



A Foreigner's money in a bank account in Singapore

This article is written for the many foreigners with bank accounts in Singapore.

You may have worked here once (or still do); you are a frequent traveller to our shores; or maybe you feel that your money will be safe given the political stability and high standards of governance and control imposed on Banks in Singapore. Whatever your reason/s for having opened a bank account in Singapore and funded it with healthy sums of money, at some point of time, you should think about the fate of the money in the account if you pass on.

There is no inheritance tax in Singapore. Hence, you would be focusing on the fastest, smoothest and most cost-efficient way of seeing that the money reaches your intended heir/s.

Having a Singapore Will ensures this.

The seven voyages of Sinbad, the sailor

Sinbad lives in Baghdad. After dissipating the wealth left to him by his father, Sinbad goes to sea to repair his fortune.

His first three voyages, full of magic, monsters and mayhem, see him accumulate much wealth which he cleverly converts to money and parks in Baghdad.

During his fourth voyage he escapes cannibals and finds himself with a party of itinerant pepper-gatherers who transport him to their own island. Befriending their king, Sinbad is given a beautiful and wealthy wife. Unfortunately, she falls ill and dies soon after their marriage. Too late, Sinbad learns about the peculiar custom of the land; on the death of one marriage partner, the other is buried alive with the dead spouse, dressed in their finest clothes and most costly jewels. Finding himself trapped in a communal tomb in a cavern with another couple (a dead husband and his live wife), Sinbad has the good luck of having a wild animal show him a passage out of the cavern. A passing ship rescues him and carries him back to Baghdad.

Impelled by restlessness, Sinbad takes to the seas again and

again and again, on three more voyages. His seventh and last sees him shipwrecked. He washes up at the mouth of a river of a great city. A rich merchant there weds his daughter (Leila) to Sinbad and thereafter dies. Sinbad inherits the wealth of his father-in-law which he places with a Bank on the island. This island is Singapore.

Tired of foreign lands, Sinbad feels homesick. Sinbad and Leila sail to Baghdad where he resolves to live quietly in the enjoyment of the rest of his life.

Sinbad one day remembers his bank accounts in Singapore and wonders what he should do with the money left there.

Adapted from "Sinbad the Sailor", on Wikipedia and modified by the Writer for this article.

[In this article, it will be assumed that Sinbad is not a Muslim. The fate of the money belonging to a Muslim foreigner is not covered in this article.]

What happens to the bank account if Sinbad passes on?

The Singapore Bank holding his money will immediately freeze the accounts. Effectively, no one can withdraw the monies.

The Bank will not deal with anyone other than Sinbad's authorised personal representative. Not even his wife, Leila, will they take instructions from.

Only the Courts of Singapore can identify the personal representatives and give them the authority to deal with Sinbad's accounts.

If Sinbad has a valid Will under Singapore law, the Courts will recognise the executors he has named in the Will and identify them as being his authorised personal representatives. The Court will issue a Grant of Probate to the executors and they can thereafter distribute his assets according to the contents of the Will. The Bank will work with the executors in the handling of the monies.

This process is smooth and fast.

If there is no valid Will or no Will for that matter, the persons related to Sinbad or having an interest in his estate are to make an application to the Courts to appoint an administrator for Sinbad's estate. The Courts will issue Letters of Administration which identifies the administrator and authorises that person to handle the estate. The Bank will work with the administrator.

Not only is much time and cost involved in this process, but person selected may not have been Sinbad's choice.

What happens to a joint bank account with Leila if Sinbad passes on

The tendency is for Banks to freeze the accounts. But if the Bank's account opening documents indicate that the joint account holder has a *right of survivorship*, the Bank may allow the joint account holder to close the existing account and transfer the money out. The practise varies as not all Banks are inclined to transfer the monies before the issuance of a Grant of Probate or Letters of Administration.

A right of survivorship arises where the account is held by the account holders as *joint tenants*. The surviving account holder is entitled to the full contents of the account. The account would be held on an "and/or" basis where either party can freely operate the account.

However, at the slightest suggestion of a contrary intention that the right exists, the joint bank account will be frozen. The Bank will wait until a Court decides as to who is entitled to the monies.

The most likely corner a dispute may arise from would be from heirs who are not also joint account holders.

To ensure that your money reaches your heirs quickly and smoothly, make a Singapore Will.





What is “a valid Will” under Singapore law?

The Courts will recognise a Will as being valid under Singapore law if it is executed in the manner required under the Singapore Wills Act.

- The Will must be in writing
- The testator must sign at the foot or end of the Will
- The testator's signature must be witnessed by 2 or more witnesses who are present at the same time
- The witnesses are required to subscribe the Will in the presence of the testator. This means that they are to sign the Will as witnesses
- Their signatures should be after or under the signature of the testator
- The witnesses cannot be beneficiaries or a spouse of a beneficiary.

If you do have a Singapore Will, and have subsequently gotten married, your Will may have been revoked.

Your Singapore Will should be drafted by a person competent in the laws of Singapore.

Can a foreign Will be a valid one under Singapore law?

A foreign Will is one that has not been executed according to the Wills Act.

Having waited too long, Sinbad finds himself lying in his death bed when he remembers the monies in his bank accounts in Singapore. There is no one around at the time competent enough to draft a Singapore Will. The lawyer at hand is asked to draft a Will. Leila and all interested parties hope that the Courts (in Singapore) will recognise it and issue a Grant of Probate.

The Wills Act in Singapore treats as “properly executed”, a (foreign) Will if it is prepared according to the internal law of either:-

- The territory where it was executed,
- The territory where the testator was domiciled at the time
 - (a) When the Will was executed or
 - (b) Of the testator's death,
- The territory where the testator habitually resided at either of the times in (a) or (b) OR
- The state of which the testator was a national at either of the times in (a) or (b).

A “properly executed” Will is enforceable in Singapore even if it is a foreign one.

Where a Singapore Will involves 1 Step, there are now 3 Steps for the Courts to take. The Courts must determine

■ Step 1

Which territory's internal law is the applicable one?

■ Step 2

What is the relevant internal law of that territory?

■ Step 3

Does the execution of the Will conform with that law?

Which territory's internal law is the applicable one?

In the age of great mobility, the Courts may be looking at several possibilities.

Sinbad finds himself dying in Malaysia when he executes the Will.

Should the laws of Malaysia apply?

Where is Sinbad's domicile?

Where is he habitually resident?

What is his nationality?

“Domicile”

This is the place a person has the closest ties with at the relevant point of time.

The domicile can be different from the country of birth, citizenship, residence for work, etc. It would be the place which, for all intents and purposes, is home. Generally many factors would be considered like the residence of the person's immediate family members and perhaps even closest friends, where there are deep roots within the community, where most time is spentetc

“Habitually resided”

This means the place where a person lives regularly. It would not be a holiday home even if the holiday there lasts several months, as the intention remains to go back home.

It is only after the Courts have considered all the facts and circumstances will it decide which territory Sinbad regarded as being his home.

Sinbad lived in Bagdad most of his life. But it need not have been his birthplace. Sinbad could have dual citizenships, neither of them in Bagdad, Iraq. During his voyages, he could have become a national of India and China. Malaysia could, in later part of his life, have become the place where Leila and Sinbad spend most time. This is where their only child and grandchildren live.

Depending on the facts and the Court's interpretation of them, the internal laws of any one of these territories may be the applicable one.

What is the relevant internal law of that territory?

The lawyers for Sinbad's estate will have to produce to the Court the advice of experts on the laws.

A quick read on Wikipedia of the laws of Bagdad is reproduced (with emphasis in italics added):-

“The Republic of Iraq's legal system *is in a period of transition* in the light of the 2003 invasion that led to the fall of Baath Party.....

The 1959 Iraq Law of Personal Status (as subsequently amended) governs the manner that religious courts may settle disputes among Muslims living in Iraq in the area ofinheritance...These rulings are binding unless they conflict with other provisions of the Iraqi legal system. *Christians, Jew and other minorities are covered partly by the Personal Status Law, partly the Civil Law and partly by their own personal status legal system.*”

If the Courts decide that the Will must conform to the laws of Iraq (Baghdad), there is much uncertainty as to what it is for a non-Muslim like Sinbad.

Overriding laws that can disrupt a distribution made in the Will - “forced heirship laws”

Establishing the domicile of a testator can be important for another reason. The application for the Grant of Probate can be challenged on the grounds that the distribution in the Will does not comply with the “forced heirship laws” in country of domicile of the testator.

These laws dictate who will inherit the estate of a person. Generally, they require that the estate (or at least a part of it) must go to one or more family members. These laws can override the distributions made in the Will of a foreign person not domiciled in Singapore.

There are no forced heirship laws for non-Muslims in Singapore. But countries with civil law jurisdictions like France, Germany, Italy, Spain, Latin America and countries like Japan, Russia and Indonesia have them.

If you are a non-Singapore domiciled foreigner, you should be clear on whether forced heirship laws can affect your distribution.

What happens if there is no Will?

The laws of intestacy in Singapore *do not apply to a foreigner who is not domiciled in Singapore at the time of passing*. It is the laws of the country of domicile of the testator that will apply. The Courts must be presented with facts to prove domicile followed by the evidence of experts in that jurisdiction on the personal laws that govern the distribution. Only after that will the Courts make a finding on the distribution of the monies in the bank account.

Sinbad's takeaway

If you have monies in a Singapore bank account,

- Make a Singapore Will.
- Make it sooner rather than later.

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