MSC INTERNATIONAL LAW OFFICE COMPANY LIMITED

INHERITANCE MANAGEMENT

A practical guide to planning, organizing, and distributing assets across generations—covering legal frameworks, considerations, and strategic approaches to wealth preservation.

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Inheritance Management

It is natural for anyone to desire assets for the sake of comfort, stability, and prosperity in life. The assets one acquires are not only used up for daily living, but many people also set aside a portion for future needs—both for themselves and for their family and descendants. However, while many understand how to preserve the assets they have earned, they often do not know how to properly transfer those assets, by what means, and at what time. Moreover, they may not be aware of the consequences of failing to plan such a transfer. This article aims to provide a general understanding of how assets can be passed on—whether through legal processes or according to the intentions of the asset owner.

Who Will Inherit the Assets If No Arrangement Is Made?

In cases where no asset management or estate planning has been carried out, the assets of the deceased will be transferred to their statutory heirs in accordance with the order and proportion specified by law.

There are six classes of statutory heirs who are considered relatives, as follows:

1. **Descendants**
   Descendants refer to the direct biological or legally adopted offspring of the asset owner. This includes children (both biological and legally adopted), grandchildren, great-grandchildren, and so on in descending order. Among descendants, only the closest generation is entitled to inherit. For example, if the asset owner passes away and is survived by both children and grandchildren, the children will inherit. However, if a child has predeceased the asset owner, that child's children (i.e., the grandchildren) will inherit in their place. This situation is referred to as **"inheritance by representation."**

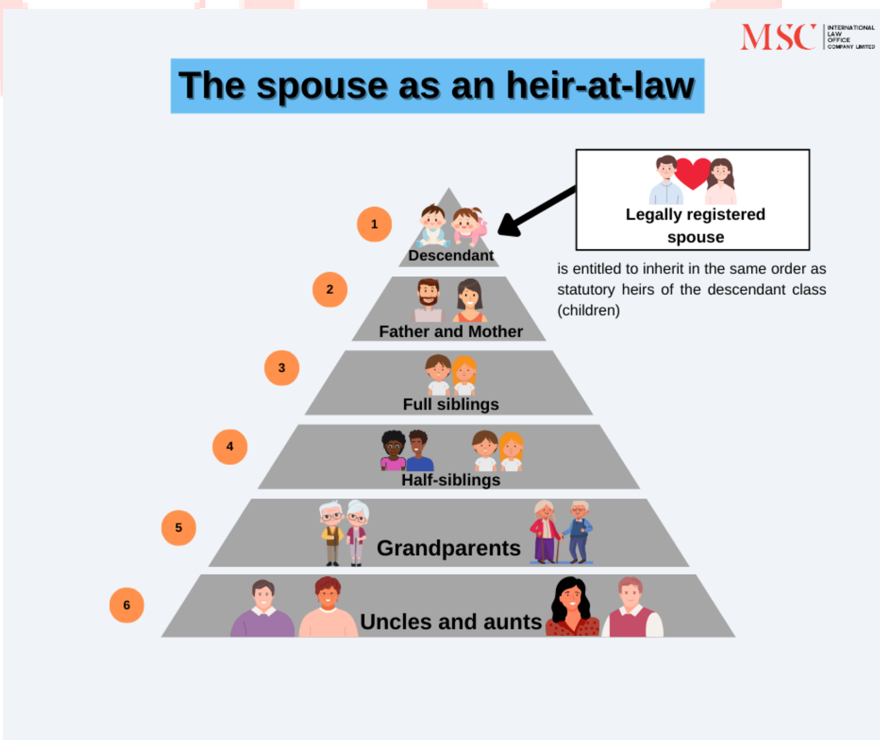
2. **Father and Mother**
   This refers to the legal father and mother of the asset owner. To be recognized as the legal father, the man must have been legally married to the mother at the time of the asset owner's birth. A mother, on the other hand, is always legally recognized regardless of her marital status. Adoptive parents are not included in this category, as the law does not recognize them as statutory heirs.

3. **Full Siblings**
   Full siblings are those who share the same legally recognized father and mother with the deceased asset owner.

4. **Half Siblings (Paternal or Maternal)**
   This refers to siblings who share only one parent with the asset owner—either the same legally recognized father (but different mothers), or the same legally recognized mother (but different fathers).

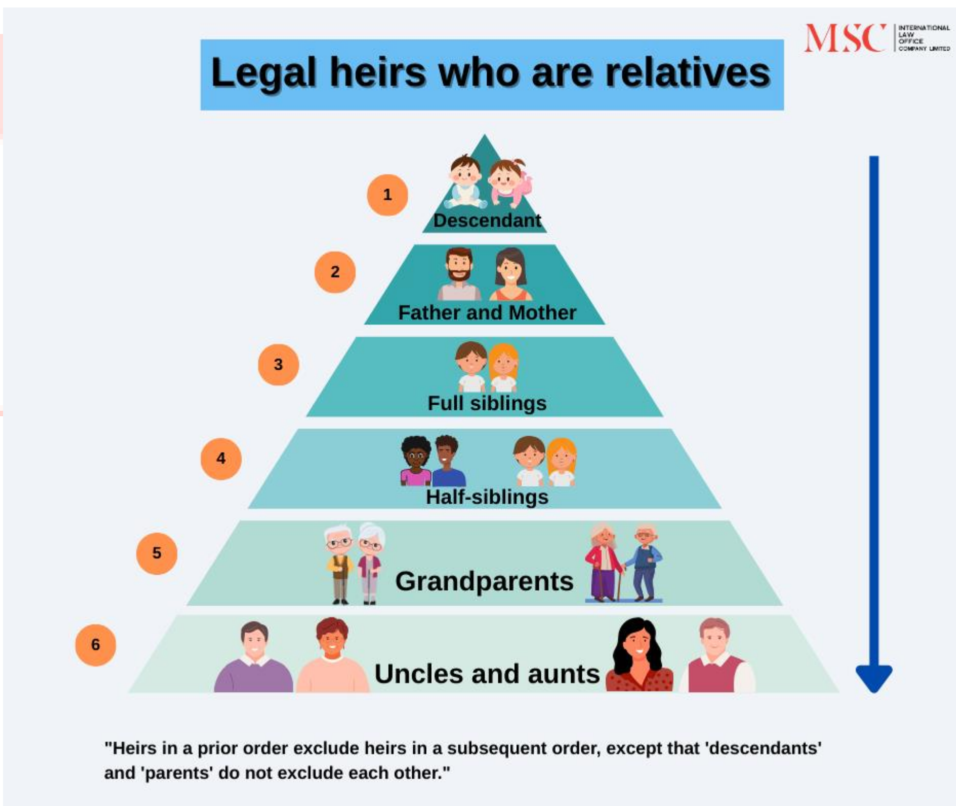
5. **Grandparents (Paternal and Maternal)**
   "Paternal grandparents" (grandfather and grandmother) are the legal parents of the asset owner's father. "Maternal grandparents" are the legal parents of the asset owner's mother.

6. **Uncles and Aunts**
   This includes the brothers and sisters of the asset owner's legal father or mother—regardless of whether they are older or younger siblings. However, this does **not** include the cousins (children of those uncles and aunts).



The six classes of statutory heirs mentioned above are those who may have the right to inherit the assets of the asset owner only as statutory heirs. This does not mean that all six classes of statutory heirs will share the inheritance equally. According to the law, "earlier heirs exclude later heirs," meaning that if an earlier class of statutory heirs is still alive or there is a "substitute heir," the later class of statutory heirs will not have the right to inherit the assets. However, this rule does not apply to descendants and parents of the asset owner. These two classes of heirs do not exclude each other. For example, if the descendants of the asset owner inherit the assets, the parents of the asset owner, if still alive, will also be entitled to inherit those assets.

In addition to the six classes of statutory heirs who are relatives, there is also a statutory heir who is the spouse of the asset owner. A statutory heir who is a spouse refers to a legally married spouse of the asset owner. A legally married spouse has the right to inherit the assets of the asset owner in the same order as children (the first class of heirs).

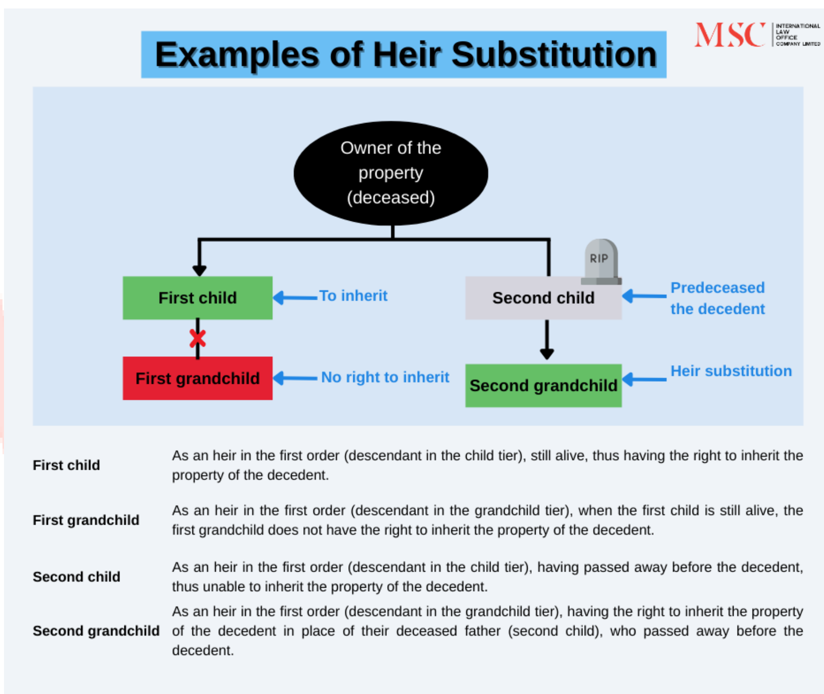


If There Are No Statutory Heirs, Who Will Inherit the Property?

If the asset owner passes away without any statutory heirs and without a will leaving the property to anyone, the assets of the deceased will be transferred to the state.

Problems Arising from Not Managing the Transfer of Assets

When the asset owner does not manage the transfer of their assets before their death, the assets may not go to the person the asset owner intended. The intended person may not receive the assets in the proportion the asset owner had planned. Sometimes, an unclear division of assets may lead to disputes over inheritance, resulting in severe conflicts within the family. This is something the asset owner never anticipated or wished to happen. To avoid such problems, many asset owners take steps to plan the transfer of their assets while they are still alive.



Asset Management for Transfer

Asset management for transfer can be done in several ways. In this article, we will categorize them into two groups based on the timing:

1. Asset management that takes effect after the asset owner's death.
2. Asset management that takes effect while the asset owner is still alive.

Asset Management That Takes Effect After the Asset Owner's Death

Asset management that takes effect after the asset owner's death refers to the asset owner planning for the transfer of their assets while they are still alive but specifying that the plan will only take effect after their death. One of the most commonly used methods for this is creating a will.

A **will** is a final directive expressing the intention of the testator (the person making the will) regarding the distribution of their assets upon their death. A will will have legal effect after the testator's death, but it must be executed in one of the methods prescribed by law to be legally valid and enforceable. There are five prescribed methods for creating a valid will, as follows:

1. **Ordinary Will**
   - It must be in writing, either handwritten or typed.
   - The date (day, month, and year) of the will must be included.
   - The testator must sign the will in the presence of at least two witnesses, who must also sign to confirm the testator's signature.
   - In case of any amendments, additions, or deletions to the will, the testator must sign next to the change in the presence of at least two witnesses, who must also sign to confirm the testator's signature at that time.
2. **Holographic Will (Entirely Handwritten by the Testator)**
   - The will must be written by the testator in their own handwriting.
   - Witnesses may or may not sign.

- The date (day, month, and year) of the will must be included.
- The testator must only sign the will.
- In case of amendments, additions, or deletions, the testator must sign next to the changes.

3. Public Will

- The testator must file a request with the district office (for wills made outside Bangkok) or the district registrar in Bangkok to have the will recorded in the presence of two witnesses.
- The testator must verify the will's contents, and if accurate, the testator and the two witnesses must sign the will.
- The registrar must sign, include the date, and affix the official seal.

4. Secret Will

- The testator must express their intent using a format prescribed by the authorities and submit it to the district office (for wills made outside Bangkok) or the district registrar in Bangkok, following these procedures:
    - The testator must write and sign the will.
    - The testator must seal the will and sign across the seal.
    - The sealed will must be presented to the registrar and at least two witnesses, and the testator must inform them that it is their will, providing their name and address.
    - The registrar must record the testator's statement and the date, affix the official seal, and ensure all signatures are placed on the sealed envelope.

5. Oral Will

- This is only used in exceptional circumstances where the testator cannot prepare a will in the prescribed formats due to situations like imminent death, an epidemic, or being in a war zone, where obtaining the necessary materials might not be possible in time.

- The testator must declare the contents of the will in the presence of at least two witnesses.
- The witnesses must report the will to the district office or the district registrar without delay, explaining the circumstances that prevented the use of other will formats, as well as the date, time, and place of the declaration.
- The registrar will record the statement and ensure all witnesses sign the document.
- This type of will is valid for one month after the testator is able to make a will in the prescribed formats again.

Since a will represents the final instructions of the testator before their death, the law places great importance on it. If the will is created according to the legal requirements and does not contain any clauses that contradict the law, it will be enforceable. The will holds the same authority as if it were the testator's own spoken words. Any property designated as part of the inheritance will be distributed according to the provisions of the will. Even if the person named in the will to receive the property is not the testator's legal heir, the property will still go to them as specified in the will. Conversely, even if someone is the testator's legal heir, they will not have any rights to the property unless their name is specifically mentioned in the will. However, any property not mentioned in the will will be inherited by the legal heirs according to the law.

Managing Assets with Immediate Effect While the Owner is Still Alive

Transferring assets with immediate effect while the owner is still alive is another popular method. This allows the asset owner to personally witness the transfer of assets to the recipient, and also enables the owner to plan for the transfer of any future assets that may arise. At the same time, the recipient can immediately benefit from the transferred assets without having to wait until the owner passes away.

In the case of transferring assets while the owner is still alive, the owner may transfer full ownership of the assets to the recipient or may grant specific rights under certain conditions. This depends on the asset owner's plan regarding the form of transfer.

Gifting Assets

Gifting assets refers to the transfer of ownership of property from the asset owner to the recipient. Under legal principles, the gift is complete only when the asset has been delivered to the recipient, unless it is a type of asset that requires a written agreement and registration with the authorities, such as land or vehicles. In such cases, the transfer is only complete when the transaction is documented and registered with the appropriate authorities.

Transferring assets by gifting is a popular method because it is straightforward and does not involve complicated procedures, making it the quickest and simplest way to achieve the desired outcome. However, there are considerations to be aware of when gifting assets:

Gift Tax

The "Gift Tax" is a personal income tax imposed on the value of the property received by the recipient in excess of 10 million baht in the same tax year for cases where the recipient is not the parents, descendants, or spouse of the asset owner. For cases where the recipient is the parents, descendants, or spouse of the asset owner, the threshold is 20 million baht in the same tax year. The recipient is responsible for paying the gift tax as required by law.

Revocability of a Gift

Once the gift has been completed, it generally cannot be revoked, except in the following cases:

- The recipient violates the terms of the gift agreement.
- The recipient shows ingratitude toward the giver, such as committing a serious criminal offense against the giver, defaming the giver, or refusing to provide necessary living support to the giver when the giver is in need, and the recipient is capable of helping.
- The recipient intentionally kills the giver or unlawfully prevents the giver from revoking the gift.

In addition to the transfer of ownership, there are also methods to give specific rights related to property, which may include conditions. Examples of this include granting rights to real property in various forms, creating a family constitution, or establishing a holding company.

Granting Property Rights in Real Estate in Other Forms

Besides transferring ownership, the asset owner may grant specific rights related to real estate to another person. For example:

- **Right of Residence**: The right related to real estate acquired through a legal agreement between parties. For instance, the owner of the property may register the right of residence for someone, allowing that person to live in the property for as long as they live.
- **Right of Superficies**: The right of an individual to own buildings, structures, or crops on someone else's land or underground.
- **Right to Collect Produce**: The right of an individual to possess and benefit from real property owned by another person.
- **Encumbrance on Real Property**: A situation where someone is not the owner of the real property but has the right to collect debts from the property.

Establishing a Family Constitution

A Family Constitution is a written agreement made by the family head and relevant family members, outlining the rules, guidelines, and conditions for managing various matters related to the family's assets and business. It is essentially a framework for the family's governance structure, asset management, allocation of duties and benefits among family members, and succession planning for passing the business to the next generation.

Since a Family Constitution is an internal agreement within the family, it is generally not legally binding and cannot be enforced against or invoked by external parties. However, the drafters of the Family Constitution may incorporate relevant legal principles into the agreement to give it legal effect. For example, they might include provisions from the Civil and Commercial Code concerning company partnerships and shareholder arrangements. This way, if a dispute arises between family members regarding business operations, the relevant laws can be used to help resolve the issue.

Because the Family Constitution sets the rules for family members, it helps ensure a shared understanding of their rights, responsibilities, and duties. It also helps prevent conflicts over inheritance after the asset owner's passing. For many asset owners, the Family Constitution is a long-term planning tool to ensure that their business and assets are properly passed on to future generations.

Currently, there is no law requiring that a Family Constitution be structured in a specific way. As a result, those creating the Family Constitution can design it themselves, in consultation with family members or with the help of a legal expert, to ensure that it is legally sound, clear, and practical.

Establishing a Holding Company

A holding company is a company that does not engage in its own business activities but generates income by holding shares in other companies. The companies in which a holding company holds shares are typically operating companies, which may be located in Thailand or abroad. The income that the holding company receives is typically in the form of dividends.

For asset owners with their own business but lacking a clear organizational structure, or for those with many family members, failing to plan for the distribution of assets or benefits to family members may lead to confusion and misunderstandings. In cases where the asset owner chooses to transfer shares to family members, there is a risk that the transferred shares could be sold to external parties, thus losing the family control over the business. This goes against the owner's intentions. Establishing a holding company to manage and allocate benefits among family members creates a clear, systematic, and easily auditable framework. It also allows for conditions to be set that restrict the transfer of shares in the holding company only to family members, ensuring that the family business remains intact.

However, establishing a holding company to manage the distribution of benefits and asset succession differs from setting up a general operating company. The organizational structure must be designed to facilitate the fair distribution of benefits among family members and comply with relevant laws, such as the Civil and Commercial Code regarding company partnerships, to ensure it is enforceable. Therefore, the design and structure of the organization should be carefully managed by professionals with expertise in both business operations and relevant laws.

Summary

Managing asset succession is critical, especially for asset owners with a large variety of assets, many heirs, or specific individuals they wish to designate as beneficiaries. This ensures that assets are passed on according to the owner's wishes and prevents potential conflicts among heirs or other entitled individuals. The method chosen for asset distribution depends on the asset owner's judgment, taking into account factors such as the types of assets, the number of assets, costs, the time required for implementation, the owner’s readiness, and the ability of the beneficiaries to manage the assets.