

# Is the Money Mine? – Issues Arising from a Joint Bank Account

## Introduction

There are many reasons why people open joint bank accounts. Oftentimes, it is a question of convenience so that the younger or more able person may operate the account for the benefit of the other joint account holder. Other times, with people who are in a relationship of trust, it is with the intention that the surviving joint account holder will have the benefit of the monies in the joint account.

The question as to who is entitled to the monies in a joint account upon the death of the other is unfortunately not so straightforward. There is potentially a distinction between the “*legal*” owner (the owner in name) and the “*beneficial*” owner (the true owner). While it is generally undisputed that the survivor will be the *legal* owner of monies in the joint account when the other joint account holder dies, disputes occasionally arise as to who is the *beneficial* owner of the monies in the joint account. A typical dispute would be one which arises between the deceased’s estate and the surviving joint account holder, in particular, where the deceased had contributed substantially or even entirely into the joint account.

This update highlights the importance in estate planning for one to consider his/her monies held in joint accounts, and if necessary to stipulate whether this ought to form part of his/her estate.

## Survivorship, Presumption of Resulting Trust and Presumption of Advancement

It is not uncommon for persons opening joint bank accounts to assume that the principle of survivorship would apply to the account – i.e., that upon the death of a joint account holder, the surviving joint account holder will take the entire interest in the joint account. Indeed, quite

frequently, the bank’s terms and conditions for the joint account would stipulate so, and provide for the bank’s rights to make payment of all monies in the joint account to the surviving joint account holder. While this is often the case, there are many circumstances which could complicate the position of the surviving joint account holder.

A common situation is where parties have made unequal contributions to the joint account, which may lead to the operation of the *presumption of resulting trust*. This presumption assumes that the party contributing more to the joint account *lacks the intention* to benefit the survivor (see: ***Lau Siew Kim v Yeo Guan Chye Terence*** [2008] 2 SLR(R) 108 at [35]). The practical effect of this is that unless sufficient evidence is provided to rebut the presumption, the deceased who had contributed the money remains the *beneficial* owner of the monies which he/she had contributed to the joint account (or more accurately, the estate of the deceased). The survivor, while being the *legal* owner of the monies in the joint account, holds such monies provided by the deceased on trust for the deceased’s estate.

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 the presumption of advancement. This presumes that an individual who transfers property/monies into the name of a person with whom he/she had such a relationship, intended to make a gift of the property/ monies to that person (***Lau Siew Kim*** at [57]). Under Singapore law, the categories of relationship recognised by law for a presumption of advancement to operate are limited. For instance, there is no presumption of advancement between cohabiting couples nor between a man and his mistress (***Lau Siew Kim***

at [73]). Likewise, such a presumption would not apply between couples in same gender marriages.

Ultimately, what the Court is trying to do is to decipher parties' intentions relating to the monies in the joint account. The presumptions discussed above will not apply where there is *direct evidence* that may adequately reveal the intention of the person contributing the monies (see: **Chan Yuen Lan v See Fong Mun** [2014] SGCA 36 at [52]).

The problem however, is that disputes often only arise many years down the road. By then, memories would have faded, and direct evidence of the intention of parties is often unavailable. The presumptions discussed above become tools utilised by the Courts in resolving disputes as to the ownership of the monies in joint accounts.

### Examples of disputes between a surviving joint bank account holder and the deceased's estate

In **Lim Chen Yeow Kelvin v Goh Chin Peng** [2008] SGHC 119, the defendant was the deceased's boyfriend and cohabitant who held a joint account with the deceased. It was not disputed that all the monies in the joint account were contributed by the deceased.

The plaintiff was the deceased's nephew and sole beneficiary in her will. He argued that the presumption of resulting trust applied and the moneys in the joint account should form part of the estate of the deceased. The deceased's will did not provide for the defendant, and made no mention of the joint account. The defendant, while sharing an extremely close relationship with the deceased, was unable to avail himself to the presumption of advancement because they were not legally married.

Fortunately for the defendant, the Court evaluated all relevant evidence to the question of the deceased's true intention with regards to the monies in the joint bank account. This included the type of persons the deceased and the defendant were, the close relationship between the deceased

and the defendant, the circumstances under which the joint account was opened and the account opening forms which were signed. The Court held that the deceased had intended to give the moneys in the joint bank account to the defendant, and the money in the joint account did not form part of the deceased's estate by way of a resulting trust.

The relevance of the bank's terms and conditions governing the joint account was dealt with in the UK case of **Whitlock v Moree** [2017] UKPC 44 involving a similar situation where the deceased had contributed all the monies in the joint account. In this case, the clause had expressly stated that "*if one of us dies, all money in the [joint account] automatically becomes the property of the other account holder*"). The majority of the Privy Council found that the joint account holders had declared their beneficial interests in signed writing and there was no need to enter into a factual inquiry about the parties' subjective intentions of whichever of them provided the money, and therefore the surviving joint account holder was beneficially entitled to the monies.

The holding by the majority in **Whitlock v Moree** appears to go beyond the current Singapore position that account opening documents are non-conclusive evidence of parties' intention relating to the monies in the joint account. Nevertheless, this case demonstrates the importance of having a written document which stipulates the beneficial interests of the joint account.

The recent Singapore decision of **Estate of Yang Chun (Mrs) née Sun Hui Min, deceased v Yang Chia-Yin** [2019] SGHC 152 revolves around joint accounts held by a childless couple. The husband had provided the lion's share of the contributions to the joint accounts. The husband passed away at the age of 95 years old, without mentioning the joint accounts in his will or otherwise dealing with them. The wife then passed away four years later at the age of 97 years old. A dispute arose between the husband's estate (represented by his nephew) and the wife's estate (represented by her nephew).

The question which the Court had to decide was whether the monies in the joint accounts belonged to the wife (and hence now, the wife's estate) legally and beneficially due to the operation of survivorship after the husband's demise.

The Court first found that a presumption of resulting trust applied on the basis of the couple's unequal contributions to the joint account. However, the presumption of advancement (between husband and wife) then operated to displace the presumption of resulting trust. The presumption of advancement was supported by the fact that the couple had a close and caring marriage for more than 50 years where the husband was the sole breadwinner and the wife was financially dependent on him, the husband had also provided for the wife in his will, the wife was involved in decisions concerning the use of the monies in the joint accounts, and the joint accounts opening forms provided that the survivor is "*entitled to claim the available funds in the account*".

As the presumption of advancement applied and was not rebutted, the Court found that the monies in the joint accounts were beneficially and legally owned by the wife upon her husband's death.

## Practical solution

As seen from the cases above, the operation of survivorship between joint account holders is not so straightforward. Should there be a dispute as to

the ownership of the monies in the joint account, 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. There is no assurance that the monies in the joint account belong to the survivor; or that the surviving joint account holder will be spared from stressful and expensive litigation.

The problems above could be alleviated if the parties' intention as to the monies in the joint account are clearly documented. This can be a stipulation in the will or a trust / declaratory document that is of sufficient formality to place the intention of parties beyond doubt. This is especially important in the following circumstances:

- a) Where parties, who are not in a recognised relationship which would give rise to a presumption of advancement, intend for the survivor to take all the monies upon one's demise. As highlighted above, Singapore Law only recognizes limited categories where a presumption of advancement can apply and at present, does not include couples who are not legally married; and
- b) Where parties have opened a joint account simply for purposes of convenience and do not intend the surviving joint account holder to be entitled to all the monies upon the other's death.

If you would like information on this or any other area of law, you may wish to contact the partner at WongPartnership whom you normally work with or the following:



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