

The prohibition of agreements on future successions

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The second feature of Italian succession law that shapes planning is the prohibition of agreements on succession. Art. 458 Codice civile provides: "Fatto salvo quanto disposto dagli articoli 768 bis e seguenti, è nulla ogni convenzione con cui taluno dispone della propria successione. È del pari nullo ogni atto col quale taluno dispone dei diritti che gli possono spettare su una successione non ancora aperta, o rinunzia ai medesimi."¹ The provision covers three types of agreement. A person cannot bind himself or herself by contract to leave property to someone (the institutive pact). A prospective heir can neither sell or otherwise dispose of rights in a future succession (the dispositive pact) nor renounce such rights before the death (the renunciative pact). A child who signs a declaration during the parents' lifetime that he or she will not claim the reserved share is therefore not bound by it under Italian law.

The contrast with Swiss law is sharp. The Swiss Civil Code allows agreements as to succession (*Erbverträge, contratti successori*) under Art. 494 ff. SCC. They include the agreement by which a prospective heir renounces the inheritance, reserved share included, in return for a payment or without consideration (Art. 495 SCC).² Swiss practice uses such agreements frequently, for example to secure the position of a surviving spouse or to settle the transfer of a business among the children while the parents are alive. For an Italian family living in Ticino the validity of such an agreement therefore depends on the succession law that applies, which is examined below in the section on private international law.

Common misconception. It is often assumed that a family can avoid Italian forced heirship by having the children sign a renunciation in Switzerland. Under Art. 458 Codice civile such a renunciation is void if Italian law governs the succession. It is effective only if a law that permits agreements as to succession, such as Swiss law, governs the succession. Even then it binds only to the extent that the authorities dealing with the estate

recognize the agreement under their own conflict rules (Art. 25 of Regulation (EU) No 650/2012 and Art. 95 PILA).

1 The family pact

The only statutory exception to the prohibition is the family pact (*patto di famiglia*), introduced by Law No 55 of 14 February 2006, which inserted Art. 768-bis to 768-octies into the Civil Code and amended Art. 458 accordingly. Art. 768-bis defines the family pact as the contract by which an entrepreneur transfers all or part of the business, or by which the holder of shares transfers all or part of them, to one or more descendants.³ The spouse and all persons who would be protected heirs if the succession were opened at that moment must take part in the contract. The descendants who receive the business must compensate the others by paying them a sum corresponding to the value of their reserved shares, unless the others waive it (Art. 768-quater).⁴ What the family members receive under the pact is not subject to bringing into account or to reduction on the later death of the entrepreneur.

The family pact gives Italian entrepreneurs a means of settling the succession to the business in their lifetime with the consent of the whole family. Its weaknesses are well known in practice. It requires the participation of all protected heirs, which is difficult if one of them refuses. It also requires a valuation of the business and a compensation in cash or in kind that the successor may not be able to afford. Whether a later-born child or a new spouse can upset the pact is regulated by Art. 768-sexies, which grants such persons a claim for payment with interest. Each of these requirements depends on the cooperation of the whole family, so that the pact suits families that already agree on who is to continue the business and at what value.⁵ Families with assets in Switzerland can combine the family pact with Swiss instruments. The combination must respect the Italian rule that the pact covers only the business or the shareholdings and leaves the rest of the estate to the ordinary rules.

2 Notes

1. Codice civile, Art. 458, text at Brocardi.it, <https://www.brocardi.it/codice-civile/libro-secondo/titolo-i/capo-i/art458.html> (consulted 5 October 2026), as amended by Legge 14 febbraio 2006, n. 55. ↩
2. Swiss Civil Code (SCC), SR 210, Arts 494–497 (contracts of succession) and Art. 495 (renunciation of inheritance). ↩

3. Codice civile, Art. 768-bis, Brocardi.it, <https://www.brocardi.it/codice-civile/libro-secondo/titolo-iv/capo-v-bis/art768bis.html> (consulted 5 October 2026). ↩
4. Brocardi.it, on Art. 768-quater and 768-sexies (above). Art. 768-quater, last paragraph, <https://www.brocardi.it/codice-civile/libro-secondo/titolo-iv/capo-v-bis/art768quater.html> (consulted 5 October 2026): "Quanto ricevuto dai contraenti non è soggetto a collazione o a riduzione". ↩
5. Codice civile, Art. 768-quater (above), on the participation of the spouse and of all prospective protected heirs and on the compensation in cash or in kind. The assessment of the practical consequences is the author's. ↩

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