Inheritance of Personal Properties in China: Bank Deposits (III)

Description

In older posts, we have discussed legal issues surrounding inheritance of personal properties in China. When it comes to inheritance of bank deposits in China, there is another layer of problem in practice: what if the inheritor or heir doesn't have a bank account in China?



Shanghai Landing Law Offices

I. Real Case Scenario

An American man died back in USA, and his parents found out that he had substantial bank deposits in China, his savings of salaries as an English teacher in a second-tiered city in China. The exact amount was not known to the parents. Also the deceased doesn't have a will, so it is a matter of intestate succession.

There are no other assets, only the bank deposits with a local China bank.

II. The Problems

On the surface, it doesn't seem complicated to get the job done. After all, it is just an amount of cash. Unfortunately, under current Chinese laws regarding estate inheritance, inheritance by foreigners of personal properties is more complex than inheritance of real properties (houses and apartments).

The main problem is about the choice of law governing the inheritance. China Law on Choices of Laws in Civil Relationships provides in its Article 31 that:

> The applicable law for intestate succession is the law of the place of the habitual residence of the deceased at the time of death except for inheritance of real estate properties in which case the applicable law shall be the law of situs of the real properties.
> *Article 31 of China Law on Choice of Laws in Foreign Related Civil Relationships*

That provision means foreign inheritance law will be applied for the inheritance of personal assets in China. This is very problematic because either China notary offices or China courts are not good at foreign laws; in particular, China notary offices may simply refuse to deal with such inheritance matters. We won't elaborate on this topic in this post.

Besides those legal issues, there are some other real blocks one of which is whether the foreign heir has a bank account in China.

Here is the thing: even if other legal issues are solved, at the end, the bank holding the fund needs to transfer the fund (in most cases, denominated in Chinese currency, RMB) to the legal heirs; as a matter of practice, the said bank will ask the heirs to have a China bank account to receive the fund, and after receipt thereof, the bank will then convert the RMB fund into other foreign currencies, and lastly, the bank sends the foreign exchange fund to the heirs' bank accounts in their home countries.

So, in most cases, the heirs' personal bank account in China is necessary for getting done the inheritance of cash. Unfortunately, very often we find that foreign heirs don't have China bank accounts. This could be a deal-killer. Particularly, in light of the current covid-19 pandemic still raging most parts of the world and China ban on international travels, it is impossible for most foreign heirs to come over to open bank accounts in China.

Shanghai Landing Law Offices

III. Solution?

In one of the cases we have entertained, the domestic bank (a big one), upon my personal inquiry and after internal discussion, said they can actually convert the fund into USD and send the same out of China via the bank account of the deceased. But most other banks won't do this.

Apparently, this problem is one that shall be addressed in China banking regulations. So far, there are no clear rules in this regard, leaving it uncertain in practice. On the other hand, if one bank is willing to facilitate the conversion and transfer of fund without the foreign heirs opening their own China bank accounts, then it could mean that there is a chance that other banks may be convinced to do the same.

Final solution lies with China banking regulators. But for foreign people facing up this problem, they may have to try their luck. While we are willing to help, there is no guarantee that we will succeed in getting the job done.

If the bank for whatever reason refuses to cooperate, the only conceivable way out of the deadlock is to sue the bank and have the court order the bank to send money out of China. This will surely increase the cost of inheriting the fund, and if the fund is not of a big amount, the cost may outweigh the benefits of inheritance. At least, this could be the light at the end of the tunnel.

Date Created
July 2021
Author
admin