

How The Civil Code Affects Family Wealth Management

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Ting ZHANG - Profile

- Visiting Fellow of University of Cambridge
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- Professional Fellow Selected by the U.S. Department of State and the National Committee on United States-China Relations
- PRC Bar Qualification
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Amy ZHANG - Profile

- Amy is a full member (TEP) of STEP (the Society of Trust and Estate Practitioner) and graduated from King's College London and later obtained Masters in Law. She has over 15 years of experience working in wealth management and wealth planning and helped many South East Asian families on their succession planning and prominent Chinese families on their cross-border wealth planning.
- She is familiar with wealth planning tools including insurance, Will, Foundation and in particular offshore trust set up including Discretionary Trust, pre-IPO trust, Foreign Grantor Trust, Granny Trust, Employee Share Option Plan Trust, Insurance Trust, Will Trust, Charitable Trust and Asset Protection Trust as well as Estate Administration covering jurisdiction of Hong Kong, Singapore, BVI, Jersey, Guernsey and the Bahamas.
- She is fluent in Mandarin, Cantonese and English both in speaking and writing.

The promulgation of the "*Civil Code*" has great significance in China's legislative process. It was revised on the basis of the original "*Marriage Law*", "*Adoption Law*" and "*Inheritance Law*" into "*Marriage and Family Part*" and "*Inheritance Part*". The promulgation of the "*Civil Code*" will have a profound impact on the wealth inheritance of high-net-worth clients in China.



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Part 1. Marriage and Family

Part 1. Marriage and Family

There are 35 legislative innovations including 28 main points in the Marriage and Family Part of the Civil Code. There are major 12 points that may have an impact on wealth management.

1. The promotion of “Good Family Style ” into the code
2. Deletes the content of “Birth Control”, the end of Birth Control Policy?
3. Legally confirms the scope of “Relatives”, “Close Relatives” and “Family Members”
4. Expands the scope of applicant for identification of parent-child relationship, and strengthen the protection of the rights and interests of children born out of wedlock
5. Major illnesses are no longer the reasons for prohibited marriage and invalid marriages.
Failure to tell truthfully that a major illness is the cause of a revocable marriage

Part 1. Marriage and Family

6. Clarifies the scope of Conjugal Property and Conjugal Debt
7. Two situations in which the conjugal property can be divided during marriage
8. Clarifies that husband and wife enjoy the right of Daily Family Agency
9. Cool-off period for divorce, set buffer time for dissolution of marriage
10. Strengthen the impact of separation on marital relations. Separation for one year after the divorce application was rejected, which is stipulated as the reason for granting divorce
11. The principle of taking care of no-fault party in the division of divorced property
12. Divorce compensation relief is no longer limited to "divided property" marriage

Part 1. Marriage and Family

Point 1.

The Promotion Of “Good Family Style ” Into The Code

Article 1043 *A family shall establish a good family style, carry forward family virtues and attach importance to the development of family civilization.*

Husband and wife shall be loyal to each other, respect each other, and care for and love each other; family members shall respect the old and cherish the young, help each other, and maintain the marriage and family relationship characterized by equality, harmony and civility.

- Reflects the legislator's respect for the ethics of marriage and family, encourages and promotes people to cultivate family style;
- Family Value Inheritance Concept of High Net Worth Customers

Part 1. Marriage and Family

Point 2. Delete The Content Of “Birth Control”

Delete the content of “Birth Control”. The end of Birth Control Policy?

- The law is not yet clear that citizens can have three children or more;
- The Civil Code consciously downplays the provisions of birth control. From the general trend, it is the consensus of the people to cancel birth control policy.

Part 1. Marriage and Family

Legally Confirms The Scope Of “Relatives”,

Point 3. “Close Relatives” And “Family Members”

Article 1045 *A person's relatives shall include his/her spouse, blood relatives and in-laws.*

A person's spouse, parents, children, siblings, maternal and paternal grandparents, as well as maternal and paternal grandchildren shall be his/her close relatives.

A person's spouse, parents, children and other close relatives living together shall be his/her family members.

- It is clear that the spouse, three generations of direct blood relatives, and blood relatives of the same generation belong to close relatives.

Part 1. Marriage and Family

Legally Confirms The Scope Of “Relatives”,

Point 3. “Close Relatives” And “Family Members”

- The definition of **Family Members** may affect the scope of certain legal responsibilities. For example:
 - The family member who is abused has the right to request the Public Security Organ to impose administrative penalties on the perpetrators in a divorce proceeding;
 - In the event of abandonment of family members, a divorce should be sentenced;
 - If abandonment of a family member constitutes a crime, he shall be found guilty.
- The definition of **Family Members** may affect the scope of right subjects. For example,:
 - Can surrogate children, same-sex couples, relatives not living together, or relatives in-laws be the beneficiaries of domestic family trusts?

Part 1. Marriage and Family

Legally Confirms The Scope Of “Relatives”,

Point 3. “Close Relatives” And “Family Members”

The impact of the definition of “Family Members” provided in Article 1045 of the Civil Code on the scope of beneficiaries of domestic family trusts

"Notice on Strengthening the Regulation of Trust Supervision during the Transition Period of Asset Management Business" No. 37 of the China Insurance Regulatory Commission stipulates that:

***Family Trust** refers to the trust company accepts the entrustment of a single individual or family, with the protection, inheritance and management of family wealth as the main trust purpose and provides trust services for customized affairs with management and financial services such as property planning, risk isolation, asset allocation, children's education, family governance, and public welfare (charity) undertakings. The amount or value of the family trust property shall not be less than 10 million yuan. The beneficiaries shall include **Family Members**, and the client shall not be the sole beneficiary.*

Part 1. Marriage and Family

Legally Confirms The Scope Of “Relatives”,

Point 3. “Close Relatives” And “Family Members”

The impact of the definition of “Family Members” provided in Article 1045 of the Civil Code on the scope of beneficiaries of domestic family trusts

- The Notice does not define “Family Member”. The Notice is aimed at: first, inheritance of wealth; second, to prevent improper transfer of benefits between the client and the beneficiary.
- The term of family trust can be inter-generational and can last for several decades to hundreds of years. It is a one-time, comprehensive consideration of future multi-generation arrangements. The thinking dimension can be much longer than the time dimension of the Civil Code that legislators were thinking about the marriage and inheritance systems.
- However, we believe that, in practice, it is not entirely reasonable to apply the definition of “Family Member” in the Civil Code to a family trust. It is also necessary to further determine whether the true relationship between the client and the beneficiary is reasonable and meets the purpose of the trust under the Notice.
- Therefore, according to different situations, we recommend the customers with special needs to set up an offshore trust in the verified jurisdiction.

Part 1. Marriage and Family

Legally Confirms The Scope Of “Relatives”,

Point 3. “Close Relatives” And “Family Members”

Does “Family Member” include surrogate children?

Article 1045, for the purpose of this Part, "children" include children born in wedlock, children born out of wedlock and adopted children, as well as step-children who are in supporting relations with the decedent.

- The Civil Code does not provide the legal status of surrogate children. Whether the surrogate child can become the beneficiary under the domestic family trust, it needs to be treated differently according to whether there is a parent-child relationship between them.
 - Current judicial practice and jurisprudence believe that a surrogate mother and child belong to the natural blood relationship, and they enjoy all rights as mothers to their children, and should also fulfill their obligations as mothers. The child's biological father (ie, the provider of sperm) has a legal maintenance obligation.
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- ✓——Genetic father and surrogate child are defined as family members
 - ✓——Genetic mothers and surrogate child are not defined as family members

Part 1. Marriage and Family

Legally Confirms The Scope Of “Relatives”,

Point 3. “Close Relatives” And “Family Members”

Does “Family Member” include Same-sex Couples

- Although there was a call for "legalization of same-sex marriage" during the revision of the Civil Code, the Civil Code did not put a bet on this issue. Therefore, the definition of “family member” in the Civil Code does not include same-sex couples.
- ✓——We may recommend overseas trust

Part 1. Marriage and Family

Point 4.

Expand the scope of applicant for identification of parent-child relationship;
Strengthen the protection of the rights of children born out of wedlock

Article 1073 A father or mother who has any justifiable objection to the parent-child relationship may bring a lawsuit to the competent people's court to request for affirmation or denial of the parent-child relationship.

An adult child who has any justifiable objection to the parent-child relationship may bring a lawsuit to the competent people's court to request for affirmation of the parent-child relationship.

- It gives the adult children the right to file a complaint regarding whether they have a parent-child relationship with one of their parents. For children born out of wedlock, they could claim certain rights (such as inheritance rights) only by confirming the existence of the parent-child relationship.
- **In Practice:**
 - ✓ Father: to confirm that there is a parent-child relationship between the child born in wedlock or out of wedlock;
 - ✓ Mother: It is generally required to confirm that a child born out of wedlock has a parent-child relationship with the father he points to;
 - ✓ Adult children: The court generally disagrees with the denial of the parent-child relationship, because the parenting relationship is already a fact after the child becomes an adult.

Part 1. Marriage and Family

Point 5.

Major illnesses are no longer the reasons for prohibiting or invalid marriages.

Failure to tell truthfully that a major illness is the cause of a revocable marriage

Provisions:

Article 1048 No marriage may be contracted if the man and the woman are lineal relatives by blood, or collateral relatives by blood up to the third degree of kinship.

Article 1051 the marriage shall be invalid if:

- (1) either of the married parties commits bigamy;*
- (2) there is the prohibited degree of kinship between the married parties; or*
- (3) one of the married parties has not reached the statutory age for marriage.*

*Article 1053 Where a party suffers from a **major illness**, it shall truthfully notify the other party before the marriage registration; failing which the other party may file a petition with the people's court to revoke the marriage.*

Part 1. Marriage and Family

Point 5.

Major illnesses are no longer the reasons for prohibiting or invalid marriages.
Failure to tell truthfully the major illness is the cause of a revocable marriage

Key Points:

- Only the court has the right to revoke the marriage, that is, if the party requests the marriage to be revoked, it can only be done through litigation, not through the Home Affairs Department or other institutions.
- The scope of Major Diseases. The Civil Code has no clear definition of the scope of "major diseases". Whether the illness of the parties constitutes a major illness to revoke the marriage may become the focus of the disputes.

Part 1. Marriage and Family

Point 6. Clarify the scope of Conjugal Property and Conjugal Debt

Expands the Scope of Conjugal Property

Article 1062 The following property acquired by the husband and the wife during the existence of their marriage relations shall be their joint property and in their joint possession:

- (1) wages, bonuses and labor remuneration;*
- (2) proceeds of production, business operation and investment;*
- (3) incomes of intellectual property rights;*
- (4) property acquired from inheritance or as a gift, with the exception of such property as stipulated by the provisions of the third item of Article 1063 herein; and*
- (5) other property which should be in their joint possession.*

Husband and wife shall enjoy equal rights in the disposition of their joint property.

Part 1. Marriage and Family

Point 6. Clarify the scope of Conjugal Property and Conjugal Debt

Expands the Scope of Conjugal Property

Investment Income

The income obtained by a spouse using Joint Property for investment;

The income obtained by a party using personal pre-marital or post-marital property for investment during the marriage.

For Example:

- Dividends and equity appreciation of the company's equity after marriage but the equity held before marriage;
- The income generated after marriage by pre-marital wealth management products, funds, stocks, and investment.

The advantage of trust:

Premarital property protection to avoid special purpose marriage.

Part 1. Marriage and Family

Point 6. Clarify the scope of Conjugal Property and Conjugal Debt

Expands the Scope of *Conjugal Debt*

Article 1064 Debts that fall under any of the following circumstances shall be joint debts of husband and wife: debts incurred by the common expression of intention by husband and wife, such as by joint signatures of husband and wife or retroactive recognition by husband or wife; or, debts incurred by husband or wife in his/her own name for daily family life needs during the period of marriage.

Debts incurred by husband or wife in his/her own name during the period of marriage that are in excess of daily family life needs shall not be joint debts of husband and wife, unless the relevant creditors are able to prove that the debts are used for the joint life or joint production and business operation of husband and wife, or are based on the common expression of intention by husband and wife.

Conjugal Debt includes the following three scenarios:

- The husband and wife "shared debts which was signed together", or one party later acknowledged. It is emphasized that the spouse has the right to know and consent.
- The debts borne by one spouse in the name of an individual but for the family's daily life needs;
- The debt owed by one spouse in the name of an individual in marriage exceeds the daily needs of the family. However, the creditor can prove that the debt is used for the joint life or joint production and business operation of husband and wife.

Part 1. Marriage and Family

Point 6. Clarify the scope of Conjugal Property and Conjugal Debt

Expands the Scope of *Conjugal Debt*—— “Debt for Family Daily Needs”

What is debt for Family Daily Needs :

- **Uses:** food, clothing, housing, transportation, medical, education, entertainment activities and various services;
- **Amount:** needs to be considered combining with the debtor’s household income, consumption level, lifestyle, etc.;
- Should not exceed the family's annual income

Burden of Proof:

- Creditor takes the preliminary burden of proof;
- If the spouse believes the debt is not the conjugal debt, he shall take the burden of proof, such as, the creditor knowing the couple is separating or during a divorce proceeding, or there is other agreement between the creditor and the debtor’s spouse.

Part 1. Marriage and Family

Point 6. Clarify the scope of Conjugal Property and Conjugal Debt

Expands the Scope of *Conjugal Debt*—— “Debt for Family Daily Needs”

The following circumstances may be deemed to exceed Family Daily Needs:

- The amount is too large, obviously exceeding the debtor's household income and daily household consumption level;
- The creditor knows or should know that the debtor has bad habits, such as gambling or drug addiction;
- The creditor knows or should know that the debtor has a large amount of debt and cannot repay it;

Debt that does not belong to the Family Daily Needs:

- For investment;
- Used for guarantee;
- Large consumption;
- Transfer money to relatives and friends without legal obligations

Part 1. Marriage and Family

Point 6. Clarify the scope of Conjugal Property and Conjugal Debt

Expands the Scope of *Conjugal Debt*—— “Debt for Family Daily Needs”

What is a “Living Together”::

- Common Consumption;
- Accumulate Common Property;

Creditor’s Burden of Proof:

- The debtor has purchased a large amount of property or has a large amount of expenditure and cannot explain the source of funds;
- The property purchased by a party before marriage is converted into the conjugal property;
- Debt for maintenance, support, medical treatment, education;
- If the husband and wife agree on a conjugal debt;
- Others;

Part 1. Marriage and Family

Point 6. Clarify the scope of Conjugal Property and Conjugal Debt

Expands the Scope of *Conjugal Debt*—— “Debt Used for Co-operation”

What’s Co-operation:

- Jointly decide on operation matters;
- One party authorizes his spouse to decide on operation matters;
- The debtor's spouse benefits from operation

Article 56 The debts of an individual business shall be secured with the individual's property if the business is operated by the individual or with the family's property if the business is run by the family. Where it is impossible to make such distinction, the debts shall be secured with the family's property.

Part 1. Marriage and Family

Point 6. Clarify the scope of Conjugal Property and Conjugal Debt

Expands the Scope of *Conjugal Debt*—— “Debt Used for Co-operation”

“Co-operation” :

- If the **legal representative or controlling shareholder** of the company provides loans or guarantees to the company in the name of the individual during the marriage-----if the debt or guarantee is closely related to **their life or operating**, the debt is deemed to be the conjugal debt;
- If the legal representative and controlling shareholder of **the husband and wife’s company** provide loans or guarantees to the company in the name of the individual during the marriage----the debt is recognized as conjugal debt;
- If a spouse, as a shareholder of a **one-person limited company**, provides loans or guarantees to the company in the name of an individual during marriage-----if the spouse **participates in or is benefited** from the production and operation, the debt shall be recognized as conjugal debt;

Part 1. Marriage and Family

Point 6. Clarify the scope of Conjugal Property and Conjugal Debt

Expands the Scope of *Conjugal Debt*—— “Debt Not Used for Living Together or Co-operation”

- The family has no large expenditures during the period of debt;
- The debtor is used for illegal activities such as gambling and drug use;
- Without the consent of the spouse, unilaterally used for relatives and friends without legal support obligations;
- The spouse is **unaware** of the debtor’s production and operation activities and was not benefited from it;
- Others

Part 1. Marriage and Family

Point 6. Clarify the scope of Conjugal Property and Conjugal Debt

Expands the Scope of *Conjugal Debt*——Creditors Can Prove That Both Spouses Have a Common Expression of Debt

- Signed by one party which was implied by the spouse;
- One party signs and transfers money to his spouse;
- If the spouse is at the scene, no objection;

Article 140 An actor may express his intention explicitly or impliedly. Silence may be regarded as expression of intention only if it is so stipulated by law or agreed by parties concerned, or if it is in line with the transaction practices of the parties concerned.

Part 1. Marriage and Family

Point 6. Clarify the scope of Conjugal Property and Conjugal Debt

Expands the Scope of *Conjugal Debt*—How to Pay Off

Article 1089 At the time of divorce, the joint debt of the couple shall be paid off jointly by them. Where their joint property is insufficient to pay off the debts, or the property is in their separate possession, the two parties shall reach agreement on payment; if they fail to reach an agreement, the People's Court shall make a judgment.

Article 307 In external relations, the co-owners shall have joint and several claims arising from the immovables or movables owned by them and bear joint and several liability for the debts arising likewise, except where laws provide otherwise or where a third party is aware that the co-owners are not associated in the aforesaid manner; in internal relations, unless otherwise agreed upon by the co-owners, the co-owners who share the ownership shall enjoy the claims and bear liability for the debts in proportion to the amounts of their respective shares, while the joint owners shall jointly enjoy the claims and bear liability for the debts. Where a person who shares ownership pays debts in excess of his share, he shall have the right to recourse from the other co-owners.

➤ Conjugal Debt----Joint Liability of Both Parties----Internal Recovery of Both Parties

Part 1. Marriage and Family

Point 6. Clarify the scope of Conjugal Property and Conjugal Debt

Expands the Scope of *Conjugal Debt*——Risks

- Either party borrows money, and the spouse transfers and hides the property together;
- If the husband and wife raise a debt, the debtor and the creditor jointly prove that it is a conjugal debt;
- The problem of "being in debt", it depends on family relations and family style construction.

Part 1. Marriage and Family

Point 6. Clarify the scope of Conjugal Property and Conjugal Debt

Expands the Scope of *Conjugal Debt*——Measures

When creditors make loans, they need focus on:

- To investigate the debtor's ability to repay;
- What is the use of debt;
- The debtor's spouse's consent;
- Financial situation of the family;
- To make clear that whether the debt is a personal debt or a conjugal debt;
- Debtor couples are required to provide co-signatures or his spouse to provide guarantee;

Part 1. Marriage and Family

Point 7. Two situations in which the common property of a spouse can be divided during marriage

➤ Two new statutory situations are added, those are, upon the request of the parties, the conjugal property can be divided directly in the marriage.

Article 1066 Under any of the following circumstances during the period of marriage, either husband or wife may apply to the competent people's court for division of their joint property:

(1) Where one party conceals, transfers, sells, destroys or squanders the joint property of husband and wife, forges joint debts of husband and wife, or otherwise seriously damages the interests of the joint property of husband and wife; or

(2) Where a person whom one party is under statutory obligations to support suffers from a serious illness and needs medical treatment, but the other party does not agree to pay for relevant medical expenses.

Part 1. Marriage and Family

Point 8. Clarified that husband and wife enjoy the right of Daily Family Agency

Article 1060 A civil legal act committed by husband or wife for daily family life needs shall be legally effective on both husband and wife, unless otherwise agreed upon by husband or wife and the counterparty. The limitations imposed between husband and wife on the scope of civil legal acts that one party may carry out shall not be used as defense against bona fide counterparties.

- **The Subject of Daily Family Agency** : Couples with a legal marriage relationship, not applicable to other family members or cohabitation relationship.
- **Applications** : due to the needs of the family's daily life, but the co-operation or business activities are not included.

Part 1. Marriage and Family

Point 9. Cool-off period for divorce, set buffer time for dissolution of marriage

Article 1077 Where either husband or wife is unwilling to divorce within 30 days after the relevant marriage registration authority has received the divorce registration application, husband or wife may withdraw the divorce registration application from the marriage registration authority.

Husband and wife shall apply in person to the marriage registration authority for the issuance of a divorce certificate within 30 days following the expiry of the time limit prescribed in the preceding Paragraph, failing which, they shall be deemed to have withdrawn their divorce registration application.

The divorce cooling-off period may have the following effects:

- Resolve some impulsive divorce;
- The parties may be more cautious about the decision to get married;
- People may be more inclined to sign a prenuptial agreement or marriage agreement;
- People may be more inclined to choose a lawsuit for divorce;

Part 1. Marriage and Family

Point 10. Strengthen the impact of separation on marital relations.

- Whether the marriage relationship is broken is the main criterion for the court to decide whether to grant divorce. Article 32 of the current Marriage Law enumerates the situations that should be regarded as broken relationships.
- Article 1079 of the Civil Code, added on the basis of the provisions of the Marriage Law that “*Where a people’s court rejects the petition for divorce, and one party files again the divorce proceedings after the couple has separated from each other for one full year, the people court shall approve the divorce.*” as a reason for granting divorce.
- Some scholars evaluated this article as the “Cooling Off Period” of a divorce proceeding.

Part 1. Marriage and Family

Point 11. The principle of taking care of no-fault party in the division of divorced property

➤ **Sanction “Property Fault Party”:**

Article 1092 Where a husband or a wife conceals, transfers, sells off, destroys or squanders the joint property of the couple, or forge the joint debts of the couple in an attempt to encroach upon the property of the other party, the former may get less or no property when the joint property is partitioned during divorce. After divorce, if the other party discovers the above act, it may bring law suit in the People's Court to request re-partition of the joint property of the couple.

➤ **Sanction “Marriage Fault Party”:**

Article 1087 At the time of divorce, the husband and the wife shall agree on the disposition of their joint property. If they fail to reach an agreement, the People's Court shall make judgement on the basis of the actual circumstances of the property and on the principle of taking into consideration the rights and interests of the child, the wife, and the innocent party.

➤ **If there are other major faults leading to divorce, the party without fault shall have right to claim damages:**

Article 1091 Where one of the following circumstances leads to divorce, the innocent party shall have the right to claim compensation: (1) bigamy; (2) cohabits with another person of the opposite sex; (3) family violence is committed; or (4) a family member is maltreated or abandoned. Or (5) other major faults.

Part 1. Marriage and Family

Point 12. Divorce compensation relief is no longer limited to
"divided property" marriages

➤ Commendation for the “Return to Family”

Article 1088 If one party has performed more obligations in respect of raising the child, taking care of the old and assisting the other party in work, it shall, at the time of divorce, have the right to request the other party to make compensation for the above, and the other party shall do so accordingly. The specific methods shall be agreed on by the parties, failing which the people's court shall make a judgement.

Part 1. Marriage and Family

Measures

Family Trust's Function of Hedging in Divorce



A Very Powerful Advantage of Family Trust is Hedging in Divorce :

- From the legal point of view, the assets in the trust do not belong to the beneficiary, so if the beneficiary divorces, the assets in the trust cannot be separated.
- High-net-worth clients can consider signing a prenuptial agreement or establishing a family trust to avoid splitting property in a divorce.

Part 2. Succession

Part 2. Succession

Regarding this part, the lecture only discusses 7 points that may have an impact on wealth management.

- 1. Re-clarifies the scope of the estate**
- 2. Indirectly expands the scope of heirs, nephews can also inherit**
- 3. Adds Heir Repentance System**
- 4. Adds two forms of will and delete the “Notarized Will Prevail”**
- 5. Adds the Will Executor System**
- 6. Expands range of supporters**
- 7. Adds “Will Trust”**

Part 2. Succession

Point 1. Re-clarifies the scope of the estate

◆The current "Inheritance Law" lists the types of estate

Civil Code, Article 1122, Inheritance shall refer to the lawful personal property left upon the death of a natural person.

- The “Inheritance” has a broader meaning in the Civil Code, such as wealth management accounts, stocks, shops, corporate equity, artworks, and even virtual online property. The purpose is to maximize the protection of legal private property to be successfully inherited.
- Before the Civil Code, in judicial practice, the court has recognized Alipay, QQ account, WeChat account, game account, game equipment, virtual currency and other virtual assets as the inheritance.

Part 2. Succession

Point 2. Indirectly expands the scope of heirs, nephews can also inherit

The scope of subrogation inheritance has been expanded from the blood relatives to side blood relatives:

“If the siblings of the decedent die before the decedent, the children of the side siblings shall inherit in subrogation.”

- In practice, the Dink family, etc., may involve the second heir. According to the Civil Code, nephews can inherit;
- To avoid the situation that there is no heir;
- The Civil Code opens up the inheritance channel between the deceased and his nephew.

Part 2. Succession

Point 3. Adds Heir Repentance System

- ◆ Even if the heir has committed fraud, coercion to make a will, or other acts that may lose the eligibility for inheritance, but he eventually reformed and the deceased expressed willingness to forgive. In this case, the law does not force him to be deprived of inheritance.
- ◆ The system encourages heirs who have made mistakes to rehabilitate themselves. It may also give the deceased the opportunity to receive better care and to respect the wishes of the deceased to the greatest extent.

Part 2. Succession

Point 4.

Adds two forms of will and delete the “Notarized Will Prevail”

Adds Two Forms Of Will

- The Succession Law now stipulates five forms of testament: **Notarized Will, Self-written Will, Agency-written Will, Recording Will, and Oral Will.**
- Civil Code adds two forms: (1) Printing Will; (2) Recording Will.

Delete the “Notarized Will Prevail”

The Civil Code provides, *Where there are several wills whose contents are in conflict with each other, the latest will shall prevail.*

- Notarized will has standardized procedures, and the process of establishment, revocation or modification is complex.
- According to the Civil Code, the validity of a will is determined by time, not by notarization or not.
- Notarized wills still have obvious advantages: the notary office is experienced and the validity of the wills is highly guaranteed.

Part 2. Succession

Point 4. Adds two forms of will and delete the “Notarized Will Prevail”

- As new Wills can overturn previously notarized Wills in the future, the new regulations will reduce people’s enthusiasm for making notarized Wills and change to a more convenient way of making Wills. The number of non-notarized Wills will increase significantly, which will lead to the number of invalid Wills and the number of inheritance lawsuits. It will inevitably increase the contradictions between heirs, and at the same time greatly increase the cost of wealth inheritance.
- In the long term, non-notarized Wills have more uncertainties in validity issues and are easily challenged. For high-net-worth families with large assets, it is recommended to make arrangements for wealth inheritance plans in advance in order to avoid family contention for property. The directional inheritance scheme, such as, family trust, life insurance and other inheritance tools have become an inevitable choice for high-net-worth families.

Part 2. Succession

Point 4. Adds two forms of will and delete the “Notarized Will Prevail”

The Advantages of Trust:

- To reduce inheritance disputes;
- High confidentiality;
- Long-term care for specific people
- To smooth inheritance of property, tax planning in advance
- To prevent squandering property and avoid loss of wealth

Part 2. Succession

Point 5. Adds the Will Executor System

Background:

- The existence of the will executor is indeed necessary. With the development of society, people's asset are becoming more and more diversified, and the relationship between claims and debts is becoming more and more complicated;
- The Civil Code has innovatively added the system of will executor, and the administration of inheritance will be more procedural. The system clarifies the specific duties of will executor, such as clearing the estate and making a list of the estate, and reporting to the heirs.
- However, the status and rights of the will executor are not yet clear. If the estate dispute is complicated, the role of the will executor needs to be tested by time.

Part 2. Succession

Point 5. Adds the Will Executor System

- *Article 1133 A natural person 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.*
- *Article 1145 After the commencement of inheritance, the executor of the will shall be the administrator of the inheritance; if there is no executor of the will, the inheritors shall promptly elect the administrator of the inheritance; if no administrator is elected by the inheritors, the inheritors shall jointly act as the administrator of the inheritance; and, if there is no inheritor or all inheritors have waived inheritance, the civil affairs department or the villagers' committee of the domicile of the decedent shall act as the administrator of the inheritance.*

Part 2. Succession

Point 5. Adds the Will Executor System

Duties of Will Executor

➤ Clearing The Estate And Making List

The will executor could acknowledge the situation of estate and debt by making estate list. This is the foundation and basis for the following works and it could effectively prevent the heritage being encroached.

➤ Custody Of Estate

The will executor shall keep the heritage with the duty of care. The “Custody” refers to behaviors such as storage, improvement, and utilization without changing the nature of objects or rights, and does not include disposal.

➤ Apply For Court To Search For Heirs, Creditors And Bequests

Part 2. Succession

Point 5. Adds the Will Executor System

Duties of Will Executor

➤ Liquidation Of Claims And Delivery Of Bequests

- The will executor shall not deliver to the creditor or bequestee without public notice procedure;
- During the public notice procedure, creditor or bequestee are not entitled to be paid off;
- After the public notice procedure, the settlement of debts takes priority over the delivery of bequests.

➤ Transfer Of Estate

➤ The Duty Of Care Of The Will Executor

Part 2. Succession

Point 5. Adds the Will Executor System

Generation Of Will Executor

Article 1133 A natural person 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.

◆ *The executor is appointed by the deceased*

Part 2. Succession

Point 5. Adds the Will Executor System

Responsibilities Of Will Executor

Losses Caused By Will Executor's Fault

- If the will executor causes losses due to negligence in work, the position of executor shall be revoked and the full price received shall be refunded. If it also causes losses to the heir, the will executor shall bear civil liability for compensation.

The Will is Invalid Because Of Deceased's Fault

- If the will executor does his job with due diligence while the deceased violates his obligation of faithful disclosure resulting in the invalidation of the will, the will executor does not assume any legal responsibility. The fees charged by the will executor will not be refunded. If the executor's fees have not been paid, the executor has the right to demand remuneration within the limits of the actual work.

Part 2. Succession

Point 5. Adds the Will Executor System

Responsibilities Of Will Executor

The Will Executor Deliberately Concealed, Tampered With Or Destroyed The Will

The position of executor shall be revoked and the full price received shall be refunded. If the heir has evidence that the executor's act causes losses to him, the heir is entitled to claim compensation from the will executor.

The Executor Failed To Execute The Will In Accordance With The Will

The position of executor shall be revoked and the full price received shall be refunded.

The Negligence Of The Will Executor Causes Damage To The Value Of The Heritage

When the will executor performs the duties, he shall strictly execute the will in accordance with laws, regulations and the will. If the value of the heritage is reduced due to his fault, the will executor shall bear civil liability.

Part 2. Succession

Point 6. Expands Range Of Supporters

Article 1158 A natural person may enter into a legacy maintenance agreement with an organization or individual other than his/her inheritors. The organization or individual shall bear the obligations to support the natural person while he/she is alive and attend to funeral matters after he/she is dead, and enjoy the right to receive the legacy, under that agreement.

- This article improves the legacy support agreement system on the basis of Article 31 of the current Inheritance Law, and expands the scope of the supporters to organizations or individuals other than heirs. To meet the diverse needs of old-age care, the organization is no longer limited to community institutions.

Part 2. Succession

Point 7. Adds “Will Trust”

Article 1133, A natural person may set up will trust according to the law.

This provision confirms the legal status of “Will Trust” from the legislative level, which is of great significance to the field of wealth inheritance.



A will trust is the establishment of a will by the owner of the property during his lifetime, and after the death, the trustee will manage and distribute the estate with the will. In short, a will trust when settlor transfers property to the trust by making a will, which is testamentary trust.

Part 2. Succession

Point 7. Adds “Will Trust”

Will Trust vs Will

- *It is unstable for inheritance of wealth relying solely on will*
- Inheritance disputes are usual in judicial practice, and there are many cases concerning the validity of the will;
- *Can not meet the diverse needs of wealth inheritance:*
- The amount of wealth has exceeded the needs of the next generation in daily life, and the deceased hopes to achieve multi-generational inheritance of wealth;
- The will is a one-time payment, the deceased does not want his wealth to be squandered;
- The deceased cannot predict the stability of the marriage of future generations and the loss caused to wealth;
- Entrepreneurs also put forward new demands for tax planning, the separation of family business and enterprise property, asset appreciation, inheritance of company management rights, and the training of successors. The will as the only wealth inheritance tool does not have the above function.

Part 2. Succession

Point 7. Adds “Will Trust”

Standby Trust

*According to the **Trust Law**, trust means that the settlor entrusts his property rights to the trustee based on trust, and the trustee, in his own name, manages the property for the benefit of the beneficiary or a specific purpose.*

Family Trust

*According to the **Notice**, a family trust refers to a trust company that accepts the entrustment of a single individual or family, with the protection, inheritance and management of family wealth as the main trust purpose, providing property planning, risk isolation, asset allocation, children education, family governance, public welfare (charity) business, etc. for customized transaction management.*

As family trust is related with financial factors, it also needs to be regulated by financial supervision.

Part 2. Succession

Point 7. *Standby Trust VS Will Trust VS Will*

	Standby Trust	Will Trust	Will
Effective Date	The trust is set up	The deceased died	The deceased died
Flexibility	After the trust is established, the client can still change or revoke the trust according to his wishes	Change rules is the same as will	In chronological order
Risk Isolation	Trust asset is independent	Trust asset is independent	The asset is not separated
Estate Administrator	Professional trust institution	Trustee	Will executor
Confidentiality	High	High	Low
Planning Purpose	Tax saving, multi-generational inheritance, prevention of squandering	Tax saving, multi-generational inheritance, prevention of squandering	Little planning space
Type of Wealth	Cash	Cash, real estate, securities	Personal property left over from the death of a natural person
Stability	Avoid inheritance dispute	Avoid inheritance dispute	Many inheritance disputes

Part 2. Succession

Independent of Trust Property

According to Article 95 of Minutes of the Ninth National Civil and Commercial Trial Working Conference, the trust property is independent from the respective property of the settlor, trustee and beneficiary during the trust period. After the trust is established, the trust property is independent from settlor's other property which is not put into trust. The trust property acquired by the trustee due to the commitment to the trust and the property acquired through the management, use, or disposal of the trust property are independent from the trustee's property. The right of the beneficiary is to be benefited from the trust, and the trust property is not the beneficiary's liability property.

Therefore, if a party applies for preservation of trust funds in the special account of the depository bank or trust company due to the dispute with the settlor, trustee or beneficiary, except in accordance with the provisions of Article 17 of the Trust Law, The people's court should not permit it. Whereas the preservation measures have been taken, if the depository bank or trust company can provide evidence to prove that the account is a trust account, the preservation measures shall be released immediately.

It is further deduced that it does not support any precautionary measures against trust property except for the circumstances specified in Article 17 of the Trust Law.

Part 2. Succession

Independent of Trust Property

- Trust can achieve the function of isolating external risks from family assets, such as the joint guarantees and gambling agreements signed by the settlor for the operation of the enterprise, by that the trust property has an independent status in law. And then trust can achieve the core purpose of family wealth inheritance.
- The *Minutes of the Ninth National Civil and Commercial Trial Working Conference* clearly stated that it does not support the preservation of trust property, which provided a huge judicial assistance for family trusts in segregating risks and inheriting wealth.

Part 3. The Impact of Civil Code on Trusts

Part 3. The Impact of Civil Code on Trusts

Point 1. Will Trust Is Recognized

Paragraph 3 of Article 1133 of the Civil Code stipulates that a natural person may establish a will trust according to law.

- This is the first time that a will trust is recognized from the legislative level, which will help trust companies further expand their will trust business.

Point 2. Adjust The Types And Effectiveness Of Will

Articles 1136-1137 of the Civil Code confirm new forms of wills such as printing wills and recording wills; Delete the “Notarized Will Prevail”

- Will trust may appear in new forms;
- Even if the will trust is established by notarized will, it also can be abolished in other forms of will later.

Part 3. The Impact of Civil Code on Trusts

Point 3. Scope Of Beneficiaries Of Family Trust

Article 1045.3 A person's spouse, parents, children and other close relatives living together shall be his/her family members.

- This is the first time clarifying the scope of "family members" at the legislative level, and it may be used to explain the definition of "Family Members" of family trusts provided in the Notice.

Point 4. Family Agency's Impact On Trust

Article 1060 A civil legal act committed by husband or wife for daily family needs shall be legally effective on both husband and wife, unless otherwise agreed by husband or wife and the counterparty.

Article 1062.2 Husband and wife shall enjoy equal rights in the disposition of their joint property.

- Regarding the short-term fixed income trust products, it can be regarded as "family daily needs", so that one spouse can implement it
- Regarding long-term and large-scale financial product, such as a family trust, it cannot be regarded as "daily needs of family", the couple shall have the same intention. Otherwise the validity of the trust contract may be affected.

Part 3. The Impact of Civil Code on Trusts

Point 5. The Legal Status Of Trust Is Not Established

- *According to the Trust Law, the trust cannot engage in civil activities in its own name, but in the name of the trustee. In practice, the business trust plan has gradually achieved a certain “entity” or “organization” status. But the Civil Code did not recognize them.*

Point 6. No Response To The Beneficiary’s Rights

- When the Civil Code lists the types of property rights, it only lists property rights, debt rights, intellectual property rights, inheritance rights and virtual property rights. There is no response to trust beneficiary rights.
- Articles 125 and 126 may be used as the legal basis for trust beneficiary rights, but it is not sure.

Article 125 A civil subject shall be entitled to equity or other investments rights in accordance with the law.

Article 126 A civil subject shall be entitled to other civil rights and interests stipulated by laws.

Part 3. The Impact of Civil Code on Trusts

Point 7. No Response To Disgorgement System

- The Civil Code did not respond to the “Disgorgement” of the Company Law and the Trust Law. The following responsibilities stipulated in the Civil Code are significantly different from disgorgement.

Article 179 The main approaches to bearing civil liability shall include: (1) Discontinuance of infringements; (2) Removal of obstacles; (3) Elimination of dangers; (4) Return of property; (5) Restoration of original conditions; (6) Repair, reworking or replacement; (7) Resumption of performance; (8) Compensation for losses; (9) Payment for breach of contract damages; (10) Elimination of adverse effects and rehabilitation of reputation; and (11) Extension of apology.

Point 8. Value The Spirit Of Contract; Despise Fiduciary Duty

- The Civil Code still adheres to the ideology of contract law. Among the large number of systems with the characteristics of fiduciary relations, such as agency relations, entrustment relations, and chronological relations, there are no provisions on fiduciary relations, especially the duty of prudence and faithfulness.
- Most of the intended fiduciary relationships are concluded through contracts.

Thank you!

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