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Marital properties in China

By Jason Tian

In the absence of a prenuptial agreement on marital properties, the statutory rules shall control what properties are community or separate properties.

Community Properties

According to Section 17 of PRC Marriage Law, the following properties obtained by the spouses during the period of marriage shall be categorized as the community properties:

- (1) Wages, salaries and bonuses;
- (2) Income of production and undertakings;
- (3) Income stemming from intellectual properties;
- (4) Properties obtained by way of inheritance or gift, except for those provided in sub-section 3 of Section 18 of the PRC Marriage Law (*see below*);
- (5) Other properties that should be classified as community property.

The obtainment referred to above should be construed as entitlement to the properties which does not necessarily require the physical possession thereof. For instance, one spouse buys TV set before getting married but he/she receives this TV set after getting married, this TV set belongs to the buying spouse only.

Wages, salaries and bonuses shall be construed in their broad sense to cover remunerations like allowances, welfares, stock options etc..

Item (2) refers to earnings of business undertakings (including agricultural production) or capital investments like equities, shares and stocks.

As to the blanket clause of item (5) above, according to the PRC Supreme Court, it encompasses the following properties during the period of marriage:

- (1) The income of investment consisting of the separate properties of one spouse;
- (2) The housing allowances or the share of the housing fund that the spouses have actually or

INSIDE THIS ISSUE

In this issue of "Love.Marriage", we go specific about the community property rules absent a prenuptial agreement thereon, briefing you on what assets will be deemed as community property and what assets will be otherwise deemed as separate property.

Bear in mind we are talking about marriages involving two persons of different nationalities.

should have acquired;

(3) the pension insurance amount or the bankruptcy compensation fee.

However, the High People's Court of Shanghai Municipality has issued guidelines that seem to run against the item (1) immediately above, which provide as follows:

- (1) In the case of rental in respect of an apartment separately owned by one spouse, given that the house is generally managed and maintained by both spouses, such rental is generally regarded as community property provided however that, if the owner spouse can demonstrate that the apartment leasing is conducted and managed by himself or herself, the rental thereof shall be regarded as separate property of the owner spouse;
- (2) Interests on the separately owned debentures, bonds or bank deposits shall be the separate property of the spouse owning such debentures, bonds or deposits;
- (3) The appreciation value of real properties, shares, stocks, bonds, funds, gold and antiques shall belong to the owner spouse of the same.

Separate Properties

Section 18 of the PRC Marriage Law provides that the following properties shall the separate properties of one spouse:

- (1) pre-marriage properties of one spouse;
- (2) fees received on account of bodily injuries such as medical care expenses, disability compensation etc.;
- (3) properties that are designated to be given to one spouse in a will or a gift contract;
- (4) daily articles used by one spouse only;
- (5) other properties that should be categorized as separate properties.

In case that it is not clear whether an item of property is community property or not, the spouse claiming to separately own it shall bear the burden of proof, failing which the property shall be viewed as community property.

Special Rules concerning Houses and Vehicles

1, Houses

In China, ownership in real property is not effectively acquired until the property is registered with government authority and an ownership certificate is issued to the owner. In that context, one may logically infer that, if one spouse buys a piece of real property before marriage but receives the ownership certificate after marriage, such real

property should be deemed as community property. However, the Shanghai High People's Court has interpreted that otherwise holding that such property is separately owned by the buying spouse.

In the case of a mortgaged house which is purchased by one spouse prior to marriage, if the other spouse helps to pay off the mortgage after marriage, upon divorce, the other spouse may only be entitled to recoup the money he or she has contributed in discharging the mortgage with no right to claim any portion of the appreciation value of the house after marriage.

2, Vehicles

Under the newly enacted PRC Property Law, the establishment of ownership pertaining to vehicles does not require registration of such vehicles with government authority. The rule is that the ownership to an automobile is transferred to the buyer upon delivery. However registration thereof will help to perfect the ownership (discussion over registration issue will fall out of the treatise of this newsletter, and if you want to know more in this regard, please write to us).

If one spouse buys a car which is delivered to him after marriage, the car still belongs to the buying spouse on the ground that the car is only a changed form of the money paid for the car which is separate property of the buying spouse.

Coming soon in the next issue:
We will, by illustration, inform you of the rules in
relation to how to deal with community property.

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江苏省徐州人，毕业于华东政法大学研究生院，获硕士学位。曾先后在英国高伟绅律师行上海代表处任高级法律翻译，并在北京市中伦金通律师事务所上海分所担任专职律师。现执业于中银律师事务所上海分所。

服务范围:

- (1) 劳动、婚姻家庭、人身损害赔偿、物业管理和房地产买卖和租赁等;
- (2) 外商投资企业设立、增资和变更、房地产投资（包括取得土地使用权、建设项目规划、施工等）、商业物业经营、公司治理结构（即股东、董事、经理等职权分配等）、股权转让和并购、产品质量等;
- (3) 法律顾问: 担任各类企业常年法律顾问，对企业经营进行事先法律风险防范，依法经营;
- (4) 法律翻译: 各类诉讼和非诉讼法律文件中英文互译、律师事务所英文网站的维护等。欢迎联系建立长期稳定的合作关系。

About Mr. Tian and his services:

Mr. Tian graduated from the renowned law school, East China University of Political Science and Law in Shanghai, and before joining Zhong Yin Law Firm, he served as senior translator at Clifford Chance LLP for 1 year and as an attorney-at-law at Zhonglun Law Firm for 2 years. His **legal services** cover FDI, M&A, real estate businesses (investment, sale, purchase, leasing and property management of both residential and commercial properties), corporate governance of FIEs etc. and other general legal businesses such as tort, marriages. He and his team also provide premium **legal translation service** to various clients.

如果您对上述内容有任何疑问，请致电、致信给我们！

If you have any questions about the above written contents, please do not hesitate to contact us!

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