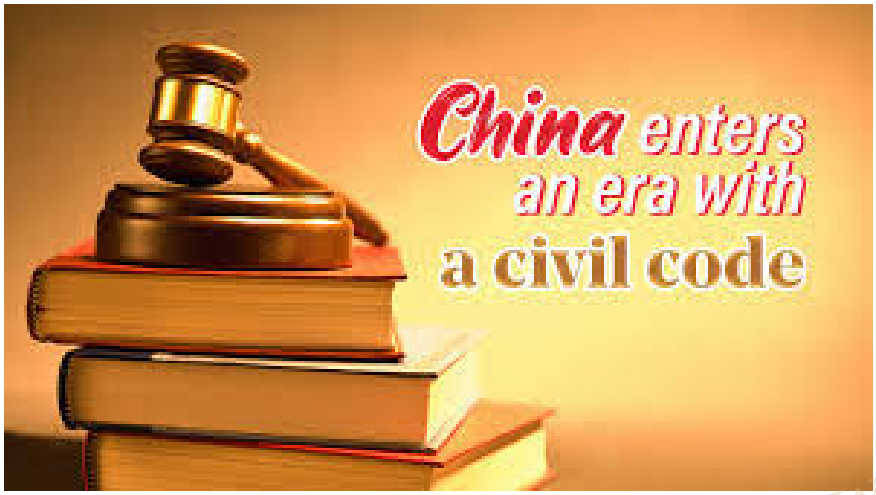
Highlights of Changes to China Marriage Law Brought About by PRC Civil Code

Description



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The highly expected Civil Code of People's Republic of China ("the Civil Code") was adopted by the 13th National People's Congress (" NPC ") on May 28, 2020 and will take effect on January 1, 2021, in which Part V is "The Marriage and Family". Upon the implementation of the Civil Code, the current China Marriage Law will be repealed simultaneously, and thus it is essential to get an overview of Part V and the changes to and impacts on the practice of marriage, divorce in China.

Part V entitled "Marriage and Family", is divided into five chapters: General Provisions, Marriage, Family Relations, Divorce, and Adoption. Comparing with the current Marriage Law, we highlight several major differences worth noting as below:

1. **Revocable Marriage Due to Serious Disease**

Current China Marriage Law provides that marriages involving a disease that is considered unfit for marriage from medical perspective are simply null and void. Under the China Civil Code, Article 1053 now provides that a party to marriage shall disclose to the other party his or her serious disease before getting married, and in absence of honest disclosure, the other party may petition to court to revoke the marriage.

Apparently the new rule is more humanized giving people with critical disease a hope for creating their families so long as he or she is honest with the other better half.

2. **The Marital Properties**

The Civil Code inherits the community property principle under current China Marriage Law, meanwhile, there are some differences in the relevant provisions, including the scope of community property and community debt during the life of marriage.

2.1 *Moderately Expand the Scope of Community Property*

In contrast to the current Marriage Law, Article 1062 of the Civil Code stipulates two new items of income that falls within the scope of community property, namely, the “service remuneration”, and the “investment income” . Service remuneration is simply added to be more accurate and precise in wording, but the inclusion of investment income can have important implications in matrimonial property relationship.

It shall be noted that the investment income can be very wide in its coverage, including funds, equity investment and other financial products. Unfortunately, the Civil Code doesn’t elaborate on the legal parameters of this concept. So, how about the value appreciation of real properties (assuming these properties are personal assets of one spouse prior to marriage) that takes place during marriage? There could be heated debate on this, pending further clarification from China Supreme Court in the future.

For high net worth individuals with multiple investments, the importance of nuptial agreements on marital properties shall be fully appreciated and understood in terms of clearly demarcating boundaries of personal and community properties and dispelling confusion.

2.2 Clarify the Definition of Community Debts

Under Article 1064 of the Civil Code, community debts are those signed by the couple jointly or those signed by one but ratified by the other subsequently, as well as debts incurred by either spouse during the marriage to meet the routine needs of the everyday family life. Community debts do not include debts incurred by one spouse for reasons other than such routine needs, unless the creditors can prove either that such debts are incurred for the common life and/or business of the couple or otherwise are mutually agreed by the couple.

Recent years, the definition and scope of community debts have been one of the most discussed legal and social issues in China after a slew of reported cases in which wives are inadvertently hit by heavy debts their husbands incurred on their own. The legislation plays a guiding role in balancing and protecting the interests of the non-debtors in marriage and the interests of creditors.

Indeed, this is not new but an elevation to law of those similar rules handed down by China Supreme Court in its judicial interpretation in the past.

2.3 *Division of Community Property during Marriage*

Division or splitting of community property without divorce has not been possible in China until August 13, 2011 when the third interpretation of China Marriage Law by China Supreme Court took effect. In that third interpretation, division of community properties was allowed if one spouse conceals, transfers, sells, mutilates or squander community properties or fabricates mutual debts and other acts that severely damages the community property, or if one spouse gets seriously sick and the other spouse refuses to pay related medical expenses.

Now this rule is also elevated into Article 1066 in the Civil Code.

Very often this rule is ignored in practice as most people won’t think of dividing community property

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when they are not thinking of divorce. However, this rule can be immensely powerful in protecting one's assets against his or her misbehaving spouse when a divorce is looming large and one spouse starts those listed misconducts, or the divorce proceeding is dragged too long before ending.

3. **Divorce**

3.1 *Divorce by Registration: Cooling-off Period*

The most controversial issue in the Civil Code is a 30-day cooling-off period after application for a divorce and before the official registration of the divorce.

According to Article 1077, after submission of application for divorce to marriage registration authority, if one parties changes his or her mind, he or she may withdraw the divorce application unilaterally; on the other hand, if no one withdraws the application during the 30-day cooling-off period, then the couple shall both appear in person to request for a certificate of divorce within another 30 days upon the expiration of the cooling-off period. Failure to apply for the issuing of divorce certificate during the stipulated period shall be regarded as withdrawing the divorce registration application.

Although such cooling off period is intended to save couples from impetuous divorces, many argue that it is nonetheless onerous and unfavourable for women. Without doubt, such efforts may increase unnecessary domestic divorce litigations in China.

3.2 Compensation for the Spouse Who Contributes More at Home

The Article 1088 of the Civil Code provides the right of claim for compensation by the spouse who takes greater part in looking after children, and caring the elderly or otherwise assisting the other party in his or her work but has less or no income. Although the standard and method of compensation need to be further clarified by judicial interpretations or carved out in judicial practice, the value of domestic contribution in family life is legally recognized.

3.3 Expand Claims for Damages by Non-fault Party

In the current China Marriage Law, Article 46 only provides for four limited circumstances whereby the not-fault spouse can claim damages against the other party in the course of divorce, such as bigamy, cohabitation with others, domestic violence, mistreatment and abandonment of family members. The Civil Code in its Article 1091 further expands the grounds for claiming such damages by adding a blanket clause "where there is any other serious fault". This simple addition may give rise to more claims for damages in divorce litigations.

4. **The Impacts on Cross-border Marriage and Divorces**

For cross-border marriages, it shall be noted that China law may or may not be relevant. They shall first turn to PRC Law on Choice of Laws to determine whether their marriage or divorce is governed by China laws.

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To avoid any legal surprise or shock, it is always a good idea to prepare a pre- or post-nuptial agreement to choose the applicable laws to govern the marital property relationship and possibly the applicable law to your divorce. This is particularly important and crucial for couples who may have assets in a number of jurisdictions.

For those people in cross-border marriage who are contemplating a divorce, it is a strategic point in your divorce plan to think of where to litigate and what applicable laws will be applied, thus mapping out the best course of action to escape your unhappy marriage.

Cross-border Divorce I: Jurisdiction Matters a Lot

Date Created
October 2020
Author
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