventory right within 2 months after the devolution of an inheritance, or after becoming aware of the devolution of an inheritance. However, the term set for the acceptance of the inheritance with inventory right – 2 months – is too short for the person invited to inherit to decide on the acceptance of inheritance, considering, in particular, the material consequences of the use of inventory right. Therefore, a longer term should be determined. Moreover, it should be considered whether the term for the use of the inventory right shall be coordinated with the term set for bringing creditor claims, so that the person invited to inherit could acquaint with the list of creditor claims and with the inventory list, and then decide on the acceptance of the inheritance with inventory right. It must be considered here that the inventory list does not include or disclose the commitments of the deceased since those become known only after the expiry of the term set in the announcement on devolution of an inheritance and invitation of heirs and creditors, whereas the inventory list normally is prepared before that, except the case provided in Paragraph 2 of Article 709 of CL. Thus, from the perspective of rights of the person invited to inherit, the term for the use of the inventory right should be set longer than the term set in the announcement on the devolution of an inheritance extending invitation to heirs and creditors.

According to Article 16 of CL, “[i]nheritance rights regarding an inheritance located in Latvia shall be adjudged in accordance with Latvian law”. At the same time, according to Article 691, “[t]he intent to accept an inheritance may be expressed either explicitly, orally or in writing, or also implicitly but with such actions that in the relevant circumstances can only be interpreted in such a way that a certain person acknowledges himself or herself as heir”. Does it mean that, in case the inheritance is located in several jurisdictions, including Latvia, the actions indicating intent to accept the inheritance, must be taken in Latvia? Shall, for example, actions directed towards acceptance of the inheritance located in USA be interpreted as an acceptance of the assets located in Latvia forming part of the same estate?

For example, person A deceases in USA and his heirs living in USA within one year after the death accept the inheritance with such actions that in the relevant circumstances can only be interpreted in such a way that they have acknowledged themselves as heirs. After one year and two months these heirs become aware that the deceased had some assets in Latvia. When they come to Latvia to settle the inheritance case it appears that the heirs are late with the one year term set forth by Article 693 of CL whereas they have not expressed their intent to inherit in Latvia within this one year term. Can we say that by the performance of actions accepting inheritance in the USA the heirs have simultaneously expressed intent to accept inheritance located in Latvia? There is a basis to conclude that the heirs, having accepted the inheritance in

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USA, have simultaneously expressed their intent to accept the inheritance located in Latvia, as they have performed actions provided for in the Civil Law within the term set forth by the Civil Law. The situation would be different if the Civil Law would set forth or request certain very specific actions for the acceptance of the inheritance, for example, an instruction that to express intent to inherit a real estate one must 3 times go round such a real estate barefooted in the morning dew. If there would be such a detailed instruction it would not be possible to accept the inheritance without the performance of such specific actions. However, since the law does not prescribe any specific actions, as mentioned before, it is essential to establish that the purpose of the particular actions demonstrates that the persons invited to inherit actually wanted to accept the inheritance. At the same time, without any doubt, it does not release the persons invited to inherit from the obligation to settle inheritance case in front of the Latvian notary public according to the procedures set by the Civil Law and the Notary Act.

Conclusion

1. As of the effective date of amendments to the Civil Law introducing the new model for the legal capacity, depending on the extent of legal capacity limitations for the person invited to inherit, the intent to accept the inheritance shall be expressed by the person invited to inherit himself or herself acting jointly with a trustee, or by the trustee alone acting on behalf of the person invited to inherit.

2. The first clause of Paragraph 1 of Article 254 of the Notary Act determines that “[i]nheritance application comprising intent to accept or decline the inheritance shall be executed by notary public in the form of notarial deed”. At the same time Article 691 of CL actually does not provide for the necessity of such special form; instead, it is determined that “the intent to accept inheritance may be expressed either explicitly, orally or in writing, or also implicitly but with such actions that in the relevant circumstances can only be interpreted in such a way that a certain person acknowledges himself or herself as a heir”. Thus, the form of notarial deed ensures proper confirmation of the expression of intent by the person invited to inherit. Nevertheless, when there is a dispute as to whether or not the person invited to inherit has expressed his/her intent on time, there is no basis, by reference to the Notary Act, to argue that the inheritance application prepared in the form of notarial deed shall be the only instrument for the acceptance of the inheritance.

3. The Civil Law allows for the acceptance of the inheritance “with such action that in the relevant circumstances can only be interpreted in such a way that a certain person acknowledges himself or herself as a heir”, however the law does not list such actions. Therefore, it shall be up to the court in each particular case to determine whether the respective action demonstrating implicit expression of

31 Please see judgment of the Civil Law Department of the Senate of Supreme Court of the Republic of Latvia as of 14 December 2011, No. SKC – 317 [not published].
intent is such that indicates a clear intent to accept inheritance by the person invited to inherit. The listing of any such actions in the law would not be suitable since one and the same action in different circumstances can and should be interpreted differently.

4. The term set for the acceptance of an inheritance by the use of inventory right is too short for the person invited to inherit to decide on the acceptance of an inheritance, therefore, it should be extended. Moreover, it should be considered whether the term for the use of the inventory right should be coordinated with the term set for bringing creditor claims, so that the person invited to inherit could acquaint with the list of creditor claims and with the inventory list, and then decide on acceptance of the inheritance with inventory right or declining of the inheritance.

5. From the perspective of legal clarity and certainty it would be appropriate to set forth separate terms for the acceptance of legacy, as well as for the request to allocate preferential share, whereas neither of them constitutes inheritance. Therefore, automatic application of terms set for the acceptance of inheritance to the acceptance of legacy and the request to allocate preferential share is not correct.

6. The Civil Law should regulate sequence for the settlement of commitments and claims encumbering the inheritance to the effect that claims of forced heirs shall be settled after full settlement of the creditors’ claims but before the distribution of legacies (except for legacies distribution or performance of which has been charged to the particular heir personally), or, it should at least be determined that the claims of creditors of the deceased in any case have priority over those of legatees. Otherwise, the institute of legacy may continue to serve as an ungrounded instrument to avoid settlement of debts encumbering the inheritance.

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