January 2024

Cross-Border Property Inheritance Series
Q & A on Cross-Border Inheritance of Real Property within The Territory*

(*The territory refers to Mainland China, excluding Hong Kong and Macao SAR, and the territory outside includes Hong Kong and Macao SAR)

What is the law applicable to the inheritance of real property?

Statutory inheritance of a real property in the Territory is governed by the law of the locality of the real property, namely, Chinese law.

If the deceased has prepared a will, the real property within the Territory will be disposed of according to the will provided that the validity of the will has been confirmed first. The validity of the will shall be confirmed in accordance with the laws at the habitual residence or of the state of nationality when the will is made or at the time of death of the deceased.

In practice, during the process of real property inheritance, no matter a legal or testamentary inheritance, the real property authority will usually require that the statutory inheritance relationship or the validity of a will created overseas to be confirmed by a notary public in China ("**Notarization of Right to Inherit in the Territory**") before the real property inheritance can be processed.

Can I inherit a real property without property certificate?

To inheritors of a real property without property certificate must first apply for the surveying and mapping of the real property or post transfer surveying and mapping with the department in charge of real property surveying and mapping, and then apply for the notarization of right to inherit in the Territory or complete the inheritance through litigation process.

To inherit via Notarization of Right to inherit, the inheritor shall obtain from overseas the documents required for carrying out the Notarization of Right to Inherit in the Territory ("**Inheritance Right Documentation**") and has successfully completed the Notarization of Right to Inherit in the Territory. After obtaining the notarization certificate for the right to inherit, the inheritor may apply for inheritance registration with the real property authority where the real property locates by submitting the notarization certificate, surveying and mapping documentation.

The inheritor may also bring a lawsuit in the court where the real property locates by submitting the Inheritance Right Documentation to obtain a court judgment confirming the right to inherit and an enforcement letter for the judgement. The inheritor may proceed with the inheritance registration with the real property authority by submitting the court enforcement letter, the surveying and mapping documentation and other documents required.

Inheritance Right Documentation usually includes the will (if any), identity document of the applicant, proof on relatives relationship, death certificate, title proof of the real property in concern, evidence on marital status, parents and children of the deceased and other relevant documents. In case that any of these documents are created outside of the Territory, such document shall be notarized and legalized (or apostilled) in its country of origin.

Can I inherit a property mortgaged? Any difference in the process?

A mortgage will not impact on the right to inherit but will impact on the process to inherit. Where the mortgage is to secure a loan for home purchase, the lending bank might not be cooperative in the change of borrower and mortgagor, but tend to require the mortgagee to repay the loan balance and cancel the mortgage before starting the inheritance process. If the mortgage is to secure any principal debt other than a loan for home purchase, to proceed with the inheritance registration, the inheritor will need cooperation of the mortgagee.

Can a will be submitted directly to the real property authority for inheritance?

A will created outside of the Territory held by an inheritor needs to be notarized and legalized (or apostilled) overseas before it can be used in the Territory (e.g., to be used for carrying out the Notarization of Right to Inherit in the Territory by the local PRC notary public).

Inheritance of rural homestead or ancestral residence

If an inheritor outside of the Territory inherits t a rural homestead or ancestral home in the Territory, which has a long history, the inheritor needs to confirm the status quo of the real property, apply for the confirmation of the actual location (address) and size with the local real property authority, as well as to deal with any relevant historical costs and tax issues.

In case that the passport number of the deceased changes

If the last passport number of the deceased does not match that registered in the real property certificate(s), the inheritor may apply for a passport track record certificate (which shall set out the numbers, dates of issuance and dates of expiration of all the passports held by the deceased) from the authority issued the passports of the deceased to verify that the deceased is the owner of the real property. The passport track record certificate must be notarized and legalized (or apostilled) before it can be used in the Territory.

Taxes to be paid on inheritance of real property in Mainland China

So far inheritance tax is not applicable in the Territory. The inheritor will be exempted from personal income tax and deed tax (but a tax exemption certificate shall be obtained from the tax authority) and is only required to pay a stamp duty at the rate of 0.05% of the real property value (being currently exempted). In addition, the inheritor shall pay the fee for the title certificate when processing the inheritance registration.

Could the proceeds from selling an inherited property be sent out of the Territory?

Yes, after an inherited real property being sold and tax being paid the inheritor may convert the proceeds into foreign currency with banks in the Territory and remit the funds out of the Territory by presenting the documents on the title of the real property and its sale.

Stephenson Harwood - Wei Tu (China) has a team of lawyers in Shanghai, Guangzhou and Hong Kong can provide cross-border property inheritance service. If you have any question or would like to obtain more information about cross-border property inheritance, please feel free to contact us.

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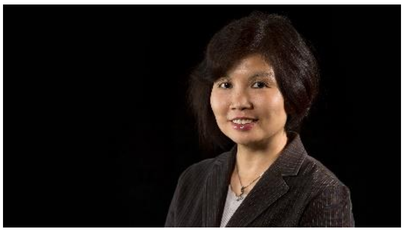

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