CHAPTER 28
WILLS AND PROBATE

In this chapter, we consider Thai laws concerning the making of a will and applying for a grant of probate where there is a will, or where there is no will, applying for a grant of administration upon intestacy. The basic law is to be found in secs 1599-1755 of the Civil and Commercial Code.

Differences between Thai law and other legal systems Differences that may distinguish Thai law regarding wills and probate from that of other countries, include the following:

- **No notion of trusts**: Thai law does not have the notion of a trust. Thus when a person deceases, his assets are notionally owned at once by his/her beneficiaries under the will, or where there is no will, by his/her heirs under the rules of intestacy. The legal position of the executors is that they are, in effect, the agents of the beneficiaries and have an obligation to transfer the assets to them, and such right is enforceable by the beneficiaries. But the bequest is not perfected until e.g. a transfer of property is registered at the Land Department, or regarding a transfer of shares, until the transfer is registered in the Share Register of the company.

- **Inheritance tax and gift tax:** Thailand put in place inheritance tax and a revised gift tax with effect from February 2016. These are discussed in detail in Chapter 15 *Other Taxes.* In addition, upon the transfer of certain assets, for example, immoveable property or shares, then Land Department fees or stamp duty or other taxes may arise (*see further Chapter 7 Land, Buildings and condominiums, and Chapter 4 Business Organizations).*

- **Application to the court for a grant of probate is always necessary:** An application to the court by the executors, or by administrators in the case of an intestacy, always has to be made to obtain a grant of probate to administer the estate. Where the deceased has made a will, although the court may accept the will as being validly made, it may require written evidence that the statutory heirs have waived their right to claim from the estate, if they are not beneficiaries under the will.

- **No notion of family provision claims:** Under English law and the laws of some countries, it is possible for certain categories of person to bring a claim against the estate, on the grounds that they have been partially or totally disinherited under the will or applicable intestacy rules. Thai law has no such notion. Subject to challenges that may be brought concerning the testator's mental capacity at the time of making the will, the observance of

formalities, or the due execution of the will, the terms of the will prevail, and no person has a right to claim family provision from the estate.

- **Civil causes of action:** The Thai Civil and Commercial Code has very detailed rules regarding the period of limitation for bringing civil claims e.g. for debt or otherwise. Upon the death of a natural person, whether claimant or defendant, and whether or not proceedings have been issued, then the cause of action would automatically cease.

- **Same sex relationships** Note that Thai law has no notion of same-sex civil partnerships, or same-sex marriage. Where the deceased had a valid same-sex civil partnership or same-sex marriage, registered in accordance with the laws of the country in which it took place, then the question whether Thai law and the Thai courts would recognise such relationship, in a case of testate or intestate succession, is controversial. In the case of the deceased leaving a valid will, it is suggested that the provisions of the will would be applied by the Thai courts. In the case of intestate succession, it is tentatively suggested that the Thai courts would approach the matter as one of partnership, and would apply the principles of partnership law as set out in the Civil and Commercial Code, to the devolution of the estate.

What is included in the estate? The estate of a deceased includes all property and his rights, duties and liabilities, except those which by law or by their nature are purely personal to him.

Deemed disappearance When a person is deemed to have disappeared *(on the grounds that it has not been certain that he is alive or dead for at least five years, or two years in certain other cases)* his/her estate devolves on the heirs.

Devolution of the estate An estate devolves on the heirs by right, or as beneficiaries under the will.

Heirs and their exclusion A natural person is an heir if he has legal personality, is alive, or *en ventre sa mere* and is born alive within 310 days after the death of the testator.

An heir who diverts or conceals property up to or exceeding his share in the estate, is excluded from inheritance; if he diverts or conceals less than his share in the succession, he is excluded to the extent of the part diverted or concealed. This rule excludes beneficiaries to whom a specific property is bequeathed, to the extent of that gift.

Ineligible heirs: The following persons are ineligible to be heirs:

- a person convicted under a final judgment of having wrongfully and intentionally caused or attempted to cause, the death of the testator, or of a person having prior right to the succession;

- a person who, having prosecuted the testator for having committed an offence punishable with death, has himself been convicted under a final judgment for bringing a false charge or for fabricating false evidence;

- a person who, knowing that the testator was murdered, did not give information for the purpose of bringing the offender to punishment; (*this rule does not apply in certain cases);*

- a person who by fraud or duress, has caused the testator to make, revoke or change a will, partly or wholly, or has prevented him from so doing;

- a person who has, partly or wholly, forged, destroyed or concealed a will.

A testator may include such persons by a written declaration.

The descendants of the excluded heir succeed as if the heir were dead.

Disinheriting heirs A testator may disinherit statutory heirs only by will or by a written declaration deposited at the Amphur.

A declaration of disinheritance may be revoked.

Where an estate devolves on a minor or mentally disordered person When an estate devolves on a minor, a person of unsound mind, or a person incapable of managing his own affairs, and such person has not already had a legal representative, custodian or curator appointed, the court shall appoint a guardian, custodian or curator, on application of any interested person or the Public Prosecutor.

An heir who is a minor, of unsound mind, or incapable of managing his/her own affairs cannot, except with the consent of his parents, guardian, custodian or curator, and the approval of the Court, do the following acts:

(1) renounce an inheritance or refuse a legacy

(2) accept an inheritance or legacy encumbered with a charge or condition.

Renunciation or refusal is subject to further detailed rules.

Statutory right of inheritance of the heirs upon full or partial intestacy In the following cases, a person's estate will be distributed amongst his statutory heirs:

- where a person dies without having made a will, or has made a will but it has no effect,

- where a person has made a will which disposes of, or affects, part only of his estate, with regard to the undisposed or unaffected par.

Unless otherwise provided in the will, although a statutory heir may have received some property under the will, such heir is still entitled to avail himself of his statutory right of inheritance to the extent of his statutory share, from property not disposed of under the will.

Where the deceased leaves a surviving spouse If the deceased was married, then the distribution of the share in the property of husband and wife, will be in accordance with the principles of divorce (*this broadly means that the surviving spouse takes 50% of marital property owned by the deceased and retains his/her own 50%: note that gifted property or inherited property is excluded from the definition of 'marital property').*

Division after the spouse's share is satisfied After satisfaction of the spouse's share, division of the estate between the statutory heirs shall be as follows:

There following classes of statutory heir inherit in the following order:

1. descendants;
2. parents;
3. brothers and sisters of full blood;
4. brothers and sisters of half blood;
5. grandparents;
6. uncles and aunts.

The surviving spouse is also a statutory heir, subject to the provisions below.

So long as there is an heir surviving or represented in a class above, an heir in a lower class has no right to the estate. Provided that this rule does not apply where there is any descendant surviving or represented, and also where either or both parents are surviving; in these cases, each parent is entitled to the same share as an heir in the category of a child.

As between descendants of different degrees, only the children of the deceased are entitled to inherit. Descendants of lower degree may inherit only by right of representation.

Division between the statutory heirs in each class and degree The distribution of inheritance to the statutory heirs in several classes of relatives takes place in accordance with the provisions above.

Statutory heirs of the same class in any of the classes above, are entitled to equal shares. If there is only one statutory heir in such class, he/she is entitled to the whole portion.

As between descendants entitled by way of representative to a division *per stirpes*, the division is as follows:

(1) If there are descendants of different degrees, only the children of the deceased who are the nearest in degree are entitled to inherit. Descendants of lower degree may inherit only by virtue of the right of representation;

(2) descendants in the same degree are entitled to equal parts;

(3) if in one degree there is only one descendant, he/she is entitled to the whole share.

Further provisions regarding spouses The surviving spouse is entitled to inherit in accordance with the provisions below:

- if there is an heir in any of the six classes above surviving or having representatives, the surviving spouse is entitled to the same share as an heir in the category of a child;

- if there are siblings of the whole blood, and such heir is alive or has representatives, or if there are no descendants but there are parents, the surviving spouse is entitled to one half of the inheritance;

- if there are brothers and sisters of the half blood or uncles and aunts, and such heir is alive or has representatives, or there are grandparents, the surviving spouse is entitled to two-thirds of the inheritance;

- if there are no heirs in any of the six categories above, the surviving spouse is entitled to the whole inheritance.

Life insurance policies If a surviving spouse is the beneficiary of a life insurance policy, he/she is entitled to receive the whole sum assured. But he/she must repay premiums paid in excess of the amount of money which could be paid as premiums by the deceased, taking into account the latter's income or usual station in life.

The amount of premiums restored shall not exceed the sum paid by the insurer.

Annuities Where both spouses have invested money in a contract whereby an annuity is payable to both of them during their joint lives and afterwards to the survivor for life, the latter shall be bound to compensate the other under marital

property rules. The damages are the extra sum required by the grantor of the annuity in order to continue to pay the annuity to the survivor.

Illegitimate and adopted children An illegitimate child who has been legitimated by his father, and an adopted child, are deemed to be descendants in the same way as legitimate children.

Where spouses are separated but not divorced Spouses who are living apart under desertion or separation, do not lose the statutory right of inheritance to one another, as long as they are not legally divorced.

Representation If a person who would have been an heir in the categories of: descendants; sibling of the whole blood; sibling of the half blood; or uncle and aunt, is dead or has been excluded before death of the testator, his descendants, (if any) shall represent him for the purpose of receiving inheritance.

If any of his descendants is dead or has been excluded in the same manner, the descendants of such descendants shall represent him for the purpose of receiving inheritance and representation shall take place in this way as regards the share of each person consecutively, to the end of the *stirpes*.

Representation also extends to the descendants of a person deemed to have deceased.

If the parents or grandparents have pre-deceased, or have been excluded before the death of the testator, their whole share devolves to the other surviving heirs of the same class, and no representation takes place.

Representation for the purpose of inheritance takes place only among statutory heirs.

Representation for the purpose of inheritance belongs only to direct descendants, not to ascendants.

Renunciation of inheritance of a person does not preclude the renouncer from representing such person in inheriting from another.

Wills – general provisions A person may make a declaration of intention by will concerning dispositions as to his property or other matters, which take effect after his death.

A declaration of intention is the latest will, in point of time.

Drafter of a will, or a witness, or spouse of such person, cannot be a beneficiary The writer of the will, or a witness, cannot be a beneficiary under such will.

This also applies to the spouse of the writer or a witness.

A competent official recording a statement made by witnesses is deemed to be a writer for this purpose.

When the capacity of the testator or beneficiary is assessed The capacity of the testator is considered at the time when the will is made.

The capacity of a beneficiary is considered at the time when the testator dies.

Wills - general The rules relating to wills are complex in that some made be made in writing and duly witnessed in order to be enforceable, and in some cases, an oral will may be valid.

General requirements for wills A will must be made in writing, dated at the time it is made, and signed by the testator before at least two witnesses present at the same time, who shall there and then sign their names certifying the signature of the testator.

No erasure, addition or other alteration to a will is valid unless made in the same form as above.

Holograph will A will may be made by a holograph document, meaning the testator must write the whole text of the document with his own hand, including the date, and his signature.

No erasure, addition or other alteration in such will is valid unless made by the testator's own hand and signed by him.

Will made at the Amphur A will may be made at the Amphur in accordance with the following rules:

- the testator must declare to the *Kromakarn Amphur* before at least two others as witnesses present at the same time, what dispositions he wishes to be included in this will;

- the *Kromakarn Amphur* must note the declaration of the testator and read it to the latter and to the witnesses;

- the testator and the witnesses must sign their names after having ascertained that the statement noted by the *Kromakarn Amphur* corresponds with the declaration made by the testator;

- the statement noted by the *Kromakarn Amphur* must be dated and signed by the official who shall certify under his hand and seal that the will has been made in compliance with these rules.

No erasure, addition or other alternation in such will is valid unless signed by the testator, the witness and the *Kromakarn Amphur*.

A will made by a public document may, on request, be made outside the *Amphur* office.

Secret will A will may be made in secret, in accordance with the following rules:

- the testator must sign his name on the document;

- he/she must close up the document and sign his name on it;

- he/she must produce the closed document to the *Kromakarn Amphur* and at least two other persons as witnesses, and declare to all of them that it contains his testamentary dispositions; and if the testator has not written the whole text of the document with his own hand he must state the name and domicile of the writer;

- after the *Kromakarn Amphur* has noted the declaration of the testator and the date of the production on the cover of the document and has endorsed his seal on it, the *Kromakarn Amphur*, the testator and the witness must sign their names thereon.

No erasure, addition or other alternation in such will is valid, unless signed by the testator.

Oral wills When, under exceptional circumstances such as imminent danger of death, or during an epidemic or war, a person is prevented from making his will in any other prescribed form, he/she may be make an oral will.

For this purpose, he must declare his intention regarding the dispositions of the will before at least two witnesses present at the same time.

The witnesses must without delay appear before the *Kromakarn Amphur* and state before him the dispositions which the testator has declared to them orally, and the date, place and exceptional circumstances under which the will was made.

The *Kromakarn Amphur* shall note down the statement of the witnesses and they shall sign the statement or, failing that, may make an equivalent to signature by affixing a fingerprint certified by the signatures of two witnesses.

Loss of validity of oral will An oral will made under the foregoing provisions loses its validity one month after the time when the testator is once again in a position to make a will in any other prescribed form.

Fingerprint of testator When the signature of the testator is required, the only equivalent to signature is by endorsing a fingerprint, certified by the signatures of two witnesses at the same time.

Wills of Thai persons made outside Thailand A Thai national making a will outside Thailand, may make it in accordance with the law of the country where it is made, or in accordance with Thai law.

When the will is made in accordance with the form prescribed by Thai law, the powers and duties of the *Kromakarn Amphur* shall be exercised by:

(1) a Thai Diplomatic or Consular Officer acting within the scope of his authority, or

(2) any authority competent under foreign law for making an authentic record of a statement.

Disclosure of will to witness Unless otherwise provided by law, a testator need not disclose the contents of his will to a witness.

Wills made during wartime When Thailand is engaged in armed conflict or is in a state of war, a person serving in the armed forces or acting in connection therewith, may make a will at the *Amphur,* by secret document, or orally, in accordance with the rules above. In such case, a military officer or official of commissioned rank shall have the same powers and duties as those of the *Kromakarn Amphur.*

The provisions above apply to a person serving in the armed forces or acting in connection therewith, who while performing duties for his country, makes a will in a foreign country which is engaged in armed conflict or is in a state of war; and in such cases, a military officer or official of commissioned rank shall have the same powers and duties as those of a Thai diplomatic or consular officer.

If the testator under the two paragraphs above is sick or wounded and is admitted to hospital, a physician of that hospital shall also have the same powers and duties as those of the *Kromakarn Amphur*, or Thai diplomatic or consular officer.

Ineligible witnesses The following persons cannot witness the making of a will:

- a person not *sui juris*

- a person of unsound mind or a person adjudged quasi-incompetent;
- a person who is deaf, dumb or blind

Writer of the will must sign his name Where a person other than the testator writes the will, such person must sign his name and add a statement that he is the writer.

If he/she is also a witness, a statement that he is a witness must be written after his signature, in the same manner as made by any other witness.

Effect and interpretation of wills

Will takes effect on death Rights and duties under a will take effect from the death of the testator, unless a condition or time clause has been provided by the testator for its taking effect thereafter.

If a testamentary disposition is subject to a condition which has been fulfilled before the death of the testator; if the condition is precedent, such disposition takes effect upon death; if the condition is subsequent, the disposition has no effect.

If the condition precedent is fulfilled after the death of the testator, the testamentary disposition takes effect at the death of the testator, but ceases to have effect when the condition is fulfilled.

If the testator has declared in the will that in the case above, the effect of the fulfillment of the condition shall relate back to the time of death, such declaration of intention shall prevail.

Legacy subject to a condition Where a legacy is subject to a condition precedent, the beneficiary may apply to the Court for appointment of an administrator of the property bequeathed, up to the time when the condition will be fulfilled or when such fulfillment becomes impossible.

If the Court thinks fit, the applicant may be appointed administrator, and security may be required from him.

Where property forming a gift is lost If the property forming the subject of the legacy has been lost, destroyed or damaged, and in consequence, a substitute or a claim for damages for such property has been acquired, the beneficiary may claim delivery of the substitute received or may himself claim damages.

Release or transfer of a claim Where a gift is made by way of a release or a transfer of a claim, the legacy shall be affective only up to the amount

outstanding at the time of the death of the testator, unless the will provides otherwise.

Gift to a creditor A gift by the testator to a creditor is presumed not to be made in payment of the debt due.

Interpretation of a will Where a clause in a will can be interpreted in several ways, the way which best assures observance of the testator's intentions shall be preferred.

Where the testator has made a legacy by describing the beneficiary in such a way that he cannot be identified, and there are several persons answering to the description of the beneficiary, in a case of doubt, all such persons are deemed to be entitled to equal shares.

Trusts not valid A trust created directly or indirectly by will or by any juristic act taking effect during lifetime or after death shall have no effect.

If the testator desires to dispose of his property in favour of a minor or a person adjudged incompetent or quasi-incompetent, or a person admitted into a hospital for unsoundness of mind, but wishes to entrust the custody and management thereof to a person other than the parents, guardian, custodian or curator, he must appoint a controller of property in the will.

Such appointment cannot be made for a period longer than the minority, or the adjudication of incompetency or quasi-incompetency, or the duration of the admittance into hospital.

Such appointment must be registered, in the case of immovable property, ships of five tons and over, floating houses and beasts of burden.

With the exception of legitimated persons, any juristic or natural person with full capacity may be appointed a controller of property.

Appointing a controller A controller of property may be appointed by the testator or a person nominated in the will. Unless the will provides otherwise:

- a controller of property may appoint by will another person to act in his place.

- a controller of property shall have the same rights and duties as a guardian.

Revocation and lapse of a will, or clause of a will A testator may at any time revoke his will wholly or partly.

If a will is to be revoked wholly or partly, revocation is valid only when the later will is duly made.

Where a will is in one document, the testator can revoke it wholly or partly by intentional destruction or cancellation. Where the will is in several duplicates, revocation is not complete unless it is effected for all duplicates.

Implied revocation A testamentary disposition is revoked if the testator has intentionally made a valid transfer of property which is the subject of the will.

The same rule applies if the testator has intentionally destroyed such property.

Conflict between wills Unless the testator has made a contrary declaration in the will, if it appears that a former and latter will conflict, the former is deemed to have been revoked by the latter, only as to the parts in which their provisions conflict.

Lapse of a testamentary disposition A testamentary disposition lapses:

- if the beneficiary predeceases the testator
- if the disposition is to take effect on a condition being fulfilled and the beneficiary dies before its fulfillment, or it becomes certain that the condition cannot be fulfilled
- if the beneficiary refuses the legacy
- if the whole property bequeathed is, without the intention of the testator, lost or destroyed during his lifetime, and the testator has not acquired a substitute or a claim for damages for the loss of such property.

Consequences If a will or clause in a will regarding any property has no effect for any reason whatsoever, such property devolves on the statutory heirs or the Government of Thailand.

Where a gift is to be inalienable A person may dispose of property subject to a stipulation that such property is inalienable by the beneficiary, provided that the stipulator appoints some person, other than the beneficiary under such disposition, who shall become absolutely entitled to such property in the case of breach of the inalienability clause.

The person appointed must be capable of rights at the same time when the act disposing of the property takes effect.

If there is no such appointment, the inalienability clause shall be deemed non-existent.

An inalienability clause may be for a period of time or for the life of the beneficiary.

If no period is fixed, the period of inalienability is deemed to last for the life of the beneficiary if the beneficiary is a natural person, or 30 years if the beneficiary is a juristic person.

If the period of inalienability is specified, the period cannot exceed 30 years; if a longer period is specified, it shall be reduced to 30 years.

Inalienability regarding certain moveable property Any inalienability clause concerning movable property whose ownership is not subject to registration shall be deemed not to exist.

No inalienability clause concerning immovable property or any real right related thereto is complete, unless it is in writing and registered by the competent official.

The provisions above apply to ships of five tons and over, floating houses and beasts of burden.

Capacity to make a will A will made by a person aged under 15 years or a person adjudged incompetent, is void.

A will made by a person, who is alleged to be of unsound mind but not adjudged incompetent, may be annulled if it is proved that at the time of making the will the testator was actually of unsound mind.

Where will or clause is void A will or clause in a will is void if it is made contrary to the provisions or formalities explained above.

Where a disposition in a will is void A testamentary disposition is void if:

- it appoints a beneficiary with a condition that the latter shall dispose also by will of his own property in favour of the testator or a third party

- it refers to a person whose identity cannot be ascertained; however a legacy under a particular title may be made in favour of a person to be chosen by a person from several other persons or from a group of persons specified by the testator;

- the property bequeathed is so insufficiently described that it cannot be ascertained, or the amount of a legacy is left to the discretion of a person.

and if it appoints a beneficiary on condition that the latter shall dispose of the property bequeathed in favour of a third party, the condition shall be deemed non-existent.

Duress and wills After the death of the testator, an interested person may apply to the Court to have a will cancelled on the grounds of duress; but if the testator continues to live for more than one year after he has ceased to be under the influence of the duress, such application cannot be made.

Mistake or fraud and wills After the death of the testator, an interested person may apply to the Court to have a will cancelled on account of mistake or fraud, but only when the mistake or fraud is such that without it, the will would not have been made.

This applies even if the fraud has been committed by a person who is not a beneficiary under the will.

But a will made under the influence of mistake or fraud is valid, if the testator fails to revoke it within one year after discovering the mistake or fraud.

Limitation period for applying to the court An action for cancellation of a testamentary disposition can be commenced not later than:

- three months after the death of the testator if the ground for cancellation was known to the plaintiff during the lifetime of the testator, or

- three months after the plaintiff has acquired knowledge of such ground, in any other case.

If such testamentary disposition affecting the interests of the plaintiff is unknown to him, even though the ground for cancellation was known to him, the period of three months runs from the moment when the disposition is known or ought to have been known to the plaintiff.

In any event, such action may not be commenced later than 10 years after the death of the testator.

Appointing an executor An executor may be appointed by the testator, or by a person nominated for this purpose in the will.

Power of the court to appoint an administrator An heir, any other interested person, or the Public Prosecutor, may apply to the Court to appoint an administrator of the estate:

- where on the death of the testator, any statutory heir or beneficiary cannot be found, is abroad, or is a minor

- if the executor or an heir is unable or unwilling to carry on, or is impeded in carrying on the administration or distribution of the estate

- if a testamentary disposition appointing an executor has no effect for any reason whatsoever.

Such appointment shall be made by the Court in accordance with the provisions of the will, if any. In the absence of such provisions, the Court may make an appointment for the benefit of the estate, having regard to the circumstances and taking into consideration the intention of the testator, as the Court may think fit.

Executor for a particular purpose Where an executor is appointed by the Court for a particular purpose, he is not bound to make an inventory of the estate unless the inventory is required for such purpose, or by an order of the Court.

More than one executor A testator may appoint one or more persons to be executors.

Unless otherwise provided by the will, if several persons have been appointed administrators and, because some of them are unable are unwilling to act, there remains only one, the latter is solely entitled to act as administrator; if there remain several administrators, it is presumed that they cannot act separately.

Date that powers commence The functions of an executor appointed by the Court begin from the date the Court order is made.

Notice to executor to accept or refuse executorship At any time after 15 days but within one year from the death of the testator, an heir or any other interested person may give notice requiring any person appointed executor under the will to declare whether he accepts or refuses the executorship.

If the person concerned does not declare his acceptance within one month from receipt of such notice, he is deemed to have refused. However, acceptance cannot be made after one year from the death of the testator except with leave of the Court.

Persons not eligible to be executors The following persons may not be executors of an estate:

- persons not *sui juris;*
- persons of unsound mind or adjudged quasi-incompetent; or
- persons adjudged bankrupt by the Court.

Duties of executors The executor of an estate has the right and duty to do all such acts as may be necessary for complying with the express or implied order in the will and for the general administration or distribution of the estate.

Liabilities of an executor Generally speaking, an executor has similar duties those of an agent under the law of agency. An executor:

- is not entitled to receive remuneration from the estate, unless permitted by the will, or by a majority of the heirs.

- May not, unless permitted by the will or by the Court, enter into any juristic act where he has an interest adverse to the interests of the estate.

- Must act personally, unless he can act by an agent through express or implied authority under the will, or by order of the court, or as the circumstances require, for the benefit of the estate.

Position of the heirs The heirs are bound to third parties by acts which an executor has done within the scope of his authority by virtue of his executorship.

They are not bound by juristic acts commenced by the executor with a third party if such juristic act was entered into for consideration of any property or other advantage given for his personal benefit, or so promised to him by such person, unless the heirs consent.

Notifying interested parties An executor shall take proper steps to seek out interested parties and shall notify them within a reasonable time, of testamentary dispositions concerning them.

Where there are multiple executors If there are several executors the performance of their duties shall be decided by a majority of votes, unless otherwise provided by the will. In the case of a tied vote, an interested party may apply to the court for a decision.

Dismissal or resignation of an executor An interested person may prior to completion of the estate distribution apply to the court for the dismissal of an executor, on the grounds of neglect of his duties, or for any other reasonable cause.

Even after having assumed his duties, an executor may resign for any reasonable cause, with the court's consent.

Inventory of estate The executor of an estate shall commence making an inventory of an estate within 15 days:

- from the death of the testator, if at such time the executor has knowledge of his appointment under the will,

- from the date when the administration begins, where the executor is appointed by the court, or

- from the date of his acceptance of executorship, in any other case.

Completion of inventory The executor must complete the inventory within one month from the time specified in the paragraph above; but this period may be extended by the Court on an application by the administrator before the expiry of the month.

The inventory shall be made in the presence of at least two witnesses who must be persons interested in the estate.

Persons who are ineligible to be witnesses of the making of a will**,** cannot be witnesses for the making of any inventory.

Implied obligations of parents to support children and *vice versa* As between the heirs and the executor appointed in the will, and between the Court and any executor appointed by the Court, the general obligations for a parent to support his/her children, and by a child to support his/her parents, shall apply.

Dismissal of executor where the inventory is unsatisfactory If no inventory is made by the executor in due time and form, or if the inventory is found unsatisfactory by the Court on the grounds of gross negligence, dishonesty or obvious incapability of the executor, he/she may be discharged by the Court.

One year to wind up the estate The executors shall perform their duties and complete the account of management and distribution within one year from the date they are deemed to take office as set out above, unless this period is otherwise determined by the testator, a majority of the heirs, or the Court.

Position concerning the estate account No approval, release from liabilities or any other agreement concerning the account of management of the estate, shall be valid unless such account has been delivered to the heirs with any document relating thereto, not less than 10 days beforehand.

No action concerning the executorship can be commenced by an heir after five years after the termination of the executorship.

Realisation of assets, payment of debts and distribution

Rights of creditors Creditors of an estate may be paid only out of property in the estate.

The heirs are bound to disclose to the executor all the property and debts of the deceased known to them.

So long as all known creditors of the estate or beneficiaries have not been satisfied by performance or distribution, the estate is deemed to be still under management.

During such period, the executor is entitled to do necessary acts of management such as to commence proceedings or submit answers in Court, etc. He shall take all necessary steps to collect debts due to estate within the shortest possible time. After the creditors of the estate have been satisfied, he shall divide the estate.

A creditor may enforce his claim against any heir. However, where there is an executor of the estate, he must be sued by the creditor in any action.

Before the division of the estate, a creditor may enforce full payment of his claim from the estate. In such case, each heir may, up to the time of the division, require that performance be made out of the testator's estate or secured therefrom.

After division of the estate, a creditor may claim performance from any heir up to the extent of the property received by him. In such case, an heir who has made performance to the creditor in excess of his proportionate share in the obligation, has a right of recourse against the other heirs.

Order for payment of creditors Without prejudice to the creditors having special preferential rights under general or specific law, and to secured creditors, the debts due from the estate shall be paid in the following order and in accordance with the law regarding preferential rights :

1. expenses incurred for the common benefit of the estate;
2. funeral expenses
3. taxes and duty due from the estate;
4. wages due by the testator to any clerk, servant and workman;
5. supplies of daily necessaries made to the testator
6. ordinary debts of the testator
7. remuneration to the administrator

Order for appropriation of property to pay debts Unless otherwise provided by the testator or by law, his property shall be appropriated to pay debts in the following order:

1. property other than immovable property;

2. immovable property expressly appropriated to that purpose by will (if any);

3. immovable property to which the statutory heirs are entitled as such;

4. immovable property bequeathed to a person on condition that he shall pay the debts of the deceased

5. immovable property bequeathed under a general bequest

6. any specific property bequeathed under a particular title

Any property appropriated under the foregoing provisions shall be sold at public auction, but an heir may prevent the sale by paying, to the extent required for satisfaction of creditors, the value of the whole or part of the property as may be determined by a valuer appointed by the Court.

Objection to auction or valuation A creditor may, at his own expense, object to the auction or valuation of the property. If, notwithstanding such objection having been raised by the creditor, an auction or valuation is effected, the auction or valuation cannot be set up against the creditor who has raised such objection.

Creditors and life insurance If during the lifetime of the deceased, a creditor has been designated as beneficiary of a life insurance policy in payment of a debt due to him, he is entitled to receive the whole sum agreed with the insurer.

He must return to the estate the amount of the premiums, if the creditors prove:

- that by paying his debt in such manner, the deceased and the creditor have committed a fraudulent act to avoid creditors; and

- that such premiums were disproportionate to the income or station in life of the deceased.

The premiums returned exceed the sum paid by the insurer.

Rights of heirs and beneficiaries A statutory heir or beneficiary under a general title is not bound to execute legacies under a particular title for more than the amount of property received by him.

Period for transfer of bequests to heirs An executor is not bound to deliver the estate or any part thereof to the heirs before one year has elapsed from the death of the testator, unless all known creditors and beneficiaries have been satisfied by performance and distribution.

Heirs have rights in common Until the division of the estate is complete, the rights and duties of joint heirs as regards the estate are in common, and the law regarding co-ownership shall apply.

Presumption of rights of joint beneficiaries Subject to the law, or the will, joint heirs are presumed to have equal shares in the undivided estate.

Where an heir receives property during lifetime Where an heir has during the lifetime of the testator received any property or other advantage by gift or by other act gratuitously, his rights in the estate shall not be prejudiced.

An heir in possession of the undivided estate is entitled to claim division thereof even after the lapse of the prescription period.

The right to demand division may not be excluded by a juristic act for a period exceeding ten years at a time.

Right to intervene in proceedings When an action for division of an estate is commenced in Court, every person claiming to be an heir may intervene in the action.

The Court cannot summon to participate in the division, heirs other than the parties or an intervener in the action, nor reserve a part of the estate for such other heirs.

Division of the estate Division of the estate may be made by the heirs severally taking possession of the property or selling the estate and dividing the proceeds of sale between joint heirs.

If division is not so effected, but is made by agreement, such agreement is not enforceable unless there is written evidence signed by the party to be liable or his agent, and in such case the provisions of law regarding compromise shall apply.

No right to compensation After the division of an estate, if an heir is by reason of eviction deprived of the whole or part of the property allotted to him under the division, the other heirs are liable to compensate him.

Such obligation ceases if there is an agreement to the contrary, or if the eviction results from the fault of the heir evicted or from a cause arising after the division.

Bona vacantia – unclaimed goods Subject to the rights of creditors, where on the death of a person there is no statutory heir or beneficiary, or creation of a foundation under a will, the estate devolves on the Government of Thailand.

Prescription periods for making claims An action concerning inheritance cannot be commenced later than one year after the death of the testator, or after the time when the statutory heir knows or ought to have known of such death.

An action concerning a legacy cannot be commenced later than one year after the time when the beneficiary knows or ought to have known of the rights to which he is entitled under the will.

Subject to the general law regarding limitation of actions, a creditor having a claim against the estate which is subject to a prescription period exceeding one year is barred from bringing an action after one year from the time when he knows or ought to have known of the death of the testator.

In no case shall claims under the foregoing paragraphs be commenced later than 10 years after the death of the testator.

The prescription period of one year can be set up only by an heir, a person entitled to exercise the rights of an heir, or by an administrator of an estate.

Revised 1 September 2018