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Legal Person: Lexalers LLC
EDRPOU: 41844803
ADDRESS: Razina 8, Khmelnytskyi, 29000, Ukraine

E-MAIL: serafimlawyers@gmail.com

SKYPE: serafimlawyers

PHONE: + 38 - 067 - 537 - 04 - 09

WHATSAPP: + 38 - 067 - 537 - 04 - 09

VIBER: + 38 - 063 - 546 - 77 - 09

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To:

Memorandum

Project: Certification and Registration of Wills for Ukrainian Citizens Abroad

Client: Newsletter

Dear colleagues,

Please find below the Memorandum on procedure of certification and registration of wills for Ukrainian Citizens Abroad.

Due to the full-scale military invasion by the Russian Federation, many Ukrainian citizens were forced to go abroad. While living outside their homeland, Ukrainians may need to make a will. They can exercise their right to create a will by contacting Ukrainian consular offices or foreign notaries/authorities authorized to perform such actions under foreign law.

1. Certification of Wills by Ukrainian Consular Offices

According to Articles 1 and 38 of the Law of Ukraine "On Notaries," notarial actions abroad are assigned to Ukrainian consular offices, and in cases specified by law, to diplomatic missions of Ukraine.

Ukrainian consular offices, among other services, perform notarial actions such as certifying wills.

Wills are certified by consular offices in accordance with Ukrainian law. In particular, they follow:

1. the Civil Code of Ukraine,
2. the Law of Ukraine "On Notaries,"
3. the Regulations on Notarial Acts in Diplomatic Missions and Consular Offices of Ukraine, approved by the Order of the Ministry of Justice of Ukraine and the Ministry of Foreign Affairs of Ukraine dated December 27, 2004, No. 142/5/310, and registered with the Ministry of Justice of Ukraine on December 27, 2004, under No. 1649/10248.

The procedure for consuls in certifying wills is established in Clause 3.8 of Chapter 3 of these Regulations.

NOTE: All wills, including those that amend or cancel previously certified wills, duplicates of wills, and statements canceling wills, are subject to mandatory registration in the Inheritance Register through the Ministry of Foreign Affairs of Ukraine (hereinafter MFA) in accordance with the procedure established by the Regulations on the Inheritance Register, approved by the Order of the Ministry of Justice of Ukraine dated July 7, 2011, No. 1810/5, and registered with the Ministry of Justice of Ukraine on July 11, 2011, under No. 831/19569 (hereinafter the Regulations).

According to Clauses 2.3 and 2.4 of Section II of the Regulations, the MFA and its representatives in Ukraine enter information on wills certified by Ukrainian consular offices, amendments, and cancellations into the Inheritance Register by submitting electronic statements to the State Enterprise "National Information Systems" or its branches using the electronic interaction system of executive authorities in the prescribed format for the entry of relevant information and the creation of a registration record.

Applications for the state registration of wills certified by Ukrainian consular offices, amendments, and cancellations can be submitted to a Registrar (state notary office, state notary archive, or private notary) directly by the testator.

When submitting these applications in the prescribed format, the testator must present a passport or other identity document.

2. Certification of Wills by Foreign Notaries/Authorities Authorized by Foreign Law

Ukrainian citizens abroad may seek to certify a will with foreign notaries/authorities authorized under foreign law to perform such actions. These wills will be certified according to the requirements of the foreign country's laws.

This provision is reflected in Article 73 of the Law of Ukraine "On Private International Law," which states that a person's capacity to create and cancel a will, as well as the form of the will and its cancellation, are determined by the law of the country where the testator had their permanent residence at the time of creating the document or at the time of death. A will or its cancellation cannot be declared invalid due to non-compliance with form if it meets the requirements of the law of the place where the will was created, the law of citizenship, or the usual place of residence of the testator at the time of creation or at the time of death, as well as the law of the country where the immovable property is located.

NOTE: according to Ukrainian legislation, upon the testator's request, wills certified (created and/or stored) and registered in foreign countries according to the Convention on the Establishment of a System for the Registration of Wills (hereinafter the Convention) may be registered in Ukraine's Inheritance Register.

According to Clause 2.3 of Section II of the Regulations, the Ministry of Justice of Ukraine enters information into the Inheritance Register on wills (created and/or stored) and registered in foreign countries, along with any amendments and cancellations, if a request for their registration in Ukraine was received under the Convention. This is done by submitting electronic applications to the State Enterprise "National Information Systems" or its branches, using the established format for interaction.

3. Conclusion

Ukrainian citizens living abroad have options for certifying their wills either through Ukrainian consular offices or foreign notaries authorized under foreign law. For these wills to be enforceable in Ukraine, they must comply with Ukrainian registration requirements and, if applicable, adhere to the Convention on Wills Registration. This structured approach ensures that Ukrainian citizens can exercise their right to create legally recognized wills, even while living outside Ukraine.

Herewith I hope to provide you with an appropriate and clear insight into the legal frames for certification and registration of wills for Ukrainian Citizens Abroad.

Sincerely,

Andriy NAVROTSKIY, LL.M.
(Universität Augsburg)
Rechtsanwalt, Attorney-at-law, CEO