

Strategize Your Cross-border Divorce at the Very Start

Description

International divorces involving couples having assets across jurisdictions can be extremely complicated if the first step taken, choice of jurisdiction, is not wise enough.



Typical Fact Pattern

A Chinese couple started their business career from within China where they have cumulated huge amount of wealth in the form of real properties and corporate equities. As many rich Chinese families, when they get rich, they often think of emmigrating to a foreign country or region. Thus, this couple first migrated to Hong Kong, and legally brought a substantial portion of their money into Hong Kong, say, in hundreds of millions of RMB. For some clear reasons, Chinese tycoons, as most other rich people,

often don't feel secure enough to put all money in Hong Kong, and would often diversify their asset allocation in other world financial centers like Singapore, New York or London.

The couple lives in London from time to time and also resides in Hong Kong for some time a year.

Now because of the [husband's extramarital affairs](#), the wife wants a divorce and, indeed, she has found out that her husband has been covertly transferred some of their assets to a BVI company controlled by his family members with a clear view to covering and concealing their marital properties to diminish the assets available for distribution or division in the case of divorce. Further, there are [family trusts set up by the husband to protect some financial assets](#).

Where to Sue to Divorce: [Jurisdiction of the Divorce](#)

So from the perspective of the wife, where should she consider initiating her divorce proceedings? She has several options:

China Mainland: she can go to a China court to file the divorce case, after all, they still have a large portion of matrimonial properties within mainland China, and [China matrimonial property regime](#) may offer her some comfort because she is entitled to at least 50% of community properties existing at the time of divorce, and she may be granted greater share (more than 50%) if she can successfully prove the adultery by her husband, and China court proceeding is speedy than most other courts in the world.

Hong Kong SAR: Hong Kong is definitely a good option for her as well. The main advantages of Hong Kong court are (1) Hong Kong courts are not just dividing the so called "[community properties](#)" as in the China mainland, but also place properties existing prior to marriage into the asset pool for redistribution by courts, a big difference compared to the matrimonial property regime in China mainland, (2) Hong Kong may offer better protection to house wives who often bore multiple children for their rich husbands and spend most of their post-marriage life in taking care of children and family chaos, for example, Hong Kong courts may support spousal support following divorce, but in China mainland there is no such a thing called alimony or post-divorce spousal support, (3) Hong Kong courts as operating in accordance with common law systems more often exercise in-personam jurisdiction over parties than China mainland courts, thus more ready to deal with properties and assets outside Hong Kong, and (4) Hong Kong courts are more familiar with family trusts concepts and have developed established rules in addressing trusts in divorce proceedings, and (5) probably one of the most key points: [Hong Kong courts' judgments may be easier to be recognized and enforced in other jurisdictions including China mainland](#), and in US, Singapore or Australia. In comparison, China mainland courts' judgments in family matters are often not recognized and enforced in most other jurisdictions.

wow..... there are obvious advantages of choosing Hong Kong courts as the forum place for the divorce.

Singapore: While Singaporean courts may enjoy the same or similar advantages as with Hong Kong courts, I do know that (1) Singaporean courts may not be that ready to include pre-marriage assets in redistribution of marital assets upon divorce, and (2) Singaporean courts' judgments won't be readily recognized and enforced in China mainland.

Enforcement: Decisive Factor

For clients who are caught in such complicated multiple-jurisdictional divorces, making the right choice of jurisdiction may save him or her a lot trouble, money and time and efforts.

Actually, comparing those advantages of those jurisdictions, the fact that Hong Kong courts' judgment can be easily enforced in both China mainland and Singapore is the most critical factor in determining the final jurisdiction over the contemplated divorce. After all, clients may deal with all possible assets and legal issues (such as family trusts) in one court proceeding instead of filing more than one cases in China mainland, Hong Kong or Singapore.

Both procedurally and substantively, Hong Kong stands out as the best jurisdiction for the wife to file her divorce case, which may best protect her interests in the upcoming divorce battle.

Indeed in a recent inquiry from a client who is in a similar situation finally made up her mind to go for my advice to file her divorce in Hong Kong instead of China mainland. She actually told me that before she approached me, she did ask another family lawyer in China mainland who had advised her to file her divorce in mainland China. I can understand why that lawyer gave that advice. I do believe we should put clients' maximum interests as the paramount principle in giving our legal advice.

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