Getting divorced outside China

Description

We are talking about divorces where the parties get married in China, or one party is a Chinese national or the marital properties (for instance a house or apartment) locate in China, or otherwise a China element is involved. Such foreign-related divorces are very complicated matter when they have to be solved in court. Since a China element is involved, it will be advisable for concerned parties to understand some of the laws of China in this regard.

I Where should I go to court for a divorce? China or my residing country?

When the couple cannot agree on terms of divorce, they will have to go to court to get divorced. But which court to go?

Generally speaking, China allows couple living abroad (USA, UK, Australia, New Zealand, Singapore and so on) to get divorced in the court of the foreign state where they reside even though the couple (two Chinese nationals, or one Chinese national and a foreign citizen) gets married in China, unless the court in their residing country decides otherwise. You donâ€™t have to come back to China in order to legally terminate the marriage union.

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II Can the court in my residing country divide and distribute the marital properties/debts?

While China allows a couple to divorce through a foreign court judgment, it basically means that China may recognize the dissolution of marriage as given effect to by foreign court judgment, but it does not mean China may also recognize the contents in the foreign judgment regarding the division and distribution of marital properties/assets and/or debts, children custody.

Though, theoretically speaking, a foreign court may apply Chinese laws to divide and distribute properties and debts accumulated during the course of marriage, China is still not yet ready to recognize such decisions by foreign courts. Notwithstanding that China supreme court has issued an interpretation guiding the recognition of divorce judgment made by foreign courts, it has also made it clear therein that these guiding rules do not apply to recognition of foreign divorce judgment in respect of division and distribution of marital properties and children custody.

In particular, it is worthy of note that China Civil Procedures Law has made it explicit that disputes arising from or in relation to real estate/real properties shall only be resolved in the court in the place of the real estate. In the case of dividing real estate/house/apartment in a divorce case, the foreign court shall not have jurisdiction over such issue. Any decision made by foreign courts will be deemed as null and void. In other words, the couple will have to come to China (or entrust a Chinese lawyer to represent you) to settle the dispute in the local court.

In summary, the couple may litigate in the foreign court to end their marriage relationship, but they will have to have their marital assets that are within China divided in a Chinese court in accordance with Chinese laws (not necessarily in accordance with Chinese laws in the case of marital properties other

than real property).

III Does China recognize the judgment entered by a foreign court? How?

Though China generally does not recognize foreign court judgments, the only exception is for divorce judgments delivered by foreign courts. China has issued judicial guidelines on procedures for recognizing a foreign divorce judgment.

As mentioned above, such recognition is to recognize the ending of the marriage legal relationship only and it is not to recognize judgments concerning marital property distribution or children custody.

Without recognition proceeding, the foreign court judgment does not mean anything in China.

Application for recognizing foreign divorce judgment shall be submitted to local intermediary court in the (original) place of residence place of the applicant.

In most cases, such recognition proceeding is initiated by a Chinese national. However, foreign nationals are also allowed to start the recognition process if the other party is a Chinese national.

If you want to know more information about this subject matter, please contact the author of this article, Jason Tian, at his emails and phones set out at the top right corner of this page.

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