LAW OF SUCCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

Description

[***Please note that this English version of Chinese succession law is quoted from Internet resource, and is not work product of the author of this blog, Jason Tian. If you have any question about the accuracy of the text or you want to get clearer about any aspect of this law, you can contact Jason Tian for help using "Contact" on this blog***.]

LAW OF SUCCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

(Adopted at the Third Session of the Sixth National People's Congress, promulgated by Order No. 24 of the President of the People's Republic of China on April 10, 1985, and effective as of October 1, 1985)

Shanghai Landing Law Offices

SUBJECT: CIVIL LAW

ISSUING-DEPT: NATIONAL PEOPLE'S CONGRESS

ISSUE-DATE: 04/10/1985

IMPLEMENT-DATE: 10/01/1985

LENGTH: 2422 words

TEXT:

CHAPTER I GENERAL PROVISIONS

[Article 1] This Law is enacted pursuant to the provisions of the Constitution of the People's Republic of China with a view to protecting the right of citizens to inherit private property.

[Article 2] Succession begins at the death of a citizen.

[Article 3] Estate denotes the lawful property owned by a citizen personally at the time of his death, which consists of:

(1) his income;

(2) his houses, savings and articles of everyday use;

(3) his forest trees, livestock and poultry;

(4) his cultural objects, books and reference materials;

(5) means of production lawfully owned by him;

(6) his property rights pertaining to copyright and patent rights; and

(7) his other lawful property.

[Article 4] Personal benefits accruing from a contract entered into by an individual are heritable in accordance with the provisions of this Law. Contracting by an individual, if permitted by law to be continued by the successor, shall be treated in accordance with the terms of the contract.

[Article 5] Succession shall, after its opening, be handled in accordance with the provisions of statutory succession; where a will exists, it shall be handled in accordance with testamentary succession or as legacy; where there is an agreement for legacy in return for support, the former shall be handled in accordance with the terms of the agreement.

[Article 6] The right to inheritance or legacy of a competent person shall be exercised on his behalf by his statutory agent.

The right to inheritance or legacy of a person with limited capacity shall be exercised on his behalf by his statutory agent or by such person himself after obtaining the consent of his statutory agent.

Shanghai Landing Law Offices

[Article 7] A successor shall be disinherited upon his commission of any one of the following acts:

(1) intentional killing of the decedent;

(2) killing any other successor in fighting over the estate;

(3) a serious act of abandoning or maltreating the decedent; or

(4) a serious act of forging, tampering with or destroying the will.

[Article 8] The time limit for institution of legal proceedings pertaining to disputes over the right to inheritance is two years, counting from the day the successor became or should have become aware of the violation of his right to inheritance. No legal proceedings, however, may be instituted after the expiration of a period of 20 years from the day succession began.

CHAPTER II STATUTORY SUCCESSION

[Article 9] Males and females and equal in their right to inheritance.

[Article 10] The estate of the decedent shall be inherited in the following order:

First in order: spouse, children, parents.

Second in order: brothers and sisters, paternal grand parents, maternal grandparents.

When succession opens, the successor (s) first in order shall inherit to the exclusion of the successor (s) second in order. The successor(s) second in order shall inherit in default of any successor first in order.

The “children” referred to in this Law include legitimate children, illegitimate children and adopted children, as well as step-children who supported or were supported by the decedent.

The “parents” referred to in this Law include natural parents and adoptive parents, as well as step-parents who supported or were supported by the decedent.

The “brothers and sisters” referred to in this Law include blood brothers and sisters, brothers and sisters of half blood, adopted brothers and sisters, as well as step-brothers and step-sisters who supported or were supported by the decedent.

[Article 11] Where a decedent survived his child, the direct lineal descendants of the predeceased child shall inherit in subrogation. Descendants who inherit in subrogation generally shall take only the share of the estate their father or mother was entitled to.

[Article 12] Widowed daughters-in-law or sons-in-law who have made the predominant contributions in maintaining their parents-in-law shall, in relationship to their parents-in-law, be regarded as successors first in order.

[Article 13] Successors same in order shall, in general, inherit in equal shares.

At the time of distributing the estate, due consideration shall be given to successors who are unable to work and have special financial difficulties.

At the time of distributing the estate, successors who have made the predominant contributions in maintaining the decedent or have lived with the decedent may be given a larger share.

At the time of distributing the estate, successors who had the ability and were in a position to maintain the decedent but failed to fulfil their duties shall be given no share or a smaller share of the estate.

Successors may take unequal shares if an agreement to that effect is reached among them.

[Article 14] An appropriate share of the estate may be given to a person, other than a successor, who depended on the support of the decedent and who neither can work nor has a source of income, or to a person, other than a successor, who was largely responsible for supporting the decedent.

[Article 15] Questions pertaining to succession should be dealt with through consultation by and among the successors in the spirit of mutual understanding and mutual accommodation, as well as of amity and unity. The time and mode for partitioning the estate and the shares shall be decided by the successors through consultation. If no agreement is reached through consultation, they may apply to a People’s Mediation Committee for mediation or institute legal proceedings in a people’s court.

Shanghai Landing Law Offices

CHAPTER III TESTAMENTARY SUCCESSION AND LEGACY

[Article 16] A citizen may, by means of a will made in accordance with the provisions of this Law, dispose of the property he owns and may appoint a testamentary executor for the purpose.

A citizen may, by making a will, designate one or more of the statutory successors to inherit his personal property.

A citizen may, by making a will, donate his personal property to the state or a collective, or bequeath it to persons other than the statutory successors.

[Article 17] A notarial will is one made by a testator through a notary agency.

A testator-written will is one made in the testator's own handwriting and signed by him, specifying the date of its making.

A will written on behalf of the testator shall be witnessed by two or more witnesses, of whom one writes the will, dates it and signs it along with the other witness or witnesses and with the testator.

A will made in the form of a sound-recording shall be witnessed by two or more witnesses.

A testator may, in an emergency situation, make a noncupative will, which shall be witnessed by two or more witnesses. When the situation is over and if the testator is able to make a will in writing or in the form of a sound-recording, the noncupative will he has made shall be invalidated.

Shanghai Landing Law Offices

[Article 18] None of the following persons shall act as a witness of a will:

(1) persons with no capacity or with limited capacity;

(2) successors and legatees; or

(3) persons whose interests are related to those of the successors and legatees.

[Article 19] Reservation of a necessary portion of an estate shall be made in a will for a successor who neither can work nor has a source of income.

[Article 20] A testator may revoke or alter a will he previously made.

Where several wills that have been made conflict with one another in content, the last one shall prevail.

A notarial will may not be revoked or altered by a testator-written will, a will written on behalf of the testator, a will in the form of a soundrecording or a noncupative will.

[Article 21] Where there are obligations attached to testamentary succession or legacy, the successor or legatee shall perform them. Anyone who fails to perform the obligations without proper reasons amy, upon request by a relevant organization or individual, entail nullification of his right to inheritance by a people's court.

[Article 22] Wills made by persons with no capacity or with limited capacity shall be void.

Wills shall manifest the genuine intention of the testators; those made under duress or as a result of fraud shall be void.

Forged wills shall be void.

Where a will has been tampered with, the affected parts of it shall be void.

CHAPTER IV DISPOSITION OF THE ESTATE

[Article 23] After the opening of succession, a successor who has knowledge of the death should promptly notify the other successors and the testamentary executor. If none of the successors knows about the death or if there is no way to make the notification, the organization to which the decedent belonged before his death or the residents' committee or villagers' committee at his place of residence shall make the notification.

[Article 24] Anyone who has in his possession the property of the decedent shall take good care of such property and no one is allowed to misappropriate it or contend for it.

[Article 25] A successor who, after the opening of succession, disclaims inheritance should make known his decision before the disposition of the estate. In the absence of such an indication, he is deemed to have accepted the inheritance.

A legatee should, within two months from the time he learns of the legacy, make known whether he accepts it or disclaims it. In the absence of such an indication within the specified period, he is deemed to have disclaimed the legacy.

Shanghai Landing Law Offices

[Article 26] If a decedent's estate is partitioned, half of the joint property acquired by the spouses in the couse of their matrimonial life shall, unless otherwise agreed upon, be first allotted to the surviving spouse as his or her own property; the remainder shall constitute the decedent's estate.

If the decedent's estate is a component part of the common property of his family, that portion of the property belonging to the other members of the family shall first be separated at the time of the partitioning of the decedent's estate.

[Article 27] Under any of the following circumstances, the part of the estate affected shall be dealt with in accordance with statutory succession:

(1) where inheritance is disclaimed by a testamentary successor or the legacy is disclaimed by a legatee;

(2) where a testamentary successor is disinherited;

(3) Where a testamentary successor or legatee predeceases the testator;

(4) Where an invalidated portion of the will involves part of the estate; or

(5) Where no disposition is made under the will for part of the estate.

[Article 28] At the time of the partitioning of the estate, reservation shall be made for the share of an unborn child. The share reserved shall, if the baby is stillborn, be dealt with in accordance with statutory succession.

[Article 29] The partitioning of a decedent's estate shall be conducted in a way beneficial to the requirements of production and livelihood; it shall not diminish the usefulness of the estate.

If the estate is unsuitable for partitioning, it may be disposed of by such means as price evaluation, appropriate compensation or co-ownership.

[Article 30] A surviving spouse who re-marries is entitled to dispose of the property he or she has inherited, subject to no interference by any other person.

[Article 31] A citizen may enter into a legacy-support agreement with a person who, in accordance with the agreement, assumes the duty to support the former in his or her lifetime and attends to his or her interment after death, in return for the right to legacy.

A citizen may enter into a legacy-support agreement with an organization under collective ownership which, in accordance with the agreement, assumes the duty to support the former in his or her lifetime and attends to his or her interment after deah, in return for the right to legacy.

[Article 32] An estate which is left with neither a successor nor a legatee shall belong to the state or, where the decedent was a member of an organization under collective ownership before his or her death, to such an organization.

Shanghai Landing Law Offices

[Article 33] The successor to an estate shall pay all taxes and debts payable by the decedent according to law, up to the actual value of such estate, unless the successor pays voluntarily in excess of the limit.

The successor who disclaims inheritance assumes no responsibility for the payment of taxes and debts payable by the decedent according to law.

[Article 34] The carrying out of a legacy shall not affect the payment of taxes and debts payable by the legator according to law.

CHAPTER V SUPPLEMENTARY PROVISIONS

[Article 25] The people's congress of a national autonomous area may, in accordance with the principles of this Law and the actual practices of the local nationality or nationalities with regard to property inheritance, enact adaptive or supplementary provisions. Provisions made by autonomous regions shall be reported to the Standing Committee of the National People's Congress for the record. Provisions made by autonomous prefectures or autonomous counties shall become effective after being reported to and approved by the standing committee of the people's congress of the relevant province or autonomous region and shall be reported to the Standing Committee of the National People's Congress for the reacord.

[Article 36] For inheritance by a Chinese citizen of an estate outside the People's Republic of China or of an estate of a foreigner within the People's Republic of China, the law of the place of domicile of the decedent shall apply in the case of movable property; in the case of immovable property, the law of the place where the property is located shall apply.

For inheritance by a foreigner of an estate within the People's Republic of China or of an estate of a Chinese citizen outside the People's Republic of China, the law of the place of domicile of the decedent shall apply in the case of movable property; in the case of immovable property, the law of the place where the property is located shall apply.

Where treaties or agreements exist between the People's Republic of China and foreign countries, matters of inheritance shall be handled in accordance with such treaties or agreements.

[Article 37] This Law shall go into effect as of October 1, 1985.

Date Created
November 2011
Author
admin

Shanghai Landing Law Offices