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*Legal opinion in respect of the application of the Italian Law 218/1995,
article 46, in case of United States citizen*

We have been instructed to give an opinion about what law is applicable in case of succession due to death of a subject of United States nationality owner of goods on the Italian territory and - on the assumption of applicability of the Italian law - whether and how should be respected the rights that the Italian legal system ensures to his heirs

In this regard, Article 46, paragraph 1, Law No. 218/1995, provides as primary rule the so called "Criterio della Nazionalità" according to the inheritance of a foreigner will be governed by its own law. However, under the 2nd paragraph is also ruled the so called "Professio Iuris", that is to say that the deceased may choose voluntarily, by an express statement in the form of wills, the law which make adjusting his whole succession.

Therefore, in case of a United States citizen - and in the absence of a different choice - the properties fell in succession which at the time of his death are located in Italy must be vested as provided in connection with the United States law. About it may be useful remind that in USA (except in the Louisiana State) each individual can freely dispose by his will of his properties as he wishes, without being bound to protect the rights of his dependants/heirs.

Anyway, what above stated is subject to the assumptions on which the application of foreign law - in this case than of United States - produces an effect contrary to internal public order within the meaning and the effects of Article 16, Law 218/1995.

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The reference to the so called “ordine pubblico interno” results in the internal matters of succession mainly in the binding of discipline concerning the rights of heirs in the meaning that it would not be compatible with the rules affecting these rights.

However, in this regard first has to point out that:

- cannot be affected the rights of the heirs (so called “Legittimari”) only in the case ruled by the above mentioned paragraph 2 regarding a voluntary choice by the deceased (and not also in case of application of the "Criterio della Nazionalità”)
- the protection literally is scheduled only in case of "succession of an Italian citizen" (and not also in case of a deceased foreigner)
- in compliance with the mandatory provisions for the protection of the heirs (so called “Legittimari”) must be a heir living in Italy at the time of death of the person whose succession it is (and not also - as in the case for which was asked this legal opinion - heirs resident in United states at the time of opening of the inheritance)

As stated above, it is also true that in general there are other exemptions to the abstract possibility of application, by reference, of a foreign law. They are necessary when that law conflicts with the previously mentioned “ordine pubblico interno” and when there are in the Italian juridical system rules of "application required" or - better – “mandatory rules”.

In this regard, it is known that the “ordine pubblico interno” is defined as the set of basic rules dictated by the Constitution and the laws implementing the general principles rooted in the dominant moral conscience. As already mentioned, Article 16, Law 218/1995 excludes the application of foreign law if its effects are contrary to the “ordine pubblico interno”.

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The "mandatory rules" are all the precepts which for their purpose must be necessarily applied with prevalence over the rules of the foreign state (called by the system of Private International Law) which therefore are not allowed.

There is not any codified or explicit list of mandatory rules and so it makes very difficult the task of the interpreter in cases where the derogation is not already contained in any standard rule. In succession issues it is discussed whether the rules concerning the necessary rights of the heirs (the so called “quote di riserva a favore dei legittimari”) are or not mandatory rules.

About it has to be stressed that the ruling of the Italian Supreme Court (Corte di Cassazione, Section II, decision number 5832/1996) has clearly stated that the so called “quote di riserva” are not relevant for the internal public order on the basis of the inexistence in the Italian Constitution of any relevant law which indeed can be changed until its abolition by the ordinary legislator.

In conclusion, for all the above mentioned reasons, in case of United States citizen owner of properties in Italy (and in the absence of the so called "Professio Iuris") with dependents/heirs resident in USA, the United States Law concerning the succession issues must be fully applied and respected - also - with reference to the exact distribution for shares of the inheritance as any significant protection cannot be ensured to the heirs by the Italian Law.

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