

?When Are You Officially Divorced?

Description

Generally this won't be a problem for people as we just need one divorce. But exceptionally where an international couple with a party being Chinese [gets divorced outside China](#), this could be an issue. Let us examine the problem.



Recognize Foreign Court Divorce Judgments in China

I. The Issue: Official Date of Divorce?

I was prompted to think about this problem because of an inquiry from a client.

He asked: he and his ex-wife were both Chinese citizens at the time of their marriage in China, but later on, both migrated to USA, and he was then naturalized to become an American citizen, thus according to China Nationality Law, automatically losing his Chinese citizenship. In the meantime, his ex-wife had remained as Chinese citizen. They divorced through court in USA in 2015. After divorce, he stayed in USA and his ex-wife went back to China.

A few years later, in 2023, his ex-wife applied to an intermediary court (higher than district/county courts in China) in China to recognize the American court's divorce judgment, and the China court did recognize the American court divorce judgment.

Now here comes the question: in China, when is the official date of divorce of the couple?

II. Legal Analysis under Chinese Laws

For a long time to date, China has adopted the legal framework (as many other jurisdictions do) of recognizing foreign court divorce judgments to which a Chinese citizen is a party in order for the said

foreign divorce to be effective in China, thus liberating the Chinese citizen from their dead marriage. Here are the main rules of this legal framework:

- (1) a foreign court divorce judgment doesn't become effective within territories of China till it is recognized by a China competent court, which is the local intermediary court of that city;
- (2) it shall be noted that China court will only recognize the dissolution of the marriage decided by the foreign family courts, other ancillary matters such as property division or child custody/parental responsibilities are not to be recognized by China courts unless there is bilateral treaty or arrangement in place between China and the foreign country or region;
- (3) both of the parties to the marriage, one of them being a Chinese citizen, have the right to apply to China intermediary courts to recognize the foreign court divorce judgements; in other words, the foreign spouse may also make the application;
- (4) China courts will adjudicate on application if none of the following is found: (i) the foreign judgments has not become effective; (ii) the foreign court doesn't have jurisdiction over the divorce case; (iii) the default judgment is made in the absence of the [defendant who has not been properly summoned/served](#); (iv) the divorce of the couple has not been entertained or decided by China courts or another foreign court divorce judgment has been recognized; (v) the foreign court divorce judgment doesn't violate the basic principles of Chinese law, or China sovereignty, security and public policies.
- (5) where a foreign court has decided on the divorce of the couple, and the judgment has not been submitted to China court for recognition, either party of the couple may still sue to China court for divorce. In the meantime, once a divorce lawsuit is started at a China court between the parties who have divorced outside China, then there is no chance for either party to apply for recognizing the foreign court divorce judgment.
- (6) once the application is made to recognize the foreign court divorce judgment, if the applicant withdraws the application or the application is rejected by China court, then there is no chance to apply for such recognition again. However the parties can then choose to sue in China court to divorce again in China.

III. Date of Divorce in China, Which Date?

Here you see, there two dates that are relevant in our discussion: the day on which the foreign court divorce judgment takes effect and the day on which [China court formally recognizes the foreign divorce judgement](#).

So which date is the day the couple should be treated as divorced in China?

The rules have not specifically provided for which date, the effectiveness day of the original foreign divorce judgment or the day of adjudication of China courts, shall be the official divorce date for the divorced couple in China.

We did locate a piece of law jointly issued by China Supreme Court and several other ministries back in 1997 in which Chinese consulates are instructed to issue affidavit on marital status based on the date of effectiveness of the foreign court divorce judgment.

This stance does go in line with recognizing a foreign court divorce judgment which connotes the retrospective effect as to the foreign court divorce judgment.

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