Managing joint accounts – Who owns what?

Introduction

1. Many people choose to open joint bank accounts with their spouses, children or even siblings. Having more than one account holder is convenient as multiple people would be able to manage the account, especially if the money is used for common expenses. However, we often do not anticipate the pitfalls that can arise when things turn sour or when death happens in the family. This article seeks to explain, among other things, what happens to the money when an account holder passes away and how one should properly manage joint accounts.

Benefits of joint accounts

2. Joint accounts allow for an account holder to monitor the other holder's spending, e.g. partners are able to keep each other's spending habits in check, or a parent can keep track of his/her child's expenditures. Another benefit of having a Joint Account is asset protection. In light of the recent Singapore High Court judgment in the case of *Timing Limited v Tay Toh Hin and another* [2021] SGHC 5 (*Timing Ltd v Tay Toh Hin*), there remains a high threshold which creditors need to satisfy before they can claim on joint bank accounts, i.e. they need to prove that all the money in a joint account belongs solely to the debtor and not the other joint account holders. Accordingly, maintaining a joint account rather than a personal account can be one way to shield your assets from creditors.

Death in the family

<u>Survivorship principles</u>

3. Similar to what happens when a property is held in joint tenancy and one of the owners passes away (surviving owner will own the property), upon the death of a joint account holder, the surviving joint account holder will usually take the entire interest in the account. However, there might be circumstances whereby the estate of the deceased holder should inherit the deceased's share instead. This will be shared below.

<u>Presumption of Resulting Trust (PRT)</u>

4. Typically, the court recognises that in a case involving two holders, the one who contributes more to the joint account is deemed the owner of the funds. According to the seminal case of *Lau Siew Kim v Yeo Guan Chye Terence (Lau Siew Kim)* [2008] 2 SLR(R) 108, where parties have made unequal contributions to the joint account, there is this presumption that the party who contributed more lacks the intention to benefit the survivor. This is known as the presumption of resulting trust, i.e. the survivor would hold the deceased's share of the monies on trust for the deceased's estate.

5. This presumption originated from the Law of Equity—Equity assumes that people do not act altruistically but rather with some degree of self-interest. However, if the joint account holders are in certain legally recognised categories of relationship such as spouses and parent-child relationships, the presumption of resulting trust could be displaced by what is known as the presumption of advancement.

Presumption of Advancement (POA)

6. When an individual transfers money into the name of a person with whom he/she had a relationship, it is presumed that a gift was intended. Naturally, such a rule is limited to certain donors, e.g. spouses, parents, and *loco parentis* (an individual taking in place of a parent). Some relationships whereby there is no POA would include non-married couples such as cohabiting couples or extramarital relationships, as well as siblings. It was also held in *Lau Siew Kim* that the strength of the presumption should be considered; key factors would include i) the nature of the relationship (obligations/dependency), ii) state of the relationship. This means that the POA could be negated if for instance, the state of relationship between the husband and wife was such that they were on bad terms.

Current test to determine interests in joint accounts

7. The case of *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 *("Chan Yuen Lan")* has set out a framework by which joint account holders' interests could be determined at [160]:

    (i) is there sufficient evidence of respective financial contributions to purchase price? If so, presumed beneficial interest in proportion to that. If no, same beneficial interest as legal interest.

    (ii) regardless of (i), is there sufficient evidence of express/inferred common intention that parties hold beneficial interests in a different proportion? If yes, it applies.

    (iii) if (i) & (ii) no, same as legal interest.

    (iv) if (i) yes but (ii) no, is there sufficient evidence that party who paid more intended to benefit the other with the amount paid? If yes, the extra amount is a gift, recipient holds beneficial interest.

    (v) if (iv) is no, does presumption of advancement apply to rebut presumption of resulting trust? If yes, no RT. If no, beneficial interest in proportion to financial contributions.

    (vi) is there sufficient/compelling evidence of subsequent express/inferred common intention that parties should hold beneficial interest in different proportion than that at time of acquisition? If yes, subsequent proportion applies.

Managing joint accounts

8. As the law stands, any litigation will likely involve the Courts looking into the entire factual matrix relating to the parties' relationship and their opening and operation of the joint account. Depending on whether there is a POA and how strong the POA is, the surviving joint account holder might not inherit the interest of the deceased.

9. To avoid potential litigious disputes between your estate and the surviving account holder, the donor can make clear declarations in their Wills, for example, on how their assets should be managed.

10. If a donor has a joint account with someone and their relationship is not recognised by the POA, the donor can make it clear in his Will that he intends to give the money in the account to this person, if that is the donor's wishes. Without this declaration, that surviving account holder will have a tough time keeping the money, should there be contests from the donor's estate.

11. If a donor opens a joint account with a close relative out of convenience but he wants other family members to inherit his money, he should state this clearly in his Will. Otherwise, as mentioned, the survivorship principle could apply and the surviving account holder would inherit the deceased's share.

12. It is, however, important to note that there is still a catch with making pre-emptive declarations in a Will. These declarations do help to corroborate the intentions of the donor. However, they might not be the only deciding factors if a case goes to trial. Ultimately, the court will examine the evidence presented holistically. For example, a donor might have declared in his Will that he intends to give the money in a joint account to his mistress, but if there is evidence that shows the donor to be on bad terms with his mistress, the court could take it into account and possibly rule that the money should not go to the mistress.

Conclusion

13. Joint accounts are certainly a great way for an individual to manage his funds; however, some prudence ought to be taken to avoid potential disputes after an account holder passes away. Surely, the last thing a deceased would want is his estate and the surviving account holder to be caught in a litigious battle. Thus, it is wise for a joint account holder to make declarations in his Will. Such documentations would serve as strong evidence of the deceased's intentions, and could prove to be a weighty factor when it is adduced in court.

Contributed by:

Patrick Tan
Founder and CEO
+65 6645 4500
Patrick.tan@fortislaw.com.sg

Adrian Sebastian Kohar
Practice Trainee
+65 6535 8100