

Институциональное совершенствование и судебное применение Книги о наследовании Гражданского кодекса КНР Institutional Improvement and Judicial Application of the Civil Code — Succession Book

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Abstract. *China's Civil Code — Succession Book is codified on the basis of the Law of Succession, with both legislative improvement and institutional innovations. The legislative improvement is reflected in various systems such as intestate succession, testate succession and testamentary gift, disposition of estates; the institutional innovations are reflected in the systems of disinheritance, succession in subrogation, the form and validity of wills, and the administrator of the estate. In order to accurately understand and apply the Civil Code — Succession Book, safeguard people's succession rights and interests, and promptly resolve succession disputes, the Supreme People's Court promulgated the Interpretation (I) of the Succession Book, which is significant in refining the legal norms of succession, clarifying the application situations of the legal norms of succession, judging the validity of succession, and safeguarding the rights and interests of the parties concerned.*

Keywords: *the Civil Code — Succession Book, Institutional Improvement, Judicial Application.*

Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code), adopted at the Third Session of the Thirteenth National People's Congress of the People's Republic of China on May 28, 2020, went into effect as of January 1, 2021. The Civil Code consists of seven books — General Part, Real Rights, Contracts, Personality Rights, Marriage and Family, Succession, and Tort Liability — and 1,260 articles. The Succession Book is the sixth book of the Civil Code and consists of four chapters — General Rules, Intestate Succession, Testate Succession

and Testamentary Gift, and Disposition of Estates, — and 45 articles. The legislative basis of the Succession Book is Law of Succession of the People's Republic of China (hereinafter referred to as the Law of Succession), which was adopted at the Third Session of the Sixth National People's Congress in 1985. In accordance with the development of social family structure and the concept of succession, the Succession Book modifies and improves the succession system on the basis of the Law of Succession in order to meet the practical needs of people in disposing their estates.

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I. Legislative Path

As an important book of the Civil Code, the legislative path of the Succession Book is the same as that of the Civil Code, which has gone through three legislative stages, namely, the overall deployment, the systematic combing and the formation of draft.

1. Overall Deployment

The codification of the Civil Code is led by the Legislative Affairs Commission of the Standing Committee of the National People's Congress, with the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Justice, Chinese Academy of Social Sciences and China Law Society as participating entities.

For a good codification of the Civil Code, the Legislative Affairs Commission of the Standing Committee of the National People's Congress and the five participating units set up a coordinating group for the codification of the Civil Code and a special working group for the Civil Code; the Supreme People's Court, Chinese Academy of Social Sciences and China Law Society also organized experts to codify the draft of the Civil Code respectively.

On 31 May 2016, China Law Society set up special subject groups respectively on specific provisions of the Civil Code to organize the drafting of the articles of law of specific provisions of the Civil Code. In early September 2016, the subject groups submitted lists of issues that needed to be integrated in each of specific provisions of the Civil Code to the Leading Group for the Codification of the Civil Code of China Law Society; in January 2017, the subject groups submitted their draft proposals for each of specific provisions of the Civil Code. After the route map for the codification of specific provisions of the Civil Code was determined, the Special Subject Group for the Succession Book continued its work on the codification of the Civil Code — Succession Book (Draft).

2. The Systematic Combing

The codification of the Civil Code is not the formulation of a completely new civil law, nor is it a simple compilation of laws, but rather the compilation and revision of the existing civil legal norms, a revision and improvement of the provisions that are no longer in line with the realities, and the making of new and targeted provisions for new situations and problems that arise in economic and social life. In accordance with the legislative spirit, the Special Subject Group for the Succession Book of the China Law Society was actively promoted the codification of the Expert Proposal Draft on the Civil Code — Succession Book.

By sorting out and studying opinions and suggestions on succession over the years, the Special Subject Group for the Succession Book of China Law Society conducted legislative research, listened extensively to opinions and suggestions of the public, judges, lawyers and notaries, etc., based on the Law of Succession, combined with new demands on legal sys-

tem of succession putting forward by the economic and social development of China, and on the basis of drawing up a list of issues on the Civil Code — Succession Book, gradually promoted the codification of the Expert Proposal Draft on the Civil Code — Succession Book, and contributed its wisdom to the codification of the Civil Code — Succession Book.

3. The Formation of the Draft

The Special Subject Group of the Civil Code — Succession Book of China Law Society, submitted the Expert Proposal Draft of the Civil Code — Succession Book to the Leading Group for the codification of the Civil Code of China Law Society on 18 January 2017. The Expert Proposal Draft consists of five chapters — General Rules, Intestate Succession, Testate Succession and Testamentary Gift, Legacy-support Agreement and Succession Agreement, Disposition of Estates — with a total of 89 articles.

The Legislative Affairs Commission of the Standing Committee of the National People's Congress and the participating units of the Civil Code codification work have made every effort to promote the codification of the Civil Code — Succession Book, and on the basis of thorough research, institutional improvement and complementary norms, the Civil Code — Succession Book (Draft) was formed and submitted to the Fifth Meeting of the Standing Committee of the Thirteenth National People's Congress held in August 2018 for consideration.

The Civil Code — Succession Book (Draft) has been gradually improved after the first and second review. The improved Civil Code — Succession Book (Draft) of Second Review consists of 4 chapters — General Rules, Intestate Succession, Testate Succession and Testamentary Gift, Disposition of Estates — and 45 articles. This Second Instance of the Civil Code — Succession Book (Draft), after amendment, was adopted at the Third Session of the Thirteenth National People's Congress on 28 May 2020.

II. The Legislative Improvement

The Civil Code — Succession Book follows and develops the legislative tradition and institutional design of the Law of Succession, making China's succession system more complete and the succession norms more scientific. At the same time, it fully incorporates the relevant provisions of the Opinions. Combing the institutional innovation and improvement of the Civil Code — Succession Book will help to grasp the process of institutional development and the path of normative improvement of China's succession legislation, and explore the value orientation and normative pursuit of succession legislation.

1. Refinement of General Rules

Chapter I of the Civil Code — Succession Book is the General Rules, consisting of seven articles, which sets out the basic rules of the succession system, reit-

erates the basic principles of the State's protection of natural person's right to inheritance and establishes the basic system of succession. Specifically, it covers the protection of the right to inheritance, the time of commencement of succession, the scope of estates, the manner of succession, the acceptance and renunciation of succession and testamentary gift, the disinheritance and exceptions. Its legislative refinement is reflected in five areas:

(1) A system of presumption of the time of death is added. Where several persons with the right to inherit each other's estate die in the same incident and it is difficult to determine the time of each person's death, the succession legislation differs from country to country as to how to determine the order of death. The relevant legislation often determines the order of death according to age and gender. For example, Article 1134 of Civil Code of the Russian Federation, Article 725-1 of Civil Code of France and Article 832 of Ethiopian Civil Code contain relevant provisions. Article 1121 of PRC Civil Code, which incorporates Article 2 of the Opinions, clearly provides that "Succession begins upon the death of a decedent. Where two or more persons with the right to inherit each other's estate die in the same incident and it is difficult to determine the time of each person's death, the person without any other successor is presumed to have predeceased those with other successor(s). Where the aforementioned deceased persons are from different generations and all of them have other successor(s), the person of the elder generation is presumed to have predeceased those of the younger generation; or, where the deceased are in the same generation, they are presumed to have died simultaneously and no succession occurs between or among them." This provision follows the physiological patterns of human beings, reflecting the natural attributes of human existence; it matches the ethical generations of human beings, reflecting the social attributes of human life.

(2) The scope of the estate is defined in general terms. Article 3 of the Law of Succession defines the scope of estates in the illustration doctrine legislation, i.e., enumeration + generalization, and the definition of estates is positive legacy. Article 1122 of the Civil Code, while continuing the positive approach, defines the scope of succession in the generalization doctrine legislation, i.e. "An estate refers to the property lawfully owned by a natural person upon death. No estate that cannot be inherited by law or by its nature may be inherited." The legislative significance of this provision is twofold: firstly, it adapts to the trend of gradually expanding the scope and types of estates. With the improvement of the material living standard of people, the scope and types of property have been expanded and the scope and types of estates have been broadened. Since succession legislation cannot exhaust the list of types of estates, the adoption of generalization doctrine legislation to define the scope

of estates helps to avoid the limitations and hysteresis of legislation. Secondly, the nature and scope of estates is clarified. In other words, as long as the decedent's personal estate is lawful, it can be inherited according to law. Estates that cannot be inherited include two main categories: the estate who is prohibited by law or by its nature may not be inherited.

(3) The grounds for disinheritance are added. Article 1125 of the Civil Code provides for two additional grounds for disinheritance: first, conceal the will with serious circumstances; second, through fraud or duress, compelling or interfering with the testator to make, alter, or revoke a will, and the circumstances are serious. The statutory grounds for disinheritance vary from time to time. According to the changes of infringement, the statutory grounds for disinheritance are increased at proper time, which helps to safeguard the legitimate rights and interests of successors and testators, realize the fairness and justice of succession and stabilize the order of succession.

(4) The system of forgiveness for a successor is added. The improvement of the system of statutory disinheritance is one of the legislative highlights of the Civil Code — Succession Book. Paragraph 1, Article 1125 of the Civil Code provides that: "A successor is disinherited if he has committed any of the following acts: (1) intentionally killing the decedent; (2) killing any other successor in fighting over the estate; (3) abandoning the decedent, or maltreating the decedent and the circumstances are serious; (4) forging, tampering with, concealing, or destroying the will, and the circumstances are serious; or (5) through fraud or duress, compelling or interfering with the testator to make, alter, or revoke a will, and the circumstances are serious." Paragraph 2, Article 1125 of the Civil Code provides that "A successor who had committed one of the acts listed in Subparagraphs (3) to (5) of the preceding paragraph may not be disinherited if he truly repented and mended his ways, and was forgiven by the decedent or was thereafter appointed as one of the successors in the decedent's will." In other words, Subparagraphs (1) and (2) are absolute grounds of disinheritance and Subparagraphs (3) through (5) are relative grounds of disinheritance.

(5) The statutory grounds for the loss of rights to receive the testamentary gift are clarified. Paragraph 3, Article 1125 of the Civil Code provides that a donee-by-will who commits any act listed in the first paragraph of Article 1125 loses his right to receive the testamentary gift. Offering the testamentary gift is a unilateral legal act in which the donor-by-will offers the donee-by-will property interests without compensation or with a burden. Since the donee-by-will receives a testamentary gift for no consideration or less than the burden attached to it, the public often places a high moral value on the donee-by-will's behavior. If a donee-by-will commits a statutory offense, it is not only inconsistent with traditional moral

norms, but also seriously hurts the moral feelings of successors and testators. For that reason, succession laws of various countries provide statutory grounds for the loss of rights to receive the testamentary gift of a donee-by-will, and not only do they usually apply the statutory grounds for disinheritance, but they also provide for stricter grounds for loss of rights to receive the testamentary gift. Paragraph 3, Article 1125 of the Civil Code provides for an absolute ground for loss of rights to receive the testamentary gift.

2. Refinement of Intestate Succession

Chapter II of the Civil Code — Succession Book is the Intestate Succession, which contains seven articles that set out the basic norms of the intestate succession system. Specifically, it includes: the principle of equality between men and women in the right to inheritance, the scope of successors and the order of succession, subrogation inheritance, the right to inheritance of widowed daughters-in-law and sons-in-law, the rules of distribution of an estate, the right to an appropriate share of the estate, and the manner of disposing succession. Its legislative improvement is reflected in two aspects:

(1) The system of subrogation inheritance is improved. On the basis of the continuation of the provisions of the Law of Succession on subrogation inheritance, paragraph 2, Article 1128 of the Civil Code provides that "Where a decedent is predeceased by a sibling of his, the children of the predeceased sibling shall inherit in subrogation." The legislative significance of this provision is twofold: firstly, it expands the scope of subrogated successors by providing for the children of the predeceased siblings to be subrogated successors. In other words, if the decedent has no successors first in order and his siblings of successors second in order have died before him, his nieces and nephews can inherit his estate. Secondly, it helps the inter-generational transmission of succession. By extending the scope of intestate successors to nieces and nephews, the estate can be passed on from generation to generation within the scope of relative relations by law, and the situation where the estate escheats to the State can be appropriately reduced, thus fulfilling the purpose of the State to protect natural person's right to inheritance and carrying forward the concept of succession of supporting the old and raising the young.

(2) The statutory conditions for the right to claim for an appropriate share of the estate have been improved. Article 14 of the Law of Succession provides that the statutory conditions for the right to claim for an appropriate share of the estate of an eligible dependent are more stringent, i.e., the eligible dependent shall be a "dual deficiency" person — any successor who has neither ability to work nor the source of income. Article 1131 of the Civil Code provides that "An appropriate share of the estate may be given to a person, other than a successor, who has been a

dependent of the now decedent, or to a person, other than a successor, who has made considerable contributions in supporting the now decedent." This provision removes the reference to the eligible dependent being a "dual deficiency" person, making the statutory conditions for the eligible dependent's right to claim for an appropriate share of the estate more concise. This is because dependence on the decedent's "support" implies that the eligible dependent has neither ability to work nor the source of income. If one is able to work or has a source of income, he does not need to be maintained by others. The precise formulation of legal norms is one of the elements of the normative expression of the Civil Code — Succession Book, which reflects the precise connotation of legal norms.

3. Improvement of Testate Succession and Testamentary Gift

Chapter III of the Civil Code — Succession Book contains 12 articles on Testate Succession and Testamentary Gift, which set out the basic norms of the testate succession and testamentary gift system. Specifically, it includes: General Rules on testate succession and testamentary gift, holographic wills, wills written on behalf of a testator, wills in printed forms, wills made in the form of an audio or video recording, nuncupative wills, notarized wills, negative conditions for acting as a witness to a will, provisions on the necessary portion of an estate, revocation, alteration and validity of wills, circumstances in which a will is void, and wills with obligations. Its legislative improvements are reflected in four areas:

(1) The forms of printed and video-recorded wills are added. Article 1136 of the Civil Code provides that "A will in printed form shall be attested by two or more witnesses. The testator and the witnesses shall sign and specify the year, month, and day on each page." Article 1137 of the Civil Code provides that: "A will made in the form of an audio or video recording shall be attested by two or more witnesses. The testator and the witnesses shall record their names or likeness in the recording and specify the year, month, and day of its making." The addition of printed and video-recorded wills responds to the needs of the times and social development, and helps to realize the testator's autonomy of intent while enriching the form of wills.

(2) The requirements for a nuncupative will are refined. Article 1138 of the Civil Code provides that: "A testator may, when facing imminent danger, make a nuncupative will. A nuncupative will shall be attested by two or more witnesses. When the imminent danger is removed and where the testator is able to make a will in writing or in the form of an audio or video recording, the nuncupative will thus made becomes invalid." This provision, which stems from the refinement of the provisions of paragraph 5, Article 17 of the Law of Succession, regarding nuncupative wills, namely, in which the will made is invalid when

the imminent danger is removed, including the testator is able to make a will in the form of a video recording.

(3) The negative conditions for witnesses to a will are improved. The fitness of a witness to a will is essential to the validity of the will. In order to ensure the authenticity and validity of wills, the qualifications or conditions of witnesses to wills are provided in the succession legislation of various countries. Based on the continuation of Article 18 of the Law of Succession, Article 1140 of the Civil Code improves the negative conditions for witnesses to a will. The qualifications or conditions for witnesses of wills are further restricted by adding the provision "a person incompetent to attest a will"; at the same time, the definition of the negative conditions for witnesses to a will is made more comprehensive. As for "a person incompetent to attest a will", it refers to persons who have full capacity for civil conduct but do not have the capacity to witness due to disability, etc. For example, blind or deaf persons are not capable of witnessing certain forms of wills.

(4) The rules governing the validity of wills are amended. In response to the limitations of Article 20 of the Law of Succession, Article 1142 of the Civil Code is improved: first, the withdrawal of a will has been amended to the revocation of a will, making the legal terminology more rigorous and precise. In other words, although the difference between withdrawal and revocation of a will is only one word, the difference in jurisprudential connotation and time point leads to a different validity. Second, the provision that "A notarized will may not be revoked or altered by a holographic will, a will written on behalf of the testator, a will in the form of an audio recording or a nuncupative will." Has been deleted. It is replaced by "A testator may revoke or alter a will he has made." The third is the addition of a fictional provision for the revocation of a will by an act to the contrary. It is replaced by "Where a testator who, after making a will, acts inconsistently with the content of his will, the pertinent part of the will is deemed to be revoked." Fourth, the provisions on the priority effect of notarized wills are amended to establish the legislative model of parallel validity of various forms of wills. Paragraph 3, Article 1142 of the Civil Code provides that "Where several wills have been made and their contents are inconsistent, the will made last in time shall prevail." This provision respects the true expression of the testator and facilitates the testator's freedom to make a will.

4. Improvements in Disposition of Estates

Chapter IV of the Civil Code — Succession Book, which is Disposition of Estates, contains 19 articles that set out the procedures and rules for disposition of estates. These include: the election of an administrator of an estate, the request for the appointment of an administrator of an estate, the duties of

an administrator of an estate, the responsibilities of an administrator of an estate, the remuneration of an administrator of an estate, the notification of the opening of the succession, the custody of the estate, the transferred succession, the determination of an estate, the scope of application of intestate succession, the share of an estate reserved for a fetus, the principles and methods of partition of an estate, the disposition of the inherited property in the event of remarriage, the legacy-support agreement, the succession and the payment of debts, the disposition of estates with neither a successor nor a donee-by-will, limited succession, the priority of debt payment over the execution of testamentary gift, the order and proportion of intestate successors, testamentary successors and donees-by-will in the disposition of taxes. Its legislative improvements are reflected in seven areas:

(1) The system of an administrator of an estate is added. In order to ensure the proper administration and smooth partition of an estate and to better safeguard the interests of successors and creditors, the Civil Code — Succession Book adds the system of an administrator of an estate. The system consists of five legal norms, which provide the manner in which an administrator of an estate is to be appointed, the application for the appointment of an administrator of an estate, the duties of an administrator of an estate, the responsibilities of an administrator of an estate and the remuneration of an administrator of an estate. The initially established system of an administrator of an estate makes up for the lack of legislation in the Law of Succession and improves the succession system in China.

(2) Provides for a system of transferred succession. The Law of Succession does not provide for transferred succession. Article 52 of the Opinions provides that "where, after the opening of succession, a successor has not disclaimed the inheritance and died before the estate is partitioned, his right to inheritance shall be transferred to his lawful successor(s)." This judicial interpretation became the legislative prototype for the system of transferred succession of the Civil Code — Succession Book. Article 1152 of the Civil Code provides that "Where, after a succession commences, a successor who has not disclaimed the inheritance dies before the estate is partitioned, the share that he should have inherited shall be inherited by his successors, unless otherwise provided in the will." The establishment and improvement of the system of transferred succession responds to the diversity of succession methods and achieves the full protection of the inheritance right and interests.

(3) Improves the scope of application of intestate succession. On the basis of Article 27 of the Law of Succession, Article 1154 of the Civil Code improves the scope of application of intestate succession: firstly, it includes "a donee-by-will is disqualified" in the scope of statutory application of intestate succession; secondly, it includes the "termination" of the donee-

by-will in the scope of application of intestate succession. The precise definition of the scope of application of intestate succession will help safeguard the rights and interests of the public in intestate succession.

(4) The system of a legacy-support agreement is improved. Article 31 of the Law of Succession provides that a citizen may enter into a legacy-support agreement with a person or with an organization under collective ownership who, in accordance with the agreement, assumes the duty to support the former in his lifetime and attends to his interment after death, in return for the right to receive a testamentary gift. Article 1158 of the Civil Code provides: "A natural person may enter into a legacy-support agreement with an organization or individual other than a successor. Such organization or individual assumes, in accordance with the agreement, a duty to support the said person during his lifetime, and attends to his interment after death, in return for the right to receive the testamentary gift under the agreement." According to this provision, the fosterer shall be "an organization or individual other than a successor", and the "organization" shall not be limited to "an organization under collective ownership". Properly expand the scope of fosterers will help to broaden the channels of maintenance and meet the needs of diversified forms of elderly care.

(5) Add the priority of "dual deficiency" successors' necessary portion. Properly disposing the relationship between the partition of an estate and the payment of debts is an issue common to all countries' succession legislation. Article 33 of the Law of Succession only provides the principle of limited succession, and does not provide that the necessary portion of a "dual deficiency" successor shall be given priority over the payment of taxes and debts owed by the decedent in the partition of an estate. Article 61 of the Opinions provides that: "An appropriate share of an estate shall be reserved for a successor who has neither ability to work nor the source of income even if the estate is insufficient to pay off debts, and then the debts shall be paid off according to Article 33 of the Law of Succession and Article 180 of the Civil Procedure Law." This judicial interpretation was incorporated in the Civil Code — Succession Book. Article 1159 of the Civil Code provides that: "Upon partitioning an estate, the taxes and debts payable or owed by the decedent in accordance with law shall be paid out of the estate, provided that a necessary portion of the estate is preserved for any successor who has neither the ability to work nor the source of income." This provision makes up for the lack of legislation in the Law of Succession and clarifies that the necessary portion of the estate of a "dual deficiency" successor takes precedence over the taxes and debts owed by the decedent when partitioning the estate, reflecting the protection of security for survival and humanistic concern for the "dual deficiency" successor.

(6) Improve the system of attribution of an estate with neither a successor nor a donee-by-will. Article 32 of the Law of Succession does not provide for the use of an estate with neither a successor nor a donee-by-will after they escheated to the State. Article 1160 of the Civil Code provides that "An estate with neither a successor nor a donee-by-will shall be escheated to the State for public interest purposes. Where the decedent was a member of a collective organization at the time of his death, the estate shall be escheated to the collective organization." This provision specifies that the estate with neither a successor nor a donee-by-will, after it has escheated to the State, is for public interest purposes.

(7) Add the order and proportion in which successors and donees-by-will pay the taxes and debts. The Law of Succession does not provide for the order and proportion in which successors and donees-by-will pay the taxes and debts. Article 62 of the Opinions provides that: "In the event that an estate has been partitioned but the debts have not been paid, if intestate succession as well as testate succession and testamentary gift are involved, the heir at law shall first pay the debts with the estate obtained thereby; if the estate is insufficient to pay off the debts, the remaining debt shall be repaid in proportion by the testamentary successor and the donee-by-will with the estate obtained thereby; if testate succession and testamentary gift are involved only, the debts shall be repaid by the testamentary successor and the donee-by-will in proportion with the estate obtained thereby." This judicial interpretation was incorporated and developed in the Civil Code — Succession Book, and became the basis for adjusting the order and proportion in which the intestate successors, the testamentary successors and the donees-by-will pay off their taxes and debts. Article 1163 of the Civil Code provides that "Where intestate succession, testate succession, and testamentary gift concurrently exist, the taxes and debts legally payable or owed by the decedent shall be paid by the intestate successor(s); such taxes and debts in excess of the actual value of the portion of the estate inherited by the intestate successor(s) shall be paid by the testamentary successor(s) and donee(s)-by-will in proportion to the shares of the estate each of them has received." This provision clarifies the order and proportion in which intestate succession, testate succession and testamentary gift assume responsibility for the payment of estate debts, improves China's system for the payment of estate debts and helps to protect the rights and interests of successors, donees-by-will and creditors.

III. Judicial Implementation

In order to ensure the smooth implementation of the Civil Code — Succession Book, on 25 December 2020, the 1825th meeting of the Judicial Committee of the Supreme People's Court adopted the Interpre-

tation of the Supreme People's Court on the Application of Succession Book of the Civil Code of the People's Republic of China (I) (the "Succession Book Interpretation (I)"), which came into effect since 1 January 2021. The Succession Book Interpretation (I) includes 45 articles on General Rules, Intestate Succession, Testate Succession and Testamentary Gift, Disposition of Estates.

1. General Rules

There are 9 articles of the General Rules, which mainly include:

(1) The value of the contract interests not yet obtained as the estate. Where the contractor has not obtained the interests from the contract at the time of his death, the entity issuing the contract or the person that succeeds the contract may make reasonable conversion or compensation for the funds invested in the contract and the labor the contractor paid as well as the added value and fruits before his death, with the value thereof as the estate.

(2) Clarify the order of effect between legacy-support agreements and wills. In the event that the decedent has, before his death, concluded a legacy-support agreement with others and made a will at the same time, if the legacy-support agreement is not in conflict with the will after the opening of succession, the estate shall be disposed of under the agreement and will respectively; in case of any conflict, the agreement shall prevail, and the will that conflicts with the agreement shall be void, in whole or in part.

(3) Obtain the estate by testate succession or intestate succession. Any testamentary successor who has obtained the estate under a will may remain entitled to obtain the estate that has not been disposed of under the will in accordance with Article 1130 of the Civil Code.

(4) Disputes over disinheritance are judged and ruled by the People's Court in accordance with the law. Where, in the course of succession, a dispute arises between successors as to whether or not any successor is disinherited, the people's court shall, in accordance with Article 1125 of the Civil Code, make a judgment on whether or not the successor is disinherited.

(5) Clarify the judgment criteria for disinheritance. Firstly, the "serious circumstances of maltreating the decedent" may be determined in terms of the time, means, consequence and social impact of the maltreatment. If the circumstances are serious and the maltreatment on the decedent is serious, it may be confirmed that the successor is disinherited, whether or not criminal liability is investigated. Secondly, where a successor intentionally kills the decedent, whether it is a completed murder or an attempted murder, the successor may be confirmed to be disinherited. Thirdly, where a successor intentionally kills the decedent or kills any other successors in fighting over the estate, and the decedent designates

his estate by will to the successor, the will may become invalid and the successor shall be disinherited. Fourthly, where a successor forges, tampers, conceals or destroys the will, infringing upon the interests of the successor who has neither ability to work nor the source of income, and causing him to live a hard life, it shall be deemed as "serious circumstances".

2. Intestate Succession

There are 14 articles of Intestate Succession, which mainly include:

(1) The rights to inheritance of different types of children. Firstly, adopted children may entitle to the right to claim for an appropriate share of their natural parents' estate in statutory situations. Where an adoptee has fully performed the duty to support his adoptive parents and at the same time has largely supported his natural parents, he may, in addition to inheriting the adoptive parents' estate in accordance with Article 1127 of the Civil Code, be given an appropriate share of his natural parents' estate in accordance with Article 1131 of the Civil Code. Secondly, stepchildren and stepparents shall entitle to dual rights to inheritance in accordance with the law. Where a stepchild inherits from his stepparents, the succession from his natural parents shall not be affected. Where a stepparent inherits from his stepchild, the succession from his children born in or out of wedlock shall not be affected.

(2) The right to inheritance between siblings. Firstly, as the relationship between an adopted child and a child born in or out of wedlock in a family, or that between different adopted children in a family are adopted siblings, they may be successors second in line to each other. The relationship of rights and duties between an adoptee and his natural siblings ceases with the establishment of the adoptive relationship, they may not be successors second in line to each other. Secondly, the right to inheritance between stepsiblings arises from the support relationship between them. Where there is no support relationship between them, they may not be successors second in line to each other. If stepsiblings inherit from each other, the succession from their natural siblings shall not be affected.

(3) Provisions relating to subrogation inheritance. Firstly, a successor in subrogation is unrestricted to the generations in a lineage. Any grandchild, maternal grandchild, great-grandchild or maternal great-grandchild of a decedent may inherit in subrogation, and a successor in subrogation is not subject to the generations in a lineage. Secondly, the subrogation inheritance right of different types of children. The children born in or out of wedlock of an adopted child of a decedent or that of the stepchild who has formed the maintenance relationship with the decedent may inherit in subrogation; the adopted children of a child born in or out of wedlock of the decedent may inherit in subrogation; the adopted children of

an adopted child of the decedent may inherit in subrogation; and the adopted children of a stepchild who has formed the maintenance relationship with the decedent may also inherit in subrogation. Thirdly, the conditions for successors in subrogation to obtain more of the estate. At the time of distributing the estate, a successor in subrogation who has neither ability to work nor the source of income or has predominantly made contributions in supporting the decedent, may be given a larger share of the estate. Fourthly, the situations under which inheriting in subrogation or claiming for an appropriate share of the estate is not allowed. In the event that a successor is disinherited, his direct lineal descendant may not inherit in subrogation. If such successor in subrogation is either unable to work and has no source of income or has substantially performed his duties in supporting the decedent, he may be given an appropriate share of the estate. Fifthly, the right to inheritance of widowed daughters-in-law or sons-in-law who have made the predominant contributions in supporting their parents-in-law shall co-exist with the right to inherit in subrogation of his children. Where a widowed daughter-in-law or son-in-law is the successor first in order in relation to his parents-in-law in accordance with Article 1129 of the Civil Code, his children's subrogation inheritance shall not be affected no matter whether he is remarried or not.

(4) Confirmation of the main obligation of the maintenance or support. Where any person has provided main sources of income for the livelihood of the decedent or major assistance in such areas as labor services, he shall be deemed to have fulfilled the main obligation of maintenance or support.

(5) Application of the right to claim for an appropriate share of the estate. Firstly, an appropriate share of the estate. Any person who is entitled to an appropriate share of the estate in accordance with Article 1131 of the Civil Code may be given a greater or smaller share than that of the successor the case may be. The second is the remedy of the right to claim for an appropriate share of the estate. Any person who is entitled to an appropriate share of the estate in accordance with Article 1131 of the Civil Code shall have the right to sue to the people's court as an independent subject of litigation if his right to lawfully acquire the estate of the decedent is infringed upon.

(6) Principles for determining the share of the successor's estate. Firstly, the distribution of an estate when the decedent does not require maintenance from the successors. Where a successor has the ability and conditions for maintenance and is willing to perform his duties in maintaining the decedent, but the decedent clearly expresses that he does not need such maintenance due to the fact that he has a fixed income and ability to work, the successor's share of succession shall generally not be affected at the time the estate is distributed. The second is the case where the successor has a smaller or no share. Although a

successor who has the ability and conditions to maintain the decedent lives together with the decedent, he fails to perform his duties in maintaining the decedent, he may be given a smaller or no share of the estate at the time the estate is distributed.

3. Testate Succession and Testamentary Gift

There are 6 articles of Testate Succession and Testamentary Gift, which mainly include:

(1) Definition of qualification of the witness to a will. Any creditor or debtor, or any partner in joint business operation of a successor or donee-by-will shall also be deemed to have an interest in the successor or donee-by-will and shall not serve as a witness to a will.

(2) Restrictions on the freedom of a will by the necessary portion. Where a testator fails to retain the share of an estate for a successor who has neither ability to work nor the source of income, the necessary portion of an estate shall be left for him at the time of disposing estates, and only then can the remainder be disposed of by reference to the distribution principles prescribed by the will. Whether a successor has neither ability to work nor the source of income shall be determined according to the actual circumstances of the successor at the time when the will becomes effective.

(3) Determination of the validity of a will. Where a testator disposes of the property of the State, the collective or another person by wills, such part of wills shall be determined as void.

(4) Conditions for a testament to be regarded as a holographic will. Where a natural person's testament contains contents about the disposition of his personal property after his death, which is indeed the true expression of the intent of the deceased, is signed by the deceased and indicates the date, month and year thereof, and there is no evidence to the contrary, disposition of the testament may be deemed as a holographic will.

(5) Definition of testamentary capacity. Any testator must have full capacity for civil conduct when making a will. The will made by a person without or with limited capacity for civil conduct is still void, even if the person subsequently possesses full capacity for civil conduct. Where a testator has full capacity for civil conduct at the time of making a will and subsequently becomes a person without or with limited capacity for civil conduct, the validity of the will shall not be affected.

(6) Effect of performance of testate succession or testamentary gift with obligations. Where an obligation is attached to a testate succession or testamentary gift, if the obligation can be performed but a successor or donee-by-will fails to do so without justified reasons, the people's court may, upon the request of the beneficiary or any other successor, cancel the successor's right to receive part of the estate subject to the obligation, and the successor or beneficiary who

makes the request shall be responsible for performing the obligation and accepting the estate according to the will of the testator.

4. Disposition of Estates

There are 15 articles of Disposition of Estates, which mainly include:

(1) Retain the estate for a successor who is unable to be notified. Where a people's court, in hearing a case of succession, knows the existence of a successor but is unable to notify him of the case, it shall, at the time of partitioning the estate, retain the estate for the successor and designate a custodian or custody agency for the estate.

(2) Reservation of a necessary portion for the fetus. Where the share of the estate that shall be reserved for a fetus is not reserved, it shall be deducted from the estate inherited by the successor(s). The share of the estate reserved for the fetus shall be inherited by his successor if the fetus dies after birth; if the fetus is stillborn, the share of the estate shall be inherited by the successor(s) of the decedent.

(3) Disposition of disclaiming inheritance. First, the effect of disclaiming inheritance. Where a successor is unable to perform his statutory obligations due to the abandonment of his right to inheritance, such act of abandonment shall be void. Second, the form of disclaiming inheritance. A successor who disclaims inheritance shall express his intention in writing to the administrator of the estate or any other successor. Where, in the process of litigation, a successor orally expresses to the people's court that he disclaims inheritance, a written record shall be made and signed by the successor who disclaims inheritance. Third, the period of disclaiming inheritance. A successor shall make the manifestation of his will to disclaim inheritance during the period after the opening of succession and before the partition of the estate. It is no longer the right to inheritance but the ownership thereof that is to be disclaimed after the partition of the estate. Fourthly, the disposition of going back on the disclamation of inheritance. If, before the disposition of estates or during the course of the proceedings, the successor goes back on his disclamation of inheritance, the People's Court shall, on the basis of the specific reasons presented by him, decide whether or not to recognize it. After the disposition of estates, any successor who goes back on his words about the disclamation of inheritance shall not be recognized. Fifth, the time effect of disclaiming inheritance. The effect of disclaiming inheritance shall be retroactive to the time of the opening of succession.

(4) Effect of transfer of testamentary gift. Where, after the opening of succession, a donee-by-will expresses his acceptance of the testamentary gift but deceases before the partition of the estate, the right to receive the testamentary gift shall be transferred to his successor.

(5) Succession of the estates of martyrs' family and natural persons on social relief. The estate of a martyr's family whose living expenses are provided by the State or collective organization or of a natural person who enjoys social relief shall still be permitted to be inherited by his statutory successor.

(6) Effect of the dissolution of the legacy-support agreement. Where any organization or individual other than a successor, after entering into a legacy-support agreement with a natural person, fails to perform it without just cause, thereby leading to the dissolution of the agreement, such organization or individual shall not be entitled to the testamentary gift, and the support expenses he has paid shall generally not be compensated. Where any donor-by-will fails to perform the legacy-support agreement without just cause, thereby leading to the dissolution of the agreement, he shall repay the support expenses paid by the organization or individual other than the successor(s).

(7) An appropriate share of the "dual — non estate". Where an estate is escheated to the State or an organization under collective ownership due to the absence of any successor or donee-by-will, and any person entitled to the estate in accordance with Article 1131 of the Civil Code prosecutes a claim to acquire the estate, the people's court shall, as the case may be, distribute an appropriate share of the estate to the person.

(8) The principle of partition of specific estate. The people's court shall, when partitioning the houses, means of production and property required for a special occupation in the estate, handle the matter on the basis of leveraging the utilization efficiency of the estate and the actual needs of the successor, by taking into account the interests of each successor.

(9) An appropriate reduction of the estate. The people's court may reduce the estate that a successor shall inherit if he intentionally conceals, misappropriates or competes for the estate, as the case may be.

(10) Determination of litigants to succession proceedings. Where, after the opening of a succession proceedings, any successor or donee-by-will is neither willing to participate in the action nor expresses his intention to waive his substantive rights, he shall be added as a co-plaintiff. Where any successor has expressed his intention to disclaim his inheritance in writing, or any donee-by-will has expressed his intention to disclaim the testamentary gift within 60 days after he learns of the testamentary gift, or has not expressed his intention within the time limit, he shall no longer be listed as a party concerned.

The Interpretation (I) of the Succession Book is the understanding and application of the Civil Code — Succession Book. It has legal significance in refining the legal norms of succession, clarifying the circumstances in which the legal norms of succession apply, judging the validity of succession and safeguarding the rights and interests of the parties.