

中国法律通讯

CHINA LAW UPDATE Love.Marriage

March 6th 2009
Issue 1

Zhong Yin Lawyers, Shanghai Office, Suite EF, 16/F, Jin Sui Mansion, No.379, South Pudong Road, Shanghai, 200120, China
Jason Tian, attorney-at-law, www.doroto.com, E-mail: doroto@163.com, Mobile Phone:(86) 138 1654 8421

Getting Married in China

By Jason Tian, attorney-at-law

Getting married with a foreigner is no longer fresh and rare phenomena in China, especially, in such international metropolis cities as Shanghai, Beijing and Shenzhen. However, while it is a great and exciting experience to get married with a Chinese person for various reasons, it is definitely also a kind of adventure for your life in China. It is an adventure because from the date of your marriage, you are expected to undergo many things that you have never known before.

First of all, you need to know the legal framework in relation to marriage in China with particular attention to rules governing marriage involved a foreign individual.

The Application Laws. The first question to be concerned is what governing laws shall be applicable to such marriages. According to PRC General Civil Principles, where a Chinese citizen marries a foreign person, their marriage shall be governed by the laws of the jurisdiction where the marriage is created. Namely, if you get married in China, PRC laws shall apply to your marriage.

Under PRC laws, the valid and legal marriage shall comply with certain formal and substantive requirements.

Formal Requirement. A civil union of a man and a woman will not be recognized as husband and wife unless the union is filed with relevant authority (usually, the civil affair department) for

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In this issue of "Love.Marriage", we outline the basic rules in relation to marriage in China. This intends to offer you a general idea of how to get married, run your family and get a divorce in China. We are going to publish a series of newsletters discussing cross-border marriages. If you want to know more information about a specific issue relating thereto, please do not hesitate to contact us.

registration thereof. Such registration authority refers to the authority in the place where the Chinese party's *hukou* (a unique term in China, referring to household registration) is registered. Upon filing for registration of marriage, in addition to your passport, the foreign party shall present a certification certifying that he or she does not have a spouse at the time of marriage, which shall be issued by a notary institution or competent governmental authority in the state of his/her origin and be attested by the Chinese embassy or consulate in that state, or shall be issued by the embassy or consulate of the state of his/her origin in China. Such filing for registration shall be jointly conducted by both parties together.

Substantive Requirements. (1) the man shall not be younger than 22 years old and the woman shall not be younger than 20 years old; (2) neither party shall already have a spouse; (3) the two shall not be close relatives; (4) neither party shall have any disease that is regarded unfit for marriage from medical perspective. Breach of any of the above requirements shall lead to annulment of the marriage from the very inception of their union in which case neither party shall have the rights and obligations incidental to those of a lawful couple.

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The Common Law Marriage. The common law marriage is alternatively termed as **de facto marriage**, referring to an interpersonal status recognized as marriage while lacking the necessary requirement for registration with competent authority. Common law marriage is constituted where the two parties concerned live continuously together and hold themselves out as husband and wife. It has been held valid in China but today this concept has been abolished in civil law arena. However, in Chinese criminal laws, courts are divided with respect to de facto marriage when deciding on the crime of bigamic marriage. There are a number of cases in which parties to de facto marriage are convicted of the bigamic marriage crime. It is very important to heed such risk if you are involved in such an affair.

Prenuptial Agreement. PRC Marriage Law recognizes such prenuptial agreements on owning, separation, division of existing and future properties, prior to or during marriage. A couple can agree therein that properties acquired during or prior to marriage are separately owned by each, or concurrently owned by both, in each case, in part or in whole. Such prenuptial agreements shall be in writing. In default of such agreement, properties shall be owned by spouses according to statutory rules (which will be elaborated in later publications).

The Same Sex Marriage. China has not recognized same-sex marriage so far. Society at large frowns over such relationships due to the conservativeness of the Chinese culture.



Husband–wife Relationship

Jason Tian, attorney-at-law

After you establish your family in China, you need to know the basic rules governing the intra-family relationship between the husband and wife.

Right of Equality. This is a fundamental principle proclaimed in Clause 2 of the PRC Marriage Law. The right of equality is further embodied in Clause 17 which provides that the husband and the wife shall have the equal right of disposing of their community property. In that regard, it is generally understood that, either husband or wife shall have the power to dispose of the community property for their daily needs of life without having to obtain the consent of the other party, but on the other side, the couple shall have to, through consultation, reach an agreement on significant disposition of the community property for non-daily needs of life.

Duty of loyalty. In a marriage, one spouse owes a duty of loyalty to the other. A serious breach of this duty by one spouse will entitle the other to claim damages upon divorce. Such serious breaches of this duty are committed if the breaching party cohabitates with another continuously and stably. Damages are generally granted by courts to compensate the emotional distress and material losses suffered by the non-defaulting spouse.

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Duty to Support. Spouses shall support one another. In case that one spouse fails to give support to the other in need with respect to financial aids or otherwise, the other spouse shall be entitled to institute legal proceeding to obtain such aids or assistance.

Right of Succession. Upon decease of one spouse, the surviving spouse shall have the right to inherit the properties of the decedent spouse at the time of death.

Right to Birth. While the right to birth is thought to be a basic human right of either spouse, whether or not to give birth to a child is largely the freedom enjoyed by the wife only. The husband cannot force the wife to bear the child. If the wife conducts abortion without the consent of her better half, the husband will generally have a slim chance of claiming any damages since Chinese laws are silent in that regard.



Get a Divorce in China

Jason Tian, attorney-at-law

Divorces are not commonplace phenomena in China, esp, those big cities, and cross-border marriages are more susceptible to end prematurely. We brief you in this section on how to divorce in China.

Applicable Laws. According to PRC laws, divorce cases shall be governed by the laws in the place of the court that entertains such cases in despite of the laws applicable to the marriage of the concerned couple. If the couple initiates the divorce proceeding in Chinese courts, the Chinese laws shall be applicable thereto with respect to divorcing and division of properties provided, however, that whether a marriage is valid or not shall be answered only in accordance with the laws in the place where the marriage was created.

Ways of Divorcing. Basically, there are two ways of divorcing: by agreement and by court. If the husband and wife agree to divorce, divorcing procedures can be a very simple job of completing certain paper works. Usually, the couple applies for divorce with the competent authority in the place where the Chinese party's *hukou* is registered. However it shall be noted that such divorce agreement must contain provisions properly dealing with their children (if any) and their properties, and otherwise, the authority will reject such divorce application. Failing such an agreement, divorce can be a very mind-vexing process in the court.

Grounds for Divorce. To have a divorce in China, it is not required to prove fault on the part of one spouse. The ground for granting a divorce is that the relationship between the spouses is broken, or

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in another word commonly used in western legal jargon, incompatible.

In one of the following circumstances, divorce shall be granted if court mediating efforts fail:

- (1) Bigamy, or one spouse living constantly and stably with another;
- (2) Engaged in domestic violence or abandoning family members;
- (3) Having bad habits like gambling, drug taking and refusing rectification of the same;
- (4) Live separately for two years because of incompatibility;
- (5) One party is declared missing by court.

The supreme court of China has issued detailed guidelines as to circumstances in which divorce can be granted.

Restricted Divorces. To better protect the interests of the female spouses, the PRC Marriage Law provides that during the period of pregnancy, one year after birth giving or six months following termination of pregnancy, the male spouse shall not be allowed to initiate divorce unless the court considers it really necessary to do so.

Child Related Issues upon Divorce. Upon divorcing, the parents shall have the right and the obligation to bring up and educate their child. If the child(ren) is placed in the custody of one party, the other party shall share the financial burden of raising the child. The couple in divorce may come to an agreement on the allocation of such burden which shall otherwise be decided by court. However, such agreement or judgment regarding allocation of

child raising fees shall not bar the child from claiming reasonable extra sums for faring, educating, medical cares etc., in addition to the originally agreed or decided amount.

After divorce, the party that does not have the custody of the child shall have the right of visitation to the child and the other party shall have the obligation to provide assistance therefor. The right of visitation may be agreed by the parties as to how and when to exercise the right or otherwise be decided by court. Right of visitation may be suspended if such visitation will have adverse influence to the growth of the child.

Division of Community Properties/debts. The most complicated part of a divorce is the division and distribution of community properties and debts. We only outline those principles at law with regard to the dealing thereof and for more detailed information related thereto, please write to us or wait for our later publications in that regard.

In the absence of agreement thereon, theoretically, community properties are usually divided and allocated equally between the divorced spouses. However, the child and the female spouse are often accorded with special care by law. Despite that the couple has agreed on separation of properties during marriage, the party who has spent more time in caring for the children and/or the elderly or in assisting the other's work shall have the right to ask for compensation from the other party. Further, if, upon divorce, one party is having a hard life, the other party shall provide appropriate help out of his or her personal property.

NOTE: in the next issue of "Love.Marriage", we will go specific about the community property during Marriage.

田杰 律师

Jason Tian
Attorney-at-law

电话(Tel):

(0086) 13816548421
(8621) 50383762

传真(Fax):

(0086) 68869532
(0086) 50383762

电子邮件(E-Mail):
Doroto@163.com

田律师简介

男，江苏徐州人，毕业于华东政法大学研究生院，获硕士学位。曾先后在英国高伟绅律师行上海代表处任高级翻译，并在北京市中伦金通律师事务所上海分所担任专职律师。现执业于中银律师事务所上海分所。

服务范围:

- (1) 劳动、婚姻家庭、人身损害赔偿、物业管理及房地产买卖和租赁等；
- (2) 外商投资企业设立、增资和变更、房地产投资（包括取得土地使用权、建设项目规划、施工等）、商业物业经营、公司治理结构（即股东、董事、经理等职权分配等）、股权转让和并购、产品质量等；
- (3) 法律顾问：担任各类企业常年法律顾问，对企业经营进行事先法律风险防范，依法经营；
- (4) 法律翻译：各类诉讼和非诉讼法律文件中英文互译、律师事务所英文网站的维护等。欢迎联系建立长期稳定的合作关系。

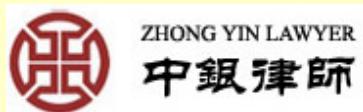
About Mr. Tian and his services:

Mr. Tian graduated from the renowned law school, East China University of Political Science and Law in Shanghai, and before joining Zhong Yin Law Firm, he served as senior translator at Clifford Chance LLP for 1 year and as an attorney-at-law at Zhonglun Law Firm for 2 years. His **legal services** cover FDI, M&A, real estate businesses (investment, sale, purchase, leasing and property management of both residential and commercial properties), corporate governance of FIEs etc. and other general legal businesses such as tort, marriages. He and his team also provide premium **legal translation service** to various clients.

前述内容均不构成有效的法律意见。如果您对上述内容有任何疑问，请致电、致信给我们！

The above written contents shall not be relied upon as legal opinions. If you have any questions about the same, please do not hesitate to contact us!

中银律师事务所上海分所
上海市浦东南路 379 号金穗
大厦 16 层 EF 座，邮编：
200120



ZHONG YIN LAWYERS
Suite EF, 16/F, Jin Sui
Mansion, No.379, South
Pudong Road, Shanghai,
200120, China