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Heirs' information requests to banks: cracking the safe in Switzerland

Marcel Frey and Urs Feller of Prager Dreifuss analyse a recent Swiss Federal Tribunal ruling that provides helpful guidance for heirs who may want to unlock financial information held by a deceased relative's bank

Heirs frequently find themselves in the position of needing to deal with the grief of losing a beloved family member, the administrative tasks that this involves, and – at the same time – considering complex and far-reaching legal issues pertaining to the estate.

Information, in particular about the financial situation of the estate, can be key in these situations. However, the make-up of modern families has, in many instances, led to a shift in the classic alignments of interest encountered a few generations ago. Children from earlier marriages are confronted with entitlements of half-siblings from later relationships, surviving step-parents enter the fray, and adopted children and litigious divorcees lay claim to their share of the estate. Added to that that banks and other financial institutions are – by default – careful to restrictive when making bank account information available to persons after the passing of the original account holder and the situation may become very complex.

The existence and scope of information rights concerning banks of the deceased are thus important tools in these situations. Given that the period within which an heir needs to decide whether he or she wants to take up the inheritance is reasonably short and an ill-considered action impacting the estate may constitute acceptance thereof (even if it turns out to be over-indebted), carefully

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gathering information to assist in such decisions may be crucial. A decision by Switzerland's highest court, the Federal Tribunal in Lausanne, highlighted this recently. This article addresses some noteworthy points from the judgment and briefly touches on a few other aspects of information rights regarding banks.

Procedural history leading to Federal Tribunal decision

Federal Tribunal judgment 5A_969/2023 of June 5 2024 concerned a legal dispute between a deceased's bank and one of the legal heirs, a daughter from his first marriage. The latter had sued the bank for information about her late father's account. Her (and her sibling's) claim had been dismissed by the first-instance Bernese Regional Court and the Supreme Court of Bern. Her appeal to the Federal Tribunal was eventually also dismissed.

The father (testator), the bank's client, had died in 2017. The testator had two children from his first marriage (with the daughter eventually lodging the appeal to the Federal Tribunal) and a daughter from a second wife, a commonly encountered patchwork family situation.

In April 2019, all the heirs – i.e., the two siblings from the first marriage and the daughter and wife from the second marriage – concluded a settlement before the conciliation authority in Bern. Pursuant to the settlement, the two children from the testator's first marriage, A. and D., would each receive CHF 400,000 in return for them exiting the community of heirs. This settlement entered into legal force.

Meanwhile, and well after conclusion of the settlement, A. and D. continued researching the bankable assets of their late father and contacted his bank (the defendant in the present case) for information based on heirship rights. At the beginning, the bank partially complied with these information requests. It would seem that the information received raised the ire of the litigious siblings.

In October 2019, A. and D. filed a 'civil law action for information' against the bank before the Bernese Regional Court, with a view to a potential state liability suit against the Canton of Bern to be lodged later based on the information received. From the Federal Tribunal's reasoning, it seems that the siblings had concluded from the bank information that they would have been entitled to a larger share of the estate. They claimed that they had been pressured into accepting the settlement offer by the judge in the conciliation proceedings. Feeling ill done by the cantonal authority, A. and D. planned on suing the Canton of Bern for damages for their perceived loss. To bolster this claim, they seem to have been dependent on more information from the bank.

The regional court dismissed the claims of A. and D., arguing the claimants' legal interest in the proceedings was not apparent. The siblings were each obliged to pay CHF 6,000 in court costs and CHF 16,634.50 as party compensation to the bank.

The Supreme Court of Bern confirmed the decision in November 2023, imposing another CHF 6,000 in court costs and a further CHF 8,317.25 in party costs on both A. and D.

A. took the higher court's judgment on appeal to the Federal Tribunal.

Analysis of the judgment

No general right to information

The Federal Tribunal held – as a general introductory finding – that Swiss private law and jurisprudence does not know a general right to information that could be invoked to pursue perceived legal rights.

In inheritance contexts, heirs can base their claims for information on two distinct legal grounds:

- The concept of inherited contractual rights; and
- Material inheritance law.

Information right based on inherited contractual rights

According to the Federal Tribunal, both rights to information may coexist. The entitlement based on inherited contractual rights is a consequence of the principle of universal succession applied in Swiss inheritance law (**Article 560 of the Swiss Civil Code**, or CC). At the point of death of the testator, not only do his or her material belongings instantly pass over to the heirs by law with no further involvement or action needed by anyone but also all contractual relationships and rights (including entitlements to receive information). The only limit to this is seen in absolute personal rights that are inseparably connected to the deceased and end with his or her death.

Such an inherited right to information is based on the contractual right that existed between the testator during his or her lifetime and his or her bank, and is grounded on the duty of the agent to render account (**Article 400, paragraph 1 of the Swiss Code of Obligations**). This statutory provision requires the agent, at the principal's request, to give an account of the activities under the mandate and to return anything received, for whatever reason, as a result of such activities. With the passing of the principal, this right is inherited as a contractual right by the heirs.

To utilise their inherited right to information, heirs need to prove the existence of the account relationship between the testator and the bank, and that they acquired the status as heirs.

Whether the heirs can assert their rights to the same extent as the principal up to the point of death seems uncertain under the new Federal Tribunal ruling (see section 3 below).

Information based on material inheritance law

The second legal basis the Federal Tribunal drew on to assess the information right of the appellant was the inheritance law jurisprudence under **Article 607, paragraph 3** and **Article 610, paragraph 2** of the CC. These provisions guarantee the right to information between the heirs to establish the assets and debts of an estate and claims among the heirs. Swiss jurisprudence has extended this provision to apply to third parties. To ascertain the composition of the estate and facilitate its division among the heirs, the latter are bound to disclose all the assets they are aware of and this duty now also binds third parties (such as financial institutions) that might hold assets of the deceased.

Accordingly, the heirs have a personal right to information held by third parties based on inheritance law, though this right is not limitless. Heirs need to plausibly demonstrate that they are dependent on the requested information with a view to an inheritance action (a claim in abatement, an action for recovery of inheritance, hotchpot claims, or a claim for division).

Finding by the Federal Tribunal in the case at hand

The Federal Tribunal concurred with the lower-instance courts that in the present case, the two siblings, A. and D., had voluntarily left the community of heirs by concluding the settlement in April 2019. By leaving the community of heirs, A. and D. had lost their status as heirs and were no longer entitled to information based on heirship by the time they had filed their claims for information in October 2019. Both the grounds for information referred to above had fallen away in the meantime. Therefore, the claimants were no longer entitled to claim any rights previously granted to them by inheritance law.

With the cessation of the status as heir, the legally protected interest necessary for any court action had ceased to exist.

Against this background, the dismissals of the claim by the Bernese Regional Court and the Supreme Court of Bern were considered correct by the Federal Tribunal and A.'s appeal was dismissed at cost (leading to further court fees of CHF 6,000 and party costs of CHF 500).

Extent of an information right

For a prospective heir, it may be helpful to understand that, depending on whether information is sought on a contractual entitlement during the bank client's lifetime or on the passing of the client by the heirs, the extent of the information may differ. It is thus useful to understand what to expect when requesting information about the client relationship from the bank.

The Federal Tribunal has ruled in recent judgments that an heir's right to information is not identical to the testator's right to information while still alive, especially concerning the scope of such information. The testator's right to privacy and their most personal rights limit an heir's right to information. In addition, an heir's right to information is, in principle, restricted to the testator's death day. To obtain information on earlier account movements or orders made while the testator was still alive, heirs with forced heirship rights must demonstrate a special legal interest (e.g., where such transactions might have violated their statutory entitlements). Without such a legal interest worthy of protection – which constitutes a general requirement for proceedings, in any event – the financial affairs of a bank client can thus not be analysed.

Furthermore, the case law of the Federal Tribunal concerning the accountability and disclosure of internal and external bank documents needs to be borne in mind. Whereas external documents addressed to the client – such as account statements, purchase and sale orders, or interest and capital reports – have to be disclosed, the same may not apply to internal bank documents. A bank must thus not deliver copies of its internal communications to the client or his or her heirs, even if such communication deals with the account relationship. Also excluded from the duty of rendering of account are internal documents such as draft agreements, previously prepared studies, or internal notes.

Possible further legal bases

Article 25 of the Federal Act on Data Protection (FADP) and Article 72 of the Financial Services Act (FINSA) contain further legal bases for information requests. An heir may be tempted to invoke these statutes in addition to the entitlements referred to above, to complement the heir's rights to information, which are otherwise based on inheritance law or inherited contractual rights, as has been shown above.

However, Article 25 of the FADP only entitles an heir to access information about whether personal data about him of her has been collected. This right is deemed uninheritable and thus it is of very limited value for an heir, if any. Therefore,

the testator's right to information under data protection aspects about the bank relationship until his or her death cannot be invoked by the heirs.

It is of greater relevance that Article 72 of the FINSA entitles a client to request a copy of his or her file and any other documents concerning the client that the bank has created in the course of the relationship. Contrary to Article 25 of the FADP, this legal right may be inherited and can be claimed by the testator's heirs.

Conclusion and recommendation

The discussed Federal Tribunal judgment shows that before relinquishing an inheritance, an heir is well advised to acquire – as best as possible and within the statutory timeframe – comprehensive knowledge about the composition of the estate and to obtain such information before accepting any agreement on leaving the community of heirs.

To issue an action for information thereafter, with the loss of the status as an heir, will inevitably lead to an applicant's interest in legal protection falling away, with the locks on the information safe closing definitely.