



# **Impact of the envisaged revision of the Swiss inheritance law on estate planning via foundations and trusts**

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## Agenda

- I. Overview: The envisaged revision of the Swiss inheritance law
- II. Example: Impact on estate planning via foundations and trusts
- III. Conclusion



## Impacts of the envisaged revision of the Swiss inheritance law

### I. Overview: Facts

- 17.6.2010: Legislative initiative “Motion Gutzwiler: Towards a contemporary inheritance law”
- 25.8.2010: Acceptance of the initiative by the Federal Council (*Bundesrat*)
- 23.9.2010: Acceptance of the initiative by the Council of States (*Ständerat*)
- 2.3.2011: Acceptance by the National Council (*Nationalrat*) with a claim for amendments requesting that unmarried couples are not equal before the law compared to married couples
- 7.6.2011: Acceptance of the amendments by the Council of States
- 4.3.2016: Publication of the preliminary draft and explanatory statement
- **Critique:** neither expert opinions nor the results of the consultation were taken into account, lowest common denominator, 2-step enactment



## Impacts of the envisaged revision of the Swiss inheritance law

### I. Overview: Relevant content for the present planning situation

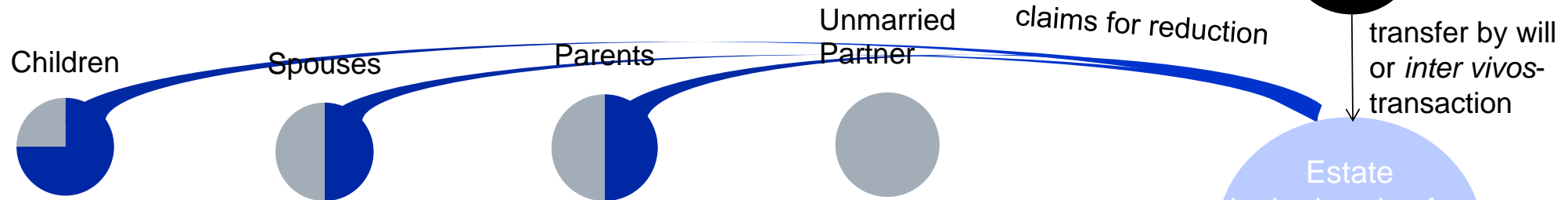
- Reduction of the compulsory shares: Children:  $\frac{1}{2}$  instead of  $\frac{3}{4}$ , Spouses:  $\frac{1}{4}$  instead of  $\frac{1}{2}$ , Parents: 0 instead of  $\frac{1}{2}$
- No compulsory share for the unmarried partner: Compromise is a claim for a legacy of maintenance under certain conditions
- Claim for reduction/“clawback” (*Herabsetzung*): amount of claims is expected to be reduced, clarification regarding the qualification of *inter vivos* trusts
- Information rights: Customary complementary information right against certain involved third parties is now regulated by the law



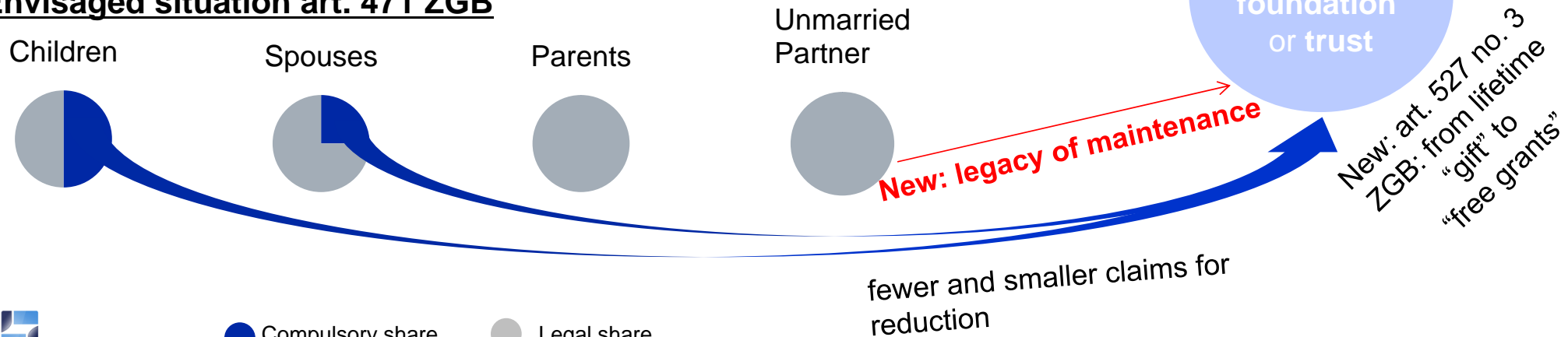
# Impacts of the envisaged revision of the Swiss inheritance law

## II. Example: Compulsory shares

### Current situation (art. 471 ZGB)



### Envisaged situation art. 471 ZGB





## Impacts of the envisaged revision of the Swiss inheritance law

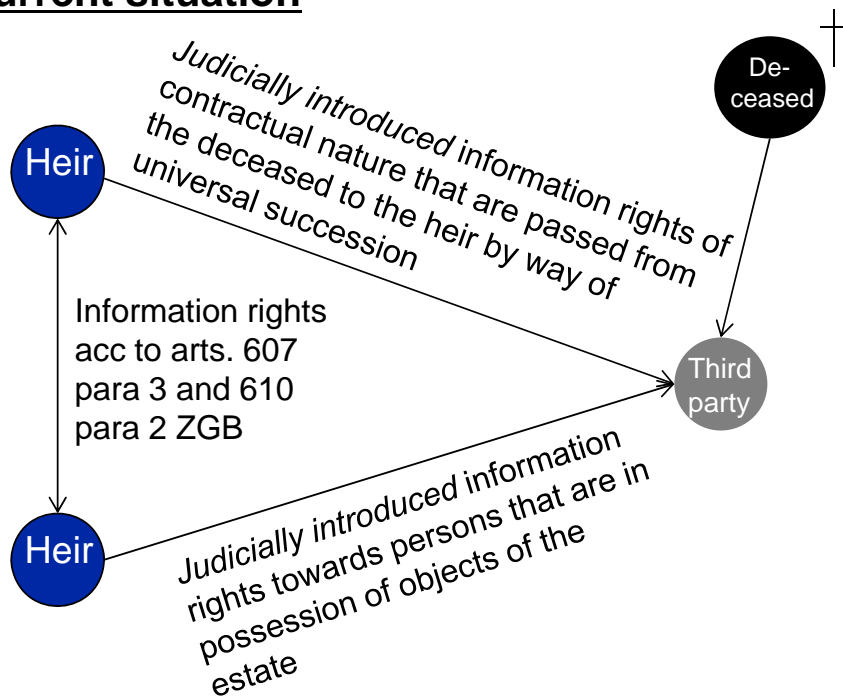
### II. Example: Legacy of maintenance (*Unterhaltsvermächtnis*), art. 484a ZGB

- Entitlement: Persons, that have **factually cohabited** with the deceased for **3 years** *and* have provided **substantial performances** in the interest of the deceased or **minors** that have lived in a **common household** with the deceased and have received **financial support** that would have continued
  - Against: The “**estate**”, i.e. also a foundation or trust that has received such assets
  - Amount: **Not defined**, i.e. in the discretion of the court (adequate standard of living)
  - Restriction: Only if **tolerable** for the heirs regarding their financial situation and the amount of the estate
  - Procedural requirement: Mandatory **court action within 3 months** after knowledge of the death
- **No legal claim or compulsory share, but hardship clause subject to various controversial criteria**

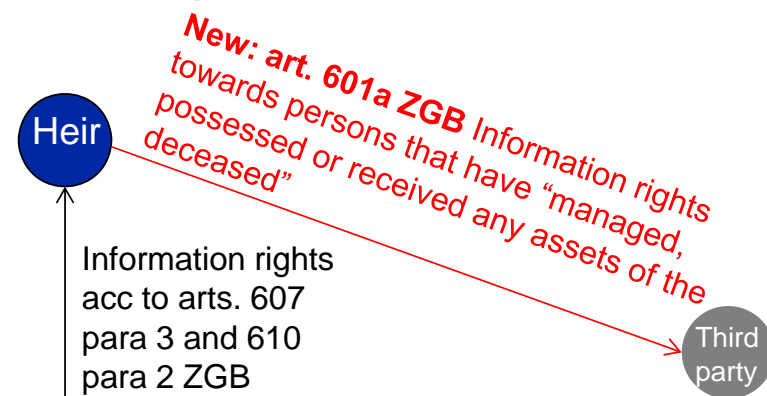
# Impacts of the envisaged revision of the Swiss inheritance law

## II. Example: Information rights

### Current situation



### Envisaged situation



#### art. 601a ZGB

- Extends to all persons that can **assert an inheritance claim** and **need information** to determine the extent of the claim
- The information right **cannot be withdrawn** by testamentary disposition
- **Professional confidentiality duty** cannot be held against



## Impacts of the envisaged revision of the Swiss inheritance law

### III. Conclusion

#### The “light side”:

- Greater freedom of disposition for the testator/settlor

#### The “dark side”:

- Far-reaching information rights against foundations/trusts
- Unpredictable new claim for unmarried partners
- In general: badly drafted provisions and 2-step enactment will cause insecurity





# Thank you for your attention

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## **Legal advice**

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