Experience Sharing: Headache and Pain of Inheriting Bank Deposits in China

Description

We have roughly wrapped up all the work for a client in relation to her inheritance of bank deposits in China left by her late husband.

Inheritance of Bank Deposits in China

We have written quite a few posts talking about inheritance of bank deposits in China, and this newly completed matter adds more juice to our experience in helping foreign clients inheriting estates in China.

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I. Case Profile

Client is an American citizen and his Chinese wife died leaving quite a bit of fund in different bank accounts in China. Here comes the critical point: there is not only RMB fund but quite a bit of USD fund accumulated over time, and this gave us a hard time in getting the job done.

Besides the husband heir, the late wife has a daughter from a prior marriage who has emigrated to a European country and has now become a foreign national.

II. What are the Problems?

Upon obtaining the inheritance right notarization document from a local notary office in Shanghai affirming all heirs' entitlement to the China estates, naturally, the next step is to help transfer the fund from the deceased's bank accounts to the heirs, marking the completion of inheritance of such cash fund.

The problem arose in connection with the USD fund when we tried to transfer it to the heirs. Indeed, not just one problem.

(1) Bank Account. We know it is necessary for foreign heirs to open bank account in China in order to receive the inherited fund. So we have managed to open accounts for the heirs without one of them

coming over to China, with a foreign-invested bank in Shanghai. But when we went to the bank holding the estate fund requesting the transfer to the heirs' bank accounts, we were required to open bank accounts with their bank first before we can transfer the same money into the accounts we have already opened for our clients. This is rather common practice in China though it is not a must, for example, the other two banks don't require clients to set up accounts with them.

Fortunately enough, this China bank allowed us to open account without the daughter coming over, which is already a surprise to us, because we used to believe all those big state-owned banks in China require customers to come to their counters in order to open accounts.

(2) Passport Inspection. The other bank didn't require clients to open accounts with them, but insisted that the daughter shall have to send her passport over here for their inspection, again this is not a requirement by another bank. We don't really know why this is a must, but as a matter of their internal risk control policy, we can only comply with their requirement if we want to get things going.

(3) **Foreign Exchange Authority Approval**. This was a real drama. We initially approached a sub-branch office of this state-owned bank for information and documentation for purpose of transferring the USD and RMB fund from the deceased's account into the heirs' accounts. Much to our surprise, they required us to submit an approval document which was supposed to be issued by China State Administration of Foreign Exchanges. We know it is not right for them to ask for this approval at the state of inheritance. We then turned to its superior branch office, and they didn't mention the requirement of that foreign exchange approval. So we went there and submitted all required documents, and that branch office did transfer the USD fund into the heirs' accounts opened with them. We felt relieved as we finally got it done.

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The next day, we got a call from an officer of the branch office of that state-owned bank asking our client to return the USD fund part into the deceased's bank account citing their internal policy that the foreign exchange authority approval should be part of the application materials, and it was missing in our application.

I rebutted them based on my understanding of the relevant foreign exchange rules claiming they had misunderstood the regulation. Their plausible legal basis is Article 28 of the *Measures on the Administration of Personal Foreign Exchanges*, effective as of February 1, 2007 which provided that the transactions between a foreign exchange account owned by a domestic individual and that of a foreign individual within China (meaning the two foreign exchange accounts are both opened with banks within China) shall be deemed as cross-border transactions. In our case, the deceased was a Chinese national and the heirs are both foreigners, and it was true that there was transfer of foreign exchange fund between two forex accounts within China. But this very Article 28 doesn't say in what circumstances the foreign exchange authority approval is required. Indeed, the "deemed cross-border transactions" could be a current account foreign exchange transaction or capital account foreign exchange transaction that is governed by different rules.

On the other hand, this same Measures on the Administration of Personal Foreign Exchanges provides in its Article 26 that transfer of legitimate assets by foreigners is dealt with in a separate regulation, namely, a piece of older regulation, effective as of December 1, 2004, regulating the purchase and remittance of foreign exchanges out of China in relation to migration and inheritance assets owned by such foreigners. In other words, if it is a matter of inheritance money, then the bank should resort tothis 2004 regulation for rules instead of that 2007 regulation.

Actually, I understand the confusion of this state-owned bank for that the 2004 regulation seems designed to regulate the inheritance by foreigners of RMB assets in China whereby purchase and remittance of foreign exchanges are necessary. However, in our case, the estate is a sum of USD denominated fund, not RMB assets. There is some ambiguity therein.

III. Effects on Our Legal Practice

This case highlights the possible intricate problems and implications in association with inheriting bank deposits in China by foreigners, due to the ambivalence of regulations and different interpretations thereof by banks.

However, on the other hand, in most cases, a deceased's major estate takes the form of residential properties or corporate equities, not bank deposits. In other words, bank deposits often are not significant part of the whole estate. Compared to inheritance of real properties, foreign clients are not willing to pay any legal fee for bank deposits in China though the workload and efforts required for inheriting bank deposits are often heavier and greater.

To help this single client in inheriting her late husband's estates in China, one of my associates was travelling with the client to different banks and other authorities almost every day for more than half a month.

Sometimes, we have to turn down requests for help in inheriting small amount of bank deposits in China. We are sorry but we just cannot do it.

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Date Created
November 2022
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