

Clarification on two points regarding China inheritance practice

Description

China themed information is pervasive throughout the web. Randomly, I came across an article discussing China inheritance or succession system, entitled "[facts about Chinese society's inheritance](#)".

While the bulk of the information contained in the article is correct, it will be useful to clarify some of the points made therein.

The article mentioned the order of succession in the case of statutory succession as follows:

“Chinese inheritance law establishes an order of succession, with inheritance granted to family members in the order of spouse, children, parents, siblings, paternal grandparents, maternal grandparents”

Without clarification, it may be confusing to readers as to whether such family members enjoy equal inheritance rights. It will be necessary to further point out that such family members listed in the citation shall be further classified into two groups with the first-order group consisting of spouse, children and parent, and second-order group consisting of siblings, paternal grandparents and maternal grandparents. In the event of decease without a valid will, the estate will be firstly inherited by the first-order group members, and only in absence of any of the first group members shall the second-group members be entitled to inherit the estate. The members of each group shall enjoy the equal right to succeed to the deceased's estate, subject to court's power to adjust their share of inheritance.

In determining the heirs in the case of statutory succession, another important situation shall be taken into consideration. For example, A has a son, B and B has a son, C. At the time of A's death, B has died before A. Now though B has already died earlier, his son C shall have the right to succeed to his grandfather A's estate in his father B's place to the extent of B's entitlement in the statutory succession proceeding.

Another point made in the article that needs a little bit clarification is related to community property rule under China marriage law. The article asserted that:

“In China, all succession of property and wealth is subject to marriage law. This means that the surviving spouse can make a claim on the estate of the deceased spouse if the net worth of the deceased spouse's estate is greater than the net estate of the surviving spouse. According to Chinese law, the surviving spouse can make a legitimate claim on the deceased spouse's property even if not listed in the will as a beneficiary.”

I don't quite get it what it means by “if the net worth of the deceased spouse's estate is greater than the net estate of the surviving spouse”. I understand the author is trying to explain how the Chinese marital property law affects the inheritance of estate.

China has in principle adopted the community property rule under which all properties obtained by or otherwise coming into ownership of one spouse during the life of their marriage will be automatically deemed as community property of both spouses with equal shares. Upon death of one spouse, the surviving spouse will be entitled to differentiate his or her assets from the commingled properties of both spouses. For example, a house bought during marriage and registered in the name of the deceased only will be halved first by the surviving spouse and only the remaining half constitute the estate inheritable by all heirs.

In the end, please note that we are talking about Chinese succession law. Foreigners who are entitled to inherit or bequeathed with, estate located in China shall need to decide on which law is the applicable law governing the inheritance of the estate. Except for real property estate, Chinese law may not be applicable to movable estate in China. For more in this regard, please refer to [how does a foreigner inherit real properties in China?](#)

Date Created

December 2011

Author

admin

Shanghai Landing Law Offices