

On the Production of Estate Inventory in the Civil Code—A Comparative Perspective between China and Foreign Countries

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Abstract: Article 1147 of the Civil Code of the People's Republic of China establishes a new system of estate administrator, which requires the estate administrator to "clean up the estate and make an inventory of the estate". By comparing the specific rules of different countries or regions on the preparation of estate inventory, we analyze the problems in China in terms of the subject of estate inventory, the period of its preparation, the object of submission, the subject of inspection, and the supervision and responsibility of the administrator's inventory preparation, and put forward suggestions and measures for the improvement of estate inventory preparation.

1. Introduction

With economic development, disputes involving inheritance are currently popping up in China, and the handling of the inheritance in question directly involves personal interests. General Secretary has repeatedly mentioned in the report of the 20th National Congress that in the process of comprehensively following the rule of law, the people-centered development ideology should be adhered to. In past judicial practice, such as the Hou family inheritance lawsuit, was the fact that Hou Yaowen did not leave a bequest agreement or a will during his lifetime.[1] In contrast, Nina's (Hong Kong) estate dispute, which has been jokingly described as "the best legal propaganda film for estate cases," was the subject of a 362-page judgment by the High Court of Hong Kong on the distribution of Nina's estate to whom and in what amounts.[2]

When the keyword "estate list" was entered on the Chinese Judicial Documents website, 568 documents were retrieved, and the number of documents was 395 after the tags "estate division" and "inheritance" were added.[3] According to the above data, the production of estate lists is still a relatively unfamiliar field in the perception of the Chinese public and the improvement of the rules for the production of estate lists is an important guidance for the judicial practice after the Civil Code comes into effect.

2. Identification of the concept and relationship between estate administrator and estate inventory

2.1 Definition of estate administrators

Compared to the expression "administrator of the estate" used in the Civil Code of China, the inheritance system in Hong Kong is divided into "executor", "administrator of the estate", who shall preserve and manage the decedent's estate; Article 2241 of the Portuguese Civil Code requires an "administrator" to take care of and administer the decedent's estate;[4] Articles 1960 of the German Civil Code refer to those who have temporary custody of the estate as "curators of the estate"; The Japanese Civil Code is unique in that it provides that the person who administers the estate is the "guardianship supervisor".[5]

2.2 Definition of heritage list

Modern civil codes have provisions for the preparation of heritage inventories. In 1790, the French National Assembly established the institution for the protection of estates and created the "Inventory of Estates".[6] Under the Justinian Empire, the heir had 60 days from the time he became aware of his right to inherit to complete the inventory of the decedent's estate. The French Civil Code, the German Civil Code and the Japanese Civil Code refer to the inventory of the estate as the "inventory of the estate"[7]; The Italian Civil Code is unique in referring to the document recording the particulars of the estate as a "document of record".[8]

2.3 Discerning the relationship between the estate administrator and the estate inventory

The French Civil Code requires the administrator to make an "inventory of the estate" after taking an inventory;[9] the Italian Civil Code requires the "executor" to deliver a "record document" to each decedent after the division of the property; and the German Civil Code requires the "curator of the estate" to prepare a "record document" within a specified period of time. The Swiss Civil Code, like the above-mentioned countries, requires the "inventory of the estate" to be submitted to the estate court for examination.[10] The primary duty of the estate administrator in our Civil Code is also to make an inventory of the estate. In order to avoid confusion, the following national expressions for "administrator" and "inventory" are collectively referred to as "administrator" and "inventory".

3. Comparison of the subjects of heritage list production

3.1 Subjects for the production of national (regional) heritage inventories

The Italian Civil Code stipulates that the only subject to make the inventory of the estate is the heirs of the estate;[11] Articles 2002 and 2003 of the German Civil Code agree that both the heirs and the estate court can be the inventory maker;[12] the Probate Ordinance of Hong Kong stipulates that all estates are first administered by a judicial permanent officer appointed by the High Court as the statutory administrator of the estate. administration.[13] A number of scholars have pointed out that professionals (organizations) such as law firms and notary publics who know the law or are neutral in their position serve as additional subjects of estate administrators.

3.2 The main body of our heritage list production

Article 1145 of the Civil Code considers that the heirs jointly act as administrators of the estate to make the inventory of the estate, which is equivalent to returning to the situation where the decedent In this case, the heirs will act as joint administrators of the estate, which is equivalent to returning to the situation where the decedent died without an administrator. The heirs are likely to hide the inheritance in their possession and they do not care whether the case is settled as soon as possible. Inheritance happens every day, but there are very few court decisions to search for. In China for thousands of years, the family concept of peace is the most important determines that the people's inheritance is generally automatic, and the people are not willing to take the road of litigation without a large subject matter dispute. The author believes that the law firm and the notary public should intervene in the administration of the estate as the second in line to make the inventory of the estate, if a suitable administrator cannot be selected according to Article 1145 of the Civil Code.[14]

4. Comparison of the period during which the estate list was made

Japan requires the heir to request the creation of an inventory to the local estate protection court and to deliver it to the local court as soon as the heir becomes aware of the commencement of the inheritance; Germany strictly adheres to the period designated by the civil procedure court for the creation of the inventory; and Italy provides that the point of departure for the creation of an inventory is the date on which it is ascertained whether the heir owns the estate.

Some scholars suggest that the law directly provides for a three-month deadline for the production of the inventory.[15] Others suggest that the period for the production of the inventory can be divided into a general period and an exceptional period based on the application of the general or exceptional circumstances provided by the law.[16] In particular, the general period is two months in France, one month to three months in Germany,[17] and three months in Switzerland, Italy and Japan.[18] The author believes that the administrator of the inheritance should make a list of the inheritance within three months from the date the administrator knew or should have known of the commencement of the inheritance. This will enable the interested parties of the estate to quickly understand the status of the estate and the debts of the decedent, and also facilitate the heirs to make timely decisions on whether to accept or renounce the inheritance.

5. Comparison of the objects of submission and subjects of access to the heritage list

5.1 Comparison of objects of heritage list submission

Article 1993 of the German Civil Code provides that the administrator of the estate may submit the prepared inventory to the estate court for review of its accuracy;[19] Article 924 of the Japanese Civil Code provides by the heir by the family court;[20] Articles 793 and 794 of the French Civil Code require the heir to submit the matter of the accurate inventory to the court secretariat in accordance with the statutory procedure;[21] Italy Article 484 of the Civil Code provides that upon completion of the inventory of the estate, declare the inventory to the notary or to the district court where the succession began and record it in the register of succession kept by the court.[22] The author believes that the administrator of the estate can submit a copy of the list to the other heirs first, and then file a lawsuit if the heirs dispute the list, which can effectively alleviate the contradiction of many cases in judicial practice.

5.2 Comparison of the subjects of heritage list access

The provisions on the subject of access to the inventory of the estate vary slightly from country to country (region to region). The Portuguese Civil Code and the French Civil Code both consider creditors and legatees as subjects of the right of access to the inventory;[23] Article 803 of the French Civil Code and Article 495 of the Italian Civil Code require the administrator of the estate to submit the completed inventory to the creditors and legatees;[24] The Probate and Administration of Estates Ordinance in Hong Kong, on the other hand, is more liberal in that any person can apply for access to the estate inventory by submitting a review fee.[25] One of the purposes of the construction of the estate inventory system is to equally protect the interests of all interested parties in the inheritance relationship.

6. Comparison of the subjects of supervision of the production of the heritage list and their responsibilities

Any legal activity is supported by legal values.[26] The norms of estate settlement should also reflect the legislative concepts of freedom, equality and justice pursued by our private law.

6.1 Heritage list monitoring subject

As for the supervision of the production of the estate inventory, the academic community mainly holds two views: one is that the heirs of the estate and the interested parties concerned are the natural supervisory subjects.[27] Another is that a full-time supervisory body such as the judiciary will supervise the estate administrator afterwards. The notary public can notarize the inventory of the inheritance upon the application of the heir. In judicial practice, the heir, accompanied by a notary public, checks whether the decedent has a bank safe deposit box and conducts an inventory of the property under custody and checks whether the decedent left a will.

In the author's opinion, the heirs and interested parties of the estate should be the subject of supervision of the production of the estate inventory. First of all, the scope of supervision can refer to the scope of shareholders' right of access and right to information in the Company Law.[28] The heirs can request the court to revoke and replace the estate administrator who fails to perform his duties according to the law and they can express their opinions on the distribution plan of the estate, etc. In the process of administering the estate, the administrator of the estate can learn from the legislative concept of corporate governance and design a system of "piercing the veil of the estate" that is in line with the national conditions of handling the estate in China.

6.2 Liability for negligence in the production of the estate inventory

The establishment of the estate administration organization presupposes the existence of the estate, which indicates the need to divide the property of the decedent and the heirs, when the division of the estate can continue only after the settlement of the estate's debts. This concept is in line with the design concept of corporate liquidation, and the supervision mechanism regarding the duties of the estate administrator can be based on the supervisory system of corporate liquidation. Some foreign scholars believe that the liquidation of debtors' assets should be simplified and accelerated due to the crisis following the SARS-CoV-2 epidemic.[29] Article 1019 of the Japanese Civil Code and Article 2331 of the Portuguese Civil Code both provide for dismissal from office for negligence in the production of estate inventories.[30] Article 2005 of the German Civil Code, which places great emphasis on the protection of creditors' interests, requires heirs to be indefinitely liable for the debts of the decedent in the event of misrepresentation in the inventory of the

estate.[31] In Hong Kong, it is stipulated that if the administrator of the estate illegally transfers or refuses to distribute the decedent's estate without legitimate reasons and excuses, he/she shall be held criminally liable according to law.[32]

7. Conclusions

The new system of estate administrators reflects the needs of China's contemporary socio-economic development, and the construction of rules involving the production of estate inventories needs to follow the freedom, equality and justice that the law should provide. Although the Civil Code provides for the specific requirement that the estate administrator shall make an inventory of the estate, there are still specific rules that need to be continued and supplemented for the production of the estate inventory.

References

- [1] Yi Zhe, Zhou Jie, Hong Yu. *The trial of Hou Yaowen's estate dispute* [J]. *In and out of court*, 2010, (11): 15-20.
- [2] Shi Hongping, Yu Xiao. *Case study - Nina's estate dispute* [J]. *Procuratorial Style*, 2010, (20): 10-12.
- [3] <https://wenshu.court.gov.cn/website/wen/>: Last accessed on November 17, 2022.
- [4] Translation by Tang Xiaoqing et al. *Portuguese Civil Code* [M]. Beijing: Peking University Press, 2009: 405.
- [5] Liu Shiguo et al. *Japanese Civil Code (2017 major revision)* [M]. Beijing: China Legal Publishing House, 2018:208.
- [6] <http://www.pku.tech/7319.html>: Last accessed December 1, 2022.
- [7] Translated by Chen Weizuo. *German Civil Code, 3rd edition* [M]. Beijing: Law Press, 2010: 595; Luo Jiezhen. *French Civil Code* [M]. Beijing: China Legal Publishing House, 2004: 605.
- [8] Chen Guozhu. *Italian Civil Code* [M]. Beijing: People's University of China Press, 2010: 143.
- [9] Luo Jiezhen. *French Civil Code* [M]. Beijing: China Legal Publishing House, 2004: 605.
- [10] Dai Yongsheng. *Swiss Civil Code* [M]. Beijing: China University of Political Science and Law Press, 2016: 195.
- [11] Chen Guozhu. *Italian Civil Code* [M]. Beijing: People's University of China Press, 2010: 138.
- [12] Translated by Chen Weizuo. *German Civil Code, 3rd edition* [M]. Beijing: Law Press, 2010: 567.
- [13] Wong Hongru. *A brief discussion of the historical development of the law on wills and estates in Hong Kong* [J]. *Legal Studies*, 2010, (1): 76.
- [14] "People's Republic of China" Notary Law Article 11 According to the application of natural persons, legal persons or other organizations, notary public institutions to handle the following notarial matters: ... (b) inheritance; (c) commission, declaration, gift, will, 2021.
- [15] Liang Huixing. *Proposed Draft of the Civil Code of China with Reasons (Inheritance Part)* [M]. Beijing: Law Press, 2013: 185-186.
- [16] Chen Wei, Liu Yujiao. *Research on the systematic construction of the inheritance list system of the Chinese Civil Code's inheritance section* [J]. *Modern Jurisprudence*, 2019, (5): 67.
- [17] Translated by Chen Weizuo. *German Civil Code* [M]. Beijing: Law Press, 2015:595.
- [18] Translated by Yu Haichong and Zhao Xixuan. *Swiss Civil Code* [M]. Beijing: Law Press, 2016: 205; translated by Chen Guozhu. *Italian Civil Code* [M]. Beijing: People's University of China Press, 2010: 100; Wang Aijun. *The Japanese Civil Code* [M]. Beijing: Beijing Law Publishing House, 2014: 147, 149.
- [19] Translated by Chen Weizuo. *German Civil Code* [M]. Beijing: Law Press, 2015:595.
- [20] Wang Aiqun. *The Japanese Civil Code* [M]. Beijing: Beijing Law Press, 2014: 149.
- [21] Luo Jiezhen. *French Civil Code* [M]. Beijing: China Legal Publishing House, 2004: 215-216.
- [22] Chen Guozhu. *Italian Civil Code* [M]. Beijing: People's University of China Press, 2010: 100.
- [23] Translation by Tang Xiaoqing et al. *Portuguese Civil Code* [M]. Beijing: Beijing University Press, 2009: 418.
- [24] Luo Jiezhen. *French Civil Code* [M]. Beijing: China Legal Publishing House, 2004: 217; Chen Guozhu. *Italian Civil Code* [M]. Beijing: People's University of China Press, 2010: 102.
- [25] Section 21 of the *Probate and Administration of Estates Ordinance, Chapter 10 of the Laws of Hong Kong*, 1971.
- [26] Chen Wei et al. *Research on the theory and practice of inheritance law in China* [M]. Beijing: China People's Public Security University Press, 2019. Project of Foreign Family Law and Women's Theory Research Center: 199.
- [27] Wang Changping and Wang Yong. *On the construction of the supervision mechanism of estate administrators* [J]. *Journal of Social*, 2014.
- [28] Sciences of Shanxi Higher Education Institution, 2014, (6): 64-65. Article 23 of the *Company Law of the People's Republic of China*.

- [29] Rafał Adamus. *Liquidation of the bankruptcy in Poland* [J]. *Bratislava Law Review*, 2020.
- [30] Wang Rongqing. *Compiled according to the revision of the Civil Code of Japan in 2018*.
- [31] Translated by Chen Weizuo. *German Civil Code, 3rd edition* [M]. Beijing: Law Press, 2015: 567.
- [32] Article 13 of the *Probate and Administration of Estates Regulations*, 1971.