Do China Courts Have Jurisdiction Over Divorce of Two Foreigners?

Description

With more and more foreigners working and living in China, we have received quite a number of inquiries from foreigners who wish to divorce their spouses in China who are also foreigners.

> What are the legal issues related to cross-border divorce? - Fortis Law - Your Key To Quality Legal
> Can Two Foreigners Divorce in China?

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But what is the take of Chinese courts regarding jurisdiction over such cases? In other words, if such a case is submitted to China courts for resolution, will China courts entertain such a case?

I. Hypothetical Case

Assuming a foreign couple, husband from USA and wife from German, are separated from each other with husband still working in China and wife having gone back to German, now the wife wants to sue the husband for a divorce in China. By the way, they got married outside of China as well.

Please note, for some tactic reasons, the wife sues for divorce only without regard to custody of child or division of marital properties. Just for dissolution of their marriage.

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II. China Courts' Jurisdiction

Strictly speaking, China Civil Procedures Law has no specific provision addressing jurisdiction over a divorce case between two foreigners. China Supreme Court's various interpretations have no light shed on the issue.

It is understandable that China courts are hesitant or unwilling to exercise jurisdiction over a case in which there are no "Chinese citizens" or "Chinese assets" or other Chinese interests involved. This must be the reason why Chinese courts often refuse filings of such cases.

But China courts are divided on the issue.

First of all, our research into national judgment database found that some China courts have entertained and tried such cases and made judgments. Theses cases are not many indeed but they indicate that China courts, if they are willing, can still exercise jurisdiction over those cases. After all, there are neither prohibitive provisions in China Civil Procedures Law.

Particularly, in Shanghai, the most popular metropolis city in China, the local highest court (the Shanghai High People's Court *????????*) issued an instruction on this jurisdiction issue back in 2011in which the court had adopted an active attitude toward the question: despite that the parties to theaction are not Chinese, and they are not married in China, if they both agree and submit to thejurisdiction of China courts, then the courts may accept the filing of such cases. Our team havehandled a case in the past with a local court in Shanghai.

We also noticed that in Beijing, China capital city, local people's high court has issued an instruction back in 2016 that contained a clause addressing the divorce between two foreigners to the effect that courts should entertain such a case if one or two of them have habitual residence in China.

You see, some China courts just don't wanna bother, and decline jurisdictions, and some courts may be proactive and are ready to help with dysfunctional marriages.

We also noticed a case where the court finally dismissed a case that had been filed on the ground of forum non-convenient doctrine, which is plausibly perfect excuse to shrug off unwanted cases.

III. What You Learn

If you or your client is caught in a situation similar to the hypothetical case above, you have got to be mindful if you wish to go to China court for a divorce.

If you have to have your divorce conducted in China court, then you need to be careful with your case filing efforts. While it is surely difficult to get your divorce case filed with a China court, you do have a hope (in light of other precedent cases that are handled by China courts). Hire a Chinese lawyer that is well-versed in this area of law and that has a hard-core perseverance in getting things done.

[An update on this post, after about two years (since the time of this post) fight, we have successfully helped a client to file a divorce case with a court in Nansha District, Guangzhou. In that case, husband was from Canada and wife from Philippines, and they got married in Hong Kong. Husband had been working in Guangzhou for a few years till the time we attempted to file the case.

Landmark Victory: Guangdong High Court Order Lower Court to Exercise Jurisdiction Over Divorce of Two-Foreigner Couple.]

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