

## Influence of the Civil Code on the Marriage and Family Life of Chinese Citizens

— 2<sup>nd</sup> Interpretation of the Civil Code

### ❖ Overview

As an encyclopedia of our society and life, *the Civil Code* has various aspects of influence on the daily life of thousands of households. In the last New Law Express, we introduced some of the provisions on the Real Rights in the Civil Code, and this issue gives an interpretation of the part of Marriage and Family (hereafter abbreviated as ‘MF’) of *the Civil Code*. Consisting of the basic rules for regulating marriage and family relations, the MF arouses wide concern and discussion in the society. It adheres to the basic principles of freedom of marriage and monogamy, takes into account the needs of modern social life and the development of modern values, and modifies, improves and innovates the current marriage and family system in China, by inheriting the general content of the currently implemented Marriage Law and Adoption Law.

The MF implements the main spirit of *the Civil Code* by underlining the principle of "Good Faith" and the core idea of "autonomy of private law" and showing full respect to the free will of individual citizens, owing to which Chinese citizens will have greater freedom to arrange their own life and develop better understanding of the significance of coping with marriage and family relations rationally. This is undoubtedly a major progress in the realization of the rule of law in China.

### ❖ Key Contents

#### I. Introducing “divorce cooling-off period”

According to the Article 1077 of *the Civil Code*, if, within 30 days after the marriage registration office receives a divorce registration application, either the husband or wife, who does not want to get divorced, may withdraw the divorce registration application from the marriage registration office. Within 30 days after the expiration of the above prescribed period, both the husband and wife shall, in person, apply to the marriage registration office for the issuance of divorce certificates; those who fail to make the application shall be deemed to have withdrawn the application for divorce.

Therefore, the so-called "divorce cooling-off period" refers to the 30 days left for a couple to reconsider about divorce. If the two parties still voluntarily divorce after the the 30-day period ends and go to the divorce registration office together, the divorce certificates will be issued then.

In the modern society where the phenomenon of "flash marriage and divorce" becomes increasingly more prominent and the divorce rate remains high, the introduction of the "divorce cooling-off period" is likely to help avoid impulsive and hasty divorces by giving time to divorce applicants to reflect on the problems in their marriage.

The "divorce cooling-off period" may have potential implications in the following respects:

1) By adjusting the existing divorce registration procedure, the divorce cooling-off period skillfully reminds citizens to be cautious about divorce, while ensuring the citizens' freedom to divorce. This not only reflects the country's policy orientation towards promotion of harmonious families and stable marriages, but also implements and maintains the basic principle of "autonomy of will" in the civil field;

2) Implementing the "divorce cooling-off period" will not substantially increase the administrative costs, but will objectively extend the period of completing divorce formalities, which to some extent, can curb "policy divorces" that aim at tax avoidance or lower mortgage interest rates;

3) With the implementation of the "divorce cooling-off period", how a husband and wife should protect their own rights and interests in the process of divorce and how to prevent either party from taking advantage of the "divorce cooling-off period" to extort properties or make other unreasonable claims will become important issues for open discussion in the future.

## **II. It has specified that spouses are eligible for legal representation in daily family matters**

"Legal Representation in Family Matters" refers to the right of spouses to legally represent each other in daily family matters. However, there is no stipulations about legal representation in family matters in the current *Marriage Law*. Now the Article 1060 of *the Civil Code* fills such a legal vacuum in *the Marriage Law*, which stipulating that "any civil juristic act that is performed by a spouse shall be binding on both parties thereto if such an act is made out of the needs of daily life unless otherwise agreed upon by the said spouse and the third party. The agreement on restriction on the scope of civil juristic acts that can be performed by one spouse reached by both sides shall not challenge any bona fide third party."

To understand the “legal representation in family matters”, we shall pay attention to the following aspects:

1) According to *the Civil Code*, the legal representation in family matters only apply to spouses with legally registered marriage, while other family members or couples in a cohabitation relationship are not applicable. The reason is that, as one of the legal consequences of being married, legal representation in family matters is provided by law and has the attribute of personal nature;

2) The scope of legal representation in family matters is limited to the civil juristic acts that performed due to the needs of daily family life, and the acts in family’s external business activities are not included. In current judicial practice, we may make comprehensive judgment about the nature of acts based on factors, such as transaction amount, whether spouses or other family members could benefit from such acts, the link between the purpose of acts and family affairs, whether there exists any civil juristic act that has been performed by one spouse which convinces a third party that his/her acts represent the will of the spouses as a whole;

3) Any civil juristic act that is performed by one spouse due to the needs of daily family life shall be binding on both parties thereto, while the said spouse may make an exception with the third party;

4) Spouses may conclude an agreement on the restriction on the scope of civil juristic acts that can be performed by each side, however, such an agreement shall not challenge any bona fide counterparty.

### **III. It has adjusted the criteria for determining the joint debts between husband and wife**

According to Article 41 of *the Marriage Law*, “at the time of divorce, debts incurred jointly by the husband and the wife during their married life shall be paid off jointly by them. Where their jointly possessed property is insufficient to pay the debts, or the property is in their separate possession, the two parties shall discuss alternative ways of payment; if they fail to reach an agreement, the People's Court shall make a judgment.” This Article does not explicitly illustrate the criteria for determining the joint debts between spouses, but only recognize the debts used for the common life during the marriage as the joint debts of spouses.

Comparing to *the Marriage Law*, Article 1064 of *the Civil Code* further specifies the criteria:

1) Debts incurred jointly by spouses in the form of signatures by both sides shall be deemed as joint debts of the spouses;

2) Debts acknowledged by either spouse after such debt was incurred by the other spouse or other form of expression of their common will shall be deemed as joint debts of the spouses;

3) Debts incurred by either spouse in his or her own name during the existence of the marriage relationship for the purpose of meeting the needs of the spouses' daily family life shall be deemed as joint debts of the spouses;

4) Any debt incurred by either spouse in his or her own name during the existence of the marriage relationship which exceeds the necessity of the spouses' daily family life shall not be deemed as common debt, unless the creditor can prove that such debt is used for the spouses to live together or operate business together, or is incurred based on expression of the spouses' common will.

The specification of the criteria for determining the joint debts between husband and wife in *the Civil Code* helps protect the the right to know and consent to the common property of the party who did not borrow, and prevent the phenomenon of "being in debt" from the root of debt incurring. At the same time, it also provides more effective protection for creditors from being unable to realize their claims because they cannot prove that a certain debt was a joint debt of the spouses. It shows positive significance for the protection of transaction security and the legitimate rights and interests of spouses.



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