

An Interpretation of the Succession Part of the Civil Code

❖ Overview of the Civil Code

Adopted by the third Session of the 13th National People's Congress of the People's Republic of China, *the Civil Code of the P.R.C.* was promulgated on May 28, 2020 and takes effect on January 1, 2021. There are seven parts constituting *the Civil Code*: the General Principles, Real Rights, Contracts, Personality Rights, Marriage and Family, Succession and Tort Liability, in addition to the Supplementary Provisions. While maintaining the basic civil system set up by the previous laws, *the Civil Code* makes significant progress by further highlighting the autonomy of private law as the core idea of civil law and through providing more effective protection of the economic life of citizens and enterprises. Succession, as a key part of the Civil Code, constructs the basic institutional framework for the inheritance after the death of a natural person, meets the demands of civil subjects in handling inheritance, and plays an essential role in promoting harmony of family and development of aging industry.

❖ Key Contents

I. Setting up the Estate Administrator System

Heritage management has not been stipulated explicitly in the existing Succession Law of P.R.C., but now it has been clarified and refined in the Succession Part of *the Civil Code*, by establishing an estate administrator system, which is one of the legislative highlights of the Civil Code.

To be specific, Article 1145 and Article 1146 of *the Civil Code* stipulate the qualification to be a heritage administrator. The Article 1145 distinguishes the method of determining the candidate of heritage administrator under different circumstances: in the case of testate succession, the executor appointed by the deceased shall act as the administrator of the heritage. Where there is no executor appointed in the testament, the heritage administrator is selected in the same way as the statutory succession. In the case of statutory succession, the inheritors shall promptly elect an heritage administrator. Where inheritors fail to do so, they shall jointly act as the heritage administrator. If there is no inheritor or the inheritors abandon the inheritance, the authority of civil affairs or the Villagers' Committee of the place where the decedent domiciles before his/her death shall act as the heritage administrator.

The Article 1146 stipulates that where there is any dispute over the determination of the heritage administrator, any interested party may apply to the People's Court for the appointment of an heritage administrator. It is worth noting that the scope of interested parties shall include, without limitation, inheritors. Those who have financial relationships with the decedent, such as creditors, debtors or other entities, can make an application to the People's Court as well.

The Articles 1147 to 1149 are general provisions on the duties, legal responsibilities and remuneration of the heritage administrator.

II. Extending the Scope of Subrogation Inheritance in the case of Statutory Succession

The existing Succession Law only provides that where a decedent survives any of his children, the direct lineal descendants of the decedent's child shall inherit in subrogation. However, it gives no consideration to the question whether the second inheritor (s) in order can be subrogated by their direct lineal descendants when there are no first inheritor (s) in order. This may lead to a conclusion that if there is no inheritors in the first order and all the inheritor (s) second in order died as well, children of the inheritor (s) second in order will be unable to inherit the estate and the decedent's estate will be attributed to the state or

collective economic organization. Clause 2 of Article 1128 of *the Civil Code* provides that the decedent's siblings may also be subrogated by their direct lineal descendants. This regulation is more conducive to the protection of the interests of the decedent and his/her family members and is more in line with the wishes of decedents in general.

III. Adding provisions on “Forgiving improperly behaving inheritors”

The Article 7 of the existing Succession Law regulates that a successor shall be disinherited upon his commission of illegal activities of contending for inheritance, such as abandoning or severely maltreating the decedent, forging a will, and compelling the decedent to make a will etc. The Succession part of *the Civil Code* adds provisions on "forgiving an improperly behaving inheritor" and improves the inheritance system regarding the loss of inheritance right. The Civil Code provides that if an inheritor who used to 1) abandon or maltreat the decedent, or 2) forge, tamper with, conceals or destroys the will, or, 3) compel or obstruct the decedent's making, alteration or withdrawal of a will by fraud or coercion to a serious extent, show true repentance, and if the decedent forgives the inheritor before his death or includes the inheritor in his or her will afterwards, such inheritor shall not lose the right of succession. The new provisions on “forgiving an improperly behaving inheritor” aim to

promoting the harmony of family life and giving an improperly behaving inheritor a chance to show his/her regrets, and demonstrates the respect to the will of a decedent.



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