

## **Testamentary Disposition and Testaments in Turkish Inheritance Law**

Transactions made after the testators' death are regarded as testamentary disposition. There is allocated portion in entire inheritance assets for this transaction. Therefore, testator has only limited portion to transfer some assets from his/her entire assets. Testamentary disposition is merely possible for the rest of the shares excluding untouchable(reserved) shares. In absence of inheritors who have reserved portions or if they do not request their share, then testator can appoint his/her own inheritors via testamentary disposition.

### **How many testamentary disposition types exist in Turkish Law?**

There are two types of testamentary dispositions, testament and inheritance contract.

#### **What is testament?**

It is legal transaction on testators' assets and as an unilateral transaction it has legal effect and it has depending character on testamentary disposition.

Every person which is over 15 years old and have mental capacity has right to will on his/her assets to somebody else.

This transaction can not be carried out by means of an attorney. There are three types of testament procedure in Turkish law as oral testament, official testament and handwriting testament.

#### **Official Testament**

This testament can be issued by a justice of the peace or notary. The testament must be in Turkish, if the Turkish speaking ability is lacking the testament must be prepared via an official translator.

Notary must keep original testament and its approved copy.

#### **Cursive Testament**

This testament can be written by handwriting but it must be delivered to justice of the peace or notary. This testament must be signed and the date must also be reflected to testament by handwriting. The signature must be signed by the hand instead of a seal or a finger print.

#### **Oral Testament**

For conclusion of an oral testament, testator must explain his/her last wills to two witnesses and he/she must appoint them to reflect testator's explanations to document as a testament. The

condition of mental capacity must be also sought for the witnesses. To conclude an oral testament, the conditions to prepare official testament and cursive testament must not be available. Accordingly, there must be a war, a shortage of food, a flood or other force measure reasons to use this method (oral testament) instead of other said methods.

#### **How can we prepare oral testament?**

After the testator's explanation, the witnesses must write what it has been said by the testator to a paper. The date must be specifically mentioned and signed by both two witnesses. Those witnesses must go to justice of the peace in order to inform that said testament is concluded in extra-ordinary conditions and they heard the context of the testament as witnesses.

#### **Inheritance Contract**

Inheritance contract is a bilateral contract between the testator and a third part for the purpose of testamentary disposition which can be carried out by a contract.

Due to its contractual character, testator cannot withdraw the provisions reflected to the contract.

The inheritance contract can solely be concluded with the same procedure as official testament. Both parties of the contract must inform about their wills to a government officer and sign the contract in the presence of two witnesses.

#### **Is it possible to annul this contract by unilateral rescission?**

In case that beneficiary of the contract shall take an action against testator and if this action can be regarded as disrespectful manner against testator. Then the testator may annul the contract by unilateral rescission. Additionally, the contract can be also annulled by the consents of both sides.

#### **Renunciation of the Inheritance Contract**

A potential inheritor can waive his/her portion by a contract concluded with the testator for the possible inheritance might be remained from a testator.