Civil Code of the People’s Republic of China — Book V: Marriage and Family

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Contents

Table of Contents 1

Chapter I — General Provisions 1

Chapter II — Marriage 2

Chapter III — Family Relations 2

Chapter IV — Divorce 4

Chapter V — Adoption 6

Table of Contents

- Chapter I — General Provisions
- Chapter II — Marriage
- Chapter III — Family Relations
- Chapter IV — Divorce
- Chapter V — Adoption

Chapter I — General Provisions

Article 1040 — This Book regulates the civil relations arising from marriage and family.

Article 1041 — Marriage and family shall be protected by the State. A marriage system based on freedom of marriage, monogamy, and equality between men and women shall be implemented. The lawful rights and interests of women, minors, the elderly, and persons with disabilities shall be protected.

Article 1042 — Arranged marriage, mercenary marriage, and other acts that interfere with the freedom of marriage are prohibited. The exaction of money or property in connection with marriage is prohibited. Bigamy is prohibited. Cohabitation of a married person with another person is prohibited. Domestic violence is prohibited. Maltreatment and abandonment among family members are prohibited.

Article 1043 — Families shall establish good family values, promote family virtues, and place emphasis on the construction of family culture. Husband and wife shall be faithful to each other and respect each other; family members shall respect the elderly, care for the young, help each other, and maintain equal, harmonious, and civilized marriage and family relations.

Article 1044 — Adoption shall be in the best interests of the adopted minor and shall protect the lawful rights and interests of the adopter and the adopted person. The sale of children in the name of adoption is prohibited.

Source: https://www.danyoungcpa.com/civil-code-book-5-marriage-family-prc-2020-english-translation/

Article 1045 — Relatives include spouses, blood relatives, and relatives by marriage. Spouses, parents, children, brothers and sisters, paternal grandparents, maternal grandparents, paternal grandchildren, and maternal grandchildren are close relatives. Spouses, parents, children, and other close relatives who live together are family members.

Chapter II — Marriage

Article 1046 — Marriage shall be based on the complete willingness of both the man and the woman. Neither party may use duress against the other party, and no organization or individual may interfere.

Article 1047 — The age of marriage shall be no earlier than 22 years for the man and no earlier than 20 years for the woman.

Article 1048 — Persons who are lineal relatives by blood or collateral relatives by blood within three generations are prohibited from marrying.

Article 1049 — Both the man and the woman who intend to marry shall apply for marriage registration in person at the marriage registration authority. A marriage is established upon registration. Where the parties have not completed the marriage registration, the registration shall be completed.

Article 1050 — After marriage registration, the woman may become a member of the man's family or the man may become a member of the woman's family, as agreed by the parties.

Article 1051 — A marriage shall be void under any of the following circumstances: (1) bigamy; (2) marriage between persons who are prohibited from marrying as relatives; (3) marriage before reaching the legal age of marriage.

Article 1052 — Where a marriage is entered into as a result of duress, the party under duress may apply to the people's court for annulment of the marriage. The application for annulment shall be made within one year from the date on which the duress ceases. Where the party under duress whose personal freedom is restricted applies to annul the marriage, the application shall be made within one year from the date on which the party's personal freedom is restored.

Article 1053 — Where one party suffers from a major illness, that party shall truthfully inform the other party before marriage registration; where the party fails to do so, the other party may apply to the people's court for annulment of the marriage. The application shall be made within one year from the date on which the party knows or should have known of the annulment ground.

Article 1054 — A void or annulled marriage shall have no legal effect ab initio and the parties shall not have the rights and obligations of husband and wife. Any property acquired during the period of cohabitation shall be disposed of by agreement of the parties; where agreement cannot be reached, the people's court shall make a judgment based on the principle of giving consideration to the party without fault. Disposition of property arising from a void marriage caused by bigamy may not prejudice the property rights of the party to the lawful marriage. The provisions of this Code regarding parents and children shall apply to the children born of the parties to a void or annulled marriage.

Chapter III — Family Relations

Article 1055 — Husband and wife shall be equal in marriage and family.

Article 1056 — Both husband and wife shall have the right to use their own surnames and given names.

Article 1057 — Both husband and wife shall have the freedom to participate in production, work, study, and social activities, and neither party may restrict or interfere with the other party in this regard.

Article 1058 — Both husband and wife shall have the equal right and obligation to raise, educate, and protect their minor children, and to jointly assume the obligation to support the minor children.

Article 1059 — Husband and wife shall have the obligation to support each other. The party in need of support shall be entitled to claim support from the other party where the other party fails to fulfill the obligation of support.

Article 1060 — A civil legal act performed by one spouse for the needs of the daily life of the family shall be effective against both spouses, unless otherwise agreed by one spouse and the other party. Restrictions agreed between the spouses on the scope of civil legal acts that one spouse may perform may not be asserted against a bona fide counterpart.

Article 1061 — Husband and wife shall have the right to inherit from each other.

Article 1062 — The following property acquired by husband and wife during the marriage shall be community property of the spouses: (1) wages, bonuses, and remuneration for labor services; (2) proceeds from production, business operation, and investment; (3) proceeds from intellectual property rights; (4) property inherited or given as a gift, except as provided in Article 1063(3); (5) other property that shall be owned in common. Husband and wife shall have equal rights to dispose of community property.

Article 1063 — The following property shall be the separate property of one spouse: (1) pre-marital property of one spouse; (2) compensation for personal injury or disability received by one spouse; (3) property given to or inherited by one spouse as designated in a will or gift contract; (4) articles of daily use exclusively used by one spouse; (5) other property that shall belong to one spouse.

Article 1064 — Debts incurred by both spouses in their joint expression of intent, such as a debt incurred by both spouses jointly signing a contract, and debts incurred by one spouse during the marriage in his or her own name for the needs of the daily life of the family, shall be joint debts of the spouses. Debts incurred by one spouse during the marriage in his or her own name that exceed the needs of the daily life of the family shall not be joint debts of the spouses, unless the creditor can prove that the debts were used for the common life of the spouses, for the common production or business operation of the spouses, or were incurred based on the joint expression of intent of both spouses.

Article 1065 — The man and the woman may agree that the property acquired during the marriage and the pre-marital property shall be owned by each party, owned jointly, or partially owned by each party and partially owned jointly. The agreement shall be in writing. Where there is no agreement or the agreement is unclear, the provisions of Articles 1062 and 1063 shall apply. The agreement on the property acquired during the marriage and the pre-marital property shall be legally binding on both parties. Where the spouses have agreed that the property acquired during the marriage shall be owned by each party, debts incurred by one spouse shall be satisfied with the separate property of that spouse, except where the counterpart creditor knows of the agreement.

Article 1066 — Under any of the following circumstances during the marriage, one spouse may apply to the people’s court for division of the community property: (1) where one spouse conceals, transfers, sells, destroys, or squanders community property, or creates a false joint debt, or commits other acts that seriously damage the community property interest; (2) where a person who has a statutory obligation of support to one spouse suffers from a major illness and needs medical treatment, and the other spouse refuses to pay the relevant medical expenses.

Article 1067 — Where parents fail to fulfill the obligation of support, minor children or adult children who are unable to live independently shall have the right to claim support from their parents. Where adult children fail to fulfill the obligation of support, parents who have no ability to work or have difficulties in life shall have the right to claim support from their adult children.

Article 1068 — Parents shall have the right and obligation to educate and protect their minor children. Where minor children cause damage to the State, a collective, or another person, the parents shall bear civil liability in accordance with the law.

Article 1069 — Children shall respect the marital rights of their parents and shall not interfere with their parents' divorce, remarriage, or post-marriage life. The obligation of children to support their parents shall not terminate upon a change in the parents' marital relationship.

Article 1070 — Parents and children shall have the right to inherit from each other.

Article 1071 — Children born out of wedlock shall have the same rights as children born in wedlock, and no organization or individual may harm or discriminate against them. A biological parent who does not directly raise a child born out of wedlock shall bear the obligation to pay the child support expenses for the minor child or the adult child who is unable to live independently.

Article 1072 — Maltreatment or discrimination of a stepchild by a stepparent is prohibited. The provisions of this Code regarding the relationship between parents and children shall apply to the rights and obligations between a stepfather or stepmother who has a relationship of support and upbringing with a stepchild, and the stepchild.

Article 1073 — Where a parent has an objection to the parent-child relationship and has legitimate reasons, the parent may bring an action in the people's court to affirm or deny the parent-child relationship. Where an adult child has an objection to the parent-child relationship and has legitimate reasons, the child may bring an action in the people's court to affirm the parent-child relationship.

Article 1074 — Paternal grandparents and maternal grandparents who can afford it shall have the obligation to raise their minor paternal grandchildren or maternal grandchildren whose parents have died or whose parents are unable to raise them. Paternal grandchildren or maternal grandchildren who can afford it shall have the obligation to support their paternal grandparents or maternal grandparents whose children have died or whose children are unable to support them.

Article 1075 — Brothers and sisters who can afford it shall have the obligation to support their minor brothers and sisters whose parents have died or whose parents are unable to support them. Brothers and sisters who have been supported by their brothers and sisters and who can afford it shall have the obligation to support their brothers and sisters who have no ability to work, no source of income, and no supporter.

Chapter IV — Divorce

Article 1076 — Where both husband and wife voluntarily agree to divorce, they shall enter into a written divorce agreement and apply for divorce registration in person at the marriage registration authority. The divorce agreement shall specify the parties' intention to divorce voluntarily and the consensus reached on matters such as child support, property division, and debt settlement.

Article 1077 — Within 30 days from the date on which the marriage registration authority receives the divorce registration application, either party may withdraw the divorce registration application if unwilling to divorce. Within 30 days after the expiry of the time period specified in the preceding paragraph, both parties shall personally appear before the marriage registration authority to apply for the issuance of a divorce certificate; where the parties fail to make the application, the divorce registration application shall be deemed to have been withdrawn.

Article 1078 — The marriage registration authority shall, after verifying that both parties do indeed desire to divorce voluntarily and have reached consensus on matters such as child support, property division, and debt settlement, register the divorce and issue a divorce certificate.

Article 1079 — Where one party alone desires a divorce, the relevant organization may mediate, or the party may institute divorce proceedings directly in the people's court. In hearing a divorce case, the people's court shall first conduct mediation; where the relationship has broken down and mediation fails, the divorce shall be granted. A divorce shall be granted if mediation fails under any of the following circumstances: (1) bigamy or cohabitation of a married person with another person; (2) domestic violence, or maltreatment or

Source: https://www.danyoungcpa.com/civil-code-book-5-marriage-family-prc-2020-english-translation/

abandonment of a family member; (3) persistent gambling, drug abuse, or other vices that remain incorrigible despite repeated admonition; (4) separation for two full years due to emotional incompatibility; (5) other circumstances that cause the breakdown of the marriage relationship. Where one party is declared missing and the other party institutes divorce proceedings, the divorce shall be granted. Where, after a judgment has been made denying divorce and the parties have been separated for another full year, one party institutes divorce proceedings again, the divorce shall be granted.

Article 1080 — The marital relationship shall be dissolved upon completion of divorce registration or upon the divorce judgment or mediation agreement of the people's court becoming effective.

Article 1081 — The spouse of a member of the armed forces on active service who desires a divorce shall obtain the consent of the member of the armed forces, unless the member of the armed forces is seriously at fault.

Article 1082 — The husband may not file for divorce during the pregnancy of the wife, within one year after the wife gives birth, or within six months after the wife terminates a pregnancy, unless the wife files for divorce or the people's court deems it necessary to accept the husband's divorce petition.

Article 1083 — Where, after divorce, both parties voluntarily resume the marital relationship, they shall apply for marriage registration anew at the marriage registration authority.

Article 1084 — The relationship between parents and children shall not be terminated upon the divorce of the parents. After divorce, whether the child is directly raised by the father or the mother, the child shall remain the child of both parents. After divorce, both parents shall continue to have the right and obligation to raise, educate, and protect the child. In principle, a child under two years of age shall be directly raised by the mother. Where the parents of a child who has reached two years of age fail to reach an agreement on the raising of the child, the people's court shall decide based on the specific circumstances of both parties and in accordance with the principle of the best interests of the minor child. Where a child has reached eight years of age, the true will of the child shall be respected.

Article 1085 — After divorce, where the child is raised by one party directly, the other party shall bear part or all of the child support expenses. The amount and duration of the expenses shall be determined by agreement of both parties; where the agreement fails, the people's court shall decide. The agreement or judgment shall not preclude the child from making a reasonable request to either parent for an amount exceeding the amount determined in the agreement or judgment when necessary.

Article 1086 — After divorce, a parent who does not directly raise a child shall have the right to visit the child, and the other parent shall have the obligation to facilitate such visitation. The method and time of visitation shall be determined by agreement of the parties; where the agreement fails, the people's court shall decide. Where a parent's visitation is detrimental to the physical or mental health of the child, the people's court shall suspend the visitation; after the cause of the suspension has disappeared, the visitation shall be resumed.

Article 1087 — At the time of divorce, the community property of the spouses shall be disposed of by agreement of both parties; where the agreement fails, the people's court shall decide based on the specific circumstances of the property and in accordance with the principle of giving consideration to the rights and interests of the children, the wife, and the party without fault. The rights and interests of the husband or wife in the contracted and managed land of the family shall be protected in accordance with the law.

Article 1088 — Where one spouse has assumed more obligations in raising children, caring for the elderly, or assisting the other spouse in work, that spouse shall have the right at the time of divorce to claim compensation from the other spouse, and the other spouse shall pay compensation. The specific method shall be determined by agreement of both parties; where the agreement fails, the people's court shall decide.

Article 1089 — At the time of divorce, the joint debts of the spouses shall be satisfied jointly. Where the community property is insufficient or the property is owned by each party, the debts shall be settled by

Source: https://www.danyoungcpa.com/civil-code-book-5-marriage-family-prc-2020-english-translation/

agreement of both parties; where the agreement fails, the people's court shall decide.

Article 1090 — Where, at the time of divorce, one party has difficulties in life, the other party, if able to afford it, shall provide appropriate assistance. The specific method shall be determined by agreement of both parties; where the agreement fails, the people's court shall decide.

Article 1091 — Where divorce is caused under any of the following circumstances, the party without fault shall have the right to claim damages: (1) bigamy; (2) cohabitation of a married person with another person; (3) domestic violence; (4) maltreatment or abandonment of a family member; (5) other material faults.

Article 1092 — Where one spouse conceals, transfers, sells, destroys, or squanders the community property of the spouses, or creates a false joint debt of the spouses in an attempt to appropriate the property of the other spouse, at the time of divorce, when dividing the community property, the spouse may be given a reduced share or no share. Where, after divorce, the other party discovers any of the acts described above, the other party may bring an action in the people's court to request re-division of the community property.

Chapter V — Adoption

Article 1093 — The following minors may be adopted: (1) orphans who have lost both parents; (2) minors whose biological parents cannot be found; (3) children whose biological parents are unable to raise them due to special difficulties.

Article 1094 — The following individuals and organizations may act as the persons placing out children for adoption: (1) guardians of orphans; (2) child welfare institutions; (3) biological parents who are unable to raise their children due to special difficulties.

Article 1095 — Where both biological parents of a minor are persons with no capacity for civil acts and may cause serious harm to the minor, the guardian of the minor may place the minor out for adoption.

Article 1096 — Where a guardian places an orphan out for adoption, consent shall be obtained from the person who has the obligation to support the orphan. Where the person with the obligation of support objects to the adoption and the guardian is unwilling to continue performing the duties of guardianship, the guardian shall be replaced in accordance with the relevant provisions of Book I of this Code.

Article 1097 — Where biological parents place their child out for adoption, both parents shall jointly place out the child. Where one of the biological parents is unknown or cannot be found, one parent may unilaterally place out the child.

Article 1098 — An adopter shall meet all of the following conditions: (1) has no children or has only one child; (2) has the ability to raise, educate, and protect the adoptee; (3) does not suffer from any disease that the medical profession considers medically unfit to adopt a child; (4) has no criminal record that would be detrimental to the healthy growth of the adoptee; (5) has reached 30 years of age.

Article 1099 — Adoption of a child of a collateral relative of the same generation within three generations may be exempted from the restrictions of Article 1093(3), Article 1094(3), and Article 1102. Adoption of a child of a collateral relative of the same generation within three generations by an overseas Chinese may also be exempted from the restriction of Article 1098(1).

Article 1100 — A childless adopter may adopt two children; an adopter who has one child may adopt only one more child. Adoption of an orphan, a disabled minor, or a minor from a child welfare institution whose biological parents cannot be found may be exempted from the restrictions of the preceding paragraph and Article 1098(1).

Article 1101 — Where a married person adopts a child, the adoption shall be made jointly by both spouses.

Article 1102 — Where a person without a spouse adopts a child of the opposite sex, the age difference between the adopter and the adoptee shall be at least 40 years.

Article 1103 — A stepfather or stepmother may, with the consent of the biological parents of the stepchild, adopt the stepchild, and may be exempted from the restrictions of Articles 1093(3), 1094(3), 1098, and 1100(1).

Article 1104 — Both the adopter and the person placing out the child shall consent to the adoption. Where the adopted minor has reached eight years of age, the consent of the adoptee shall be obtained.

Article 1105 — Adoption shall be registered with the civil affairs authority of the people's government at the county level or above. The adoptive relationship shall be established from the date of registration. Where the biological parents of a minor cannot be found, the civil affairs authority handling the registration shall make a public announcement before registration. The parties to an adoptive relationship may enter into an adoption agreement on a voluntary basis. Where the parties to an adoptive relationship request notarization of the adoption, either party or both parties may apply to a notary public for the notarization.

Article 1106 — Upon the establishment of the adoptive relationship, the public security authority shall handle the household registration matters for the adoptee in accordance with the relevant State provisions.

Article 1107 — After the establishment of the adoptive relationship, the rights and obligations between the adoptive parents and the adopted child shall be governed by the provisions of this Code regarding the relationship between parents and children. The rights and obligations between the adopted child and the close relatives of the adoptive parents shall be governed by the provisions of this Code regarding the close relationship between children and the close relatives of the parents. The rights and obligations between the adopted child and the biological parents and other close relatives shall be terminated upon the establishment of the adoptive relationship.

Article 1108 — After the establishment of the adoptive relationship, the adopted child may adopt the surname of the adopter, or may retain his or her original surname with the consent of all parties.

Article 1109 — Adoption by a foreigner may be handled in accordance with the law and with the approval of the competent authority of the foreigner's country of nationality and after the review and approval of the civil affairs authority of the State Council of the PRC.

Article 1110 — Where an adopter or a person placing out a child for adoption requests that the parties keep the adoption confidential, other persons shall respect their will and may not disclose such information.

Article 1111 — An adoptive relationship may be terminated by agreement of the parties. Where the adopted child has reached eight years of age, the consent of the adoptee shall be obtained. Where an adopter fails to perform the obligation to raise the child and commits acts of maltreatment, abandonment, or other acts that infringe upon the lawful rights and interests of the minor adopted child, the person placing out the child shall have the right to request termination of the adoptive relationship. Where the adopter and the person placing out the child fail to reach an agreement on termination, either party may bring an action in the people's court.

Article 1112 — Where the adoptive relationship is terminated, the rights and obligations between the adopted child and the adoptive parents and their close relatives shall be terminated accordingly, and the rights and obligations between the adopted child and the biological parents and their close relatives shall be automatically restored. However, where the adopted child has reached majority at the time of termination, whether the rights and obligations between the adopted child and the biological parents and their close relatives are restored may be determined through consultation.

Article 1113 — Where the adoptive relationship is terminated, an adult adopted child who has been raised by the adoptive parents shall pay living expenses to the adoptive parents who have no ability to work and no source of income. Where the adoptive relationship is terminated due to maltreatment or abandonment of the adopted child by the adoptive parents when the child was a minor, the adoptive parents shall not have the right to claim compensation for the adoption expenses from the person placing out the child. Where an adult adopted child maltreats or abandons the adoptive parents, thereby causing the termination of the adoptive

relationship, the adoptive parents may claim compensation from the adopted child for the adoption expenses.

Article 1114 — Where the law has other provisions regarding the adoption of a child by a foreigner, such provisions shall apply.

Article 1115 — This Book shall come into effect on January 1, 2021. The Marriage Law of the People's Republic of China and the Adoption Law of the People's Republic of China shall be repealed on the same date.

Disclaimer: This translation is provided for informational and reference purposes only. While every effort has been made to ensure accuracy, this is not an official translation and should not be relied upon as legal advice. The official Chinese text of the Civil Code of the People's Republic of China shall prevail. For matters involving legal rights or obligations, please consult a qualified legal professional familiar with PRC law. Dan Young Business Consultancy makes no representation or warranty, express or implied, as to the accuracy or completeness of this translation and accepts no liability for any loss or damage arising from reliance on it.