The Legal Perfection of the System of Executors in Estate Management

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Abstract. The newly added estate administrator system in the Civil Code holds significant importance in preventing improper estate management, resolving inheritance disputes, and protecting the interests of relevant parties. However, the general and principle-based nature of this system has posed challenges in judicial practice, revealing its shortcomings and inability to meet the needs of current legal relationships. Therefore, it has become an urgent task to supplement and modify this system. In order to improve the estate administrator system, several aspects can be considered for reflection and improvement. Firstly, it is necessary to clarify the independent legal status of estate administrators and have their rights granted by notary institutions. Secondly, provisions should be added regarding the entities responsible for compiling estate inventories, time limits, contents, reporting recipients, and handling objections. Additionally, establishing procedures for public notice and declaration of creditors’ claims and specifying the procedures for debt settlement are crucial. Lastly, it is important to consider introducing provisions for terminating estate administrator duties in two specific situations.

Keywords: The inheritance section of the Civil Code; The system of estate executors.

1. Introduction

Before the promulgation of the Civil Code, China lacked a comprehensive estate management system, resulting in frequent issues such as improper estate management, abuse of power by inheritors to transfer assets, and infringement of the legitimate rights and interests of estate creditors, leading to numerous inheritance disputes. Therefore, the introduction of the estate administrator system in the Civil Code has become a highlight, providing effective safeguards for estate inheritance. However, the provisions regarding estate administrators in the Civil Code are relatively generalized and lack specific operational guidelines, resulting in loopholes in practice. Therefore, it is necessary to draw on the experiences of other countries or regions, combine them with the national conditions, refine and improve the system, and propose modification suggestions.

Many scholars have conducted in-depth research on the estate administrator system and put forward valuable suggestions. Scholars such as Liu Guoxian, Wang Baoshi, and Wu Yunying have made recommendations on the legal status, appearance of rights, qualifications of litigation parties, rules for changing and terminating duties, and the construction of related supporting systems. Professor Liang Huixing's work covers specific aspects such as the selection, responsibilities, and remuneration of estate administrators.

However, it should be noted that there are inconsistent views among scholars regarding the estate administrator system, and most of these views are based on legislative experiences from foreign countries. Therefore, when applying and improving the estate administrator system, it is still necessary to consider the national conditions and draw on relevant regulations from abroad to further enhance and improve it.

2. Current Legislative Status of Estate Administrators System in China

The Civil Code provides detailed regulations on the specific implementation details of estate administrators in the chapter "Handling of Estates" within the inheritance section.
2.1 Methods of Appointment for Estate Administrators

The Civil Code outlines three methods for appointing estate administrators.

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The Civil Code specifies three modes for appointing estate administrators.

(1) Direct Transition from Executor to Estate Administrator

If the executor is specified in the will but no administrator is explicitly chosen, the executor automatically assumes the role of the administrator and is responsible for handling all matters related to the inheritance.

(2) Joint and Timely Appointment by Heirs in the Absence of an Executor

This mode further subdivides into four situations:

- When there is a sole heir, the estate directly becomes the property of the heir, who can independently handle the estate while concurrently assuming the duties of an estate administrator.
- When there are multiple heirs, they should promptly choose an administrator together. The selected person can be from among the heirs or an external individual. Once selected and entrusted, they immediately acquire the corresponding rights and obligations. The agreements between the parties can follow the relevant provisions of the “Civil Code” regarding agency contracts.
- If heirs are unable to promptly select an estate administrator or have conflicting opinions, all heirs will jointly assume the responsibilities of estate administrators.
- If there are no heirs or if all heirs renounce their inheritance rights, the civil affairs department or village committee of the deceased person's place of residence will act as the administrator.

(3) Appointment by People's Court

In instances where heirs dispute the appointment of an estate administrator and fail to reach a consensus, interested parties may apply to the people's court to designate an estate administrator. In such cases, the court will designate a suitable estate administrator based on the specific circumstances.

2.1.2 Responsibilities of Estate Administrators

In the Civil Code, five specific responsibilities are outlined for estate administrators.

(1) The creation of an inventory of the estate is crucial. It establishes the scope, specific value, and existing debts and claims of the inheritance, ensuring a smooth distribution process.

(2) Declaration of Estate Status to Rightful Claimants: administrators are required to report the status of the inheritance to the rightful beneficiaries. They must provide detailed reports to all parties with a vested interest in the inheritance to safeguard their legal rights.

(3) Implementation of Necessary Measures to Prevent Estate Damage: During the settlement and handling of the estate, if there is a threat of damage to the estate, estate administrators are empowered to take essential measures to prevent unfavorable outcomes.

(4) Management of Debts and Credits of the Deceased: Estate administrators should promptly pursue the collection of credits and settle debts in accordance with statutory priorities.

(5) Division of the Estate: After covering estate administration expenses, tax payments, and debt settlements, any remaining estate with a valid will should be distributed according to its provisions. In the absence of a valid will, estate administrators must distribute the estate according to the legally prescribed order. If there are no heirs or if heirs renounce their inheritance, the remaining estate should be turned over to the state or collective organizations.

2.1.3 Legal Responsibilities of Estate Administrators

Article 1148 of the Civil Code stipulates that estate administrators are obligated to fulfill the duty of prudent estate administration. Should they intentionally or through gross negligence cause harm to heirs, legatees, or creditors, they shall bear civil liability. After establishing legal responsibilities for estate administrators, provisions for their exemption from liability should also be outlined in the
law. Although the Civil Code does not specifically define situations for exempting estate administrators from liability, general provisions regarding tort liability can be applicable.

2.2 Shortcomings of the Estate Administrator System in China

2.2.1 Unclear Authority of Estate Administrators

(1) Unclear Legal Status of Estate Administrators

The legal status of estate administrators in estate affairs is a crucial prerequisite for their involvement. However, the Civil Code does not explicitly define this. If the legal status of estate administrators remains unclear, inheritance disputes may only be initiated by heirs or creditors, potentially involving interested parties in litigation and adding to the burden on the courts. Therefore, clarifying the legal status of estate administrators and defining their rights and obligations is fundamental to establishing the estate administration system. Only upon this foundation can the discussion of estate administrators' rights, obligations, and responsibilities proceed, ensuring the legitimate rights and interests of heirs and creditors are safeguarded.

(2) Lack of Recognized External Identity for Estate Administrators

The concept of the "recognized external identity" for estate administrators originates from Germany, signifying the legitimate external form of an estate administrator's management of estate affairs, used to prove the administrator's identity and rights to third parties. In Germany, estate administrators can apply to the family court for a certificate of recognized external identity. To obtain this certificate, relevant documentation must be submitted and reviewed by the family court. Estate administrators meeting the issuance criteria will receive a certificate detailing their specific rights and limitations in managing the estate. This certificate holds public credibility, enabling estate administrators to establish legal relationships with third parties, with the trust interests of well-intentioned third parties being legally protected.

However, the Civil Code of China does not specify the recognized external identity of estate administrators. Given that estate administrators require recognition and cooperation from heirs and third parties responsible for safeguarding the estate, it is essential for a credible institution to verify the estate administrator's identity.

2.2.2 The responsibilities of legacy managers are excessively brief

(1) Ineffective Establishment of the Legacy Inventory System

The production of an estate inventory is the responsibility of estate administrators. However, the provisions in the Civil Code regarding the estate inventory system are overly brief and lack specific operational regulations. This becomes particularly problematic when dealing with large estates and various forms of assets, as it gives rise to a series of questions. For instance, what is the appropriate timeframe for estate administrators to compile the inventory? Can the deadline be extended, and under what circumstances? What should be included in the inventory? And who has the authority to access the inventory? These issues highlight the need for more comprehensive and practical guidelines in the estate inventory system, as outlined in the Civil Code.

(2) Lack of Public Notification Procedure for Creditor Claims in Legacy Management

In accordance with the Civil Code, legacy managers are obligated to report the status of the legacy to the heirs. However, it does not specify whether they are required to report the status of the legacy to the legacy creditors. Similarly, Article 1150 of the Civil Code states that heirs have an obligation to notify other heirs and the executor of the will after the inheritance begins, but it does not mandate notifying creditors.

In practice, the absence of a procedure for public notification of creditor claims allows heirs to take advantage of their position, engaging in actions such as embezzlement, concealment, and reckless spending of the legacy without the knowledge of the creditors. Consequently, establishing a corresponding public notification procedure for legacy creditors is necessary to safeguard their right to information and protect their legitimate interests in the legacy.
2.2.3 Absence of Termination Regulations for Legacy Managers' Responsibilities

The Civil Code establishes the rules for the selection, responsibilities, and civil liability of estate administrators but does not specify the resignation, replacement, and removal of administrators. To ensure the integrity of the estate administration system, it is necessary to provide detailed regulations in these aspects.

On one hand, specifying the resignation, replacement, and removal of estate administrators safeguards their freedom. If administrators are unable to fulfill their duties due to subjective or objective reasons, they should be allowed to relinquish their positions, while also considering the protection of the interests of the estate beneficiaries and granting administrators the freedom to choose.

On the other hand, stipulating the resignation, replacement, and removal of estate administrators is beneficial for monitoring their behavior. When administrators fail to fulfill their responsibilities or misuse their authority to infringe upon the legitimate rights and interests of other estate beneficiaries, the beneficiaries can apply to the court for the replacement of administrators in accordance with the regulations.

After the completion of the inheritance, estate administrators should lose their apparent authority through a formal procedure to prevent third parties from continuing to believe in their status and engage in transactions. In conclusion, it is necessary to introduce provisions regarding the termination, resignation, and replacement of estate administrators.

3. Suggestions for Improving China's Estate Administrator System

3.1 Clarifying the Authority of Legacy Managers

3.1.1 Clarifying the Legal Status of Legacy Managers

The article explores the controversy surrounding the legal status of estate administrators in academia, focusing primarily on the theories of agency and inherent rights.

(1) Agency Theory

According to the agency theory, estate administrators represent three entities: the deceased, the heirs, and the estate itself. The article critically examines these three viewpoints. Firstly, based on relevant legislation in China, the theory of agency for the deceased lacks justification since death extinguishes the legal capacity of natural persons, rendering them unable to delegate agency matters. Secondly, the theory of estate agency faces challenges as the estate is not considered a civil subject, making it difficult to establish the source of rights, which are not recognized by law. Lastly, the theory of agency for heirs argues that after the demise of the deceased, they lose the ability to enjoy rights, whereas the establishment of estate administrators ensures the protection of the estate for the benefit of the heirs.

(2) Inherent Rights Theory

The inherent rights theory asserts that estate administrators inherently possess the authority to carry out various administrative tasks. This theory can be further categorized into three viewpoints: the institutional theory, the theory of limited property rights, and the theory of duties. The institutional theory considers estate administrators as independent institutions or organizations with legal personality, while the theory of limited property rights suggests that estate administrators hold certain property rights over the estate to fulfill their responsibilities. Both of these theories are still in the theoretical stage and have not been adopted by any country. The theory of duties argues that the rights of estate administrators derive from their inherent responsibilities as defined by law. In performing their duties, estate administrators have an independent legal status and corresponding disposal powers, similar to the role of bankruptcy administrators.

(3) Author's Perspective
The article concludes by stating that the theory of agency for heirs reflects the internal relationship between estate administrators and heirs, while the theory of duties best represents their external relationship. Taking a comprehensive approach, a balanced approach should be adopted, incorporating elements from both the agency theory and the inherent rights theory. In internal relationships, the theory of agency for heirs can reflect the agency relationship, while in external relationships, the theory of duties from the inherent rights theory can eliminate external interference in estate administration, aligning with the current situation in China.

3.1.2 Establishment of Regulations on the Rights and Obligations of Estate Managers

In Germany, inheritance matters are handled by family courts, which grant the estate administrator the authority to act on behalf of the estate. However, considering the situation in China, it is currently impractical for specialized family courts to grant the estate administrator the authority. Instead, this authority should be bestowed by notary organizations. Firstly, China's family court system is not well-established. Family courts were only established in 2016 and are still in the early stages of development, with most of them located in grassroots courts and varying in their specific forms. Secondly, it is feasible for notary organizations to grant the estate administrator the authority. The “Notary Law” clearly stipulates that notary organizations can issue identity certificates based on the applicant's request. Granting the estate administrator's identity certificate through notary organizations is legally supported.

In light of this, the granting of rights and obligations to estate managers by notary offices should include the following aspects:

Firstly, the organization responsible for granting the authority to the estate administrator. The authority should be granted by the notary organization in the relevant area where the inheritor resides.

Secondly, the application requirements for the estate administrator’s authority. The notary organization issues an identity certificate for the estate administrator based on the application. In cases where a valid will exists, the application can be made based on the valid will, the death certificate of the deceased, and the applicant’s identification documents. In cases where no will is made, the heirs can reach a written agreement on the appointment of the estate administrator and provide the death certificate of the deceased and the applicant's identification documents to apply.

Thirdly, the effectiveness and expiration of the estate administrator’s authority certificate. The certificate’s effectiveness date is the granting date stated on the certificate, and the expiration date is the date when the estate administrator’s duties terminate.

Fourthly, the content of the estate administrator’s authority. This includes the basic identity information of the estate administrator, the basic identity information of the inheritor, the scope of the estate administrator's rights, the signature of the notary officer handling the case, the official seal of the notary organization, and the date of certificate issuance.

Fifthly, in cases where there are objections to the estate administrator’s identity, the parties can file a lawsuit requesting the court’s designation, and the court’s judgment document will serve as the authority certificate.

3.2 Elaboration on Estate Manager Responsibilities

3.2.1 Establishment of a Comprehensive Estate Inventory System

In China, there are primarily two methods of inheritance: limited inheritance and renunciation of inheritance. To improve the modern system of inheritance inventory, the following recommendations are proposed:

Firstly, the entities responsible for compiling the inheritance inventory can include estate administrators, will executors, heirs, civil affairs departments, or village committees. Legal firms, accounting firms, or notary organizations can be entrusted with the task of compiling the inheritance inventory.
Secondly, it is suggested to establish a unified time limit of three months for the production of the inheritance inventory. In complex cases, an extension of up to three months can be applied for. Those eligible to request an extension include estate administrators, heirs, creditors, and other relevant parties.

Thirdly, the inheritance inventory should be reported to the heirs, creditors, and other parties with a vested interest in the inheritance. Furthermore, it should be permissible for creditors, debtors, and other stakeholders to access the inheritance inventory after providing relevant supporting documents.

Fourthly, once the inheritance inventory is completed, it becomes effective for all heirs. In case of any objections, specialized institutions can be approached to conduct a review. The costs associated with the review will be borne by the party whose objection is upheld.

Fifthly, intentional fabrication of the inheritance inventory by an inheritor will result in joint liability. If a non-inheritor estate administrator intentionally or negligently produces a false inventory, they will be held liable for infringement.

3.2.2 Proposal to Enhance Public Notification Procedures for Creditors

First, regarding the subject of public notice and notification: In addition to the heirs, the deceased's affiliated organizations, and the local community committees as stipulated by law, other institutions and individuals should also bear the responsibility of notification and public announcement. The heirs or estate administrators should be the primary entities responsible for notification and public announcement.

Second, concerning the duration of public notice and notification: Referring to the provisions in Japan and the current Civil Procedure Law in China, the time limit should be no less than 60 days. Clear rights holders should be individually notified, while unclear rights holders should be urged to declare their claims through public announcements.

Third, regarding the declaration of claims and legal consequences: If the creditors declare their claims within the specified period, the estate administrators should consolidate the confirmed claims, and repay them according to the value of the estate. Creditors with secured rights should be given priority in repayment. For claims that are not yet due or subject to disputes, a corresponding portion should be reserved for the creditors before the distribution of the estate.

Fourth, concerning the registration, access, and objections to estate debts: It is recommended that creditors provide evidence when declaring their claims to ensure the authenticity and accuracy of the declared claims. It is also suggested to grant interested parties in the estate the right to access registered claims to prevent the abuse of false claims and enhance transparency and fairness in the estate handling process. Additionally, it is proposed to grant relevant parties the right to raise objections.

3.3 Enriching the Provisions for the Termination of Estate Managers' Responsibilities

3.3.1 Natural Termination of Estate Managers' Duties

The natural termination of estate managers' responsibilities can be categorized into two scenarios. Firstly, when estate managers have completed all estate management tasks, their duties come to an end. Whether the estate manager has fulfilled their responsibilities should be determined by referencing the arrangements and instructions of the deceased in the will. Only when all entrusted tasks in the will have been completed and there are no disputes among the interested parties should the estate manager's duties be considered fulfilled. Such a requirement ensures the effectiveness and fairness of the estate manager's execution process. Secondly, when an estate manager dies, goes missing, or loses legal capacity, their duties also come to an end. For natural persons serving as estate managers, their eligibility should be based on their full legal capacity for civil conduct. If an estate manager's legal capacity is compromised and no longer meets the requirements for serving as an estate manager, their duties will be terminated. As for legal entities serving as estate managers, if they face bankruptcy or similar situations, they will lose their eligibility, and their duties will be terminated.
3.3.2 Voluntary Resignation of Estate Managers

The academia widely acknowledges the right of estate administrators to voluntarily terminate their duties. Reference can be made to the provisions in the Civil Code regarding the replacement of property administrators for missing persons. According to these regulations, if a property administrator fails to fulfill their responsibilities or intentionally or negligently causes improper performance of their duties, interested parties of the missing person can apply to the court for a replacement of the property administrator. Additionally, the property administrator themselves can also apply to the court for a change and termination of their duties based on valid reasons. Such provisions effectively address the issues of unmanaged inheritance and the untimely fulfillment of debts and obligations, thereby protecting the legitimate rights and interests of both the inheritors and the deceased. When it comes to the change and termination of estate administrators, we can draw on the standardized system for the replacement of property administrators for missing persons, which holds significant reference value.

Conclusion

The newly added system of estate administrators in the Civil Code has met the demands of social and economic changes and scholars, serving as a significant "bridge" to address the growing need for inheritance. This system aligns with the requirements of economic development and represents the modernization process of inheritance law. However, in practice, the estate administrator system has not fully played its intended role and requires improvement. Drawing on relevant systems from other regions, it is recommended to clarify the authority of estate administrators, improve the estate inventory system, and introduce additional provisions regarding the public notice and notification procedures for creditors and the termination rules for estate administrators. These measures will enhance the practicality of the system, regulate the exercise of rights by estate administrators and inheritors, and achieve the integration of inheritance legal norms.

References


