

IAFL First China Mainland Event Held at Shanghai Landing Law Offices

Description

Last week, on December 11, 2023, at the office of Shanghai Landing Law Offices, IAFL AP Chapter held its first event ever in the mainland China, a symposium focusing on division of assets in cross-border international divorces.



IAFL Debut Event in China Mainland

IAFL Asian Pacific Chapter has been trying to recruit qualified fellows from mainland China (for the purpose of this post, China here excludes Hong Kong SAR, Macau SAR and Taiwan), and so far out of its 650,000+ lawyers in the China mainland, there are only 5 Fellows in IAFL AP Chapter, a humble number even before Hong Kong, the tiny point on the China map.

The reason for mainland China lagging far behind Hong Kong SAR is that most lawyers in mainland China cannot use English as a working language. Indeed, those lawyers who can speak and write good English are often not engaged in family laws but those areas of laws such as foreign investment, intellectual properties etc.

Apparently, the high demand for English-speaking family lawyers (here in mainland China family laws generally cover both marriage and inheritance laws) has prompted more lawyers to practice this area of laws, and in big cities like Shanghai, Beijing, Shenzhen and Guangzhou, even the second-tiered cities like Hangzhou, Suzhou, Nanjing, Xiamen, local lawyers are frequently encountering international divorce cases or cross-border family disputes such as child abduction into a foreign country.

Thus, after we announced the event a month ago, we have seen strong interests in both on-site and online registration with some 30 people registering to participate on site and some 2000 views online through the live stream platform.

The live audience are very much interested and enthusiastic about the topics. Frequently we interacted with the audience on certain topics. For many, the exotic knowledge of foreign divorce laws are intriguing, surprising and shocking to them, as most of them may only be familiar with Chinese divorce laws only.

For example, except for California divorces laws which share quite a bit of commonality, the matrimonial property laws of Hong Kong, Singapore and Australia in terms of property division/distribution upon divorce are quite distinct from China divorce laws: Chinese courts will need to firstly identify the community properties that are acquired after marriage by the couple and then divide the same according to law but in Hong Kong and Australia they don't have the idea of community property and most properties titled in one spouse name could be put in the pot for division and in Singapore, pre-marriage properties that have been substantially improved by the other spouse may well be included for division upon divorce.

Also in China, the divorced spouse may file a new case to divide any piece of newly found assets that are left out of the prior divorce proceeding. The prior judgments on divorce and asset splitting/division are not affected at all, but it seems that in common law jurisdictions if there is any substantial asset left out in prior proceedings, their courts will revoke the prior judgments and enter into a new one taking into the newly discovered property, which doesn't seem pragmatic in real life although it does seem logical and legal.

The differences in matrimonial properties and divorce laws across jurisdictions are enormous especially between China mainland and other jurisdictions. It is indispensable for legal counsels in cross-border divorce cases to understand such differences or at least to know the existence of such differences and their possible impact so as not to inadvertently advise clients in the wrong ways.

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