China Supreme Court interpretation on marital debts to save Chinese wives

Description

We all love money but hate debts. In particular, you extremely hate paying debts incurred by others, even if debts incurred by your other half.

In response to the outcries from Chinese wives, on January 17, 2018, China Supreme Court issued a brief new interpretation (hereinafter the "**New Interpretation**") on how to decide on what debts shall be regarded as marital debts binding both spouses. In other words, the new judicial interpretation further shed lights on in what circumstances a spouse (generally the wife) shall be subjected to joint and several liability in repaying the debts incurred in the name of the other spouse. This new piece of interpretation marks a major departure from the prior rules.

I. Review of Rules Concerning Marital Debts Prior to the New Interpretation

First of all, readers shall take note that under China Marriage Law, the default rule is that assets acquired and debts incurred by one spouse after their marriage are generally considered community properties and joint debts that shall be dealt with in their divorce.

With particular respect to marital debts, we have the following rules related thereto:

(1) Article 19 of China Marriage Law (amended in April of 2001) in its third paragraph provides: where the couple agree on the separate ownership to assets acquired during their marriage, which agreement is known to the third party creditor, then the debt incurred in the name of one spouse shall be paid off by the said one spouse with his or her separate assets.

(2) Article 41 of China Marriage Law reads: upon divorce, the debts incurred for the couple's mutual life shall be paid off jointly by the couple.

(3) Article 23 of China Supreme Court Judicial Interpretation of China Marriage Law (II) provides: the claim by the creditor of one spouse against the other spouse for repayment of the debt incurred by the said one spouse prior to their marriage shall not be supported unless the creditor can prove the debt was used for their post-marriage mutual family life.

(4) Article 24 of China Supreme Court Judicial Interpretation of China Marriage Law (II) further provides: where a creditor asserts right in respect of a debt incurred in the sole name of one spouse during marriage, such debts shall be considered as joint debts of the couple, unless one spouse can prove that the debt is expressly stipulated as personal debt between the creditor and debtor or can prove the debt is within the ambit of the proviso prescribed in third paragraph of Article 19 of China Marriage Law (as cited above).

It is this Article 24 that has sparked outcries and protests among Chinese wives.

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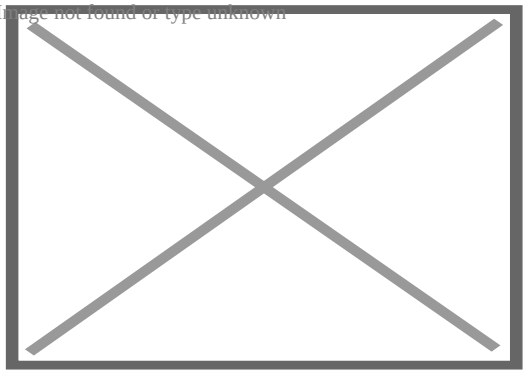

There have been a slurry of reported cases tried in China courts where the wife was ordered to pay the huge debts her husband borrowed in his personal name and the borrowed money was used for non-family life such as business adventure or even gambling or drugs. Generally such borrowings are not consented by the wives who may have no clue about what their husbands have been up to with the borrowed money. What's more, in many cases, creditors of this kind are allowed to go after the divorced wife for debts her husband borrowed during their marriage that are not known to her before divorce.

The serious grievance has led to a nationwide appeal by the women to amend Article 24 cited above and redress the balance of interests between third party creditors and debtors' spouses. Thus comes the next piece of China Supreme Court notice.

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(5) On February 28, 2017, China Supreme Court in an effort to pacify Chinese women public issued a supplementary provision to the said Article 24, adding two more paragraphs as part of the Article 24 to narrow its the application. here are the two paragraphs:

> Where one spouse conspires with the third party in fabricating a debt, the court shall not support the claim made by the third party in regard of the debt.
>
> Where the debt was incurred by one spouse in the course of illegal activities such as gambling or drug-taking, the court shall not support the claim made by the third party in regard of the debt.

Apparently, this slight move, if not a flout to the public, does not bring about the intended effects at all. Indeed, the new paragraphs don't change much at all. Chinese wives don't buy it. So the call for repeal and amendment to the Article 24 remains in the air.

(6) Now comes the New Interpretation that provides:

> Article 1 Debts that are incurred with mutual agreement of the both spouses such as being signed with signatures of both or ratified ex post by one of the other spouse, shall be considered as the joint debts of the couple.
>
> Article 2 Where one spouse incurs, during marriage, debts in his or her own name for the

daily family life needs, and the creditors claim that the debts are joint debts of the couple, the court shall support the claim.

Article 3 Where one spouse incurs, during marriage, debts in his or her own name for a purpose other than daily family life needs, and the creditors claim that the debts are joint debts of the couple, the court shall not support the claim, unless the creditors can prove the debts are used for the common marital life of the couple, for the couple's common business production and operation, or otherwise agreed mutually by the couple.

So what is the big deal about the New Interpretation?

First, it makes it clear that except for borrowings for daily life needs, a debt incurred in the name of one spouse cannot be presumed to be joint debts of the couple unless the debts are mutually agreed by the couple (concurrently or one after another). So mutual consents are required in order to find joint debts for the couple for unexpected big debts.

Second, in judicial practice, the burden of proof for proving the joint debts of the couple is now shifted to the creditors who seek to subject the other non-signing spouse to joint liability in repaying the debts. This will give a lot of trouble to the creditors who fail to secure the consent of one spouse to the debts incurred by the other spouse.

This very shift of burden of proof will change the landscape of the marital debts practice in China.

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II. Implications of the New Interpretation

(1) Of course, the first obvious effect is that Chinese wives now can calm down and enjoy a piece of mind in their family life.

Indeed, just recently, a friend of mine whose husband was being chased by "bad people" who extended usury loans to him for expanding his real estate leasing business was almost devastated worrying about the only home being taken away. With New Interpretation coming into effect, the debt borrowed by the husband for business expansion may not be considered as joint debts since the wife is not running the business together with her husband.

(2) The New Interpretation will have far-reaching impact on the lenders such as banks and private lenders. It is no longer taken for granted that the loan is automatically secured by a surety with joint and serveral liability. Lenders shall have to be more careful in extending loans to individual clients, and shall have to get the written consent from the borrower's spouse in order to make sure the community properties of the couple are available for future repayment of the loan. After all, it is going to be hard job on the lender to prove the money is used for mutual marital life or for any common undertakings of the couple.

(3) Courts may have time struggling to decide on whether a certain use of the borrowed money is for daily family life needs, which can be elusive to define given different conditions of each family in life. Also what is common business production and operation may also give rise to debate and argument in court rooms.

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