

# The Protection of Creditors in China's Inheritance Activities

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**Abstract:** Although China has promulgated the “Inheritance Law” to solve the problems related to inheritance, the “Inheritance Law” only pays attention to the protection of the interests of heirs, but not creditors, so the protection of creditors' interests in inheritance has not been solved. The essence of inheritance notarization is to prove that the heir has the right to inherit the estate according to law, that is, the status of the estate after the occurrence of inheritance. The protection of creditors causes various problems under the condition of imperfect regulations. This paper puts forward some suggestions on the protection of creditors' interests from the aspect of perfecting the legal system.

## 1. Introduction

The protection of creditors' interests is an important content in the inheritance laws of various countries. In traditional Chinese society, inheritance is not only a habit, but also a legal act. The practical significance of inheritance far exceeds the significance of inheritance itself [1]. China's inheritance law has more specific and explicit provisions on the former issue, but there is only one principle for the latter issue, and it lacks operability. As a result, the interests of creditors are violated from time to time, and the basis for creditors to seek legal protection is lacking, the people's court is also difficult to rule due to the lack of legal norms [2]. How to protect, coordinate and balance the interest relationship between the heirs and the creditors of the decedent in the inheritance, and how to prevent the heirs and other interested parties from infringing on the interests of the creditors of the inheritance by taking advantage of their advantageous position in inheritance, is a problem worthy of in-depth consideration and research. In the current Inheritance Law, more attention is paid to the specific inheritance situation of the decedent and the abnormal distribution mode, while ignoring whether the decedent has debt situation [3]. Property in dynamic changes can be valued and impaired at any time. The defects of the current inheritance law have become more and more obvious. This paper tries to discuss the existing problems and application of the inheritance law.

## 2. The Relevant Provisions of the Current “Inheritance Law” on the Repayment of Debts of the Decedent

### 2.1 The Principle of Paying Off the Debts of the Decedent

Legally, the lawful personal property left by the decedent includes not only the lawful personal property owned by the decedent before his death, but also the creditor's rights and debts of the decedent before his death. The infringement was committed by the decedent himself before his death. Tort is committed by the decedent for the purpose of intentionally reducing the solvency of his estate. The consequences of the infringement committed during his lifetime were not revealed until the legacy was cleared up. If the amount exceeds the actual value of the estate, the successor shall not voluntarily repay it [4]. This principle of simultaneous inheritance of rights and obligations is called the principle of general inheritance, also called the principle of unlimited liability inheritance, which originated from Roman law. Judging from the provisions of Article 33 of China's Inheritance Law, China adopts the principle of limited inheritance. However, due to the general provisions and the lack of restrictions on heirs, the interests of creditors are often not fairly protected, resulting in an imbalance between the interests of heirs and creditors of the estate. The legal consequences of unlimited inheritance will arise according to law. Therefore, the adoption of

conditional limited inheritance system essentially means the recognition of two kinds of inheritance systems—limited inheritance and unlimited inheritance, and the recognition of heirs' right to choose unlimited inheritance, limited liability inheritance and waiver of inheritance. Successors can directly choose to abandon inheritance to avoid limiting the program cost under inheritance [5]. When the successor chooses to give up the debt, the court shall appoint an administrator to liquidate the estate so that the creditors can be paid off in proportion.

## **2.2 China's Inheritance Law Adopts the Principle of Limited Liability Inheritance**

Article 33, paragraph 1, of China's "Inheritance Law" stipulates: "Inheriting an estate shall pay off taxes and debts that the decedent shall pay according to law, and the payment of taxes and debts shall be limited to the actual value of his estate. The estate is first handed over to the administrator and executor of the estate, instead of directly entering the successor management link. The main purpose of this is to enable the administrator and executor to complete the management activities such as paying taxes, paying off debts and delivering bequests before the inheritance of the estate. At the same time, the provisions on the scope of active property are not comprehensive, the real right has not been explicitly included in the scope of the estate, and the creditor's rights are directly limited to the scope of "the subject of performance is finance", thus causing the current estate scope to be relatively narrow. The scope (amount) of liability for repayment is limited to the actual value of the decedent's estate. For taxes and debts exceeding the actual value of the estate, the heir may not repay them, except if the heir voluntarily pays them. Therefore, China should adhere to the principle of limited inheritance and focus on improving the relevant provisions of conditional limited inheritance, i.e. improving the procedural provisions for heirs to enjoy the inheritance rights of the remaining property after the debts are paid off, without having to bear the responsibility for paying off debts beyond the scope of the inheritance. The object of this kind of infringement is not the creditor of the decedent, but the creditor of the heir or legatee. If there is only testamentary succession and bequest, the testamentary successor and legatee shall pay off the income in proportion [6].

## **3. Lack of System to Protect Creditors' Interests in Inheritance**

At present, the interests of many creditors of the decedent are infringed because of various factors, and the most important reason is that there are some deficiencies in the legislation of creditor's interests protection in our country's inheritance. The specific defects are shown in the following aspects:

### **3.1 The Scope of the Estate is Too Narrow**

In order to better protect the interests of the heirs and creditors, it is necessary to clearly define the scope of the decedent's estate. Among them, the scope of heritage stipulated in our country's current legislation includes only positive property, but not negative property. Infringements committed by the decedent before his death. It refers to the decedent's behavior of intentionally and abnormally disposing of his property for the purpose of evading debts before his death, thus reducing the solvency of his legacy debts [7]. Under the direct inheritance system, the heir can directly obtain the property ownership after the decedent dies, thus assuming the rights and obligations related to the property. Among them, in the process of fully implementing the principle of limited liability inheritance, it is easy to cause the successor to only safeguard his own inherited interests, thus unable to protect the specific creditor's rights of the decedent's creditors. Even if the heir is found to transfer or conceal the estate, it will not affect the heir's limited liability to pay off the debts, thus making the malicious heir unable to get legal sanctions. This requires us to re-examine the relevant provisions in the "Inheritance Law" and revise and improve the legal provisions from the theoretical level according to the needs of practice to better protect citizens' legal rights.

### **3.2 Equal Protection of the Interests of Heirs and Creditors Has Not Yet Been Taken into Account**

Article 33, paragraph 1, of China's "Inheritance Law" stipulates: "Inheriting an estate shall pay off taxes and debts that the decedent shall pay according to law, and the payment of taxes and debts shall be limited to the actual value of his estate. If the amount exceeds the actual value of the estate, the successor shall not voluntarily repay it "[8]. In addition to being influenced by the traditional inheritance concept of the common people and the relatively single heritage in the past, the creditor's rights and debts among people are relatively simple, and the infringement of creditors' interests in inheritance is not very prominent, the more important reason is the lack of legislation. The serious lag of law is still directly related to its essence. Legislation needs to be continuously improved to adapt to economic and social development. In the Inheritance Law, the debt repayment of the decedent mainly adopts the unconditional and limited liability inheritance system. According to the analysis of this principle, the heir can assume the corresponding liability of the estate debt according to the scope of the inheritance, thus leaving the heir in a relatively advantageous position while the estate creditor is always in a disadvantageous position. Therefore, the inheritance relationship must be determined within a reasonable time so as to settle the creditor-debtor relationship left by the decedent as soon as possible [9]. As can be seen from the above legal provisions, our country adopts the principle of limited inheritance, but limited inheritance in our country is unconditional, that is, the law does not require the successor to make an inventory of the estate or otherwise make an expression of intention, nor does it need special procedures. There is no general inheritance system in our country's inheritance law, and its value and function have been completely ignored.

### **3.3 The Time Limit for Accepting and Renouncing Inheritance Has Not Been Clearly Defined**

The time limit for accepting inheritance and abandoning inheritance has not been clearly stipulated in the Inheritance Law, which means, to a certain extent, if the successor does not give up inheritance directly after the beginning of inheritance, the property rights and property obligations of the decedent will be directly attributed to the successor, while creditors can only apply to the successor for claiming rights in inheritance. The disadvantages of this regulation are obvious: first, it is not conducive to the management and utilization of heritage; Second, it affects the creditor's exercise of rights and is not conducive to the protection of creditors' interests. There is no announcement system to clear up the debts of the estate. As well as the scope of the estate debts, the sequence of paying off the estate debts, the responsibilities of each joint heir to the estate debts, how to deal with the uncertain estate debts, etc. The current notarization laws and regulations in our country do not stipulate the procedures for paying off the debts left by the decedent. Therefore, notarization institutions generally do not require the applicant to provide proof of the debts of the decedent. Once the heir is unwilling to exercise his rights, it will lead to the creditor in the inheritance difficult to claim his creditor's rights to the heir with certain obligations in time [10]. As a result, the decedent's estate's ability to repay debts is weakened and the realization of the creditor's specific creditor's rights is not guaranteed, which violates the principle of fairness and equality in civil law.

### **3.4 Provisions on Debt Repayment in Inheritance Lack Operability**

Article 33, paragraph 1, of China's "Inheritance Law" stipulates: "Inheriting an estate shall pay off taxes and debts that the decedent shall pay according to law, and the payment of taxes and debts shall be limited to the actual value of his estate. According to the provisions of Article 33 of China's Inheritance Law, the estate should be used first to pay taxes owed by the decedent before his death and to pay off debts. However, the Inheritance Law does not stipulate how to deal with other illegal acts such as distributing the estate without paying off debts first or using the estate first to pay off the debts of the decedent himself. Cause creditors to be unable to realize the priority of compensation for specific heritage; Failure to fulfill the obligation of demand leads to creditors not obtaining timely repayment of debts without their knowledge. The law stipulates not only "what

should be done” but also “what if not”. Therefore, relief measures are an indispensable part of legal norms. Otherwise, the previous provisions have no foothold and are at most a legal declaration. Therefore, we should perfect the way heirs choose to inherit.

#### **4. Suggestions on Protecting Creditors' Interests in Inheritance**

##### **4.1 Build a Sound System of Estate Managers**

In the process of building a perfect system of estate managers, it should include the selection of estate managers, the management responsibilities of estate managers and the rights and responsibilities of managers respectively. If the successor fails to make an express choice within the statutory time limit, it is presumed to be unlimited liability inheritance according to law, and it shall bear unlimited liability for paying off the debts of the decedent before his death. In addition, heirs can voluntarily choose to repay debts exceeding their share of the estate. If the heir abandons his inheritance, he will not be liable for the taxes and debts that the decedent should pay. The successor shall recommend the administrator or the local neighborhood committee shall directly decide the administrator. Secondly, clearly define the main responsibilities of the estate manager. Although the heir claims that the estate is insufficient to pay off the debts, if he maliciously conceals the estate or disposes of the estate and damages the interests of creditors, as punishment, he shall lose the limited inheritance interest and assume unlimited liability for paying off the debts of the estate. Therefore, China should actively explore the establishment of a sound heritage management system. The administrator refers to the person who is responsible for the preservation and management of the deceased's estate. After the succession begins, the administrator of the estate shall be determined in time, and his duties and responsibilities shall be determined to ensure the integrity of the estate.

##### **4.2 Reasonably Increase the Announcement Procedures for Searching Heirs and Creditors in Inheritance**

Because our heirs and the creditors of the decedent do not have a comprehensive understanding of the relevant information, it is difficult to naturally protect their legitimate interests. Therefore, it is necessary to reasonably increase the announcement procedures for searching heirs and creditors in inheritance. According to this system, the heir cannot directly contact and inherit the estate, and what he inherits is positive property, so he does not need to use his own property to pay off the debts of the decedent. The existence of the right of inheritance option gives the heir a certain degree of autonomy, which can choose limited inheritance, abandonment of inheritance or unlimited inheritance. The negative inheritance of the decedent does not necessarily fall on the heir. If the successor violates this principle and cheats creditors, he shall bear the adverse legal consequences. The principle of honesty and credit should be embodied in the design of inheritance system, especially the system of protecting creditors' interests. Therefore, in addition to stipulating that creditors to be identified should be notified, an estate public notice system should also be established to inform creditors of the decedent's death. In this way, all creditors can be placed on an equal footing and realize their claims.

##### **4.3 To Establish a Liquidation System for the Third Party's Heritage**

In order to effectively protect the interests of creditors in inheritance, a third-party liquidation system can be established. Among them, the main purpose of establishing the third-party heritage liquidation system is to better protect citizens' private property and fully highlight the fairness of the law. At the same time, indirect inheritance is more reasonable and indemnificatory than direct inheritance in the protection of the interests of the estate creditors. Dividing the estate after paying off the debts can avoid unnecessary disputes between the estate creditors and the heirs. The making of the estate inventory is the main premise to define the scope of the heir's estate, to divide the heir's liability for paying off debts, and to distinguish between the inherent assets and the estate. Under the direct inheritance system, the basic way to solve this problem is to change the unconditional limited liability inheritance system of the current inheritance law, establish the conditional limited

inheritance system, and grant creditors the right to claim for inheritance management. Creditors of the decedent can apply for the declaration of the estate so as to make the estate completely out of the control of the heir, thus preserving the estate to the greatest extent. According to the liquidation system of the third party's heritage, the liquidation of the heritage can be carried out more fairly and transparently, and the subjects of inheritance can be defined, thus achieving the purpose of protecting the interests of creditors in inheritance.

## 5. Conclusion

Perfecting the protection of the interests of the decedent's creditors reflects its necessity both from the perspective of the balance of interests between creditors and heirs and from the perspective of legal fairness and justice. The protection of creditors' interests is fundamentally a social and economic order issue. This problem exists in all fields of social and economic life, especially in the field of property inheritance. There are still some deficiencies in the provisions on the debts of the decedent in China's Inheritance Law, which have seriously affected their legitimate rights and interests. It is very necessary to conduct an in-depth study on this issue, which not only theoretically improves China's inheritance system, but also provides a solution to the disputes between the decedent's creditors and the heir in judicial practice. Therefore, it is necessary to formulate perfect legislation and system to make up for it, instead of simply putting the inheritance that no one has inherited into the state or collective ownership, so as to more effectively protect the interests of creditors in inheritance.

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