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BRIEFING

SEPTEMBER 2009 | 01

INVENTORY: A NEW LEGAL REGIME

INTRODUCTION

The law establishes that the main purpose of an inventory is to *“put an end to community property”*. That is to say, when there is no agreement among beneficiaries regarding the division of an estate, the way to solve this problem is by means of an Inventory.

An Inventory takes place in the following situations:

- if there is no agreement among all the parties regarding the division of an estate;
- if a minor or disabled party is involved, the Department of Justice requires an Inventory or
- if any of the beneficiaries is absent in an unknown location or is incapable of administering his own assets, and consequently unavailable to intervene in the extra-judicial sharing of the estate.

An Inventory could also aim at the division of an estate following a break-up, divorce or as a consequence of an annulment of a marriage.

Prior to the entry into force of Law no. 29/2009, 29 June, an Inventory was regulated under the Civil Procedure Code (articles 1326 to 1406).

I – THE RECENT LEGAL AMENDMENTS

The new legal regime of Inventory was approved, as previously mentioned, by Law no. 29/2009, 29 June, that has also approved amendments to the Civil Code, to the Civil Procedure Code, to the Register of Deeds Code and to the Civil Register Code. The above mentioned law also introduces amendments to the National Registration of Legal Persons regime, puts forward the incorporation of EC Directive 2008/52/CE of the EC Parliament and Council of 21 May in the national legal framework and introduces amendments to Decree-Law no. 594/74, 7th November.

Law no. 29/2009, 29th June, will enter into force 18 January 2010, exception made to the amendments related with mediation, that are already in effect as of 1 July 2009 (article 87).

II – MAIN ASPECTS OF THE NEW LEGAL REGIME

A - AN “OUT OF COURT” SOLUTION

The main objective of the new legal regime of Inventory is the simplification of legal procedures by accelerating the process of the division of estates by taking the Inventory process out of the courts and placing it into the domain of the Register Offices (yet to be determined by the Government) and Notaries.



LITIGATION
AND
ARBITRATION

“Law no. 29/2009, 29 June, enters into force the 18 January 2010, exception made to the amendments related with mediation, that have been applicable since 1 July 2009 (article 87).”

The law does not significantly amend the Inventory process' main framework, that remains very much the same as its previous configuration in the Civil Procedure Code, yet it reduces in some situations the period of time granted by law to practice some acts and permits the use of electronic communication among all the parties involved, namely the Register Office or Notary, the parties interested in the Inventory and the judges.

The Register Offices and Notaries must submit the Inventory for the consideration of a judge, notably, when a situation arises where the existence of a debt is being decided in a court or in situations of verification in the case of an insolvency of the estate under an Inventory.

The decisions issued by the Register Officers or Notaries that aim at suspending or putting an end to the Inventory are subject to the control of the judge that has supervisory powers over the Inventory. The interested parties must file a claim against any actions taken by the Register or Notary in the 30 days following the notification of the decision regarding what they intend to question. The decision issued by the judge may be subject to appeal to an Higher Court that shall have the final word on the matter (article 72).

B - DEMATERIALISATION OF THE PROCESS

According to no. 3 of article 2 of the new Inventory Law, “*During the development of the process of Inventory there should be a regular publication in an Internet site, regulated by the member of the Government in charge of the Justice area, of the following documents:*

- a) Inventory Claim*
- b) Service of process*
- c) Date designated to the meeting of all those interested in the Inventory*
- d) Decision of the Inventory*
- e) Any other acts considered of relevance to the objectives of the Inventory.”*

The access to the internet site is limited to those with an interest in the Inventory by means of an access code known only to them, as ruled in the Decree Order that regulates the new Inventory Law (article 2, no. 4), which has not been published.

“The new legal regime reduces in some situations the period of time granted by the law to practice some acts and introduces the use of electronic communication among all the parties involved.”

Article 21 indicates the items that must be included in the Inventory Claim. No. 2 of the same article establishes that there should be a model of a standard Inventory Claim to be used by all interested parties, that must be approved by the President of the Register and Notaries Institute. No. 3 establishes that the Inventory Claim and the documentation attached should be sent electronically to the court.

All those interested in initiating an Inventory may chose any of the Register Services designated in the above mentioned Decree Order or any Notary to file the Inventory Claim.

The court with jurisdiction over the Register Office or Notary where the Inventory Claim is filed has the power to supervise the Inventory, to issue the final judgment on the Inventory and to take any actions that are of the court's competence (article 77 of the Portuguese Civil Procedure Code, with the amendments introduced by Law no. 29/2009).

“The conduct of the process will hereinafter be in the hands of the Register Services (that the Government has yet to indicate) and of the Notaries, even though the general supervision of the process still lies with the judge.”

“The Register Officer or the Notary may ask any financial institution, financial intermediate or issuer for information related to bank deposits and financial instruments individually or jointly owned by the deceased.”

III – OTHER IMPORTANT AMENDMENTS IN THE INVENTORY LEGAL REGIME

We should stress two other aspects of the legal regime of the Inventory that we think are relevant and should therefore be pointed out in this study:

- Regarding the presentation of the list of assets composing the estate, the Register Officer or the Notary may, by their own accord or as a result of a claim filed by any interested party, ask any financial institution, financial intermediate or issuer for information related with bank deposits and financial instruments individually or jointly owned by the deceased. The above mentioned information may not be refused on the basis of professional secrecy rules (no.s 7 and 8 of article 23).
- There is now a strict provision in article 32 that establishes that, prior to the meeting of the interested parties, and as a way of guaranteeing an equitable division of the assets among the various interested parties, the value of the assets may be evaluated by an independent intervenient if any of the interested parties, the Register Officer or the Notary consider it necessary. Nevertheless, it is not mandatory that the Register Officer or the Notary adhere to the results of the evaluation. They may diverge from these results or attend a claim from any of the interested parties.

CONCLUSION

In our initial investigation of the main features of this new law, what strikes us as the main amendment introduced in the legal regime is that the legislator clearly chose a “going out of court option” by taking the Inventory out of the courts and placed it into the domain of Register Offices and Notaries. We should also stress that the legislator introduced electronic means of communication as the preferred means of communication among all the parties involved in order to reduce the duration of the Inventory process. Apart from these changes there were no other relevant amendments to the Inventory regime. Only time will tell if the present amendments to the legal regime will promote a reduction in the time Inventories tend to last presently.

We will wait for the issuance of the Decree Orders that will implement the amendments discussed above before we deliver a more exhaustive study of this matter.

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