

DIPLOMATIC CONFERENCE ON WILLS

Washington, D.C. October 16-26, 1973

Doc. 4 (Add.3)
Original: English
October 16, 1973

STATEMENT FROM THE DELEGATION OF THE REPUBLIC OF CHINA

The Conference of "the Convention on the Uniform Law on the Form of the International Will" will define the love one has for his relatives, and will stress the desire for individual freedom and the rights of individuals to inherit personal property. It is important that all nations participating in this conference pledge their respect and allegiance to these objectives. With a great deal of satisfaction, we, the delegation from the Republic of China, attend this meeting. First of all, on behalf of the Republic of China delegation, we wish this conference success. At the same time, we would like to acquaint you with the Chinese laws pertaining to wills, and the various legal aspects as they relate to inheritance laws in general.

The Constitution of the Republic of China which was promulgated in the year 1947 states that all citizens of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law (article 7), and that personal freedom, property and rights shall be guaranteed to all the people (articles 8 through 24). The Book of Succession of the Civil Code was promulgated on December 26, 1930 and put into effect on May 5, 1931. It adopts the general principle that all heirs regardless of sex, are legal heirs and that one's spouse has the right to inherit property from each other. We consider this very modern legislation, and in full accord with our constitution.

Regarding the form of a will, there are five forms which are described in Paragraph 2, Chapter 3 of the Book of Succession, Civil Code (articles 1189 to 1198). We would like to describe the five legal wills which are valid under the laws of the Republic of China.

1. A holograph will: Such a will must be written by the testator himself, with the entire text of his last wishes (1190).
2. A notarial will: An oral statement given by a testator and the will must be performed in the presence of a court notary, and in accordance with last wishes of the testator (1191).
3. A secret will: For making a secret will, the testator must, after signing it, have it securely enveloped, affix a signature across the seam of the envelope, designate at least two witnesses and the court notary (1192).
4. A dictated will: For making a dictated will, the testator must designate at least three witnesses. One of the witnesses

has to write the will, according to an oral statement given by the testator, and the will must then be signed by the witnesses and testator together (1194).

5. An oral will: Where a testator by reason of imminent death or other exceptional circumstances is unable to make a will in any other form, he may make it orally. The testator must state orally his testamentary wishes and one of the witnesses must set down these wishes correctly in writing and it must then be signed by at least two witnesses (1195-1197).

A testator is free to utilize any of these five forms. Among these five forms, the form called the "Notarial Will" has been formalized in a Notarial Office of various district courts in this country. The form is simplified and is uniform, which makes it very convenient to use. For better and more effective recognition and execution, it is suggested that a "uniform will" be established in the international will, which can be recognized by the contracting nations.

Enclosure I

Article 1189 through 1198 of the Civil Code of the R.O.C.

Article 1189

A will shall be made in one of the following forms:

1. A holograph will;
2. A notarial will;
3. A secret will;
4. A "dictated" will;
5. An oral will.

Article 1190

For making a holograph will, the testator must himself write the whole text, stating the year, month and day and sign it. In case of any insertion, cancellation, erasure or alteration, he must make and sign an additional note stating the place in the text where words have been inserted, cancelled, erased or altered, and the number of such words.

Article 1191

For making a notarial will, the testator must designate at least two witnesses and make an oral statement of his testamentary wishes before a public notary. The statement must be written down, read over and explained by the public notary, and, after the testator has given approval, signed by him together with the witnesses and the testator, stating the year, month and day. In case the testator is not able to sign his name, the public notary must state the circumstances and make him affix his finger print in lieu of signature.

The functions of a public notary as provided in the preceding paragraph may be exercised by a court clerk in a place where there is no public notary, or by a Chinese consul when a Chinese citizen abroad makes a will in the place where such consul resides.

Article 1192

For making a secret will, the testator must, after signing it, have it securely enveloped, affix a signature across the seam of the envelope, designate at least two witnesses, and declare before a public notary that it is his will, and, if not written by himself, also declare the name and domicile of its draftsman; the public notary must state on the envelope the date on which the will is brought and the declaration of the testator, and sign together with the testator and the witnesses.

The provisions of Paragraph 2 of the preceding article apply mutatis mutandis to the aforementioned case.

Article 1193

A secret will which may be defective as regards the formalities provided in the preceding article but is otherwise in compliance with the formalities of a holograph will provided in Article 1190 has the effect of a holograph will.

Article 1194

For making a "dictated" will, the testator must designate at least three witnesses, make an oral statement of his testamentary wishes, have it written down, read over and explained by one of the witnesses; after the testator has given his approval, the statement bearing the year, month and day, and the name of the draftsman, must be signed by all the witnesses and the testator together. Where the testator is not able to sign his name, he must affix his finger print in lieu of signature.

Article 1195

Where a testator by reason of imminent danger of death or other exceptional circumstances is unable to make a will in any other form, he may make it orally.

For making an oral will, the testator must designate at least two witnesses, state orally his testamentary wishes; one of the witnesses must set down these wishes correctly in writing, state the year, month and day, and sign together with the witnesses.

Article 1196

An oral will loses its effect one month after the time when the testator

is able to make a will in another form.

Article 1197

An oral will must be brought up by one of the witnesses or an interested person, within three months after the death of the testator, for decision by the family council as to its genuineness. Where objections arise regarding the decision of the family council, application may be made to the court for a judgment.

Article 1198

The following persons may not act as witness of a will:

1. A minor;
2. An interdicted person;
3. An heir, his spouse or his lineal relatives by blood;
4. A legatee, his spouse or his lineal relatives by blood;
5. Persons who are assistants to, or employed by, or living together with, the public notary or the person that exercises the functions of a public notary.

Enclosure II

Article 22 through 28 of the "Law Governing the Application of Laws to Civil Matters Involving Foreign Elements" of the R.O.C.

Article 22

With respect to succession, the law of the country of the deceased at the time of his death shall apply; provided, however, that when a national of the Republic of China is an heir under the law of the Republic of China, he may effect succession to the deceased's property which is in the Republic of China.

Article 23

In the case of death of an alien who left property within the Republic of China and the property such as not inherited by any person under the law of his country, it shall be dealt with by the law of the Republic of China.

Article 24

With respect to the requisites for establishment and the effect of a will, the law of the country of the testator at the time of establishing the will shall apply.

With respect to the revocation of the will, the law of the country of the testator at the time of revoking the will shall apply.

Article 25

Where the law of a foreign country is applicable under this law, but the provisions therein are in contrary to the public order and good morals of the Republic of China, such foreign law shall not be applied.

Article 26

Where the law of the nation of the party concerned shall be applied under this law and the party concerned has several nationalities acquired at different time, the law of the nation of the party concerned shall be decided according to the nationality last acquired; if the nationalities were acquired simultaneously, the law of the nation which is closest in relationship with the party concerned shall apply; provided, that if the party concerned is to be considered as national of the Republic of China in accordance with law of nationality of the Republic of China, the law of the Republic of China shall apply.

Article 27

When the law of the nation of the party concerned shall be applicable under this law, but the party concerned is stateless, the lex domicilii shall apply. When his domicile is unknown, the law of the place of his residence shall apply.

If the party concerned has several domiciles, the law of the place of his domicile which is closest in relationship shall apply; if he has a domicile within the Republic of China, the law of the Republic of China shall apply.

The provision in the preceding paragraph shall apply mutatis mutandis if the party concerned has several residences. If his residence is unknown, the law of the place where he is at shall apply.

Article 28

Where the law of the country of the party concerned shall be applicable under this law and the laws of various localities in the country are different, the lex domicilii of his country shall apply. If the domicile within his country is unknown, the law of the place where the capital is located shall apply.

Enclosure III

Form of a Notarial Will of the Republic of China

Name	Sex	Age	Native Place	Occupation	Address	Identification
Testator						
Witnesses						

Description of Testament:

If an Interpreter Present
The Fact:

Date & Place This Will Made:

This will is confirmed by the persons present.
Signed or Sealed
Testator:
Witnesses:

Notary Public:
() District Court,
Taiwan, Republic of China

* * *