

ภาคผนวก

**Civil Code of Japan (民法 Minpō, 1896)****Chapter VII Wills****Section 1 General Provisions****Article 960 Formalities for Will**

No will shall take effect unless made in accordance with the formalities provided in this Code.

**Article 961 Capacity to Make Will**

Any person who has attained 15 years of age may make a will.

**Article 962**

The provisions of Article 5, Article 9, Article 13 and Article 17 shall not apply to a will.

**Article 963**

At the time of making a will, a testator shall have the capacity to do so.

**Article 964 Comprehensive and Specific Testamentary Gifts**

A testator may make a disposition of his/her property, in whole or in part, comprehensive or specific title (s); provided that this may not violate provisions regarding legally reserved portion.

**Article 965 Provisions Relating to Heirs to be Applied Mutatis Mutandis**

The provisions of Article 886 and Article 891 shall apply mutatis mutandis to a testamentary donee.

**Article 966 Limitations on Will of Person under Guardianship**

(1) If a person under guardianship makes a will to the benefit of a guardian or the guardian's spouse or lineal relative before the completion of a profit and loss account for guardianship, that will shall be void.

(2) The provision of the preceding paragraph shall not apply in the case where a lineal relative, spouse, or sibling of the ward is a guardian.

## **Part 2 Formalities of Wills**

### **Subsection 1 Ordinary Formality**

#### **Article 967 Types of Will Made by Ordinary form**

A will shall be made by holograph document, notarized document, or sealed and notarized document; provided that this shall not apply to the case where it is permissible to use a special method.

#### **Article 968 Will by Holograph Document**

(1) To make a will by holograph document the testator must write the entire text, the date, and his/her name in his/her own hand and affix his/her seal.

(2) Unless, for an insertion, deletion or any other alteration to the handwritten certificate, the testator indicates the place of alteration, makes a specifically signed addition to the effect that it has been changed, and furthermore affixes his/her seal to the place that has been altered, it shall have no effect.

#### **Article 969 Will by Notarized Document**

A will by notarized document shall be made in compliance with the following items:

- (i) no fewer than two witnesses shall be in attendance;
- (ii) the testator shall give oral instruction of the tenor of the will to a notary public;
- (iii) a notary public shall take dictation from the testator and read this aloud, or allow inspection, to the testator and witnesses;
- (iv) the testator and witnesses shall each sign, and affix his/her seal to, the certificate after having approved its accuracy; provided, however, that in the case where a testator is unable to sign, a notary public may sign on his/her behalf, with supplementary registration giving the reason for that; and
- (v) a notary public shall give supplementary registration to the effect that the certificate has been made in compliance with the formalities listed in each of the preceding items, sign this, and affix his/her seal.

#### **Article 969-2 Special Provisions for Will by Notarized Document**

(1) In the case where a will by notarized document is made by a person who cannot speak, the testator shall make a statement of the tenor of the will through an interpreter, or by

his/her own hand, in lieu of the oral instruction of item (ii) of the preceding Article. In this case, in the application of the provision of item (iii) of the same Article, 'oral instruction' in that item shall become 'statement through an interpreter, or by his/her own hand'.

(2) In the case where the testator or a witness of the preceding Article is deaf, a notary public may convey the written contents of the provision of item (iii) of the same Article to the testator or witness through an interpreter, in lieu of the reading aloud provided for in the same item.

(3) If a notarized document has been made in compliance with the formalities provided for in the preceding paragraphs (1) and (2), a notary public shall give supplementary registration on the certificate to this effect.

#### **Article 970 Will by Sealed and Notarized Document**

A will by sealed and notarized document shall be made in compliance with the following formalities:

- (i) the testator shall sign, and affix his/her seal to, the certificate;
- (ii) the testator shall seal the certificate and, using the same stamp as that used for the certificate, affix his/her seal;
- (iii) the testator shall submit the sealed certificate before one notary public and not less than two witnesses, with a statement to the effect that it is his/her own will, giving the author's name and address;
- (iv) after having entered the date of submission of the certificate and the statement of the testator upon the sealed document, a notary public shall, together with the testator and witnesses, sign it and affix his/her seal; and

(2) The provision of paragraph (2) of Article 968 shall apply *mutatis mutandis* to the making of a will by sealed and notarized document.

#### **Article 971 Effect of Will by Sealed and Notarized Document Failing to Satisfy Formalities**

Even a will by sealed and notarized document which fails to satisfy the formalities provided for in the preceding Article shall have effect as a will made by holograph document, if prepared in accordance with the formalities provided for in Article 968.

**Article 972 Special Provisions for Will by Sealed and Notarized Document**

(1) In the case where a will by sealed and notarized document is made by a person who cannot speak, the testator shall make a statement to the effect that the certificate is one's own will, giving the author's name and address through an interpreter, or by his/her own hand upon the sealed document, in lieu of the statement of item (iii) of paragraph (1) of Article 970.

(2) In the case referred to in the preceding paragraph, if a testator has given a statement through an interpreter, a notary public shall make an entry on the sealed document to that effect.

(3) In the case referred to in paragraph (1) , if the testator has written on the sealed document is in his/her own hand, a notary public shall make an entry to that effect on the sealed document in lieu of the entry of statement in the provision of item

(iv) of paragraph 1 of Article 970.

**Article 973 Will of an Adult Ward**

(1) For an adult ward to make a will at a time that his/her decision-making capacity has recovered temporarily, not less than two doctors shall be in attendance.

(2) A doctor in attendance of the making of a will shall make an entry on the will to the effect that the testator was not in a condition lacking decision-making capacity at the time of making the will, sign it, and affix his/her seal; provided that in the case of a will by sealed and notarized document, he/she shall make an entry to that effect on the sealed document, sign it, and affix his/her seal.

**Article 974 Causes of Disqualification of Witness or Observer**

The following persons may not be a witness or observer to a will:

- (i) a minor;
- (ii) a presumed heir, donee, or a spouse or lineal relative of either; or
- (iii) a spouse, relative within four degrees, secretary, or employee of a notary public.

**Article 975 Prohibition of Joint Wills**

A will may not be made by two or more persons on the same certificate.

## **Subsection 2 Special Formalities of Wills**

### **Article 976 Will Made by Person Rapidly Approaching Death**

(1) If a person who is rapidly approaching death due to illness or another reason intends to make a will, he/she may do so in the attendance of not less than three witnesses by giving oral instruction of the tenor of the will to one of the witnesses.

In this case, the person who received the oral instruction shall enter this, read it aloud, or allow inspection, to the testator and other witnesses, and after each witness has approved the accuracy of that entry, sign it, and affix his/her seal.

(2) In the case where a person who cannot speak makes a will pursuant to the provisions of the preceding paragraph, the testator shall state of the tenor of that will through an interpreter before the witnesses, in lieu of the oral instruction of the same paragraph.

(3) In the case where the testator, or a witness, referred to in the second sentence of paragraph (1) is deaf, the person who has received the statement or oral instruction of the tenor of the will shall convey to the testator or other witnesses the written contents referred to in the provision of that sentence through an interpreter in lieu of the reading aloud provided for in that sentence.

(4) For a will made pursuant to the provisions of the preceding three paragraphs, effect shall not arise unless it has been confirmed by the family court on the application of one of the witnesses or an interested party within twenty days of the creation of the will.

(5) The family court may not confirm a will referred to in the preceding paragraph unless it is convinced that the will captured the true intention of the testator.

### **Article 977 Will Made by Person with Infectious Disease in Quarantine**

A person who is isolated through an administrative disposition due to an infectious disease may make a will in the attendance of one police official and at least one witness.

### **Article 978 Will Made by Person on Vessel**

A person on a ship may make a will in the attendance of the ship's captain or a clerk, and at least two witnesses.

**Article 979 Will Made by Person on Ship Meeting Disaster**

(1) In the case where a ship meets disaster, a person who is on that ship and rapidly approaching death may make a will orally in the attendance of at least two witnesses.

(2) In the case where a person who cannot speak makes a will pursuant to the provision of the preceding paragraph, the testator shall do so through an interpreter.

(3) The effect of a will made in compliance with the provisions of the preceding two paragraphs shall not arise unless a witness makes an entry of its tenor, signs this, affixes his/her seal, and furthermore, it gains confirmation by the family court on the application made without delay by one of the witnesses or an interested party.

(4) The provision of paragraph (5) of Article 976 shall apply *mutatis mutandis* to the case described in the preceding paragraph.

**Article 980 Signature and Seal of Relevant Parties to a Will**

In the cases described in Article 977 and Article 978, a testator, author, observer, or witness shall sign and affix his/her seal to each will.

**Article 981 Case Where Signature or Seal Is Impossible**

In the cases described in Articles 977 to 979 inclusive, if there is a person who is unable to sign or affix his/her seal, an observer or witness shall make supplementary registration of the reason for that.

**Article 982 Provisions Relating to Will by Ordinary Formalities to be Applied *Mutatis Mutandis***

The provisions of paragraph (2) of Article 968 and Articles 973 to 975 inclusive shall apply *mutatis mutandis* to a will made pursuant to the provisions of Articles 976 to 981.

**Article 983 Effect of Will Made by Special Formalities**

The effect of a will made pursuant to the provisions of Article 976 to 982 inclusive shall not arise if a testator survives for a period of six months from the time they recover the ability to make a will by ordinary formalities.

## **CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES**

### **Article 3**

#### **General principles**

The principles of the present Convention shall be:

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;
- (g) Equality between men and women;
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

### **Article 4**

#### **General obligations**

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

- (a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
- (b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- (c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;

(d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

(e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;

(f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;

(g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;

(h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;

(i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in the present Convention so as to better provide the assistance and services guaranteed by those rights.

2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.

5. The provisions of the present Convention shall extend to all parts of federal States without any limitations or exceptions.

#### **Article 5**

##### **Equality and non-discrimination**

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

#### **Article 6**

##### **Women with disabilities**

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

### **Article 7**

#### **Children with disabilities**

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

### **Article 8**

#### **Awareness-raising**

1. States Parties undertake to adopt immediate, effective and appropriate measures:

(a) To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;

(b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;

(c) To promote awareness of the capabilities and contributions of persons with disabilities.

2. Measures to this end include:

(a) Initiating and maintaining effective public awareness campaigns designed:

(i) To nurture receptiveness to the rights of persons with disabilities;

(ii) To promote positive perceptions and greater social awareness towards persons with disabilities;

(iii) To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;

(b) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;

(c) Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;

(d) Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

## **Article 9**

### **Accessibility**

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

(a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;

(b) Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures:

(a) To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;

(b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;

(c) To provide training for stakeholders on accessibility issues facing persons with disabilities;

(d) To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;

(e) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;

(f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

(g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;

(h) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

## **Article 10**

### **Right to life**

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

## **Article 11**

### **Situations of risk and humanitarian emergencies**

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

## **Article 12**

### **Equal recognition before the law**

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

## **Article 13**

### **Access to justice**

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

#### **Article 14**

##### **Liberty and security of person**

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.

#### **Article 15**

##### **Freedom from torture or cruel, inhuman or degrading treatment or punishment**

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

## **Article 16**

### **Freedom from exploitation, violence and abuse**

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

## **Article 17**

### **Protecting the integrity of the person**

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

## **Article 18**

### **Liberty of movement and nationality**

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

(a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;

(b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;

(c) Are free to leave any country, including their own;

(d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

## **Article 19**

### **Living independently and being included in the community**

States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

(a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;

(b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

(c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

## **Article 20**

### **Personal mobility**

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

(a) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;

(b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;

(c) Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;

(d) Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.

## **Article 21**

### **Freedom of expression and opinion, and access to information**

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

(a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

(b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;

(c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;

(d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;

(e) Recognizing and promoting the use of sign languages.

## **Article 22**

### **Respect for privacy**

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

## **Article 23**

### **Respect for home and the family**

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:

(a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;

(b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;

(c) Persons with disabilities, including children, retain their fertility on an equal basis with others.

2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

## **Article 24**

### **Education**

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

(a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

(b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

(c) Enabling persons with disabilities to participate effectively in a free society

2. In realizing this right, States Parties shall ensure that:

(a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

(b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

(c) Reasonable accommodation of the individual's requirements is provided;

(d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

(a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

## **Article 25**

### **Health**

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

(a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;

(b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and

services designed to minimize and prevent further disabilities, including among children and older persons;

(c) Provide these health services as close as possible to people's own communities, including in rural areas;

(d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

(e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;

(f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

## **Article 26**

### **Habilitation and rehabilitation**

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:

(a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;

(b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

## **Article 27**

### **Work and employment**

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

(c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;

(d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;

(e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

(f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;

(g) Employ persons with disabilities in the public sector;

(h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

(j) Promote the acquisition by persons with disabilities of work experience in the open labour market;

(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

## **Article 28**

### **Adequate standard of living and social protection**

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

(a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;

(b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;

(c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;

(d) To ensure access by persons with disabilities to public housing programmes;

(e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

## **Article 29**

### **Participation in political and public life**

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:

(a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, *inter alia*, by:

(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) To promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

(i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

### **Article 30**

#### **Participation in cultural life, recreation, leisure and sport**

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

(a) Enjoy access to cultural materials in accessible formats;

(b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;

(c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

(a) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;

(b) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end,

encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;

(c) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;

(d) To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;

(e) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

## **Guardianship Act 1987**

### **Part 1 Preliminary**

#### **Section 4 General principles**

It is the duty of everyone exercising functions under this Act with respect to persons who have disabilities to observe the following principles:

(a) the welfare and interests of such persons should be given paramount consideration,

(b) the freedom of decision and freedom of action of such persons should be restricted as little as possible,

(c) such persons should be encouraged, as far as possible, to live a normal life in the community,

(d) the views of such persons in relation to the exercise of those functions should be taken into consideration,

(e) the importance of preserving the family relationships and the cultural and linguistic environments of such persons should be recognised,

(f) such persons should be encouraged, as far as possible, to be self-reliant in matters relating to their personal, domestic and financial affairs,

(g) such persons should be protected from neglect, abuse and exploitation,

(h) the community should be encouraged to apply and promote these principles.

## Part 2 Appointment of enduring guardians

### Section 5 Definitions

In this Part:

*appointee* means a person appointed as an enduring guardian under this Part.

*appointor* means a person who has appointed an enduring guardian under this Part.

*eligible signer*, in relation to a notice or other instrument, means a person who:

- (a) is at least 18 years of age, and
- (b) is not a witness to the notice or other instrument, and
- (c) in the case of an instrument appointing an enduring guardian or revoking an

appointment—is not an appointee or alternative enduring guardian.

*eligible witness* means a person who:

- (a) is any of the following:
  - (i) an Australian legal practitioner,
  - (ii) (Repealed)
  - (iii) a registrar of the Local Court,
  - (iv) a person (or a person belonging to a class of persons) prescribed by the

regulations for the purposes of this subparagraph, and

(b) in the case of an instrument appointing an enduring guardian or revoking an appointment—is not an appointee or alternative enduring guardian.

### Section 6 Adult person may appoint guardian

A person of or above the age of 18 years may, by instrument in writing, appoint a person as his or her guardian.

#### Section 6A When appointment has effect

(1) An appointment under this Part:

(a) has effect only during such period of time as the appointor is a person in need of a guardian, and

(b) unless revoked or suspended under this Part, has effect during all such periods.

(2) A person appointed under this Part is appointed as an enduring guardian.

**Section 6B Eligibility for appointment**

(1) A person is not eligible to be appointed as an enduring guardian unless he or she is of or above the age of 18 years.

(2) A person is not eligible to be appointed as an enduring guardian if:

(a) the person is, in a professional or administrative capacity, directly or indirectly responsible for, or involved in, the provision of any of the following services for fee or reward to the person making the appointment:

(i) medical services (whether provided in a hospital, at home or otherwise),

(ii) accommodation,

(iii) any other services to support the person making the appointment in his or her activities of daily living, or

(b) the person is the spouse, parent, child, brother or sister of a person of the kind referred to in paragraph (a).

(1) However, if a person who is validly appointed as an enduring guardian becomes responsible for or involved in the provision for fee or reward of a service to the appointor of the kind referred to in subsection (2) (a), the appointment does not lapse.

**Section 6C Method of appointment**

(1) An instrument does not operate to appoint a person as an enduring guardian unless:

(a) it is in or to the effect of the form prescribed by the regulations, and

(b) it is signed:

(i) by the appointor, or

(ii) if the appointor instructs—by an eligible signer who signs for the appointor in the appointor's presence, and

(c) it is endorsed with the appointee's acceptance of the appointment, and

(d) the execution of the instrument by the appointor and appointee is witnessed by one or more eligible witnesses, and

(e) each witness certifies that the person or persons whose execution of the instrument is witnessed executed the instrument voluntarily in the presence of the witness and appeared to understand the effect of the instrument, and

(f) if the instrument is signed for the appointor by an eligible signer—the person who witnesses the signature certifies that the appointor, in the witness’s presence, instructed the signer to sign the instrument for the appointor.

(1) Without limiting subsection (1) (b) (i), an instrument is signed by the appointor if the appointor affixes his or her mark to the instrument.

(2) If an eligible signer signs an instrument on behalf of an appointor as provided by subsection (1) (b) (ii), the appointor is taken to have signed the instrument for the purposes of this Act (including subsection (1) (e)).

(3) For the purposes of subsection (1) (d):

(a) the execution of the instrument by or for the appointor and by the appointee may be witnessed by the same person or by different persons, and

(b) the execution of the instrument by or for the appointor does not need to be witnessed at the same time and place as the execution of the instrument by the appointee.

#### **Section 6D Appointment of 2 or more enduring guardians**

(1) An instrument appointing an enduring guardian may appoint 2 or more such guardians to act jointly, severally or jointly and severally.

(2) If an instrument appoints 2 or more enduring guardians to act both jointly and severally:

(a) the appointees are authorised to act jointly or severally at their discretion in relation to the appointor except as otherwise provided by the instrument of appointment, and

(b) a vacation in the office of one enduring guardian does not terminate the appointment of any other enduring guardian unless the instrument of appointment provides otherwise.

(3) Without limiting subsection (1), an instrument appointing more than one enduring guardian may confer different functions on each appointee. In any such case:

(a) each appointee is taken to have been appointed to act severally, and

(b) a reference in this Act to the enduring guardian is a reference to whichever of the appointees has the relevant function.

(4) An instrument appointing 2 or more enduring guardians to act jointly may provide that the death, resignation or incapacity of one or more appointees does not operate to terminate the appointment of any other appointee.

(5) For the purposes of this Act, an instrument that makes provision of the kind referred to in subsection (4) is taken to have appointed an appointee to act severally if each other appointee has died, resigned or become incapacitated.

(6) A person who was appointed by an instrument executed by an appointor as a joint enduring guardian where that instrument does not make provision of the kind referred to in subsection (4) may apply to the Tribunal for an order confirming his or her appointment as an enduring guardian if each other appointee has died, resigned or become incapacitated.

(7) The Tribunal may confirm the appointment of a person as an enduring guardian under subsection (6) only if the Tribunal is satisfied that the appointor did not intend the appointment to terminate if one or more of the other joint enduring guardians died, resigned or became incapacitated.

(8) If the Tribunal confirms the appointment of a person as an enduring guardian under subsection (6), the instrument appointing the person is taken to have appointed the person to act severally if each other appointee has died, resigned or become incapacitated.

#### **Section 6DA Alternative enduring guardians**

(1) An instrument of appointment of an enduring guardian (the original enduring guardian) may appoint another person to be an alternative enduring guardian of the appointor.

(2) The instrument of appointment does not operate to appoint a person as an alternative enduring guardian unless it is endorsed with the person's acceptance of the appointment.

(3) An alternative enduring guardian has (and may exercise) the functions of an original enduring guardian only:

- (a) if the original enduring guardian dies, or
- (b) if the original enduring guardian resigns, or
- (c) during any incapacity of the original enduring guardian.

(4) If 2 or more original enduring guardians are appointed by the instrument of appointment, the alternative enduring guardian:

(a) is taken to have been appointed as an alternative enduring guardian for each of the original enduring guardians unless the instrument of appointment provides otherwise, and

(b) if the original enduring guardians were appointed jointly and all of them have died, resigned or become incapacitated—section 6D operates in relation to that alternative enduring guardian as if he or she had been appointed as an original enduring guardian by the instrument of appointment and was the only remaining original enduring guardian.

(5) A reference in a provision of this Act (other than this section) to an enduring guardian is to be read as a reference to the alternative enduring guardian while that person has, and may exercise, the functions of an original enduring guardian.

### **Section 6E Functions of enduring guardians**

(1) Subject to subsection (2), an instrument appointing a person as an enduring guardian authorises the appointee, while the appointment has effect, to exercise the following functions:

(a) deciding the place (such as a specific nursing home, or the appointor's own home) in which the appointor is to live,

(b) deciding the health care that the appointor is to receive,

(c) deciding the other kinds of personal services that the appointor is to receive,

(d) giving consent under Part 5 to the carrying out of medical or dental treatment on the appointor,

(e) any other function relating to the appointor's person that is specified in the instrument.

(2) The instrument of appointment may limit or exclude the authority it confers in relation to any one or more of the functions specified in subsection (1).

(2A) For the purpose of exercising a function that an appointee is authorised to exercise by an instrument appointing the appointee as an enduring guardian, the appointee has the same right of access to information about the appointor as the appointor has.

(2B) Nothing in the Privacy and Personal Information Protection Act 1998 prevents a public sector agency (within the meaning of that Act) from disclosing information about an appointor to an appointee if the agency is satisfied that the disclosure of the information would assist the appointee to exercise his or her functions as an enduring guardian.

(2C) Nothing in subsection (2A) affects the operation of the Health Records and Information Privacy Act 2002 in relation to the disclosure of health information about an appointor to an appointee.

(3) The functions authorised by an instrument appointing an enduring guardian are, unless the Tribunal otherwise directs, to be exercised in accordance with any lawful directions contained in the instrument.

## **Part 7 The Public Guardian**

### **Section 77 Public Guardian**

(1) There is to be a Public Guardian.

(2) The Public Guardian is to be the person holding office as such under Chapter 1A of the Public Sector Employment and Management Act 2002.

(3) The Public Guardian has the functions conferred or imposed on the Public Guardian by or under this or any other law.

(4) The Public Guardian may delegate to a person, of a class of persons approved by the Minister or prescribed by the regulations, any of the Public Guardian's functions, other than this power of delegation.

## **High Court Amendment Rules 1985**

### **Section 21**

Testator blind, illiterate, etc.

The High Court Rules are hereby amended by repealing rule 658, and substituting the following rule: "658 "If-

“(a)The will has been signed by the testator by mark or by some other person by direction of the testator and it is not certified in the attestation clause that the will was read over and understood by the testator before the testator signed it; or

“(b)It appears that the testator was blind or illiterate and it is not certified in the attestation clause that the will was read over to and understood by the testator before he signed it;  
or

“(c)For any other reason the Court is doubtful whether or not the testator had knowledge of the contents of the will at the time of its execution or had, at that time, full possession of his mental faculties,—

“evidence satisfying the Court that the testator had that knowledge or full possession of his mental faculties shall be given in accordance with rule 664.”

### **Judicature Act 1908**

#### **Rule 664**

##### Recall of grant

(1) If a grant is made in common form, a person may make an interlocutory application for an order for the recall of the grant.

(2) The Court may make an order recalling the grant only if—

(a) the application is unopposed; and

(b) one of the following circumstances exists:

(i) the grant was made on the basis that the deceased died intestate and a will has been found; or

(ii) a will has been found with a date later than that of the will of which probate was granted; or

(iii) the person to whom the grant was made applies for the recall; or

(iv) the person to whom the grant was made consents to the recall.

(3) If subclause (2) is not satisfied, a person wishing to apply for an order for the recall of the grant must bring proceedings.

(4) Rule 639 applies to an application under subclause (1) and the proceedings referred to in subclause (3).

## **Louisiana Civil Code**

### **Chapter 6 - Dispositions Mortise Causa**

#### **Section 1 - Testaments Generally**

**Art. 1571.** A testament may not be executed by a mandatary for the testator. Nor may more than one person execute a testament in the same instrument. [Acts 1997, No. 1421, §1, eff. July 1, 1999]

**Art. 1572.** Testamentary dispositions committed to the choice of a third person are null, except as expressly provided by law. A testator may delegate to his executor the authority to allocate specific assets to satisfy a legacy expressed in terms of a value or a quantum, including a fractional share.

The testator may expressly delegate to his executor the authority to allocate a legacy to one or more entities or trustees of trusts organized for educational, charitable, religious, or other philanthropic purposes. The entities or trusts may be designated by the testator or, when authorized to do so, by the executor in his discretion. In addition, the testator may expressly delegate to his executor the authority to impose conditions on those legacies. [Acts 1997, No. 1421, §1, eff. July 1, 1999]

**Art. 1573.** The formalities prescribed for the execution of a testament must be observed or the testament is absolutely null. [Acts 1997, No. 1421, §1, eff. July 1, 1999]

#### **Section 2 - Forms of Testaments**

**Art. 1574.** There are two forms of testaments: olographic and notarial. [Acts 1997, No. 1421, §1, eff. July 1, 1999]

**Art. 1575. A.** An olographic testament is one entirely written, dated, and signed in the handwriting of the testator. Although the date may appear anywhere in the testament, the testator must sign the testament at the end of the testament. If anything is written by the testator after his signature, the testament shall not be invalid and such writing may be considered by the court, in its discretion, as part of the testament. The olographic testament is subject to no other requirement as to form. The date is sufficiently indicated if the day, month, and year are

reasonably ascertainable from information in the testament, as clarified by extrinsic evidence, if necessary.

B. Additions and deletions on the testament may be given effect only if made by the hand of the testator. [Acts 1997, No. 1421, §1, eff. July 1, 1999; Acts 2001, No. 824, §1]

**Art. 1576.** A notarial testament is one that is executed in accordance with the formalities of Articles 1577 through 1580.1. [Acts 1997, No. 1421, §1, eff. July 1, 1999; Acts 1999, No. 745, §1, eff. July 1, 1999]

**Art. 1577.** The notarial testament shall be prepared in writing and dated and shall be executed in the following manner. If the testator knows how to sign his name and to read and is physically able to do both, then:

(1) In the presence of a notary and two competent witnesses, the testator shall declare or signify to them that the instrument is his testament and shall sign his name at the end of the testament and on each other separate page.

(2) In the presence of the testator and each other, the notary and the witnesses shall sign the following declaration, or one substantially similar: "In our presence the testator has declared or signified that this instrument is his testament and has signed it at the end and on each other separate page, and in the presence of the testator and each other we have hereunto subscribed our names this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_." [Acts 1997, No. 1421, §1, eff. July 1, 1999; Acts 2001, No. 824, §1]

**Art. 1578.** When a testator knows how to sign his name and to read, and is physically able to read but unable to sign his name because of a physical infirmity, the procedure for execution of a notarial testament is as follows:

(1) In the presence of the notary and two competent witnesses, the testator shall declare or signify to them that the instrument is his testament, that he is able to see and read but unable to sign because of a physical infirmity, and shall affix his mark where his signature would otherwise be required; and if he is unable to affix his mark he may direct another person to assist him in affixing a mark, or to sign his name in his place. The other person may be one of the witnesses or the notary.

(2) In the presence of the testator and each other, the notary and the witnesses shall sign the following declaration, or one substantially similar: "In our presence the testator has declared or signified that this is his testament, and that he is able to see and read and knows how to sign his name but is unable to do so because of a physical infirmity; and in our presence he has affixed, or caused to be affixed, his mark or name at the end of the testament and on each other separate page, and in the presence of the testator and each other, we have subscribed our names this \_\_\_\_ day of \_\_\_\_, \_\_\_\_." [Acts 1997, No. 1421, §1, eff. July 1, 1999]

**Art. 1579.** When a testator does not know how to read, or is physically impaired to the extent that he cannot read, whether or not he is able to sign his name, the procedure for execution of a notarial testament is as follows:

(1) The written testament must be read aloud in the presence of the testator, the notary, and two competent witnesses. The witnesses, and the notary if he is not the person who reads the testament aloud, must follow the reading on copies of the testament. After the reading, the testator must declare or signify to them that he heard the reading, and that the instrument is his testament. If he knows how, and is able to do so, the testator must sign his name at the end of the testament and on each other separate page of the instrument.

(2) In the presence of the testator and each other, the notary and witnesses must sign the following declaration, or one substantially similar: "This testament has been read aloud in our presence and in the presence of the testator, such reading having been followed on copies of the testament by the witnesses [, and the notary if he is not the person who reads it aloud,] and in our presence the testator declared or signified that he heard the reading, and that the instrument is his testament, and that he signed his name at the end of the testament and on each other separate page; and in the presence of the testator and each other, we have subscribed our names this \_\_\_\_ day of \_\_\_\_, \_\_\_\_."

(3) If the testator does not know how to sign his name or is unable to sign because of a physical infirmity, he must so declare or signify and then affix his mark, or cause it to be affixed, where his signature would otherwise be required; and if he is unable to affix his mark he may direct another person to assist him in affixing a mark or to sign his name in his place. The other person may be one of the witnesses or the notary. In this instance, the required declaration must be modified to recite in addition that the testator declared or signified that he did not know

how to sign his name or was unable to do so because of a physical infirmity; and that he affixed, or caused to be affixed, his mark or name at the end of the testament and on each other separate page.

(4) A person who may execute a testament authorized by either Article 1577 or 1578 may also execute a testament authorized by this Article. [Acts 1997, No. 1421, §1, eff. July 1, 1999]

**Art. 1580.** A testator who knows how to and is physically able to read braille, may execute a notarial testament according to the following procedure:

(1) In the presence of a notary and two competent witnesses, the testator must declare or signify that the testament, written in braille, is his testament, and must sign his name at the end of the testament and on each other separate page of the instrument.

(2) In the presence of the testator and each other, the notary and witnesses must sign the following declaration, or one substantially similar: "In our presence the testator has signed this testament at the end and on each other separate page and has declared or signified that it is his testament; and in the presence of the testator and each other we have hereunto subscribed our names this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_."

(3) If the testator is unable to sign his name because of a physical infirmity, he must so declare or signify and then affix, or cause to be affixed, his mark where his signature would otherwise be required; and if he is unable to affix his mark he may direct another person to assist him in affixing a mark, or to sign his name in his place. The other person may be one of the witnesses or the notary. In this instance, the required declaration must be modified to recite in addition that the testator declared or signified that he was unable to sign his name because of a physical infirmity; and that he affixed, or caused to be affixed, his mark or name at the end of the testament and on each other separate page.

(4) The declaration in the notarial testament in braille form must be in writing, not in braille. [Acts 1997, No. 1421, §1, eff. July 1, 1999]

**Art. 1580.1.** A. A notarial testament may be executed under this Article only by a person who has been legally declared physically deaf or deaf and blind and who is able to read sign language, braille, or visual English.

B. The notarial testament shall be prepared and shall be dated and executed in the following manner:

(1) In the presence of a notary and two competent witnesses, the testator shall declare or signify to them that the instrument is his testament and shall sign his name at the end of the testament and on each other separate page of the instrument.

(2) In the presence of the testator and each other, the notary and the witnesses shall then sign the following declaration, or one substantially similar: "The testator has signed this testament at the end and on each other separate page, and has declared or signified in our presence that this instrument is his testament, and in the presence of the testator and each other we have hereunto subscribed our names this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_."

C. If the testator is unable to sign his name because of a physical infirmity, the testament shall be dated and executed in the following manner:

(1) In the presence of a notary and two competent witnesses, the testator shall declare or signify by sign or visual English to them that the instrument is his last testament, that he is unable to sign because of a physical infirmity, and shall then affix his mark at the end of the testament and on each other separate page of the instrument.

(2) In the presence of the testator and each other, the notary and the witnesses shall then sign the following declaration, or one substantially similar: "The testator has declared or signified by sign or visual English that he knows how to sign his name but is unable to sign his name because of a physical infirmity and he has affixed his mark at the end and on each other separate page of this testament, and declared or signified in our presence that this instrument is his testament and in the presence of the testator and each other we have hereunto subscribed our names this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_."

D. The attestation clause required by Subparagraphs B(2) and C(2) shall be prepared in writing.

E. (1) A competent witness for the purposes of this Article is a person who meets the qualifications of Articles 1581 and 1582, and who knows how to sign his name and to read the required attestation clause, and is physically able to do both. At least one of the witnesses to the testament shall also meet the qualifications of a certified interpreter for the deaf as provided for in R.S. 46:2361 et seq.

(2) The testator shall be given the choice of accommodation services afforded by the use of large print, braille, or a tactile interpreter. [Acts 1999, No. 745, §1, eff. July 1, 1999]

**Section 3 - of The Competence of Witnesses and of Certain Designations in Testaments**

**Art. 1581.** A person cannot be a witness to any testament if he is insane, blind, under the age of sixteen, or unable to sign his name. A person who is competent but deaf or unable to read cannot be a witness to a notarial testament under Article 1579. [Acts 1997, No. 1421, §1, eff. July 1, 1999]

**Art. 1582.** The fact that a witness or the notary is a legatee does not invalidate the testament. A legacy to a witness or the notary is invalid, but if the witness would be an heir in intestacy, the witness may receive the lesser of his intestate share or the legacy in the testament. [Acts 1997, No. 1421, §1, eff. July 1, 1999]

**Art. 1582.1.** A person may not be a witness to a testament if that person is a spouse of a legatee at the time of the execution of the testament. The fact that a witness is the spouse of a legatee does not invalidate the testament; however, a legacy to a witness' spouse is invalid, if the witness is the spouse of the legatee at the time of the execution of the testament. If the legacy is invalid under the provisions of this Article, and if the legatee would be an heir in intestacy, the legatee may receive the lesser of his intestate share or legacy in the testament. Any testamentary terms or restrictions placed on the legacy shall remain in effect. [Acts 2003, No. 707, §1, eff. Jan. 1, 2004; Acts 2004, No. 231, §1]

**Art. 1583.** The designation of a succession representative or a trustee, or an attorney for either of them, is not a legacy. [Acts 1997, No. 1421, §1, eff. July 1, 1999]

**Louisiana Code of Civil Procedure**

**Art. 2884. Nuncupative testament by private act**

A. Except as provided in Article 2886, the nuncupative testament by private act must be proved by the testimony of at least three of the competent witnesses present when it was made. These witnesses must testify, in substance:

(1) That they recognize the testament presented to them as being the same that was written in their presence by the testator, or by another person at his direction, or which the testator had written or caused to be written out of their presence and which he declared to them contained his testament; and

(2) That they recognize their signatures and that of the testator, if they signed it, or the signature of him who signed for them, respectively, if they did not know how to sign their names.

B. A person's testimony for the purpose of this Article may be given in the form of an affidavit executed after the death of the testator, unless the court in its discretion requires the person to appear and testify orally. All affidavits accepted by the court in lieu of oral testimony shall be filed in the probate proceedings. This Paragraph does not apply to testimony with respect to the genuineness of a will that is judicially attacked.

Acts 1987, No. 270, §1; Acts 1999, No. 85, §1.

**Art. 2885. Mystic testament**

A. Except as provided in Article 2886, the mystic testament must be proved by the testimony of at least three of the witnesses who were present at the act of superscription. These witnesses shall testify, in substance:

(1) That they recognize the sealed envelope presented to them to be the same that the testator delivered to the notary in their presence, declaring to the latter that it contained the testator's testament; and

(2) That they recognize their signatures and that of the notary in the act of superscription, if they signed it, or the signature of the notary and of the person who signed for them, if the witnesses did not know how to sign their names.

B. The notary before whom the act of superscription has been passed may testify as one of the three witnesses required above.

C. A person's testimony for the purpose of this Article may be given in the form of an affidavit executed after the death of the testator, unless the court in its discretion requires the person to appear and testify orally. All affidavits accepted by the court in lieu of oral testimony shall be filed in the probate proceedings. This Paragraph does not apply to testimony with respect to the genuineness of a will that is judicially attacked.

Acts 1987, No. 270, §1; Acts 1999, No. 85, §1.

**Art. 2886. Probate of nuncupative testament by private act; mystic testament, when witnesses dead, absent, or incapacitated**

A. If some of the witnesses to the nuncupative testament by private act, or to the act of superscription of the mystic testament, are dead, absent from the state, incapacitated, or cannot be located, so that it is not possible to procure the prescribed number of witnesses to prove the testament, it may be proved by the testimony of those witnesses then residing in the state and available.

B. If the notary and all of the subscribing witnesses are dead, absent from the state, incapacitated, or cannot be located, the testament may be proved by the testimony of two credible witnesses who recognize the signature of the testator, or of the notary before whom the act of superscription of the mystic testament was passed, or the signatures of two of the witnesses to the nuncupative testament by private act, or to the act of superscription of the mystic testament.

C. A person's testimony for the purpose of this Article may be given in the form of an affidavit executed after the death of the testator, unless the court in its discretion requires the person to appear and testify orally. All affidavits accepted by the court in lieu of oral testimony shall be filed in the probate proceedings. This Paragraph does not apply to testimony with respect to the genuineness of a will that is judicially attacked.

Amended by Acts 1980, No. 106, §2; Acts 1987, No. 270, §1; Acts 1999, No. 85, §1.

**Art. 2891. Notarial testament, nuncupative testament by public act, and statutory testament executed without probate**

A notarial testament, a nuncupative testament by public act, and a statutory testament do not need to be proved. Upon production of the testament, the court shall order it filed and executed and this order shall have the effect of probate.

Acts 1997, No. 1421, §3, eff. July 1, 1999.

## **Succession Act 2006**

### **Chapter 2 Wills**

#### **Part 2.1 The making, alteration, revocation and revival of wills**

##### **Division 1 Making a will**

###### **Section 5 Minimum age for making a will**

- (1) A will made by a minor is not valid.
- (2) Despite subsection (1):
  - (a) a minor may make a will in contemplation of marriage (and may alter or revoke such a will) but the will is of no effect if the marriage contemplated does not take place, and
  - (b) a minor who is married may make, alter or revoke a will, and
  - (c) a minor who has been married may revoke the whole or any part of a will made while the minor was married or in contemplation of that marriage.
- (3) Subsection (1) does not apply to a will made by an order under section 16 (Court may authorise minor to make, alter or revoke a will).

##### **Division 2 Executing a will**

###### **Section 6 How should a will be executed?**

- (1) A will is not valid unless:
  - (a) it is in writing and signed by the testator or by some other person in the presence of and at the direction of the testator, and
  - (b) the signature is made or acknowledged by the testator in the presence of 2 or more witnesses present at the same time, and
  - (c) at least 2 of those witnesses attest and sign the will in the presence of the testator (but not necessarily in the presence of each other).
- (2) The signature of the testator or of the other person signing in the presence and at the direction of the testator must be made with the intention of executing the will, but it is not essential that the signature be at the foot of the will.
- (3) It is not essential for a will to have an attestation clause.

(4) If a testator purports to make an appointment by his or her will in the exercise of a power of appointment by will, the appointment is not valid unless the will is executed in accordance with this section.

(5) If a power is conferred on a person to make an appointment by a will that is to be executed in some particular way or with some particular solemnity, the person may exercise the power by a will that is executed in accordance with this section, but is not executed in the particular way or with the particular solemnity.

(6) This section does not apply to a will made by an order under section 18 (Court may authorise a will to be made, altered or revoked for a person without testamentary capacity).

**Section 7 Must witnesses know that they are signing a will?**

A will that is executed in accordance with this Act is validly executed even if one or more witnesses to the will did not know that the document he or she attested and signed was a will.

**Division 3 Dispensing with requirements for execution, alteration or revocation of a will**

**Section 8 When may the Court dispense with the requirements for execution, alteration or revocation of wills?**

(1) This section applies to a document, or part of a document, that:

- (a) purports to state the testamentary intentions of a deceased person, and
- (b) has not been executed in accordance with this Part.

(2) The document, or part of the document, forms:

(a) the deceased person's will—if the Court is satisfied that the person intended it to form his or her will, or

(b) an alteration to the deceased person's will—if the Court is satisfied that the person intended it to form an alteration to his or her will, or

(c) a full or partial revocation of the deceased person's will—if the Court is satisfied that the person intended it to be a full or partial revocation of his or her will.

(3) In making a decision under subsection (2), the Court may, in addition to the document or part, have regard to:

(a) any evidence relating to the manner in which the document or part was executed, and

(b) any evidence of the testamentary intentions of the deceased person, including evidence of statements made by the deceased person.

(4) Subsection (3) does not limit the matters that the Court may have regard to in making a decision under subsection (2).

(5) This section applies to a document whether it came into existence within or outside the State.

#### **Division 4 Witnessing a will**

##### **Section 9 Persons who cannot act as witnesses to wills**

A person who is unable to see and attest that a testator has signed a document may not act as a witness to a will.

##### **Section 10 Can an interested witness benefit from a disposition under a will?**

(1) This section applies if a beneficial disposition is given or made by will to a person (the interested witness) who attests the execution of the will.

(2) The beneficial disposition is void to the extent that it concerns the interested witness or a person claiming under the interested witness.

(3) A beneficial disposition is not void under subsection (2) if:

(a) at least 2 of the people who attested the execution of the will are not interested witnesses, or

(b) all the persons who would benefit directly from the avoidance of the disposition consent in writing to the distribution of the disposition under the will and have the capacity to give that consent, or

(c) the Court is satisfied that the testator knew and approved of the disposition and it was given or made freely and voluntarily by the testator.

(4) In this section:

beneficial disposition does not include a charge or direction for the payment of:

(a) a debt, or

(b) reasonable remuneration to an executor, administrator, legal practitioner or other person acting in relation to the administration of the testator's estate.

### **Division 5 Revocation, alteration and revival of a will**

#### **Section 11 When and how can a will be revoked?**

- (1) The whole or any part of a will may be revoked but only:
- (a) if the revocation (whether by a will or other means) is authorised by an order under section 16 or 18, or
  - (b) by the operation of section 12 or 13, or
  - (c) by a later will, or
  - (d) by some writing declaring an intention to revoke it, executed in the manner in which a will is required to be executed by this Act, or
  - (e) by the testator, or by some person in his or her presence and by his or her direction, burning, tearing or otherwise destroying the will with the intention of revoking it, or
  - (f) by the testator, or by some person in his or her presence and at his or her direction, writing on the will or dealing with the will in such a manner that the Court is satisfied from the state of the will that the testator intended to revoke it.
- (2) No will or part of a will may be revoked by any presumption of an intention on the ground of an alteration in circumstances.

#### **Section 12 Effect of marriage on a will**

- (1) A will is revoked by the marriage of a testator.
- (2) Despite subsection (1), the following are not revoked by the marriage of the testator:
- (a) a disposition to the person to whom the testator is married at the time of his or her death,
  - (b) an appointment as executor, trustee, advisory trustee or guardian of the person to whom the testator is married at the time of his or her death,
  - (c) a will made in the exercise of a power of appointment if the property in relation to which the appointment is exercised would not pass to the executor, administrator or NSW Trustee and Guardian if the power of appointment was not exercised.
- (3) A will made in contemplation of a particular marriage, whether or not that contemplation is expressed in the will, is not revoked by the solemnisation of the marriage concerned.

(4) A will that is expressed to be made in contemplation of marriage generally is not revoked by the solemnisation of a marriage of the testator.

**Section 13 What is the effect of divorce or an annulment on a will?**

(1) The divorce of a testator or annulment of his or her marriage revokes:

(a) a beneficial disposition to the testator's former spouse made by a will in existence at the time of the divorce or annulment, and

(b) an appointment of the testator's former spouse as an executor, trustee, advisory trustee or guardian made by the will, and

(c) a grant made by the will of a power of appointment exercisable by, or in favour of, the testator's former spouse.

(2) Subsection (1) does not apply if a contrary intention appears in the will.

(3) The divorce of a testator or the annulment of his or her marriage does not revoke:

(a) the appointment of the testator's former spouse as trustee of property left by the will on trust for beneficiaries that include the former spouse's children, or

(b) the grant of a power of appointment exercisable by the testator's former spouse exclusively in favour of the children of whom both the testator and the former spouse are the parents.

(4) If a disposition, appointment or grant is revoked by this section, the will takes effect in respect of the revocation as if the testator's former spouse had died before the testator.

(5) Nothing in this section affects:

(a) any right of the former spouse of a testator to make any application under Chapter 3 of this Act, or

(b) any direction, charge, trust or provision in the will of a testator for the payment of any amount in respect of a debt or liability (including any liability under a promise) of the testator to the former spouse of the testator or to the executor or the administrator of the estate of the former spouse.

(6) In this section:

*annulment*, in relation to a testator, means:

(a) the annulment of the testator's marriage by the Family Court of Australia, or

(b) the annulment of the testator's marriage under a law of a place outside Australia, if the annulment is recognised in Australia under the Family Law Act 1975 of the Commonwealth.

*divorce* means the ending of a marriage by:

(c) a divorce order in relation to the marriage taking effect under the Family Law Act 1975 of the Commonwealth, or

(d) a decree of nullity in respect of the marriage by the Family Court of Australia, or

(e) the dissolution of the marriage in accordance with the law of a place outside Australia, if the dissolution is recognised in Australia under the Family Law Act 1975 of the Commonwealth.

*spouse* includes a party to a purported or void marriage.

*Testator's former spouse* means the person who was the testator's spouse immediately before the testator's marriage was ended by divorce or annulment.

#### **Section 14 How a will may be altered**

(1) An alteration to a will after it has been executed is not effective unless the alteration:

(a) is executed in the manner in which a will is required to be executed under this Part, or

(b) is made by a minor by the authority of an order of the Court under section 16 and is executed in accordance with, and satisfies the requirements for such a will set out in, section 16 (5), or

(c) is made for and on behalf of a person who does not have testamentary capacity by the authority of an order under section 18 and satisfies the requirements for such a will set out in section 23.

(2) Subsection (1) does not apply to an alteration to a will made by or at the direction of the testator, or signed by the Registrar under section 23, if the words or effect of the will are no longer apparent because of the alteration.

(3) If a will is altered, it is sufficient compliance with the requirements for execution if the signatures of the testator and of the witnesses to the alteration are made:

(a) in the margin, or on some other part of the will beside, near or otherwise relating to the alteration, or

(b) as authentication of a memorandum referring to the alteration and written on the will.

**Section 15 How a revoked will may be revived**

(1) A will or part of a will that has been revoked is revived by re-execution or by execution of a will showing an intention to revive the will or part.

(2) A revival of a will that was partly revoked and later revoked as to the balance only revives that part of the will most recently revoked.

(3) Subsection (2) does not apply if a contrary intention appears in the reviving will.

(4) A will that has been revoked and is later wholly or partly revived is taken to have been executed on the day on which the will is revived.

**Part 2.2 Wills made or rectified under Court authorisation**

**Division 1 Wills by minors**

**Section 16 Court may authorise minor to make, alter or revoke a will**

(1) The Court may make an order authorising a minor:

- (a) to make or alter a will in the specific terms approved by the Court, or
- (b) to revoke a will or part of a will.

(2) An order under this section may be made on the application of a minor or by a person on behalf of the minor.

(3) The Court may impose such conditions on the authorisation as the Court thinks fit.

(4) Before making an order under this section, the Court must be satisfied that:

(a) the minor understands the nature and effect of the proposed will or alteration or revocation of the will or part of the will and the extent of the property disposed of by it, and

(b) the proposed will or alteration or revocation of the will or part of the will accurately reflects the intentions of the minor, and

(c) it is reasonable in all the circumstances that the order should be made.

(5) A will is not validly made, altered or revoked, in whole or in part, as authorised by an order under this section unless:

(a) in the case of the making or alteration of a will (in whole or in part)—the will or alteration is executed in accordance with the requirements of Part 2.1, and

(b) in the case of a revocation of a will (in whole or in part):

(i) if made by a will—the will is executed in accordance with the requirements of Part 2.1, and

(ii) if made by other means—is made in accordance with the requirements of the order, and

(c) in addition to the requirements of Part 2.1, one of the witnesses to the making or alteration of the will under this section is the Registrar, and

(d) the conditions of the authorisation (if any) are complied with.

(6) A will that is authorised to be made, altered or revoked in part by an order under this section must be deposited with the Registrar under Part 2.5.

(7) A failure to comply with subsection (6) does not affect the validity of the will.

#### **Section 17 Will made by minor under an order of a foreign court**

(1) A will of a deceased person that is a court authorised will for a minor is a valid will.

(2) A will is a court authorised will for a minor if:

(a) a court, in a place outside New South Wales, made an order authorising a minor to make the will, and

(b) the will was executed according to the law of the place relating to wills of minors, and

(c) the minor was a resident in the place at the time the will was executed.

#### **Division 2 Court authorised wills for persons who do not have testamentary capacity Section 18 Court may authorise a will to be made, altered or revoked for a person without testamentary capacity**

(1) The Court may, on application by any person, make an order authorising:

(a) a will to be made or altered, in specific terms approved by the Court, on behalf of a person who lacks testamentary capacity, or

(b) a will or part of a will to be revoked on behalf of a person who lacks testamentary capacity.

(2) An order under this section may authorise:

(c) the making or alteration of a will that deals with the whole or part of the property of the person who lacks testamentary capacity, or

(d) the alteration of part only of the will of the person.

(3) The Court is not to make an order under this section unless the person in respect of whom the application is made is alive when the order is made.

(4) The Court may make an order under this section on behalf of a person who is a minor and who lacks testamentary capacity.

(5) In making an order, the Court may give any necessary related orders or directions.

(6) A will that is authorised to be made or altered by an order under this section must be deposited with the Registrar under Part 2.5.

(7) A failure to comply with subsection (6) does not affect the validity of the will.

## **The Law of Succession of the People's Republic of China**

### **Chapter I General Provisions**

#### **Article 1**

This Law is enacted pursuant to the provisions of the Constitution of the People's Republic of China with a view to protecting the right of citizens to inherit private property.

#### **Article 2**

Succession begins at the death of a citizen.

#### **Article 3**

Estate denotes the lawful property owned by a citizen personally at the time of his death, which consists of:

- (1) his income;
- (2) his houses, savings and articles of everyday use;
- (3) his forest trees, livestock and poultry;
- (4) his cultural objects, books and reference materials;
- (5) means of production lawfully owned by him;

- (6) his property rights pertaining to copyright and patent rights; and
- (7) his other lawful property.

### **Chapter III Testamentary Succession and Legacy**

#### **Article 16**

A citizen may, by means of a will made in accordance with the provisions of this Law, dispose of the property he owns and may appoint a testamentary executor for the purpose. A citizen may, by making a will, designate one or more of the statutory successors to inherit his personal property.

A citizen may, by making a will, donate his personal property to the state or a collective, or bequeath it to persons other than the statutory successors.

#### **Article 17**

A notarial will is one made by a testator through a notary agency.

A testator-written will is one made in the testator's own handwriting and signed by him, specifying the date of its making.

A will written on behalf of the testator shall be witnessed by two or more witnesses, of whom one writes the will, dates it and signs it along with the other witness or witnesses and with the testator.

A will made in the form of a sound-recording shall be witnessed by two or more witnesses.

A testator may, in an emergency situation, make a nuncupative will, which shall be witnessed by two or more witnesses. When the emergency situation is over and if the testator is able to make a will in writing or in the form of a sound-recording, the nuncupative will he has made shall be invalidated.

#### **Article 18**

None of the following persons shall act as a witness of a will:

- (1) persons with no capacity or with limited capacity;
- (2) successors and legatees; or
- (3) persons whose interests are related to those of the successors and legatees.

**Article 19**

Reservation of a necessary portion of an estate shall be made in a will for a successor who neither can work nor has a source of income.

**Article 20**

A testator may revoke or alter a will he previously made.

Where several wills that have been made conflict with one another in content, the last one shall prevail.

A notarial will may not be revoked or altered by a testator-written will, a will written on behalf of the testator, a will in the form of a sound-recording or a nuncupative will.

**Article 21**

Where there are obligations attached to testamentary succession or legacy, the successor or legatee shall perform them. Anyone who fails to perform the obligations without proper reasons may, upon request by a relevant organization or individual, entail nullification of his right to inheritance by a people's court.

**Article 22**

Wills made by persons with no capacity or with limited capacity shall be void. Wills shall manifest the genuine intention of the testators; those made under duress or as a result of fraud shall be void.

Forged wills shall be void.

Where a will has been tampered with, the affected parts of it shall be void.

**Wills Act 2007****Part 1****Preliminary provisions****Section 8 Meaning of will**

(1) Will means a document that—

- (a) is made by a natural person; and
- (b) does any or all of the following:

- (i) disposes of property to which the person is entitled when he or she dies; or

(ii) disposes of property to which the person's personal representative becomes entitled as personal representative after the person's death; or

(iii) appoints a testamentary guardian.

(2) When this Act refers to making, changing, revoking, or reviving a will, it means a will as defined in subsection (1).

(3) When this Act refers to a will in any other context, it means whichever is appropriate of the following:

(a) a will as defined in subsection (1); or

(b) a document that changes a will as defined in subsection (1); or

(c) a document that revokes a will as defined in subsection (1); or

(d) a document that revives a will as defined in subsection (1); or

(e) a codicil to a will as defined in subsection (1).

(4) A person who may dispose of property during his or her life by a document creating a valid power or trust may dispose of property by his or her will by creating a power or trust of the same kind.

(5) In this section, property—

(a) includes—

(i) a contingent, executory, or future interest in property; and

(ii) a right of entry to property; and

(iii) a right of recovery of property; and

(iv) a right to call for the transfer of title to property; and

(b) does not include property of which a person is a trustee when he or she dies.

(6) Section 108 of Te Ture Whenua Maori Act 1993 overrides this section.

## Part 2

### Wills

#### Subpart 1—Making, changing, revoking, and reviving wills

#### Section 9 Persons who may make, change, revoke, and revive wills

- (1) A person of 18 years or over may make, change, revoke, and revive a will.
- (2) A person under 18 years may make, change, revoke, and revive a will if he or she—
  - (a) is married, in a civil union, or in a de facto relationship; or
  - (b) has been married, in a civil union, or in a de facto relationship.
- (3) A person under 18 years may make, change, revoke, and revive a will if he or she—
  - (a) is not married, in a civil union, or in a de facto relationship; and
  - (b) has never been married, in a civil union, or in a de facto relationship; and
  - (c) has not agreed with another person to marry him or her or enter a civil union with him or her; and
  - (d) satisfies a Family Court that he or she understands the effect of—
    - (i) making, changing, revoking, and reviving a will; or
    - (ii) doing whichever of those actions he or she asked the court to approve;
 and
  - (e) has an approval given by the Family Court, with or without conditions, to his or her—
    - (i) making, changing, revoking, or reviving a will; or
    - (ii) doing whichever of those actions he or she asked the court to approve.
- (4) A person under 18 years may make, change, revoke, and revive a will if, on the date on which his or her will complies with section 11, he or she—
  - (a) is a military or seagoing person; or
  - (b) is about to comply with an order to train for or join the Armed Forces for operational service; or
  - (c) is about to comply with an order to join a ship as a seafarer.

**Section 10 Persons under 18 who agree to marry or enter civil union**

- (1) A person under 18 years may make, change, revoke, and revive a will if—
- (a) he or she and another person have agreed to marry each other or enter a civil union with each other; and
  - (b) either—
    - (i) the will expressly says that it is made in contemplation of the marriage or civil union; or
    - (ii) the will does not expressly say that it is made in contemplation of the marriage or civil union but the \ circumstances existing when it was made show clearly that it was made in contemplation of the marriage or civil union.
- (2) The will is effective if the marriage or civil union occurs.

**Validity**

**Section 11 Requirements for validity of wills**

- (1) A will must be in writing.
- (2) A will must be signed and witnessed as described in subsections (3) and (4).
- (3) The will-maker must—
- (a) sign the document; or
  - (b) direct another person to sign the document on his or her behalf in his or her presence.
- (4) At least 2 witnesses must—
- (a) be together in the will-maker's presence when the will-maker—
    - (i) complies with subsection (3); or
    - (ii) acknowledges that—
      - (A) he or she signed the document earlier and that the signature on the document is his or her own; or
      - (B) another person directed by him or her signed the document earlier on his or her behalf in his or her presence; and
  - (b) each sign the document in the will-maker's presence.

(5) As evidence of compliance with subsection (4), at least 2 witnesses may each state on the document, in the will-maker's presence, the following:

- (a) that he or she was present with the other witnesses when the will-maker—
    - (i) signed the document; or
    - (ii) acknowledged that he or she signed the document earlier and that the signature on the document is his or her own; or
    - (iii) directed another person whose signature appears on the document to sign the document on his or her behalf in his or her presence; or
    - (iv) acknowledged that another person directed by him or her signed the document earlier on his or her behalf in his or her presence; and
  - (b) that he or she signed the document in the will-maker's presence.
- (6) No particular form of words is required for the purposes of subsection (5).

#### **Section 12 Witnesses**

- (1) The person appointed as executor of a will may witness the will.
- (2) The validity of a will is not affected by the fact that a witness did not know that the document he or she was signing was a will.

#### **Section 13 Witnesses affected by dispositions made to them**

- (1) A disposition of property in a will is void if—
  - (a) the disposition is to a witness; or
  - (b) the disposition is to a witness's wife, husband, civil union partner, or de facto partner; or
  - (c) the property would go to a person claiming under a person described in paragraph (a) or (b).
- (2) Subsection (1) does not apply if—
  - (a) the will has at least 2 witnesses who are not described in the subsection; or
  - (b) the disposition is the repayment of a debt to a person described in the subsection; or
  - (c) all the persons who would benefit directly from the avoidance of the disposition—

- (i) consent in writing or electronically to the distribution of the property; and
  - (ii) have legal capacity to give consent; or
- (d) the High Court is satisfied that the will-maker—
- (i) knew and approved of the disposition; and
  - (ii) made the disposition voluntarily.

### **Subpart 3—Military or seagoing persons**

#### **Section 34 Military or seagoing persons may do informal testamentary actions**

(1) A military or seagoing person of any age may make an informal will containing any provision that may lawfully be contained in a valid will.

(2) A military or seagoing person of any age may change, revoke, or revive a valid will or an informal will by any words, written or oral, as long as they show an intention to change, revoke, or revive the will.

(3) Section 108 of Te Ture Whenua Maori Act 1993 overrides this section.