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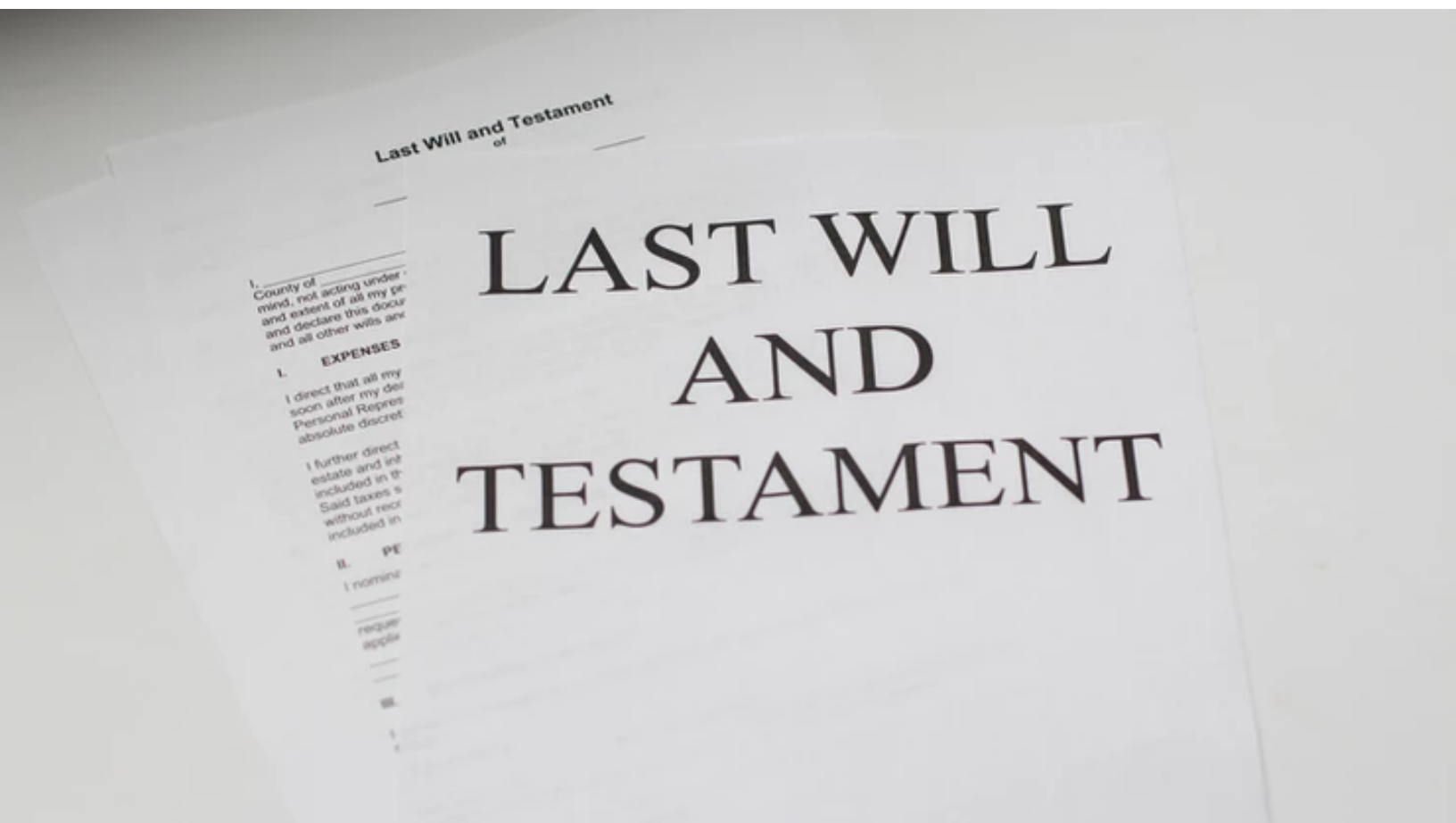
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Comparison of the Testamentary Forms between the UPC and the Chinese Civil Code

* By: Jiang Zhu



On May 28, 2020, the *Civil Code of People's Republic of China* (hereinafter referred to as the "Chinese Civil Code"), one of the most important laws in the Chinese legal system, was passed by the Chinese National Congress and will become effective on the very first day of 2021.

The Chinese Civil Code is the first, and thus far the only, Chinese law that is titled as a "code." It integrates the existing major civil laws and rules in China in an attempt to build a complete and coherent civil legal system in China.[1] The Chinese Civil Code consists of 1,260 Articles, which are distributed into seven main sections and one supplementary section, namely "general provisions," "property rights," "contracts," "personality rights," "marriage and family," "succession," "torts," and "supplementary provisions." [2] The succession section is based on the currently effective *Chinese Succession Law*, which will be repealed upon the implementation of the Chinese Civil Code. On the issue of testamentary forms, the succession section of the Chinese Civil Code permits "testator-written wills," "proxy-written wills on behalf of the testator," "printout wills," "audio recorded wills," "video recorded wills," "nuncupative wills," and "notarized wills," among them the printout wills and video recorded wills are newly added to the Chinese succession law.

Testator-written wills in Chinese law can be analogized to holographic wills in the UPC. Essentially, they are both written by the testators and can be effective in the absence of a witness. However, a holographic will requires that “the signature and material portions of the document are in the testator’s handwriting,”[3] while Chinese law requires a testator-written will be “made in the testator’s own handwriting and signed by himself.”[4] Subtle differences can be detected between the UPC and Chinese Civil Code. First, the UPC only requires the “material portions” of the will be made by testator’s handwriting. In contrast, although it is not explicit, Chinese law seems to prefer that the whole will be written in the testator’s handwriting. Second, although the UPC and Chinese Civil Code both require the testator to sign his handwritten will, the Chinese courts seem to focus more on the genuineness of the will and the real intent of the testator, rather than merely on form compliance.

In some cases, Chinese courts affirmed the validity of testator-written wills even though testator’s signatures were not present, as long as the court could confirm that the will was executed by the testator and effectively demonstrated his or her real intent.[5] Apart from the testator-written will, all other forms of wills in Chinese Civil Code are subject to two or more witnesses in order to be valid.[6]

The UPC and Chinese Civil Code share this commonality. However, the Chinese Civil Code varies with regard to how the varying witness methods and processes apply to the different types of the wills.

Both the proxy-written will and the printout will are analogues to written wills under the UPC. For the proxy-written will, one of two witnesses should be responsible for writing the will, and the testator and the witnesses are required to sign the will. This method distinguishes the Chinese proxy-written will from the UPC written will in which the witnesses are not obligated to write the testator’s will. Moreover, the UPC allows other individuals to sign wills on the testator’s behalf in his conscious presence and by his direction.[7] However, under Chinese law, even in the proxy-written will, the testator is required to sign his name on the will independently.[8]

A printout will is treated as a proxy-written will in the Chinese Civil Code, which means that two witnesses are needed to validate the will.[9] This rule is basically an incorporation of the Chinese judicial practice.[10] In addition, for the witness process of the printout will, both the testator and the witnesses are required to sign each page of the printout will. In contrast, the UPC does not isolate the printout will as a separate type of will, nor does it identify a special witness process for this kind of will. Therefore, under the UPC, the witness process required in the execution of a printout will is essentially the same as with other written wills.

A nuncupative will is not included in the UPC, however, it has a place in Chinese laws relating to succession in the Chinese Civil Code. Even though a nuncupative will can only be used by a testator under emergency circumstances, it needs to be witnessed by two or more witnesses. The emergency circumstance are over when the testator is able to make a will in writing or in the form of an audio recording or video recording, and thereupon the nuncupative will shall be invalidated immediately.[11]

Audio recorded wills have been adopted since the days of Chinese Succession Law.[12] The newly promulgated Chinese Civil Code incorporates the video recorded will into it as a new form of will. As noted above, two or more witnesses are needed in order to validate the audio or video recorded will. However, given the particularity of the audio and video recorded will, the witness for these kinds of wills are different. The witnesses do not need to “sign” the will, instead, both the testator and witnesses are required to record their names or images in the recorded audio or video in accordance with specific forms.

As to the notarized will, the UPC gives a notarized will no special position compared to other witnessed wills.[13] However, in the Chinese Succession Law, the notarized will was once given a higher validity over other types of wills. According to the Chinese Succession Law, a notarized will may not be revoked or changed by testator-written will, proxy-written will, sound-recorded will or nuncupative will.[14] As a result, a notarized will can only be revoked or changed by a new notarized will. However, the succession section of the Chinese Civil Code abandons this regulation and places the notarized will in the same tier as other types of valid wills. Furthermore, upon the effectiveness of the Chinese Civil Code, testators may revoke or change notarized wills via any types of wills that are permitted pursuant to Chinese law. If there are several wills with contradicting content, the most updated, or recent will shall prevail.

[15]

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[1] Wang Chen, Guanyu “Zhonghua Renmin Gongheguo Minfa Dian (Caonan)” de Shuoming (关于<中华人民共和国民法典(草案)>的说明), spec. vol. 2020 Standing Comm. Nat’l People’s Cong. Gaz. 178, 181 (China).

[2] See generally Zhonghua Renmin Gongheguo Minfa Dian (中华人民共和国民法典) [the Civil Code of People’s Republic of China] (promulgated by Nat’l People’s Cong., May 28, 2020, effective Jan. 1, 2021) spec. vol. 2020 Standing Comm. Nat’l People’s Cong. Gaz. 2 (China).

[3] Unif. Probate Code § 2-503 (b).

[4] Zhonghua Renmin Gongheguo Minfa Dian (中华人民共和国民法典) [the Civil Code of People’s Republic of China], art.1134, *supra* note 2, at 161.

[5] See Wu Xiangping deng Su Wu Xianglin Jicheng An (吴享平等诉吴享林继承案) [Wu Xiangping etc. v. Wu Xianglin on Succession], https://pkulaw.cn/case_es/payz_a25051f3312b07f30d01ffc35e9f4a27f09bc76796f4923dbdfb.html?match=Exact (last visited Nov. 7, 2020) (People’s Ct. of Xiufeng District Guilin City Guangxi Zhuang Autonomous Region 2008) (China); Ju Mou, Wu Mou 1 Yizhu Jicheng Jiufen Zaishen Shencha yu Shenpan Jiandu Minshi Caidingshu (剧某, 吴某1遗嘱继承纠纷再审审查与审判监督民事裁定书) [Civil Decision of Retrial Consideration and Judicial Supervision on the Testamentary Succession Dispute between Ju Mou and Wu Mou 1], <https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=7217c86d8e9c4d68be6fabe400bdbe77> (last visited Nov. 7, 2020) (Higher Ct. of Hebei Province 2020) (China.)

[6] Zhonghua Renmin Gongheguo Minfa Dian (中华人民共和国民法典) [the Civil Code of People’s Republic of China], art.1135, 1136, 1137, 1138, *supra* note 2, at 161.

[7] Unif. Probate Code § 2-502 (a) (2).

[8] Zhonghua Renmin Gongheguo Minfa Dian (中华人民共和国民法典) [the Civil Code of People’s Republic of China], art.1135, *supra* note 2, at 161.

[9] Zhonghua Renmin Gongheguo Minfa Dian (中华人民共和国民法典) [the Civil Code of People’s Republic of China], art.1136, *supra* note 2, at 161.

[10] See the People’s Higher Ct. of Beijing, Beijing Shi Gaoji Renmin Fayuan Guanyu Shenli Jicheng Jiufen Anjian Ruogan Yinan Wenti de Jieda (北京市高级人民法院关于审理继承纠纷案件若干疑难问题的解答), <https://www.pkulaw.com/lar/8705ae74308ff814ca0bba86f5c21bfabdfb.html> (last visited Nov. 7, 2020); see also Shanghai Runtong Law Firm, Minfa Dian Xingui zhi “Dayin Yizhu” de Caipan Guize yu Zhuyi Shixiang (<民法典>新规之“打印遗嘱”的裁判规则与注意事项), <http://www.wuyou1.com/dx1hal/n7250.html> (last visited Nov. 7, 2020).

[11] Zhonghua Renmin Gongheguo Minfa Dian (中华人民共和国民法典) [the Civil Code of People’s Republic of China], art.1138, *supra* note 2, at 161.

[12] Jicheng Fa (继承法) [Succession Law] (promulgated by the Nat’l People’s Cong., Apr. 10, 1985, effective Oct. 1, 1985), art. 17, http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4457.htm (last visited Nov. 7, 2020).

[13] Unif. Probate Code § 3-406.

[14] Jicheng Fa (继承法) [Succession Law] art. 20, *supra* note 12.

[15] Zhonghua Renmin Gongheguo Minfa Dian (中华人民共和国民法典) [the Civil Code of People’s Republic of China], art.1142, *supra* note 2, at 161.