

## **Resurrection of the Swiss inheritance law: overview of the XXI century legislation**

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# Agenda

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- I. Historical considerations
- II. Overview of the main amendments
- III. Criticism
- IV. Next steps
- V. Conclusion

# I. Historical considerations

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Eugen Huber, 1907

The guiding principles were :

- Safeguard of intergenerational peace
- Preservation of the legacy constituted by the deceased after his/her death
- Fair and economically reasonable distribution of the deceased's assets pursuant to his/her plans

These goals are still valid today.

## II. Overview of the main amendments

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1. Forced heirship provisions
2. Right to information
3. Audiovisual will
4. “Legacy hunter” : limitation of legacy in favour of trusted persons
5. Absence of forced heirship rights for the surviving spouse or registered partner in the event of a pending divorce procedure

# 1. Forced heirship provisions

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(i) Abolition of forced heirship rights in favour of the parents and reduction of the spouse and descendants forced heirship right

(ii) Protection of the unmarried life partner and his/her children

## **(i) Abolition of forced heirship rights in favour of the parents and reduction of the spouse and descendants' forced heirship right**

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Article 471 nSCC:

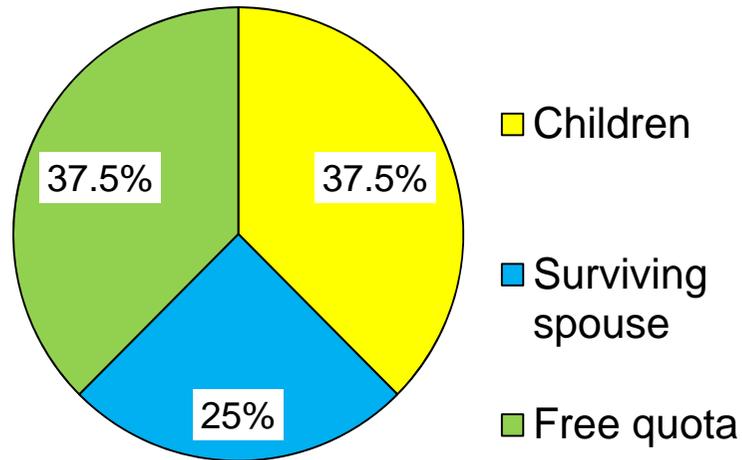
*The statutory entitlement is :*

- 1. For any issue, half of their statutory succession rights;*
- 2. For the surviving spouse or registered partner, one quarter*

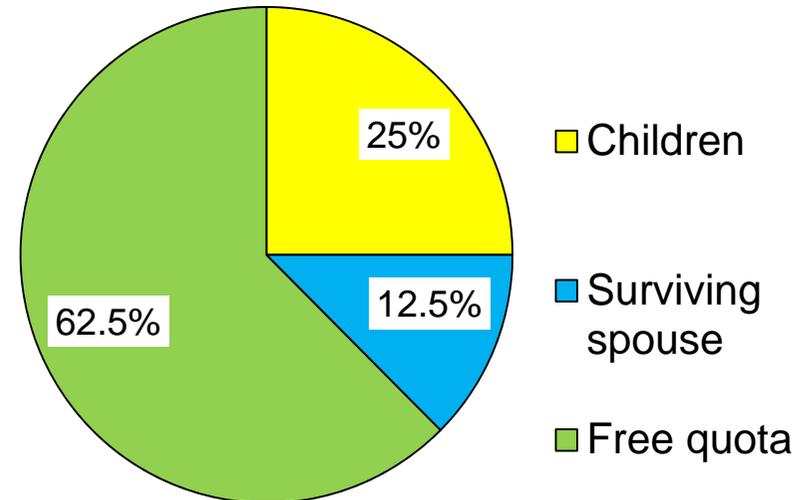
# Compulsory Portion under Swiss Inheritance Law

## Example 1: Spouse and Children as Heirs

### Present Law



### Draft New Law\*

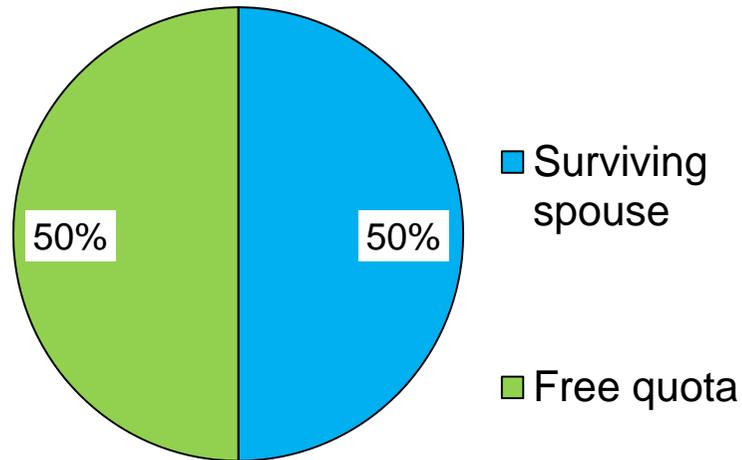


\*Our clarifications with the Swiss Federal Office of Justice show that the new law is not expected to enter into force before approx. 5 years.

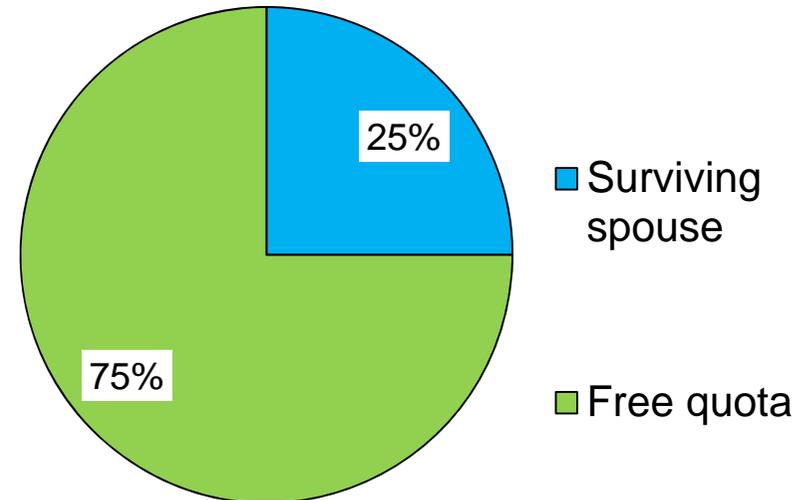
# Compulsory Portion under Swiss Inheritance Law

## Example 2: Only Spouse as Heir

### Present Law



### Draft New Law\*

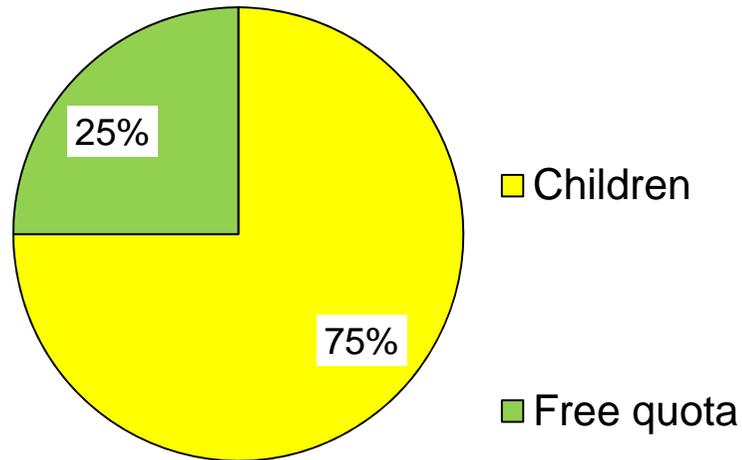


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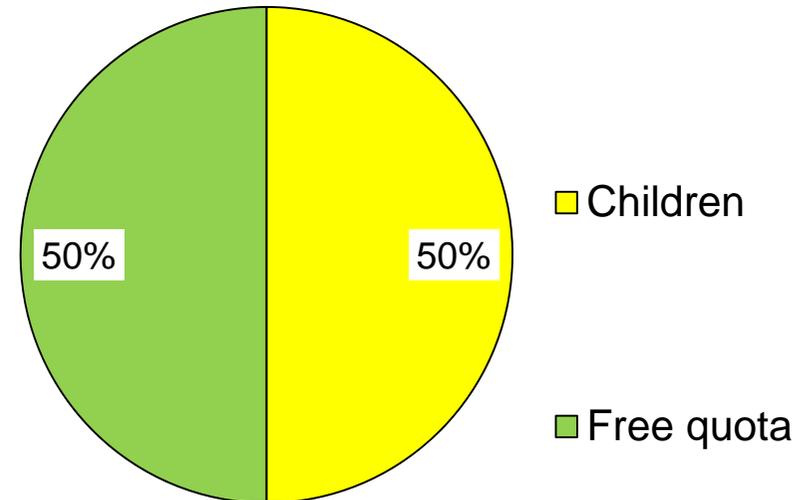
# Compulsory Portion under Swiss Inheritance Law

## Example 3: Only Children as Heirs

### Present Law



### Draft New Law\*



\*Our clarifications with the Swiss Federal Office of Justice show that the new law is not expected to enter into force before approx. 5 years.

## (ii) Protection of the unmarried life partner and his/her children

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### Article 484a nSCC

*<sup>1</sup> The judge can order a maintenance legacy charged on the estate in favour of a person in order to guarantee the continuity of an acceptable standard of living if this person:*

- 1. had a couple relationship with the deceased since at least three years and provided for an important contribution in the interest of the latter;*
- 2. lived during at least five years, while he/she was minor, in the same household as the deceased, and the latter provided him/her a financial support that the deceased would have continued to provide if he/she had not passed away.*

*<sup>2</sup> The maintenance legacy must be reasonably demandable from the heirs taking namely into account their financial situation and the value of the estate.*

*<sup>3</sup> It is ordered on demand. The request must be made within three months following the date on which the claimant has knowledge of the decease, subject to foreclosure.*

## 2. Right to information

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### Art 601a nSCC

*<sup>1</sup>Anybody who can assert a claim in a succession has, as of the date of death, the right to obtain from successors and third parties having managed, possessed or received assets from the deceased information enabling him/her to establish the extent of his/her rights.*

*<sup>2</sup>This right exists as long as interests in the estate exist.*

*<sup>3</sup>The right to information of the protected heirs cannot be suppressed by Will; the professional secrecy cannot be opposed to the persons having a right to the information.*

### 3. Audiovisual Will

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#### Art 506 nSCC

*<sup>1</sup>The will can be made orally or in an audiovisual form, when, under extraordinary circumstances, the testator is prevented from using one of the other testamentary forms; hence in case of imminent danger of death, interrupted communications, epidemic or war.*

*<sup>2</sup>(...)*

*<sup>3</sup>In the audiovisual form, the testator shall appear physically on the video recorded, indicate his/her name, explain the extraordinary circumstance, if possible the date and declare his/her last wishes.*

## 4. “Legacy hunter” : limitation of legacy in favour of trusted persons

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### *Article 541a nSCC*

*The persons who, in their professional capacity, had a trusted relationship with the deceased, as well as their relatives, cannot receive, in total, more than one quarter of the estate by testamentary disposition.*

## 5. Absence of forced heirship rights for the surviving spouse or registered partner in the event of a pending divorce procedure

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### *Art. 472 nSCC*

*The spouse or the surviving registered partner is not a protected heir when at the time of death, a divorce procedure or dissolution of partnership procedure is pending and:*

- 1. was introduced or pursued by common request ;*
- 2. was introduced by unilateral request more than two years before the death.*

### III. Criticism

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Among the numerous criticisms :

- No coordination with other legislations (social insurance, tax...)
- The maintenance legacy in favour of the financially dependent living partner/minor child in the form of a rent or usufruct is not satisfactory as it creates durable links with the heirs.
- The criteria for the attribution on the maintenance legacy should be better defined and harmonised with the dispositions on alimonies after a divorce
- The maintenance legacy's tax treatment will most likely be very unfavourable in the absence of specific disposition
- The disposition on legacy hunter should be rephrased not to include relatives having previous affective ties with the deceased.
- (...)

## IV. Next steps

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- Review of all the consultations received by Federal Council
- Issuance of Messages by Federal Council
- Parliamentary process (2 to 3 years)
- Referendum ?
- Entry into force not expected before 5 years

## V. Conclusion

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- These amendments can already be taken into account in the estate planning advises we are giving to our clients today
- Reconsideration of the advises previously given will be necessary when the new law will enter into force.

# Maud Udry-Alhanko, Attorney at Law, LL.M., TEP Partner



## Practice Areas

- Private Clients
- General Corporate Law

## Education

- STEP Foundation Certificate and Diploma in International Trust Management (2011)
- Admitted to the bar in Switzerland (2008)
- Admitted to the bar in New York (2006)
- Duke University, LL.M. (2004-2005)
- University of Geneva, lic. iur. (2004)

## Memberships

- Geneva, Swiss and New York Bar Association
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# Thank you

We thank you for your time and interest in Meyerlustenberger Lachenal.