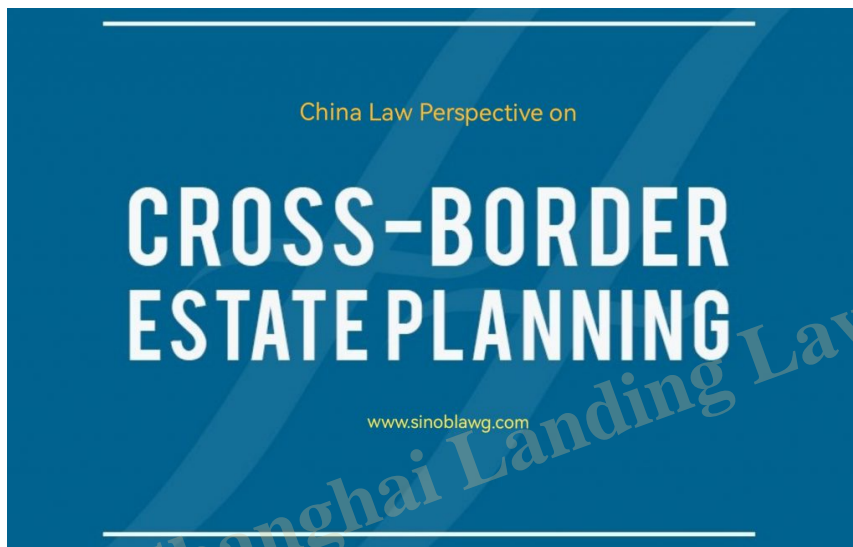


Estate Planning for Real Properties in a Foreign Country?

Description

In a flat world, people and things are increasingly interwoven. Many individuals have families across borders and more often have assets across borders. These raise challenging issues when it comes to estate planning for assets in foreign countries, esp real properties.



Estate Plan for Assets in Foreign Countries

I. Question Before Us: Estate Plan for Property in Foreign Country

Recently a couple of inquiries from potential clients have aroused strong interests in understanding international estate planning for assets and properties outside China.

One client contacted me after her father died suddenly in China, and she found out that her father, a Chinese entrepreneur, had moved millions of USD worth assets out of China in violation of China foreign exchange laws, to Singapore, and Hong Kong, and Spain. She, as a Chinese citizen born out of his father's first marriage, was left hopeless and totally lost as to how to deal with huge amount of estates in foreign countries and region where she has no idea about how estates are administered in those foreign jurisdictions.

Another client raised a more interesting question. He used to be a Chinese citizen, and emigrated to Canada, and got naturalized into a Canadian citizen. However, he moved back to live in China with his families. Sometime after he became a Canadian citizen, he bought a property in the State of Washington in USA. He is now seriously ill and wishes to set up an estate plan for his real property in Washington State. Wow... here we see a typical highly interwoven world for one family. And indeed, there are many similar cross-border families with assets located across multiple borders.

We will focus on the second inquiry described above regarding [estate planning for real properties](#) in

foreign countries.

II. What Can We Chinese Lawyers Do for the Client?

As a Chinese estate attorney, we are often asked by clients to write wills and set up their guardianship plan. Most often we write wills for foreign clients because they have assets in China, and they need an estate plan for their China assets, be it real properties, [bank deposits](#), corporate shares etc.

But the property in question is located in a foreign country, and yes, we can still write down the wishes of the client in a piece of paper, but I am not sure whether this will can stand before the foreign court. In my 15+ years of experience as a cross-border inheritance lawyer, I know the China will shall be probated with a court in Washington state which will also oversee the administration of the estate. So if the will I prepare for the client is not recognized or is otherwise set aside in whole or in part, then my legal service for writing the will surely constitute a malpractice, and may lead to serious consequence for the client and his family.

Besides, the substantive laws concerning [inheritance and estate administration](#) can be very different in the State of Washington from my limited general knowledge about those in common law jurisdictions, such as forced heirship laws.

With so much uncertainty, it is too much for us to make such a will for the client.

So I explained to the client that I am not in a position to help him with writing up this will for his property in America, and he needs to consult a local estate lawyer in Washington State.

III. Recognition of Foreign Wills

My researches into the question whether China wills will be recognized in foreign countries has elicited the finding that recognition of foreign wills is a big question across the world indeed. Even wills made in USA are not so widely recognized even among its own allies.

Indeed, the simple Will may not work to transfer the property. If real property is involved, wills created in the United States are not recognized in the majority of nations in the world, including some of the most common nations that people seek to own property in. For example, United States wills are not enforced in Switzerland, France, New Zealand, Japan, and the United Arab Emirates.

A quote from Stimmel, Stimmel & Roeser

Inheritance and estate administration and planning laws are the most divided area of law across the world. We have so many international conventions on international commercial and trade laws, but there are limited such conventions in the world addressing unification of private laws in relation to [cross-border inheritance and estate administration](#).

Even between Hong Kong and China mainland, there has been no arrangement between the two sides for facilitating inheritance assistance across their border.

It is an area of law full of jungles, and we need to tread carefully in providing cross-border legal services to clients.

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