Inheritance



법제처

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[Inheritance]

We provide legal information related to inheritance, ranging from inheritance priority, share of inheritance, inheritance renunciation, qualified acceptance, and inheritance registration for various inheritance-related tax issues.

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1. Overview of Inheritance

1.1. About Inheritance

1.1.1. About Inheritance

About Inheritance

▪ Concept of inheritance

- Inheritance refers to the succession of blanket rights and duties pertaining to the property of the inheritor to the inheritee from the time of the commencement of the inheritance, except for the right exclusively attached to the inheritee (Article 1005 of the "Civil Act").

※ Inheritee refers to a person who bequeathes property due to his/her death or judicial declaration of disappearance, and inheritor refers to a person who inherits property due to the death or judicial declaration of disappearance of the inheritee.

Parties eligible for inheritance

▪ Only the inheritance of property is allowed

- Since the head of family inheritance system was abolished [partial amendment to the (former) "Civil Act" of Act No. 4199, January 13, 1990], only the inheritance of property is accepted under the current law (Article 1005 of the "Civil Act").

Commencement of inheritance

▪ Commenced by the death of the inheritee

- The inheritance is commenced by **the death of the person (inheritee)** (Article 997 of the "Civil Act").

· The death of a person refers to the moment in time in which his/her life becomes absolutely and permanently suspended.

√ In this regard, the time of death is generally regarded as the time when breathing, pulse, and blood circulation stop.

· Apart from this, **a person who is judicially declared disappeared is also considered dead** and the inheritance commences.

√ The judicial declaration of disappearance refers to adjudication conducted by the family court on the application of any person interested or of a public prosecutor, if it is uncertain for five years whether an absentee is alive or dead (Article 27 (1) of the "Civil Act").

√ The person interested or of a public prosecutor may still file an application to receive the judicial declaration of disappearance if the survival or death of a person who was on a battlefield, aboard a sunken vessel or a downed aircraft, or encountered any other peril that might be a cause of death, is not known distinctly for one year after the termination of the war, the sinking of the vessel or the crash of the aircraft, or the end of any other peril (Article 27

(2) of the "Civil Act").

- Place of Commencement of Inheritance

▪ Commenced at the place of domicile of the inheritee

- An inheritance is commenced at the place of domicile of the inheritee (Article 998 of the "Civil Act").

· Therefore, even if the inheritee dies in a place other than his/her place of domicile, the inheritance is commenced at his/her place of domicile.

- **Expenses of inheritance**

▪ Paid out of the inherited property

- Expenses for inheritance shall be paid out of the inherited property (Article 998-2 of the "Civil Act").

· The expenses of inheritance refer to any expenses arising from the inheritance and the following falls under the category of the expenses of inheritance:

√ Management expenses of inherited property within the period of acceptance and renunciation of inheritance

√ In the event of qualified acceptance or renunciation of inheritance, the management expenses for inherited property for a certain period of time

√ Management expenses of inherited property until the partition of the property after simple acceptance

※ At this time, the management expenses of inherited property refer to the expenses objectively required for the maintenance and preservation of the inherited property, and if a lawsuit is filed against the inherited property, the expenses of the lawsuit, etc. also fall into the category.

√ Funeral expenses

√ Inheritance tax

1.1.2. Overview of the Legislative System Concerning Inheritance

- **Civil Act**

▪ Civil Act

- The basics of inheritance is provided in Part V of the "Civil Act".

- A person who has the highest priority and the closest in degree of relationship becomes the inheritor among lineal descendants of the inheritee, lineal ascendants of the inheritee, brothers and sisters of the inheritee, and collateral blood relatives within the fourth degree of the inheritee (Article 1000 of the "Civil Act").

- If there exist two or more inheritors, they become co-inheritors in which case they share the inherited property according to their share of inheritance until the inherited property is divided (Article 1006 of the "Civil Act").

- **Family Litigation Act**

▪ Family Litigation Act

- The “Family Litigation Act” applies to non-contentious cases on inheritance.

- The adjudication on the qualified acceptance and renunciation of inheritance, request for permission to extend the period for acceptance or renunciation of inheritance, the request for the disposition for preserving the inherited property, the request for the appointment of an appraiser for inherited property, the request for the appointment of an administrator of jointly inherited property, the request for partition of inherited property, the request for the appointment of an administer and public notice on a search for an heir if it is unclear whether there exists an inheritor, and the request for the apportionment of the inherited property will be subject to the non-contentious procedure under the “Family Litigation Act” (Article 2 (1) 2 of the “Family Litigation Act”).

Civil Procedure Act

▪ Civil Procedure Act

- The general civil procedures under the “Civil Procedure Act” apply to the request for the partition of inherited property of co-inheritors, the request for the recovery of inheritor by the inheritor, and the request of the return of the legal reserve of inheritance by trial.

Registration of Real Estate Act

▪ Registration of Real Estate Act

- If an inheritor has inherited real estate property, he/she may register the real estate property as a result of inheritance and the real estate registration procedure is subject to the “Registration of Real Estate Act”.

Inheritance Tax and Gift Tax Act, Local Tax Act, and Framework Act on Local Taxes

▪ Inheritance Tax and Gift Tax Act, Local Tax Act, and Framework Act on Local Taxes

- An inheritor who inherits will be imposed of inheritance tax.An inheritor must report the payment of inheritance tax within six months from the last day of the month in which the commencement date of inheritance falls.The payment procedure of inheritance tax is subject to the “Inheritance Tax and Gift Tax Act.”

- An inheritor who inherits real estate property, vehicle, condominium membership, etc. will be imposed of the acquisition tax.The payment procedure of acquisition tax is subject to the “Local Tax Act” and the “Framework Act on Local Taxes.”

1.1.3. Checklist for Inheritance

What legal knowledge do I need to know if a close family member of mine has died?

▪ Checklist for inheritance

- If a close family member of yours has died, you need to find out whether you fall into the category of inheritors of the deceased.The further details are as follows:

> **1. Find out whether you fall in the category of inheritors.**

· If you become an inheritor, you will succeed the property rights as well as the duties of the inheritee (the deceased). Therefore, you need to be quick to find

out whether you are an inheritor to avoid inheriting any unwanted liabilities.

2. You need to find out if there is a will written by the inheritee.

· If a legally valid will has been created, the content of the will must be observed in the case of a statutory will. In particular, if there is any testamentary gift, the testamentary gift is provided to the beneficiary first and then the remaining estate is inherited, and therefore, the will must be found to verify its content.

3. If you are an inheritor, you must inquire about the property status of the inheritee.

· You can find out whether there are any deposits, loans, guarantees, security accounts, insurance contracts, and credit card-related debts under the name of the inheritee through the Financial Complaints Center on the 1st floor of the Financial Supervisory Service headquarters, or each financial association.

· In addition, inheritors can file an application with the City/Gu Office or Eup/Myeon/Dong Community Center to inquire into the deceased estate by probing his/her financial transactions, national tax and local tax arrears, unpaid taxes, and refunded taxes, national pension, public official pension, private school teachers' pension, car ownership, detailed land ownership, and more all at once.

√ Application is available by visiting the City/Gu Office or the Eup/Myeon/Dong Community Center or by accessing Government 24.

4. You need to carefully figure out your share of inheritance and what portion of the property you will be entitled to inherit.

· If there exist two or more inheritors, they become jointly entitled to receive the inheritance, and if there is no testamentary gift, the share of inheritance of each individual will be subject to the statutory share of inheritance (Article 1009 of the "Civil Act").

5. If you have more debts than the property you receive through inheritance, or if you are unsure about the exact amount of the debt, you should consider whether to renunciate inheritance or to effect qualified acceptance.

· Since the inheritance renunciation (Article 1019 of the "Civil Act") or the qualified acceptance of inheritance (Article 1028 of the "Civil Act") require reports to the family court within three months from the date on which the inheritor becomes aware of the commencement of inheritance, you must decide whether to waive the inheritance or effect the qualified acceptance.

2. Inheritor

2.1. About Inheritor

2.1.1. Inheritor

What is inheritor?

▪ Concept of inheritor

- An inheritor refers to a person who succeeds the property status of the inheritee as inheritance commences.

※ An inheritee refers to a person who bequeaths his/her property due to death or judicial declaration of disappearance.

· An inheritor must be a **human being** and a corporation is not eligible to inherit any property and is only eligible to receive testamentary gifts.

· An inheritor **must be alive at the time of commencement of inheritance.**

· With respect to the order of inheritance, however, an unborn child is considered as already born (Article 1000 (3) of the "Civil Act").

Inheritance priority

▪ Inheritance priority

- The inheritors are determined in the following order and **the statutory spouse** of the inheritee will be a joint inheritor with them if there are any lineal descendants or ascendants of the inheritee. If there are no such lineal descendants or ascendants of the inheritee, the said statutory spouse will be the sole inheritor (Articles 1000 (1) and 1003 (1) of the "Civil Act").

Priority	Inheritor	Note
1	Lineal descendants of the inheritee (Children, grandchildren, etc.)	Will always become inheritors.
2	Lineal ascendants of the inheritee (Parents, grandparents, etc.)	Will become inheritors if there are no lineal descendants.
3	Siblings of the inheritee	Will become inheritors if there are no first-in-line and second-in-line inheritors.
4	Collateral blood relatives within the fourth degree of the inheritee (Uncles, aunts, etc.)	Will become inheritors if there are no first-in-line, second-in-line, and third-in-line inheritors.

2.1.2. Inheritor as Spouse or Inheritor by Representation

Inheritor as spouse

▪ Who is an inheritor as spouse?

- An inheritor as spouse refers to a spouse who falls under the category of inheritors, and the spouse here must be a person who is in a marital relationship under the statutes.

  · Therefore, a spouse who is in a de facto relationship does not qualify as an inheritor.However, a party in a special relationship with the inheritee may be apportioned with inherited property only if there is no inheritor (Article 1057-2 of the "Civil Act").

- A spouse will be a co-inheritor with the same priority as the lineal descendants who are first in line and if there is no such lineal descendant, he/she will be a co-inheritor as the lineal ascendants who are second in line.Meanwhile, if there is neither lineal descendants nor lineal ascendants, the spouse will be the sole inheritor (Article 1003 of the "Civil Act").

▪ Co-inheritance of the spouse

- If any lineal descendants or lineal ascendants become inheritors, the spouse will be a co-inheritor along with the said lineal descendants or lineal ascendants.

  · Therefore, the lineal descendants or the lineal ascendants of the spouse will co-own the inherited property by their respective share of inheritance.

Inheritor by representation

▪ Who is an inheritor by representation?

- An inheritor by representation refers to any lineal descendants or spouse of the

inheritee by representation in the order in which the deceased or disqualified person would have become the inheritor if a lineal descendant or a brother or sister who would become an inheritor has died, or has become disqualified before the commencement of succession (Articles 1001 and 1003 (2) of the "Civil Act").

▪ How to become an inheritor by representation

- **Must have a cause of representation**

  · "A lineal descendant or sibling" (if not dead or had not been disqualified from inheritance) must be "dead or disqualified" "before the commencement of inheritance".

- **Must meet requirements for the inheritor by representation.**

  · The inheritor by representation must be a "lineal descendant or spouse" of the to-be inheritor (if not dead or had been disqualified from inheritance).

2.2. Disqualified Person for Succession

2.2.1. Disqualified Person for Succession

Disqualified person for succession

▪ Who is a disqualified person for succession?

- A disqualified person for succession refers to a person who is ineligible to become an inheritor, that is, a person who is placed on the order of inheritance set out under the law but is disqualified for a certain reason.

- A person who is ineligible for succession are as follows (Article 1004 of the "Civil Act"):

  · A person who has intentionally killed or attempted to kill a lineal ascendant, the inheritee, his or her spouse, or any person who has priority or is in the same order of inheritance;

  · A person who has intentionally assaulted a lineal ascendant, the inheritee or his or her spouse, and caused their death;

  · A person who interferes by fraud or duress with a will or withdrawal of a will on inheritance of the inheritee;

  · A person who, by fraud or duress, has the inheritee make a will on his or her inheritance;

  · A person who forges, alters, destroys or conceals a will on inheritance of the inheritee;

3. Effects of Inheritance

3.1. Transfer of Inherited Property

3.1.1. Transfer of Inherited Property

Effects of Inheritance

Universal succession of inherited property

- An inheritor succeeds, from the time of the commencement of the inheritance, to the blanket rights and duties regarding the property of the inheritee (Article 1005 of the "Civil Act").
  - The inheritance is commenced by the death of the person (inheritee) (Article 997 of the "Civil Act").
- The inherited property subject to succession at this time does not only include **positive property** that benefits the inheritor but also **negative property** such as debts.
  - The positive property refers to inherited property such as real rights, claims, and objects, and the negative property refers to debts.

Inherited property

The inherited property includes the following (e.g.):

Classification	Inherited property
Positive property	Objects such as movables and immovables
	Real rights such as ownership, possessory rights, superficies, servitudes, rights to registered lease on deposit basis (chonsegwon), rights of retention, pledges, and mortgages for objects
	Claims as the rights in which a particular person demands certain action against another particular person √ Claims for damages arising from the violation of life (Article 750 of the "Civil Act") √ Claims for compensation (Article 751 (1) of the "Civil Act") √ Claims for a partition of property due to divorce (Article 839-2 (1) of the "Civil Act") √ Stockholder's rights of a corporation (Article 335 of the "Commercial Act") √ Equity interests of members of a limited company (Article 556 of the "Commercial Act") √ Positions of a limited partner of a limited partnership company (Article 283 of the "Commercial Act")
	Intangible property rights such as patents, model utility rights, design rights, trademark rights, rights on works
Negative property	General debts Taxes

Non-inherited property

- The following does not fall under the category of the inherited property (e.g.):

Classification	Non-inherited property
Strictly personal rights	- Membership of an incorporated association (Article 56 of the "Civil Act") - Special servitude (Article 302 of the "Civil Act") - Position of the party to a mandate agreement (Article 690 of the "Civil Act") - Position of the principal or the agent in an agency relationship (Article 127 of the "Civil Act") - Position of a partner (Article 717 of the "Civil Act") - Position of the donee in a periodic performance (Article 560 of the "Civil Act") - Position of an employer (Article 657 of the "Civil Act") - Equity interests of the members of a merged company (Article 218 of the "Commercial Act") - Position of the general partners of a limited partnership (Articles 218 and 269 of the "Commercial Act") - Penalties, minor fines or additional charges
Things determined to the reserved under the statutes or contracts	- Right to claim life insurance (Article 730 of the "Commercial Act") - Right to claim retirement pension and bereaved family pension - Properties for ancestral rites (Article 1008-3 of the "Civil Act") - Condolence money - Position of a fidelity guarantor (Article 7 of the "Fidelity Guarantee Act") - Surety obligation of a continuous surety agreement with no fixed surety period and surety limit

3.2. Inheritance Shares of Inheritors

3.2.1. Inheritance Shares

- Inheritance shares

▪ What is an inheritance share?

- An inheritance share refers to the share that each inheritor succeeds if two or more inheritors jointly succeed to the inherited property.

▪ Inheritance shares of spouses

- The share inherited by an inheritee's surviving spouse will be increased by 50 percent (%) over the inherited share of the inheritee's lineal descendant where the spouse inherits jointly with such descendants, or 50 percent (%) over the inherited share of the inheritee's lineal ascendant if the spouse inherits jointly with such ascendants (Article 1009 (2) of the "Civil Act").

▪ Inheritance shares of inheritors by representation

- The portion inherited by the person who becomes an inheritor in lieu of the deceased or disqualified person (Article 1001 of the "Civil Act") will be the portion the deceased or the disqualified person has been entitled to (Article 1010 (1) of the "Civil Act").

- If there exist two or more lineal descendants of the deceased or disqualified person and if there exist two or more inheritors with the same order of priority, their shares of the inheritance will be equally divided within the limits of the share of inheritance of the deceased or disqualified person has been entitled to. The share inherited by an inheritee's surviving spouse will be increased by 50 percent (%) over the inherited share of the inheritee's lineal descendant where the spouse inherits jointly with such descendants, or 50 percent (%) over the inherited share of the inheritee's lineal ascendant if the spouse inherits jointly with such ascendants (the former part of Article 1010 (2) and Article 1009 of the "Civil Act").

- If there is no lineal descendant of the inheritor by representation, the surviving spouse of the deceased or disqualified person will be the sole inheritor by representation (Article 1003 of the "Civil Act").

▪ Inheritance shares of co-inheritors

- If there are two or more inheritors in the same rank, their shares of the inheritance will be equally divided (Article 1009 (1) of the "Civil Act").

3.2.2. Inheritance Shares of Special Beneficiaries

Inheritance shares of special beneficiaries

▪ Who is a special beneficiary?

- A special beneficiary refers to a person who has previously received a gift or testamentary gift of property from the inheritee among co-inheritors (Article 1008 of the "Civil Act").

▪ What is a special benefit?

- A special benefit refers to the property transferred to the co-inheritors as a gift or testamentary gift.

▪ How to calculate the share of inheritance if there is a special beneficiary

- If any one of the co-inheritors has previously received a gift or testamentary gift of the property from the inheritee, and such property received is of less

value than his/her share of the inheritance, he/she will be entitled to a share of the inheritance within the limit of the difference between the gifts and his/her legal share of inheritance (Article 1008 of the "Civil Act").

- If the value of the property received as a gift or testamentary gift by the special beneficiary is of less value than his/her share of inheritance, he/she may claim the share of inheritance that falls short against other inheritors (Article 1008 of the "Civil Act").

3.2.3. Inheritance Shares of Contributors

Inheritance shares of contributors

▪ Who is a contributor?

- A contributor refers to a person among co-inheritors who has specially supported the inheritee by sharing accommodations, providing nursing, or other means for a considerable period or has specially contributed to the maintenance or increase of the property of the inheritee (Article 1008-2 (1) of the "Civil Act").

▪ What is a contributory portion?

- A contributory portion refers to a system that recognizes the share of inheritance by adding the property to the extent of contribution to a party if there is a person among co-inheritors who has specially contributed to the maintenance or increase of the property of the inheritee or has specially supported the inheritee(source: Glossary of Legal Terms, Korea Legislation Research Institute).

Determination of the contributory portion

▪ Determination by agreement

- The contributory portion will be determined by agreement by co-inheritors in principle (Article 1008-2 (1) of the "Civil Act").

▪ Determination by the judgment of a family court

- If the parties fail to reach an agreement or are unable to reach an agreement on the contributory portion, the contributor is entitled to file a claim with the family court to determine the contributory portion.

- The family court will determine the contributory portion, taking into consideration the time, method and degree of the contribution, the value of the inherited property and other circumstances (Article 1008-2 (2) of the "Civil Act").

※ The contributor is entitled to claim the contributory portion against other co-inheritors (Article 1008-2 (4) of the "Civil Act") if (1) the inherited property is to be divided (Article 1013 (2) of the "Civil Act") or (2) if the co-inheritors have already divided their inherited property but the party affiliated claims payment of the amount equivalent to his or her portion (Article 1014 of the "Civil Act").

▪ How to calculate the share of inheritance if there is a contributor

▪ Limits on the contributory portion

- The contributory portion must not exceed the amount calculated by deducting the

value of testamentary gifts from that of property of the inheritee when the inheritance is commenced (Article 1008-2 (3) of the "Civil Act").

▪ How to calculate the share of inheritance if there is a contributor

- If there is a contributor among co-inheritors, the contributory portion in the value of property of the inheritee determined by co-inheritors at the time of commencement of the inheritance will be deemed as the inherited property and the share of inheritance for each inheritor will be subject to the statutory share of inheritance (Articles 1009 and 1010 of the "Civil Act").At the time, the share of inheritance for the contributor will be calculated by adding the contributory portion (Article 1008-2 (1) of the "Civil Act").

3.3. Partition of Inherited Properties

3.3.1. Joint Inheritance

What is joint inheritance?

▪ What is joint inheritance?

- Joint inheritance refers to the inheritance of the property of the inheritee if there are multiple inheritors.

▪ Who are co-inheritors?

- Co-inheritors refer to multiple inheritors with the same order of priority for joint inheritance.

Co-ownership of the inherited property by co-inheritors

▪ Co-ownership of the inherited property by co-inheritors

- If there are multiple inheritors, they become co-owners of the inherited property (Article 1006 of the "Civil Act").

- Co-ownership refers to the ownership of an article jointly by two or more persons in proportion to their share of inheritance (Article 262 of the "Civil Act").

▪ Succession of the rights and duties of co-inheritors

- Co-inheritors succeed to the rights and duties of the inheritee in proportion of their share of inheritance (Article 1007 of the "Civil Act").

※ However, this relationship of co-ownership of co-inheritors is introduced for the provisional status of the inherited property.

Management and disposition of joint inherited property

▪ Management of joint inherited property

- Co-inheritors are entitled to dispose of their own shares and may make use of or take the profits from, in proportion to their own shares, the whole of the article owned jointly (Article 263 of the "Civil Act").

- Co-inheritors are not allowed to dispose of or make any alteration in the article jointly owned without consent of the other co-owners (Article 264 of the "Civil Act").

▪ All matters relating to the administration of the article jointly owned will be determined by a majority in shares of the co-inheritors.However, each co-inheritor will be entitled to do any act of preservation (Article 265 of the "Civil Act").

- Each co-inheritor will be required to pay the expenses of administration and bear all other duties for the jointly inherited property in proportion to his/her share (Article 266 (1) of the "Civil Act").

  · If a co-inheritor fails to meet the obligation on the expenses of administration of the jointly inherited property for one year or longer, other co-inheritors may purchase the share of the said co-inheritor with the value equivalent to the said expenses (Article 266 (2) of the "Civil Act").

Transfer of shares for joint inheritance

▪ Transfer of shares for joint inheritance

- If one of the co-inheritors has assigned his or her share of inheritance to a third party, any other co-inheritor may obtain such share by reimbursing its value and expenses relating to the transfer (Article 1011 (1) of the "Civil Act").

  · The right to acquire the share of inheritance transferred to a third party must be exercised within three months from the day on which such cause has been known or within one year from the day on which such cause has occurred (Article 1011 (2) of the "Civil Act").

3.3.2. Partition of the Inherited Property among Co-inheritors

Partition of the inherited property

▪ The inherited property will be divided into the property of each inheritor.

- Each of the co-inheritors succeeds to the rights and duties of the inheritee in proportion to his/her share of the inheritance and the inherited property will be jointly owned by co-inheritors (Articles 1006 and 1007 of the "Civil Act").

  · In this case, the inherited property needs to be divided into the property of each inheritor, and this is referred to as the partition of the inherited property.

- The partition of inherited property becomes prohibited when such partition is barred under the testamentary will or agreement.

  · If the partition of the inherited property is barred under the testamentary will of the inheritee, the partition will be prohibited for a certain period of time.

  √ An inheritee may prohibit the partition of all or part of the inherited property or by all of part of the inheritors by testamentary will (Article 1012 of the "Civil Act").

  √ However, the period prohibiting the partition will be reduced to five years if the period set exceeds five years.

  · If the partition of the inherited property is barred by an agreement by co-inheritors, the partition will be prohibited for a certain period of time.

  √ The co-inheritors may agree not to divide the inherited property for up to five years (Article 268 (1) of the "Civil Act").

√ Such an agreement on the prohibition of partition may be renewed for up to five years (Article 268 (2) of the "Civil Act").

- **Each and every co-inheritor must participate** in the partition of the inherited property.

  · The parties who are entitled to claim the partition of the property include inheritors, testamentary donees by general title, inheritors of co-inheritors, and transferees of the share of inheritance.

  √ An obligee of the inheritor may exercise his/her right to claim the partition by subrogation as an obligee (Article 404 of the "Civil Act").

Property subject to partition

▪ In principle, the co-inheritors are entitled to divide the entire inherited property.

- The inherited property is transferred as a whole through inheritance and the entire inherited property becomes subject to partition, but divisible inherited property is not subject to partition.

  · The valuation of inherited property to be divided will be based on the time of partition of the time of the judgment for partition.

▪ As an exception, pecuniary claims and obligations are not subject to partition of inherited property.

- Divisible claims and obligations such as pecuniary claims and obligations constitute the inherited property, but since they are divided and succeeded to the co-inheritors in accordance with the statutory share of inheritance upon the commencement of inheritance, they are not subject to partition.

  ※ Divisible claims refer to those divisible and payable to multiple obligees due to their nature.

  ※ Divisible obligations refer to those entitled to claim the performance of a certain part against multiple obligators due to their nature.

How to divide the inherited property

▪ Partition by specification

The partition by specification of inherited property refers to the partition carried out by the method of partition of the inherited property according to the inheritee's testamentary will or by entrusting a third party other than the inheritors to set the method of partition (Article 1012 of the "Civil Act").

▪ Partition by agreement

- The partition by agreement of inherited property refers to the partition carried out by agreement among co-inheritors if there is no testamentary will of the inheritee on the prohibition of partition (Article 1013 (1) of the "Civil Act").

- The partition by agreement requires the agreement of all parties concerned, but not the special method of partition.The partition may be carried out by partition of payment, partition of in-kind property, and partition of prices, or any other methods that compromise all such methods.

  ·The partition by agreement may be carried out orally between inheritors as a kind of contract, but it is advised to create an agreement on the partition to avoid

any possible disputes.

- If the inheritor who has participated in the partition by agreement is an unqualified person or has agreed to a partition without including some of the inheritors, the agreement will be held null and void.

one of the inheritors is a minor, a special agent must be appointed to protect the interests of the minor.

- If there was a mistake, fraud, or undue influence in the expression of one's intent for the partition by agreement, the party who has made the expression of his/her intent will be entitled to revoke the agreement (Articles 109 and 110 of the "Civil Act").

▪ Partition by adjudication

- The partition by adjudication of inherited property refers to the method of partition which allows co-inheritors to file a claim at the family court if the co-inheritors fail to reach an agreement on the partition (Articles 1013 (2) and 269 of the "Civil Act" and Article 2 (1) 2 b. 10 of the "Family Litigation Act").

※ Judicial conciliation is mandatory for the partition by adjudication of inherited property (Article 50 of the "Family Litigation Act") and the proceedings for the partition by adjudication will be initiated only if the judicial conciliation is not established (Article 36 of the "Judicial Conciliation of Civil Dispute Act").

- The partition by adjudication of inherited property must filed by one of or several inheritors against the rest of inheritors (Article 110 of the "Family Litigation Rules").

·Since the claim for the partition of inherited property constitutes a claim for the partition of articles jointly owned due to its nature, there is no restriction on the period permissible for the claim.

- Once the claim for the partition by adjudication of inherited property is filed, the family court will deliver its decision on the partition of property.

·If the article in kind cannot be partitioned or there arise concerns over a significant decrease in its value due to partition, the court may order the sale of the object by auction (Articles 1013 (2) and 269 (2) of the "Civil Act").

Effects of the partition

▪ Retroactive effects of the partition

- The partition of inherited property will be retroactively effective when the inheritance commences.However, it cannot undermine the rights of a third party (Article 1015 of the "Civil Act").

▪ Liability for warranty of co-inheritors

- Co-inheritors hold the same liability for warranty as the seller in relation to the share of inheritance for the property obtained by partition (Article 1016 of the "Civil Act").

▪ Liability for warranty of the obligor of inheritance with his/her funding ability

- Each co-inheritor will, in proportion to his or her share of the inheritance, warrant the solvency of the obligor as of the time of division with regard to

claims acquired by other co-inheritors through division (Article 1017 (1) of the "Civil Act").

- With regard to an obligation which is not yet due or an obligation subject to a condition precedent, each co-inheritor warrants the solvency of the obligor at the time of performance (Article 1017 (2) of the "Civil Act").

▪ Apportionment of the warranty liability of insolvent co-inheritors

- If there is an insolvent person among co-inheritors liable for warranty, the portion of liability which such person is to bear will be apportioned to those having the right to claim for reimbursement and other solvent co-inheritors in proportion to their share of inheritance.However, if the person who has the right to claim reimbursement fails to receive any reimbursement due to his/her own negligence, he/she will not be allowed make a demand upon the other co-inheritors to bear their portions (Article 1018 of the "Civil Act").

▪ Right to apply by person, etc. affiliated after partition

- If a person who has become a co-inheritor by affiliation or by a final judgment after the commencement of the inheritance applies for the partition of inherited property, he/she may, if other co-inheritors have already effected the partition or other disposition, claim payment of the amount equivalent to his/her portion (Article 1014 of the "Civil Act").

- Since the claim for the payment of the amount equivalent to the share of inheritance of the person, etc. affiliated falls under the category of the claim for the recovery of inheritance, a period of exclusion of three years will apply.Therefore, it must be exercised within three years from the day on which the person etc. affiliated becomes aware of the fact that he/she is a true heir and he/she has been excluded from inheritance (day on which he/she became a co-inheritor as a result of the court decision recognizing a person who is not related by marriage) (See Article 999 (2) of the "Civil Act," Supreme Court Decision 2006Meu2757, 2754 Decided July 26, 2007).

3.4. Claim for Recovery of Inheritance

3.4.1. Claim for Recovery of Inheritance

Claim for the recovery of inheritance

▪ Concept of the claim for the recovery of inheritance

- The claim for the recovery of inheritance refers to a claim held by the person who has the right of inheritance or his/her legal representative for the recovery from a violation if the right of inheritance is violated by a person who pretends to have the right of inheritance (Article 999 (1) of the "Civil Act").

> ※ Pretending to have the right of inheritance refers to arrogation to an unjustified title, and a person who pretends to have the right of inheritance refers to a person who occupies all of part of the inherited property by pretending to be an inheritor.Therefore, it refers to a person who holds the position as a de facto inheritor despite the fact that he/she does not hold any right of inheritance, and its category includes cases in which those who

are not inheritors occupy inherited property on purpose or disqualified persons for succession become inheritors (source: Glossary of Legal Terms, Korea Legislation Research Institute).

How to exercise the claim for the recovery of inheritance

▪ Nature of the period to exercise the claim for the recovery of inheritance

- The claim for the recovery of inheritance must be filed within three years from the date on which the party becomes aware of the violation of his/her inheritance right and the period of exclusion is set as ten years from the date on which the violation of the inheritance right took place, which is considered as the filing period.Therefore, in order to avoid the disadvantage arising from the period of exclusion, you must file a claim for recovery of inheritance.

※ The period of exclusion refers to the period of existence prescribed by law for certain kinds of rights in order to rapidly establish the relationship of legal rights and duties.After this period, the rights will expire (source: Standard Korean Language Dictionary, National Institute of Korean Language).

▪ Exercise at court

- Claims at court for the recovery of inheritance are subject to the civil procedure.

· In the event of a claim at court, the jurisdiction of the lawsuit belongs to the court of the inheritee's place of domicile (Article 22 of the "Civil Procedure Act").

Claimant and counterpart of the recovery of inheritance

▪ Claimant of the recovery of inheritance

- Inheritors and their legal representatives are entitled to claim the recovery of inheritance.

- A testamentary donee by a universal title is also entitled to claim the recovery of inheritance.

▪ Counterpart

- The counterpart to the claim for the recovery of inheritance is the true inheritor.

Period of exercise of the claim for the recovery of inheritance

▪ Period of exercise of the claim for the recovery of inheritance

- The claim for the recovery of inheritance will lapse at the expiration of three years from the date he/she becomes aware of the violation, or ten years from the date the right of inheritance is violated (Article 999 (2) of the “Civil Act”).

· Three years from the date on which he/she becomes aware of the violation computes the period during which he/she becomes aware of the fact he/she is a true inheritor and that he/she has been excluded from inheritance as well as the fact that he/she becomes aware of the commencement of inheritance (Supreme Court Decision 79Da2052 Decided February 10, 1981).

Effects of the claim for the recovery of inheritance

▪ Effects of the claim for the recovery of inheritance

- If the judgment in favor of the plaintiff becomes final, the defendant (true inheritor) must return the inherited property to the inheritor according to the judgment.

4. Acceptance and Renunciation of Inheritance

4.1. Decision on the Acceptance and Renunciation of Inheritance

4.1.1. Decision on the Acceptance and Renunciation of Inheritance

Examination of the inherited property

▪ Examination of the inherited property

- An inheritor may examine the inherited property before effecting such acceptance or renunciation (Article 1019 (2) of the "Civil Act").

· Examination of the inherited property

· You can find out whether there are any deposits, loans, guarantees, security accounts, insurance contracts, and credit card-related debts under the name of the inheritee through the Financial Complaints Center on the 1st floor of the Financial Supervisory Service headquarters, or each financial association.

▶ In addition, inheritors can file an application withthe City/Gu Office or Eup/Myeon/Dong Community Center to inquire into thedeceased estate by probing his/her financial transactions, national tax andlocal tax arrears, unpaid taxes, and refunded taxes, pension (only applicableto national pension, public officials pension, pension for private schoolteachers, military pension, and retirement pension of the Korea Workers'Compensation & Welfare Service), status of subscription to a mutual aidassociation (only applicable to the Construction Workers Mutual AidAssociation, the Public Officials Benefit Association, the Military Mutual AidAssociation, the Korea Scientists and Engineers Mutual-Aid Association, and theKorean Teachers' Credit Union), car ownership, detailed land ownership,and more all at once.

√ Application is available by visiting the City/Gu Office or the Eup/Myeon/Dong Community Center or by accessing Government 24(Apply for the Integrated Search of the Property of the Deceased, etc.).

Decision on the acceptance and renunciation of inheritance

▪ Decision on the acceptance and renunciation of inheritance

- The inheritor is advised to examine the property and compare the property to be inherited and debts to make the decision on the acceptance or renunciation of inheritance as follows:

Resultsof the examination of the inherited property	Decision on the acceptance and renunciation of inheritance
Property > debt	Absolute acceptance of inheritance
Property? Debt	Qualified acceptance of inheritance
Property < debt	Renunciation of inheritance

· The renunciation of inheritance refers to an expression of intent not to reject the effect of inheritance.

√ If an inheritor effects an absolute acceptance, he shall succeed without limitation to the rights and duties of the inheritee (Article 1025 of the "Civil Act").

· The qualified acceptance of inheritance refers to an expression of intent to accept the inheritance under the condition of repaying the debt and bequest of the inheritee to the extent of the property that the inheritor will acquire by inheritance.

√ If the inheritor effects the qualified acceptance of inheritance, even if the inherited liability exceeds the positive property to be acquired by inheritance, he/she will not be obligated to make repayment with the property of the inheritor him/herself.

· The renunciation of inheritance refers to an act of denying any effect of inheritance that all of the property rights and duties that have previously belonged to the inheritee are transferred to the inheritor by operation of law according to the commencement of inheritance.

√ If the inheritor renounces the inheritance, he/she will be deemed as non-inheritor from the beginning.

4.2. Absolute acceptance of Inheritance

4.2.1. Absolute acceptance of Inheritance

Absolute acceptance of inheritance

▪ Concept of the absolute acceptance of inheritance

- The absolute acceptance of inheritance refers to an expression of intent not to reject the effect of inheritance.

· If an inheritor effects an absolute acceptance, he shall succeed without limitation to the rights and duties of the inheritee (Article 1025 of the "Civil Act").

▪ Absolute acceptance by law

- An inheritor will be deemed to have effected an absolute acceptance in any of the following circumstances (Article 1026 of the "Civil Act"):

·If an inheritor has taken an act of disposition with regard to the inherited property (e.g. If an inheritor has sold a real estate property which is an inherited property and transferred the register, if an inheritor has sold shares which is an inherited property, or if an inheritor has paid off his/her debt with the deposit bond which is an inherited property).

·If an inheritor has failed to effect either a qualified acceptance or a renunciation within the period of consideration of the inheritance acceptance, etc.

·If an inheritor, after having effected a qualified acceptance or a

renunciation, has concealed or fraudulently consumed, or failed intentionally to enter in the inventory, the inherited property.

▪ Exception to the absolute acceptance by law

- If an inheritor of second priority has accepted an inheritance as the inheritor had renounced his/her inheritance, the inheritance will not be accepted even if the person who had renounced his/her inheritance fraudulently consumes (Article 1027 of the "Civil Act").

Period of the absolute acceptance of inheritance

▪ Period of the absolute acceptance of inheritance

- An inheritor may effect the absolute acceptance **within three months from the date on which he/she became aware of the commencement of inheritance.** However, such period may be extended by the Family Court upon the application of any party interested or of a public prosecutor (Article 1019 (1) of the "Civil Act"). Even if an inheritor has failed to effect either a qualified acceptance or a renunciation within the period, since absolute acceptance regards it as done (Article 1026, subparagraph 2 of the "Civil Act"), if there is no special reason to effect the absolute acceptance early, there is no need to effect the qualified acceptance or renunciation.

▶ **Permission for the extension of the period for absolute acceptance of inheritance**

- The **persons who has the right to apply** are any party interested or of a public prosecutor (Article 1019 (1) of the "Civil Act").
- The **period of application** is three months from the date on which the applicant becomes aware of the commencement of inheritance.
- The **court of jurisdiction** is the family court of the place where the inheritance commences (Article 44 (1) 6 of the "Family Litigation Act").

▪ Period of special qualified acceptance

- Notwithstanding the fact that the inheritor examined the inherited property before he/she accepted or renounced the inheritance, if an inheritor has made an absolute acceptance (including the case deemed to have made an absolute acceptance under Article 1026, subparagraphs 1 and 2) without knowing the fact that his/her inherited liability exceeds his inherited property within three months from the date on which he/she became aware of the commencement of inheritance without any gross negligence, a qualified acceptance may be made **within three months from the date on which he knew such fact** (Article 1019 (3) of the "Civil Act").

- If a minor inheritor grants absolute acceptance of an inheritance whose inherited liability exceeds the inherited property before reaching the age of majority, even though the inheritor investigated the inherited property before giving such acceptance or renouncing the inheritance, he or she is eligible for qualified acceptance within three (3) months, after reaching the age of majority, from the date he or she realizes that the inherited liability exceeds the inherited property. The same shall apply if the minor inheritor did not or was unable to grant qualified acceptance under Article 1019(3) of the Civil Act (Article

1019(4) of the Civil Act).

▪ Period of inheritance acceptance for a person with limited capacity

- If an inheritor is a person with limited capacity, the period of up to three months from the date on which he/she became aware of the commencement of inheritance will be calculated from the time his/her legal representative becomes aware that the inheritance has been commenced (Article 1020 of the "Civil Act").

▪ Special rules on the calculation of the period of acceptance

- If an inheritor dies without effecting either acceptance within three months from the date on which he/she becomes aware of the commencement of inheritance, the period will be calculated from the time when his inheritor becomes aware that the inheritance has been commenced in his favor (Article 1021 of the "Civil Act").

Revocation of the acceptance of inheritance

▪ Prohibition of the revocation in principle

- The revocation of the acceptance of inheritance is not allowed for a period of up to four months from the date on which the inheritor becomes aware of the commencement of inheritance (Article 1024 (1) of the "Civil Act").

▪ Exceptional permission for revocation

- Nevertheless, if an inheritor accepts the inheritance due to mistake, fraud, or undue influence, he/she may revoke the acceptance of inheritance for the said reason.However, such right of voidance will be extinguished by prescription, if it is not exercised within three months from the day on which it became possible to effect ratification, or within one year from the day on which acceptance or renunciation was effected (Article 1024 (2) of the "Civil Act").

4.3. Qualified Acceptance of Inheritance

4.3.1. Qualified Acceptance of Inheritance

Qualified acceptance of inheritance

▪ Concept of the qualified acceptance of inheritance

- The qualified acceptance of inheritance refers to an expression of intent to accept the inheritance under the condition of repaying the debt and bequest of the inheritee to the extent of the property that the inheritor will acquire by inheritance.

▪ Special qualified acceptance of inheritance

- The special qualified acceptance refers to a qualified acceptance made within three months from the date on which the inheritor who has effected the absolute acceptance becomes aware of the fact, not knowing that, without any gross negligence, the inherited liability exceeds the inherited property within three months from the date on which he/she becomes aware of the commencement of inheritance (Article 1019 (3) of the "Civil Act").

▪ Qualified acceptance of co-inheritors

- If there are multiple inheritors, each inheritor may effect an acceptance of

inheritance on the condition that he/she will perform in proportion to his/her share of the obligations and testamentary gift of the inheritee only to the extent of the property to be acquired in proportion to his/her share of the inheritance (Article 1029 of the "Civil Act").

Report of the qualified acceptance

▪ How to effect the qualified acceptance

- If an inheritor wishes to effect a qualified acceptance, he/she must declare the qualified acceptance, attaching an inventory of the inherited property, to the family court having jurisdiction over the place of commencement of inheritance (Article 1030 (1) of the "Civil Act" and Article 44 (1) 6 of the "Family Litigation Act") within three months from the date on which he/she becomes aware of the commencement of inheritance (Article 1019 (1) of the "Civil Act").

- For a special qualified acceptance, the inheritor must report the special qualified acceptance to the family court within three months from the date on which the inheritor who has effected the absolute acceptance becomes aware of the fact, not knowing that, without any gross negligence, the inherited liability exceeds the inherited property within three months from the date on which he/she becomes aware of the commencement of inheritance (Article 1030 (1) of the "Civil Act" and Article 44 (1) 6 of the "Family Litigation Act").

▪ Submission of the qualified acceptance report

- In order to report the qualified acceptance or renunciation of inheritance, the applicant or his/her representative must submit written documents with the applicable information and his/her name and seal or signature affixed (Article 75 (1) of the "Family Litigation Rules" and Article 36 (3) of the "Family Litigation Act").

- In effecting a special qualified acceptance, if there is any property, among the inherited properties, which is already disposed of, its inventory and value must be submitted together (Article 1030 (2) of the "Civil Act").

- The qualified acceptance report must be attached with the certificate of seal impression of the applicant or his/her representative (Article 75 (2) of the "Family Litigation Rules").

▪ Receipt of reports

- The family court will accept the above report if it contains no mistakes.

- When a family court accepts a qualified acceptance report, a judgment granting affirmative relief will be issued for all inherited liability even if no inherited property is assigned to the inheritor or the inherited property is insufficient to repay the inherited liability.

- However, since the debt carries a nature that is unable to effect the compulsory execution in relation to the inherent property of the inheritor, the judgment granting affirmative relief provides that the execution is limited to the inherited property to restrict the its execution force.

- When a family court accepts a qualified acceptance report, a written judgment stating the address and name of the representative will be prepared (Article 75 (3) of the "Family Litigation Rules").

Period of qualified acceptance

▪ Period of qualified acceptance

- An inheritor may effect the absolute acceptance **within three months from the date on which he/she becomes aware of the commencement of inheritance.** However, such period may be extended by the Family Court upon the application of any party interested or of a public prosecutor (Article 1019 (1) of the "Civil Act").

▪ Period of the special qualified acceptance

- Notwithstanding the fact that the inheritor examined the inherited property before he/she accepted or renounced the inheritance, if an inheritor has made an absolute acceptance (including the case deemed to have made an absolute acceptance under Article 1026, subparagraphs 1 and 2) without knowing the fact that his/her inherited liability exceeds his inherited property within three months from the date on which he/she became aware of the commencement of inheritance without any gross negligence, a qualified acceptance may be made **within three months from the date on which he knew such fact** (Article 1019 (3) of the "Civil Act").

- If a minor inheritor grants absolute acceptance of an inheritance whose inherited liability exceeds the inherited property before reaching the age of majority, even though the inheritor investigated the inherited property before giving such acceptance or renouncing the inheritance, he or she is eligible for qualified acceptance within three (3) months, after reaching the age of majority, from the date he or she realizes that the inherited liability exceeds the inherited property. The same shall apply if the minor inheritor did not or was unable to grant qualified acceptance under Article 1019(3) of the Civil Act (Article 1019(4) of the Civil Act).

▪ Period of acceptance for a person with limited capacity

- If an inheritor is a person with limited capacity, the period of up to three months from the date on which he/she became aware of the commencement of inheritance will be calculated from the time his/her legal representative becomes aware that the inheritance has been commenced (Article 1020 of the "Civil Act").

▪ Special rules on the calculation of the period of acceptance

- If an inheritor dies without effecting either acceptance or renunciation within three months from the date on which he/she becomes aware of the commencement of inheritance, the period will be calculated from the time when his inheritor becomes aware that the inheritance has been commenced in his favor (Article 1021 of the "Civil Act").

Effects of the qualified acceptance

▪ Effects of the qualified acceptance

- Even if the qualified acceptance report is accepted, the liability of the inheritee remains valid.

- However, due to the qualified acceptance of inheritance, the inheritor becomes able to repay the liability and bequest of the inheritee to the extent of the property succeeded by inheritance (Article 1028 of the "Civil Act").

▪ Qualified acceptance and non-extinction of rights and duties over property

- Where an inheritor effects a qualified acceptance, any rights and duties over property which he/she had towards the inheritee will not be extinguished (Article

1031 of the "Civil Act").

▪ Public notice and peremptory notice towards obligees

- A qualified acceptor must, within five days after he/she has effected the qualified acceptance, notify the general obligees in succession and the testamentary donees by public notice that he has effected a qualified acceptance and that they are required to notify him/her of their claims or testamentary gifts within a specified period of not less than two months (Article 1032 (1) of the "Civil Act").

- A qualified acceptor must give a separate notice to each obligee known to them to report his claim.Obligees known to the qualified acceptors cannot be excluded from the liquidation (Articles 1032 (2) and 89 of the "Civil Act").

- A qualified acceptor may refuse performance of obligations relating to inheritance (Article 1033 of the "Civil Act"), from the date of qualified acceptance until the expiration of the period of public notice and peremptory notice (Article 1032 (1) of the "Civil Act").

▪ Performance by distribution

- A qualified acceptor must, from the date of qualified acceptance until the expiration of the period of public notice and peremptory notice (Article 1032 (1) of the "Civil Act"), effect performance to obligees who have notified him/her of their claims within such period, and to all other obligees known to him/her, in proportion to the amounts of their respective claims of the inherited property. However, the rights of the obligees who have priority rights may not be entrenched (Article 1034 (1) of the "Civil Act").

※ The obligee who has priority rights refers to a person who has a claim subject to preferential repayment compared to other claims, and the claims with priority include mortgage-backed claims and pledge-backed claims.

- If a special qualified acceptance is to be effected (Article 1019 (3) of the "Civil Act"), the inheritor must make the repayment of the above amount by adding the value of the remainder of the inherited property as well as the value of the property already disposed of.However, the amount repaid to the obligees in inheritance or testamentary donees before the qualified acceptance will be excluded from the value of the property already disposed of (Article 1034 (2) of the "Civil Act").

- As for the obligations which are not yet due, a qualified acceptor must, from the date of qualified acceptance until the expiration of the period of public notice and peremptory notice (Article 1032 (1) of the "Civil Act"), effect performance to obligees who have notified him/her of their claims within such period, and to all other obligees known to him/her, in proportion to the amounts of their respective claims of the inherited property (Articles 1035 (1) and 1034 (1) of the "Civil Act").

Revocation of the qualified acceptance

▪ Prohibition of the revocation in principle

- The revocation of the acceptance or renunciation of inheritance is not allowed for a period of up to four months from the date on which the inheritor becomes aware of the commencement of inheritance (Article 1024 (1) of the "Civil Act").

Exceptional permission for revocation

- Nevertheless, if an inheritor accepts or renounces the inheritance due to mistake, fraud, or undue influence, he/she may revoke the acceptance or renunciation of inheritance for the said reason. However, such right of voidance will be extinguished by prescription, if it is not exercised within three months from the day on which it became possible to effect ratification, or within one year from the day on which acceptance or renunciation was effected (Article 1024 (2) of the "Civil Act").

- For an inheritor to revoke the qualified acceptance or renunciation of inheritance, he/she must file a written report affixed with the name and seal or signature of the applicant or his/her representative to the family court which delivered the judgment on the qualified acceptance or renunciation (Article 76 (1) of the "Family Litigation Rules").

- The declaration of the revocation of the qualified acceptance of inheritance must be attached with a **certificate of seal impression** of the declarant or his/her representative (Articles 76 (3) and 75 (2) of the "Family Litigation Rules").

4.4. Renunciation of Inheritance

4.4.1. Renunciation of Inheritance

Renunciation of inheritance

Concept of the renunciation of inheritance

- The renunciation of inheritance refers to an expression of intent of the inheritor to expire the effect of inheritance, and in order to renounce the inheritance, the inheritor must file a report of the renunciation of inheritance with the family court (Article 1041 of the "Civil Act").

  · The renunciation of inheritance effects the waiver of the right for an inheritor and only the renunciation of the entire inherited property is allowed.Therefore, no partial or conditional renunciation is allowed.

Declaration of renunciation

How to declare the renunciation of inheritance

- If an inheritor wishes to renounce the inheritance, he/she must declare the renunciation of inheritance to the family court having jurisdiction over the place of commencement of inheritance within three months from the date on which he/she becomes aware of the commencement of inheritance (Articles 1041 and 1019 (1) of the "Civil Act" and Article 44 (1) 6 of the "Family Litigation Act").

Submission of the inheritance renunciation declaration

- In order to declare the renunciation of inheritance, the applicant or his/her representative must submit written documents with applicable information and his/her name and seal or signature affixed (Article 75 (1) of the "Family Litigation Rules" and Article 36 (3) of the "Family Litigation Act").

Receipt of reports

- The family court will accept the above report if it contains no mistake.

Duration of the renunciation of inheritance

▪ Duration of the renunciation of inheritance

- An inheritor may effect the renunciation **within three months from the date on which he/she becomes aware of the commencement of inheritance.** However, such period may be extended by the Family Court upon the application of any party interested or of a public prosecutor (Article 1019 (1) of the "Civil Act").

▪ Period of the special qualified acceptance

- Notwithstanding the fact that the inheritor has examined the property to be inherited, the inheritor fails to be aware of the fact that the inherited liability exceeds the inherited property without any gross negligence within three months from the date on which he/she becomes aware of the commencement of inheritance and does not renounce the inheritance, and therefore, it is raised as an absolute acceptance, he/she may effect the qualified acceptance **within three months from the date on which he/she becomes aware of the fact** (Article 1019 (3) of the "Civil Act").

- If a minor inheritor grants absolute acceptance of an inheritance whose inherited liability exceeds the inherited property before reaching the age of majority, even though the inheritor investigated the inherited property before giving such acceptance or renouncing the inheritance, he or she is eligible for qualified acceptance within three (3) months, after reaching the age of majority, from the date he or she realizes that the inherited liability exceeds the inherited property. The same shall apply if the minor inheritor did not or was unable to grant qualified acceptance under Article 1019(3) of the Civil Act (Article 1019(4) of the Civil Act).

▪ Period of the acceptance or renunciation of inheritance for a person with limited capacity

- If an inheritor is a person with limited capacity, the period of up to three months from the date on which he/she became aware of the commencement of inheritance will be calculated from the time his/her legal representative becomes aware that the inheritance has been commenced (Article 1020 of the "Civil Act").

▪ Special rules on the calculation of the period of the renunciation of inheritance

- If an inheritor dies without effecting renunciation within three months from the date on which he/she becomes aware of the commencement of inheritance, the period will be calculated from the time when his inheritor becomes aware that the inheritance has been commenced in his favor (Article 1021 of the "Civil Act").

Effects of the renunciation of inheritance

▪ Retroactive effects of the renunciation of inheritance

- renunciation of inheritance will be effective retroactively from the time of the commencement of the inheritance (Article 1042 of the "Civil Act").

▪ Reversion of the renounced inherited property

- If there are multiple inheritors, and one of them has effected the renunciation of inheritance, his/her share of inheritance will revert back to the other inheritors in proportion to their respective shares (Article 1043 of the "Civil Act").

▪ Management of the renounced inherited property

- A person who has effected the renunciation of inheritance will be required to continue to manage the inherited property until the person who becomes inheritor by reason of renunciation becomes able to undertake the management of the property (Article 1044 (1) of the "Civil Act").

Revocation of the renunciation of inheritance

▪ Prohibition of the revocation in principle

- The revocation of the renunciation of inheritance is not allowed for a period of up to four months from the date on which the inheritor becomes aware of the commencement of inheritance (Articles 1024 (1) and 1019 (1) of the "Civil Act").

▪ Exceptional permission for revocation

- Nevertheless, if an inheritor accepts or renounces the inheritance due to mistake, fraud, or undue influence, he/she may revoke the renunciation of inheritance for the said reason. However, such right of voidance will be extinguished by prescription, if it is not exercised within three months from the day on which it became possible to effect ratification, or within one year from the day on which acceptance or renunciation was effected (Article 1024 (2) of the "Civil Act").

- For an inheritor to revoke the renunciation of inheritance, he/she must file a written report affixed with the name and seal or signature of the applicant or his/her representative to the family court which delivered the judgment on the renunciation (Article 76 (1) of the "Family Litigation Rules").

- The declaration of the revocation of the renunciation of inheritance must be attached with a **certificate of seal impression** of the declarant or his/her representative (Articles 76 (3) and 75 (2) of the "Family Litigation Rules").

5. Obligees and Persons Having Special Connection

5.1. Application for Separation of Inherited Property

5.1.1. Application for Separation of Inherited Property by Obligees, Etc.

Separation of the inherited property

▪ Concept of the separation of the inherited property

- The separation of the inherited property refers to separating the inherited property from the inherent property of the inheritor at the request of an obligee in inheritance, or a testamentary donee, or an obligee of an inheritor after the commencement of inheritance (Article 1045 (1) of the "Civil Act").
- This is to prevent the inheritor's obligee from being disadvantaged and if the inherited liability is greater than the inherited property and to prevent the obligees in inheritance and testamentary donees from being disadvantaged if the inherent property of the inheritor is greater than his/her liability, when the inherited property is mixed with the inheritor's inherent property.

▪ Claimant

- An obligee in inheritance, or a testamentary donee, or an obligee of an inheritor may apply to the family court having jurisdiction over the place where the inheritance commenced for the separation of the inherited property (Article 1045 (1) of the "Civil Act" and Article 44 (1) 6 of the "Family Litigation Act").

▪ Counterpart

- The **inheritor** becomes the other party who is entitled to apply for the separation of inherited property and if the inheritor is unknown, the **administrator of the inherited property** becomes the other party.

  · If there are multiple inheritors, all of them must be the other parties.

▪ Period of application

- The application must be filed within three months from the commencement of inheritance, that is, **three months from the death of the inheritee** (Article 1045 (1) of the "Civil Act").
- An application may be filed with the court for the separation of property even after three months from the death of the inheritee, until such time as an inheritor has not accepted or renounced the pertinent inheritance (Article 1045 (2) of the "Civil Act").This is because the acceptance or renunciation of inheritance must be made within three months from the date on which the inheritor becomes aware of the commencement of inheritance (Article 1019 (1) of the "Civil Act"), it may be longer than 3 months from the commencement of inheritance (date of death of the inheritee).

▪ Place to apply for (court of jurisdiction)

- The application for the separation of inherited property must be filed with the

family court having jurisdiction over the place where the inheritance commenced (Articles 2 (1) 2 b. 35, 44 subparagraph 6, and 39 of the "Family Litigation Act").

Separation procedure for the inherited property

▪ Family court's order to separate the property

- If the application for the separation of property is legally filed by the applicant, the family court will order the separation of property.

▪ Public notice and peremptory notice towards obligees, etc.

- If the family court has ordered a separation of property due to the application of separation of the inherited property, the applicant must, **within five days**, give public notice to the general obligees in inheritance and to testamentary donees, that an order for a separation of property has been issued and that they are required to give a notice of their claims or testamentary gifts within a specified period of not less than two months (Article 1046 (1) of the "Civil Act").

- The applicant for the separation of inherited property must give a separate notice to the obligees in inheritance and donees known to him/her for the declaration of each claim and testamentary gifts. Obligees in inheritance and beneficiaries known to the applicant cannot be excluded from the liquidation (Articles 1046 (2) and 89 of the "Civil Act").

▪ Order of disposition for the management of inherited property

- If the family court has ordered a separation of property, it may order the adoption of such measures as may be necessary for the management of the inherited property (Article 1047 (1) of the "Civil Act").

- Even after an inheritor has effected an absolute acceptance, and if a separation of property has been ordered, the inheritor must manage the inherited property with the same care as he exercises for his own property (Article 1048 (1) of the "Civil Act").

- An inheritor must report how property management is handled at the request of the obligees in inheritance, obligees of the inheritor, or donees, and once the property management comes to an end, the inheritor must report the full account without delay (Articles 1048 (2) and 683 of the "Civil Act").

  · An inheritor must deliver to the obligees in inheritance, obligees of the inheritor, or donees all the money and any other things which he has received and the fruits which he/she has collected therefrom during the course of handling the inherited property (Articles 1048 (2) and 684 (1) of the "Civil Act").

  ·An inheritor must transfer any rights obtained under his/her name for the obligees in inheritance, obligees of the inheritor, or donees to the inheritor (Articles 1048 (2) and 684 (2) of the "Civil Act").

  · If an inheritor has spent for his own benefit any money which he/she ought to deliver to the obligees in inheritance, obligees of the inheritor, or donees or which is to be used for the inheritor's benefit, he/she must pay interest therefrom the day on which he/she spent such money, and if there are any further damages, he/she must also be held liable (Articles 1048 (2) and 685 of the "Civil Act").

· If an inheritor needs to spend any expenses incurred in handling the management of inherited property, he/she may demand from the obligees in inheritance, obligees of the inheritor, or donees the reimbursement of such expenses with interest thereon from the day they were spent (Articles 1048 (2) and 688 (1) of the "Civil Act").

· If an inheritor has assumed a debt necessary for handling the property management, he/she may request the obligees in inheritance, obligees of the inheritor, or donees to repay the debt on behalf of him/herself, if the debt is not due, to furnish adequate security (Articles 1048 (2) and 688 (2) of the "Civil Act").

Effects of the separation of inherited property

▪ Effects of the separation of inherited property

- If an order has been made to separate the property, any rights and duties over property which he/she had towards the inheritee will not be extinguished (Article 1050 of the "Civil Act").

▪ Condition to set up against third person in case of separation of property

- As to immovable inherited property, a separation of property cannot be set up against a third person, unless it has been registered (Article 1049 of the "Civil Act").

▪ Performance by distribution

- An inheritor may refuse performance to obligees in inheritance, and to testamentary donees within three months from the commencement of inheritance (Article 1045 of the "Civil Act") and before the expiration of the period for public notice and peremptory notice (Article 1046 of the "Civil Act") towards obligees in inheritance and testamentary donees (Article 1051 (1) of the "Civil Act").

- The inheritor must, upon the expiration of the above period, effect performance, out of the inherited property, to obligees in inheritance and testamentary donees who applied for the separation of property or who have notified within such period, and to obligees in inheritance and testamentary donees known to the inheritor, in proportion to their amount of obligations or testamentary gifts.However, the rights of the obligees who have priority rights may not be entrenched (Article 1051 (2) of the "Civil Act").

- An inheritor must perform in proportion to the amount of each claim even for those that are not yet due (Articles 1051 (3) and 1035 (1) of the "Civil Act").

- An inheritor may not effect performance to testamentary donees until he has completed performance to all obligees inherited (Articles 1051 (3) and 1036 of the "Civil Act").

- If it is necessary to sell some or all of the inherited properties in order to perform obligations for the obligees in inheritance or testamentary donees (Articles 1034 through 1036 of the "Civil Act"), an auction must be held pursuant to the Civil Execution Act (Articles 1051 (3) and 1037 of the "Civil Act").

▪ Unfair performance

- If an inheritor performs his/her obligations for any obligees in inheritance or testamentary donees and becomes unable to perform his/her obligations for other

obligees in inheritance or testamentary donees by neglecting the public notice or preliminary notice towards obligees (Article 1032 of the "Civil Act") or in violation of the regulation under the "Civil Act" (Articles 1033 through 1036 of the "Civil Act"), the inheritor must compensate for the damage sustained.

▪ Performance of obligation out of inherent property

- The obligees in inheritance and testamentary donees due to unfair performance (Articles 1051 (3) and 1038 (1) of the "Civil Act") may be entitled to receive performance out of the inherent property of the inheritor limited to the circumstances where they are unable to receive full performance from the inherited property (Article 1052 (1) of the "Civil Act").

- In the above case, the obligees of the inheritor will reserve the right to receive performance in preference to others out of the inherent property of the inheritor (Article 1052 (2) of the "Civil Act").

5.2. If No Inheritors Exist

5.2.1. Reversion of Inherited Property If No Inheritors Exist

Application for the commission of an administrator of the inherited property and the public notice thereof

▪ Application for the commission of an administrator of the inherited property and the public notice thereof

- If it is unknown whether an inheritor exists, any relative of the inheritee or any other interested person or the public prosecutor may appoint an administrator of the inherited property at the family court (Article 1053 (1) of the "Civil Act").

※ The relatives of the inheritee refer to his/her blood relatives within the eighth degree of relationship, his/her affinity relatives within the fourth degree of relationship, and his/her spouse (Article 777 of the "Civil Act").

※ Other interested persons refer to those who have legal interests in the management and liquidation of the inherited property or the obligees in inheritance and testamentary donees.

· In response, the family court must appoint an administrator of the inherited property and publish a public notice on the issue without delay (Article 1053 (1) of the "Civil Act" and Article 2 (1) 2 a. 37 of the "Family Litigation Act").

· The public notice on the appointment of an administrator of the inherited property must contain the following (Article 79 of the "Family Litigation Rules"):

√ Name and address of the claimant

√ Name, occupation and last address of the inheritee

√ Places and dates of birth and death of the inheritee

√ Name and address of the administrator of the inherited property

· Expenses necessary for the public notice will be payable from the inherited

property (Article 81 of the "Family Litigation Rules").

▪ Management of the inherited property by an appointed property administrator

- An administrator appointed by a family court must **prepare** an **inventory of the property** which he is to manage (Articles 1053 (2) and 24 (1) of the "Civil Act").
  - · The family court may order the administrator appointed by the family court **to take such steps necessary** for preservation of an absentee's property (Articles 1053 (2) and 24 (2) of the "Civil Act").
  - · The expenses spent by the property administrator for managing the inherited property will be payable from the inherited property (Articles 1053 (2) and 24 (4) of the "Civil Act").
- Any acts of preservation and acts of making use of, or improving the thing or the right which is the object of agency, but only in so far as the nature of such thing or right is not altered (Article 118 of the "Civil Act") require the **permission of the family court.**The permission of the family court must also be obtained for any acts beyond the powers of the property administrator when it is unknown whether the inheritor is alive or dead (Articles 1053 (2) and 25 of the "Civil Act").
- If a demand is made by any of the obligees in inheritance or testamentary donees, the property administrator must at any time present the inventory of the inherited property and report their status (Article 1054 of the "Civil Act").

▪ Security provided by the appointed administrator of the inherited property

- The family court may require the administrator of the inherited property appointed by the court to furnish reasonable security for the management and return of the property (Articles 1053 (2) and 26 (1) of the "Civil Act").

▪ Remuneration for the appointed administrator of the inherited property

- The family court may award the administrator of the inherited property appointed by the court reasonable remuneration out of the inherited property (Articles 1053 (2) and 26 (2) of the "Civil Act").

If an inheritor appears

▪ If the existence of the inheritor becomes apparent

- The duties of the acceptance will be terminated when the existence of the inheritor becomes apparent and the inheritor approves the inheritance (Article 1055 (1) of the "Civil Act").
- If the inheritor approves the inheritance, the administrator must calculate the management of the inherited property without delay (Article 1055 (2) of the "Civil Act").

If an inheritor does not appear

▪ Public notice of liquidation

- If the existence of the inheritor is unknown within three months from the public notice of the appointment of an administrator of the inherited property (Article 1053 (1) of the "Civil Act"), the administrator must publish a public notice of the claim or testamentary gift for the general obligees in inheritance and testamentary donees within a certain period without delay.The period must be at least two months (Article 1056 (1) of the "Civil Act").

· A statement must be included in the public notice for the claim declaration that the claims of obligees who do not report their claims within the period will be excluded from liquidation (Articles 1056 (2) and 88 (2) of the "Civil Act").

- The public notice for claim declaration must be given in the same manner as that of particulars to be registered to the court. (Articles 1056 (2) and 88 (3) of the "Civil Act").

▪ Preliminary notice of the claim declaration for known obligees

- An administrator of the inherited property must give a separate notice to each obligee known to them to report his claim. Obligees known to the qualified acceptors cannot be excluded from the liquidation (Articles 1056 (2) and 89 of the "Civil Act").

▪ Order of the performance of obligations and method of liquidation

- The administrator of the inherited property may refuse the performance of obligations for inherited claims before the expiration of the period of public notice towards obligees (Articles 1056 (2) and 1033 of the "Civil Act").

- An administrator of the inherited property must, upon the expiration of the period of public notice, effect performance to obligees who have notified him/her of their claims within the said period, and to all other obligees known to the administrator, in proportion to the amounts of their respective claims of the inherited property.However, the rights of the obligees who have priority rights may not be entrenched (Articles 1056 (2) and 1034 (1) of the "Civil Act").

· If an inheritor has effected a qualified acceptance (Article 1019 (3) of the "Civil Act"), the inheritor must make the repayment of the above amount by adding the value of the remainder of the inherited property as well as the value of the property already disposed of. However, the amount repaid to the obligees in inheritance or testamentary donees before the qualified acceptance will be excluded from the value of the property already disposed of (Articles 1056 (2) and 1034 (2) of the "Civil Act").

- An administrator of the inherited property must perform in proportion to the amount of each claim even for those that are not yet due (Articles 1056 (2) and 1035 (1) of the "Civil Act").

· Conditional obligations or obligations with uncertain duration must be performed according to the valuation of an appraiser appointed by the court (Articles 1056 (2) and 1035 (2) of the "Civil Act").

√ In this case, any expenses incurred by the appointment of the appraiser and the appraiser's valuation will be payable from the inheritance property (Article 82 of the "Family Litigation Rules").

- An administrator of the inherited property may not effect performance to testamentary donees until he has completed performance to all obligees inherited (Articles 1056 (2) and 1036 of the "Civil Act").

- If it is necessary to sell some or all of the inherited properties in order to perform obligations for the liquidation of inherited property, an auction must be held pursuant to the "Civil Execution Act" (Articles 1056 (2) and 1037 of the "Civil Act").

- If an administrator of the inherited property performs his/her obligations for any

obligees in inheritance or testamentary donees and becomes unable to perform his/her obligations for other obligees in inheritance or testamentary donees by neglecting the public notice or preliminary notice towards obligees (Article 1032 of the "Civil Act") or in violation of the regulation under the "Civil Act" (Articles 1033 through 1036 of the "Civil Act"), the inheritor must compensate for the damage sustained (Article 1056 (2) and 1038 (1) of the "Civil Act").

· If the performance of obligations for the liquidation of inherited property is effected unfairly (former part of Article 1038 (1) of the "Civil Act"), the obligees in inheritance or testamentary donees to whom no performance has been effected may exercise the right to demand reimbursement from such obligees in the inheritance or testamentary donees, as having improperly received performance with knowledge of the circumstances (Articles 1056 (2) and Article 1038 (2) of the "Civil Act").

· The prescription to exercise the right to reimbursement due to unfair performance will expire if the party demanding reimbursement or his/her legal representative fails to exercise the right within three years from the date on which he/she becomes aware of the damage, and will expire after ten years from the date on which the unfair performance was effected (Articles 1056 (2),1038 (3) and 766 of the "Civil Act").

- Obligees in inheritance and testamentary donees who have failed to give notice of their claims within the period of public notice or preliminary notice for obligees (Article 1032 (1) of the "Civil Act") and who were unknown to the administrator of the inherited property may receive performance only where there is any surplus of the inherited property.However, this will not be the case where obligees to the inherited property and testamentary donees have special security interest with respect to the inherited property (Articles 1056 (2) and 1039 of the "Civil Act").

Final public notice to search inheritors

▪ Public notice to search inheritor

- If, after the expiration of the period of declaration for liquidation (Article 1056 (1) of the "Civil Act") it is still unknown whether an inheritor exists, the court must, upon the application of the administrator, give public notice for inheritors to raise their rights within a specified period. The period must be at least one year (Article 1057 of the "Civil Act").

· Expenses necessary for the public notice to search inheritors will be payable from the inherited property (Article 81 of the "Family Litigation Rules").

If a person having special connection exists

▪ Apportionment adjudication for persons having special connection

- If no person raises his/her right to inheritance within the period of the public notice to search inheritors (Article 1057 of the "Civil Act"), a person having special connection may apply for the apportionment of inherited property (Article 1057-2 (1) of the "Civil Act").

- If the request for adjudication of the person having special connection is deemed reasonable, the family court will determine whether to apportion all or part of the inherited property through adjudication (Article 1057-2 (1) of the "Civil Act").

※ A person who is eligible to be a person having special connection

· The person having special connection refers to a person who had a special connection at the time of the death of an in and includes the following persons:

√ A person who lived together with the inheritee

√ A person who has provided the inheritee with medical and nursing care

√ A person who has been commissioned by the inheritee to perform the ancestral rites of the inheritee and his/her ancestors

√ A person who has managed the inheritance

√ A person who has been in a de facto marriage relationship with the inheritee

▪ Period of application

- The request for the adjudication of the apportionment of inherited property (Article 1057-2 (1) of the "Civil Act") must be filed **within two months from the expiration of the period of the public notice to search inheritors** (Article 1057-2 (2) of the "Civil Act")

▪ Objection against the apportionment adjudication

- Those who have lived together with the inheritee, have provided the inheritee with medical and nursing care, or have had a special relationship with the inheritee (Article 1057-2 (1) of the "Civil Act") may immediately file an appeal against the decision on the apportionment of inherited property (Article 1057-2 of the "Civil Act") (Article 83 of the "Family Litigation Rules").

※ The immediate appeal refers to a simple appeal to be filed within one week from the notification of adjudication as required for rapid resolution of court decisions or orders (Article 444 of the "Civil Procedure Act").

If no person having special connection exists

▪ Escheatment of inherited property

- Any inherited property not apportioned to the persons having special connection (Article 1057-2 of the "Civil Act") will be escheated to the State (Article 1058 (1) of the "Civil Act").

- If the property is to be escheated to the State, the administrator must calculate the management of the inherited property without delay (Articles 1058 (2) and 1055 (2) of the "Civil Act").

▪ Prohibition on demanding performance with respect to property escheated

- Even if there exist any obligees in inheritance or testamentary donees who have not received any performance out of the inherited property due to the inherited property escheated to the State, no demand of such performance may be filed against the State (Article 1059 of the "Civil Act").

6. Application to Return Legal Reserve of Inheritance

6.1. Application to Return Legal Reserve of Inheritance

6.1.1. Application to Return Legal Reserve of Inheritance of the Person with the Right of Legal Reserve of Inheritance

Legal reserve system

▪ Significance of the legal reserve system

- The legal reserve of inheritance refers to a certain portion in the inherited property that must be left as it is under the statutes for a certain inheritor without being handled by the person who has inherited (source: Standard Korean Language Dictionary, National Institute of Korean Language).

- Since the "Civil Act" recognizes the freedom of disposing the property through testamentary will, if an inheritee bequeaths his/her property to non-family members or some of the inheritors, the inherited property may not be transferred to the inheritors.

  · However, if the freedom of disposing the inherited property is recognized without any limitation, the stability of family life will be undermined and the life security of the inheritor after the death of the inheritee will be violated.

  · To prevent such unfair outcomes and guarantee the life of the inheritors, the "Civil Act" recognizes the legal reserve system.

Legal reserve of inheritance of the persons with the right to legal reserve of inheritance

▪ Persons with the right to legal reserve of inheritance

- Persons with the right to legal reserve of inheritance are lineal descendants, and lineal ascendants or spouse of the inheritee (Article 1112 of 「Civil Act」).

- A unborn child and an inheritor by representation also holds the right to legal reserve of inheritance (Articles 1000 (3) and 1118 of the "Civil Act").

  ※ However, a person who has renounced his/her inheritance will not be entitled to request the return of the legal reserve since he/she is no longer an inheritor.

▪ Legal reserves of the persons with the right to legal reserve of inheritance (Article 1112 of the "Civil Act")

Order	Persons with the right to legal reserve of inheritance	Ratio of the legal reserve of inheritance
1	Lineal descendants of the inheritee	1/2 of the inheritance stipulated by law
2	Lineal ascendants of the inheritee	1/3 of the inheritance stipulated by law

※ If the **inheritee has a surviving spouse,** he/she will hold the right to legal reserve of inheritance together with the persons with the right to legal reserve of inheritance in the first or second priority, and his/her ratio of legal reserve of inheritance will be one-half of the statutory share of inheritance.

Calculation of the legal reserve of inheritance

▪ Calculation of the legal reserve of inheritance

- A legal reserve of inheritance shall be calculated as the sum of the values of the inherited properties and the given properties at the commencement of inheritance minus the total amount of debts of the inheritee (Article 1113 (1) of the "Civil Act").

▪ Calculation of the amount of the legal reserve of inheritance

- (Positive property subject to inheritance + testamentary gift - inherited liability) × (Ratio of legal reserve of inheritance of each inheritor) - Special profits

Claim for the return of the legal reserve of inheritance

▪ Claim for the return of the legal reserve of inheritance

- If there are any shortages in the legal reserve of inheritance due to a gift or testamentary gift granted by the inheritee, persons with the right to legal reserve of inheritance may claim the return of the property to the extent of shortfall (Article 1115 (1) of the "Civil Act").

  · At this time, the testamentary gift granted by the inheritee must have been made within one year prior to the commencement of inheritance in principle, but any testamentary gift made while being aware of the violation of the testamentary gift for the inheritor or legal reserve of inheritance will be applicable without any restriction on the its duration (Article 1114 of the "Civil Act" and Supreme Court Decision 95Da17885 Decided September 25, 1996).

▪ Counterpart of the return

- The person who violates the legal reserve of inheritance of the claimant and receives a gift or testamentary gift will be the other party to the claim for the legal reserve of inheritance.

▪ How to make the claim

- The claim for return may be made either in court or outside the court and if the claim is filed in court, the proceedings will be subject to the civil procedure.

▪ Sequence of the return

- Gifts cannot be demanded to be returned until testamentary gifts have been returned (Article 1116 of the "Civil Act").

▪ How to return

- In the claim for the return of the legal reserve of inheritance, if two or more persons have received the gifts or testamentary gifts, they must return the same proportions as their shares of the testamentary gifts (Article 1115 (2) of the "Civil Act").

■ Prescription of the claim for the return

- The claim for the return will expire if not filed within one year from the date on which the person with the right to legal reserve become aware of the commencement of inheritance and the gift or testamentary gift to be returned.The claim will also lapse if ten years have passed from the commencement of inheritance (Article 1117 of the "Civil Act").

Other matters

■ Claim to return the legal reserve of inheritance of the inheritor by representation

- If a lineal descendant or a sibling who would become an inheritor (Article 1000 (1) 1 and 3 of the "Civil Act") has died or has become disqualified prior to the commencement of inheritance, any of his or her lineal descendants will become an inheritor in the order in which the deceased or disqualified person would have become, and any inheritor by representation will also be entitled to claim the return of the legal reserve of inheritance (Articles 1118 and 1001 of the "Civil Act").
  - A spouse is also entitled to claim the return of the legal reserve of inheritance if he/she is a legal reserve of inheritance (Articles 10118 and 1010 (2) of the "Civil Act").
- The legal reserve of inheritance of the inheritor by representation who becomes an inheritor in lieu of the deceased or disqualified person will match the portion the deceased or the disqualified person has been entitled to (Articles 1118 and 1010 (1) of the "Civil Act").
  - If there are multiple lineal descendants who have died or become disqualified (Article 1010 (1) of the "Civil Act"), the legal reserve of inheritance will be determined within the limits of the share of inheritance of the deceased or disqualified person has been entitled to (Articles 1118 and 1010 (2) of the "Civil Act").

■ Claim for the return of the legal reserve of inheritance of special beneficiaries

- If any one of the co-inheritors has previously received a gift or testamentary gift of the property from the inheritee, and such property received is of less value than his/her share of the inheritance, he/she will be entitled to a share of inheritance and legal reserve of inheritance within the limit of the difference between the gifts and his/her legal share of inheritance (Article 1118 and 1008 of the "Civil Act").

7. Registration of Inheritance and Taxes

7.1. Registration of Inheritance

7.1.1. Registration of Inheritance

Registration of inheritance

▪ Registration of inheritance

- Once the inheritee commences, an inheritor succeeds to the blanket rights and duties on the property of the inheritee, and thus, the ownership of the real estate property will be transferred to the inheritor (Article 1005 of the "Civil Act").
  - · However, in order to dispose of the real estate property, the transfer of ownership must be registered (Article 187 of the "Civil Act").
- Only the inheritor is required to apply for the registration of inheritance (Article 23 (3) of the "Registration of Real Estate Act").
  - · If the cause of registration is inheritance, the inheritor is required to provide information demonstrating the inheritance as an attachment to the registry (Article 24 of the "Registration of Real Estate Act" and Article 46 (1) 1 of the "Real Estate Registration Rules").
  - · In this case, if there are multiple inheritors, the information must contain the share of inheritance of each inheritor of the property jointly owned and register the transfer (Article 48 (4) of the "Registration of Real Estate Act").

Persons eligible to apply for the registration

▪ Inheritor him/herself

- **Only the inheritor** is required to apply for the registration of inheritance (Article 23 (3) of the "Registration of Real Estate Act").
- At this time, **if there is more than one inheritor**, the information must contain the share of inheritance of each and every inheritor to register the transfer (Article 48 (4) of the "Registration of Real Estate Act") and any inheritor among them is eligible to apply the registration of inheritance of all other inheritors ["Application for the Registration of Inheritance of One of the Joint Inheritors" (Registration Precedent No. 1-314, April 30, 1985)].

▪ If there is a testamentary donee

- If there is a beneficiary who has received testamentary gifts independent of inheritors, the beneficiary is not eligible to apply for the registration by him/herself.
  - · In this case, the executor of the will (person responsible for registration) and the beneficiary (person entitled to registration) other than the inheritors must jointly apply for the registration (「Guidelines for the Affairs concerning the Application Procedures, etc. for the Registration of Ownership Preservation (Transfer) of a Person who has

Received Testamentary Gifts」).

Where to apply for the registration

▪ Competent registry

- All affairs relating to the registration are handled at the district courts, their branch courts or registries (Article 7 (1) of the "Registration of Real Estate Act").

- However, in the case of a registration application due to inheritance or bequest, a registry office other than the one with jurisdiction over the real estate may also handle the registration process related to the application (pursuant to Article 7-3 of 「Registration of Real Estate Act」).

▪ Internet registry

- For further information, please go to the website of the Supreme Court Internet Registry.

How to apply for the registration of inheritance

▪ How to apply for the registration of inheritance

- The registration must be applied by any of the following methods (Article 24 (1) of the "Registration of Real Estate Act"):

  · A method in which an applicant or his/her agent goes to a registry and submits documents stating the application information and accompanying information However, if such agent is an attorney (including a law firm, a law firm with limited liability, and a judicial association) or a certified judicial scrivener (including a corporation of certified judicial scriveners and a corporation of certified judicial scriveners with limited liability), he/she may require a clerk prescribed under the "Real Estate Registration Rules" to go to a registry and submit such documents.

  · A method of submitting application information and supporting documents using an electronic data processing system (including cases where applications are submitted via mobile device applications) (the types of registration that allow electronic applications and the application methods shall follow 「Real Estate Registration Rules」)

▪ Information required

- When applying for the registration of inheritance, the following information must be provided to the registry in the application (Article 43 (1) of the "Real Estate Registration Rules").

  · Matters concerning the labeling of real estate

  · Applicant's name (or title), address (or office location) and resident registration number (or registration number of real estate)

  · Name and address of an agent if the registration is applied by the agent

  · Grounds of registration and the date

  · Purpose of registration

  · Required information for registration (limited to cases in which the application

is made for the registration of rights through a joint application or the sole application of the prevailing person required to register)

- Registry
- Date of application

▪ Attached information

- When applying for the registration, the following information must be provided to the registry as attached information together with the information in the application (Article 46 (1) of the "Real Estate Registration Rules").
  - Information certifying the grounds of registration
  - Evidential information when permission, consent, or approval from a third party is required for the grounds of registration
  - If the consent of a third party with an interest is required for registration, information proving such consent or there is a judgment in opposition
  - Information that proves the authority if an agent files the application
  - Information that proves the address (or office location) and resident registration number (or real estate registration number) of the person entitled to registration (limited to cases in which he/she becomes a new registered person). However, when applying for the registration of transfer of ownership or when it is necessary to verify the identity of the person responsible for the registration pursuant to Article 52-2(1) of 「Real Estate Registration Rules」, information proving the address (or location of the office) of the person responsible for the registration must also be provided.
  - When applying for the registration of transfer of ownership, information on the land register, forest land register, building register, or other information proving the indication of the real estate
  - In cases where a qualified representative applies for ① a registration involving rights jointly filed, or ② a registration involving rights solely applied for by a judgment debtor who has lost a case, the qualified representative (in the case of a legal entity, this refers to the responsible attorney or judicial scrivener) must verify whether the principal is the obligated party for the registration, which must be done by submitting or presenting documents prepared in accordance with legal requirements, such as a resident registration card, certificate of seal impression, or certificate of personal signature confirmation, or through another similarly reliable method. The representative must then submit handwritten signature information according to the procedures set forth in the 「Regulation on the Confirmation of the Registration Obligor and Submission of Handwritten Signature Information by Qualified Representatives」.

Fees

▪ Fees for the registration of ownership transfer

- Anyone who intends to file for a registration is required to pay fees (Article 22 (3) of the "Registration of Real Estate Act").

7.2. Taxes Relating to Inheritance

7.2.1. Inheritance Tax

Inheritance tax

▪ Imposition of inheritance taxes

- Inheritance tax will be imposed to inheritors (Articles 3 and 3-2 of the "Inheritance Tax and Gift Tax Act").

How to calculate the inheritance tax

▪ Scope of inherited property (Article 2, subparagraph 3 of the "Inheritance Tax and Gift Tax Act")

- The inherited property refers to all the property reserved to the inheritee, including the following articles and rights. However, those that are exclusively personal to the inheritee and cease to exist following the death of the ancestor will be excluded:

- All the articles having economic value that can be converted into money

- All the legal or de facto rights having property value

▪ Calculation of the taxable value of inherited property (Articles 13 through 17 of the "Inheritance Tax and Gift Tax Act")

- The taxable value of inherited property will be an amount obtained by adding the value of the property transferred in advance and the value of the presumed property for inheritance after deducting the public charges and taxes, funeral expenses, and debts from the value of inherited property (if the amount after deducting the public charges and taxes, funeral expenses, and debts from the inherited property exceeds the value of the inherited property, it will be deemed as the value of inherited property) (Article 13 of the "Inheritance Tax and Gift Tax Act").

▪ Calculation of the inheritance tax basis (Articles 18 through 25 of the "Inheritance Tax and Gift Tax Act")

- The **tax basis of inherited property** refers to the amount minus the deduction, appraisal and assessment fees of inherited property, and the value of casualty loss from the taxable value of inherited property (Article 25 of the "Inheritance Tax and Gift Tax Act").

▪ Calculation of the calculated amount of inheritance tax

- Inheritance tax will be the amount calculated by applying the prescribed tax rates to the tax basis of inherited property (Article 26 of the "Inheritance Tax and Gift Tax Act").

- The value of the inherited property will be evaluated based on the market price at the time of the commencement of inheritance (Article 60 of the "Inheritance Tax and Gift Tax Act").

Calculating the actual amount to be paid

▪ Calculating the actual inheritance tax to be paid

- The tax subject to voluntary payment is calculated by adding the extra tax for generation-skipping inheritance to the calculated tax, deducting various tax

credits, and deducting any amount of annual installments and payment in kind.

▪ Addition of the extra tax for generation-skipping inheritance

- If an inheritor or beneficiary is a lineal descendant, other than an offspring of the inheritee, an amount equivalent to 30/100 (40/100 if the value of inherited property that an inheritor or a beneficiary who is a lineal descendant of the inheritee other than his/her offspring and is a minor has received or is to receive, exceeds two billion won) of the amount calculated by multiplying the proportion of the property the inheritor or beneficiary has received or is to receive among the inherited property by the calculated amount of inheritance tax. However, this will not be the case for inheritance by representation (Article 27 of the "Inheritance Tax and Gift Tax Act").

▪ Various tax credits

- The tax will be deducted under the following circumstances:

  · **Gift tax credit:** If there is any calculated amount of gift tax for the bequeathed property added to inherited property (Article 28 of the "Inheritance Tax and Gift Tax Act")

  · **Foreign tax credit:** If the inheritance tax has been levied for inherited property located overseas pursuant to foreign statutes (Article 29 of the "Inheritance Tax and Gift Tax Act")

  · **Tax credit for short-term re-inheritance:** If the inheritance commences again within 10 years from the commencement of inheritance due to the death of the inheritor or beneficiary (Article 30 of the "Inheritance Tax and Gift Tax Act")

  · **Deduction of the reported amount of tax:** If the tax basis of inherited property is reported pursuant to Article 67 of the "Civil Act" (Article 69 of the "Civil Act")

▪ Annual installment and payment in kind

- The inheritance tax is payable biannually and making the payment twice a year is referred to as the payment in installment and making the payment over a long period of time is referred to as the payment in annual installments.

  · The inheritance tax may be payable in installments under the following circumstances (Article 70 (2) of the "Inheritance Tax and Gift Tax Act" and Article 66 (2) of the "Enforcement Decree of the Inheritance Tax and Gift Tax Act"):

  √ If the amount of tax to be paid does not exceed 20 million won: the amount exceeding 10 million won

  √ If the amount of tax to be paid exceeds 20 million won: the amount that is 50/100 of or less than the amount of tax

  · If the amount of tax exceeds 20 million won, the taxpayer may provide security to the tax office and set the period of payment in annual installments with the amount payable in each installment to exceed 10 million won (Article 71 of the "Inheritance Tax and Gift Tax Act").

- If the value of the real estate and securities in the inherited property exceeds 1/2 of the total value of property and the amount of tax payable exceeds 20 million won, the taxpayer is allowed to pay the tax with the inherited real estate and securities, which is referred to as the payment in kind (Article 73 of

the "Inheritance Tax and Gift Tax Act").

Payment of the inheritance tax

▪ If paid voluntarily after declaration

- An inheritor or beneficiary is under an obligation to declare the tax subject to voluntary payment calculated as above, taxable value of inheritance, and the tax basis of inherited property to the head of a competent tax office **within six months from the last day of the month in which the commencement date of the inheritance falls** (Article 67 (1) of the "Inheritance Tax and Gift Tax Act").

- A person who reports inheritance tax must pay the amount to the tax office having jurisdiction over the place for tax payment, the Bank of Korea, or the post office, by the respective reporting deadline (Article 70 of the "Inheritance Tax and Gift Tax Act").

▪ If paid by the notice of decision

- Where a taxpayer fails to file a return (including scheduled returns and interim returns) on the tax base of national tax pursuant to the tax-related Acts within the statutory due date of return, the amount obtained by multiplying an amount he/she should pay upon filing the tax return by the following rates must be paid as the penalty tax (Article 47-2 (1) of the "Framework Act on National Taxes").

  1. If the taxpayer fails to file a return on the tax base under the tax-related Acts by the statutory due date of return due to an unlawful act: 40% (if an unlawful act has been committed in an international trade, 60%)

  2. In other circumstances: 20%

- If a person fails to pay or underpays the inheritance tax until the statutory due date, he/she must pay the penalty tax for insincere payment in addition to the inheritance tax (Article 47-5 (1) of the "Framework Act on National Taxes").

▪ Joint and several payment of co-inheritors

- If there are more than one inheritor or beneficiary, each and every inheritor or beneficiary must pay the actual amount calculated by multiplying the proportion of the property he/she has received or he/she will receive by the calculated amount of inheritance tax (Article 3-2 (1) of the "Inheritance Tax and Gift Tax Act").

- However, since the co-inheritors or beneficiaries are jointly and severally liable to pay inheritance tax within the limits of property each has received or is to receive (Article 3-2 (3) of the "Inheritance Tax and Gift Tax Act"), if anyone among the co-inheritors defaults on his/her inheritance tax, the other co-inheritors will remain liable to pay the tax.

- In addition, even if one of the co-inheritors have paid the entire inheritance tax, no gift tax is imposed on the co-inheritors who have not paid any inheritance tax.

▶ Since this is a brief description of the inheritance tax payable at the time of inheritance, please contact the National Tax Service or regional tax office for further details on the calculation of taxes [Customer Satisfaction Center of the National Tax Service(☎ 126)].

7.2.2. Acquisition Tax

Acquisition tax

▪ What is the acquisition tax?

- The acquisition tax refers to the local tax imposed on those who acquire real estate, vehicle, golf membership, condominium membership, etc. in the province where the relevant real estate is located (Article 7(1) of the "Local Tax Act").

  · The acquisition tax is imposed if any of the following properties are acquired by inheritance (Article 7(1) of the "Local Tax Act"):

1. Real estate
2. Vehicles
3. Mechanical equipment
4. Standing trees
5. Aircraft
6. Ships
7. Mining rights
8. Fishing rights
9. Aquaculture right
10. Gold membership
11. Horseback-riding membership
12. Condominium membership
13. Sports complex membership
14. Yacht membership

Calculation of the acquisition tax

▪ How to calculate the acquisition tax

- The acquisition tax is calculated by applying the tax rates under Articles 11 through 15 of the "Local Tax Act" to the tax basis under Article 10 of the same Act.

  · Acquisition tax = Tax basis (value at the time of acquisition) × tax rate

▪ Tax basis for the acquisition tax

- The tax basis for acquisition tax is the value at the time of acquisition; provided, however, that if the acquisition is made in annual installment, the tax basis for acquisition tax shall be the amount of the annual installment (referring to the actual amount paid each time, and including the contract deposit which is included in the amount acquired) (Article 10 of the Local Tax Act).

▪ Tax basis in the case of gratuitous acquisition

- In the case of gratuitous acquisition of real estates, etc., the value at the time of acquisition shall the value (value decided in a comparable trade, appraised value, or public sale value, etc.) generally deemed to be accepted in a transaction executed freely between an unspecified number of persons at the time of such acquisition (Article 10-2(1) of the Local Tax Act).

▪ Tax basis in the case of derivative acquisition for value

- In the case of derivative acquisition for value of real estates, etc. (referring to a transaction where the compensation is paid for acquisition, such as sale and exchange), the value at the time of acquisition shall be the actual acquisition price, including any and all expenses paid or payable to the counterparty or a third party by a person falling under the following for the acquisition of the x-object before the time of acquisition (Article 10-3(1) of 「Local Tax Act」).

  · Taxpayer

  · In the case of acquiring property through a trust under 「Trust Act」, truster as defined by 「Trust Act」;

  · Any person who has paid or is required to pay expenses to acquire the object as specified in Article 18(3) of 「Enforcement Decree of the Local Tax Act」

▪ Tax basis in the case of original acquisition

- In the case of original acquisition of real estates, etc., the value at the time of acquisition shall be the actual acquisition price (Article 10-4(1) of the Local Tax Act).

▪ Special provision for tax basis in the case of gratuitous acquisition, derivative acquisition for value, or original acquisition

- Notwithstanding Articles 10-2 and 10-3 of the Local Tax Act, the value at the time of acquiring a motor vehicle or mechanical equipment shall be the price or the value subject to the following classification (Article 10-5(1) of the Local Tax Act):

  · In the case of gratuitous acquisition of a motor vehicle or mechanical equipment: current price base under Article 4(2) of the Local Tax Act

  · In the case of derivative acquisition for value of a motor vehicle or mechanical equipment: actual acquisition price; provided, however, that if the actual acquisition has not been reported or if there is no marking of the value reported, or if such value reported is less than the current price base under Article 4(2) of the Local Tax Act, the value at the time of acquisition shall be the current price base under the same Paragraph.

  · In the case of using a motor vehicle produced by a motor vehicle manufacturer by himself/herself: actual acquisition price

▪ Tax basis where deemed to be acquisition

- The value at the time of acquisition shall be the actual acquisition price equivalent to the value increased as a result of any of the following changes (Article 10-6(1) of the Local Tax Act):

  · Change of land category

  · Change of the purpose of use of ships, motor vehicles, mechanical equipment, or any other matters prescribed by the Presidential Decree

▪ Tax rate for the acquisition tax

- When real estate is inherited, the acquisition tax for the real estate is calculated by applying the standard tax rate to the tax basis (Articles 11 and 12 of the "Local Tax Act" and Article 23(3) of the "Enforcement Decree of the Local Tax Act").

▪ Adjustment of the acquisition tax

- If any real estate such as a golf course, a high-end residential house, or a high-end recreation center is acquired, the amount calculated by applying the above standard tax rates plus 400/100 of the base rate for heavy taxation (20/1,000) (Article 13(5) of the Local Tax Act).

- The tax rates for the acquisition tax may be adjusted according to the relevant municipal ordinance within the extent of 50/100 of the tax rates (Article 14 of the "Local Tax Act").

※ If you would like to look up the municipal ordinance on the adjustment of the acquisition tax, go to the Enhanced Local Laws and Regulations Information System (http://www.elis.go.kr/) and search "acquisition tax".

Payment of the acquisition tax

▪ Reporting and payment of the acquisition tax

- A person who has inherited an object subject to acquisition tax shall report the calculated amount of acquisition tax within six months (nine months for each inheritor whose place of domicile is in a foreign country) from the commencement of inheritance (judicial declaration of disappearance for any disappeared persons) (Article 20(1) of the "Local Tax Act").

  · A person who intends to report the acquisition tax must provide the object acquired, date of acquisition, purpose, etc. in the acquisition report to file the report to the mayor, governor, or the head of the autonomous district having jurisdiction over the place subject to taxation (Article 33(1) of the "Enforcement Decree of the Local Tax Act" and Article 9(1) and the attached Form No. 3 of the "Enforcement Rule of the Local Tax Act").

  · A person who intends to pay the acquisition tax must do so with the statement of payment for acquisition tax (Article 9(2) and attached Form No. 4 of the "Enforcement Rule of the Local Tax Act").

▪ Collection of tax shortfalls and additional taxes

- If a person obligated to pay acquisition tax fails to fulfill his/her duty to pay taxes, he/she will be subject to the collection of the calculated amount of acquisition tax or the tax shortfall in addition to the following additional taxes by means of ordinary collection (Article 21(1) of the "Local Tax Act," Articles 53 through 56 of the "Framework Act on Local Taxes," and Article 34 of the "Enforcement Decree of the Framework Act on Local Taxes").

  · Additional tax for the failure to file a report

  · Additional tax for a understated report

  · Additional tax for insincere payment

  · Additional tax for insincere payment such by means of extraordinary collection,

etc.