



Divorce by Mutual Consent in the People's Republic of China

December 1995

LL File No. 2001-11372
LRA-D-PUB-002259

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DIVORCE BY MUTUAL CONSENT IN THE PEOPLE'S REPUBLIC OF CHINA

Divorce is governed in the People's Republic of China (PRC) by the Marriage Law.¹ It provides in article 24 that divorce shall be granted if husband and wife both desire it. The Law further states that application for divorce shall be made to the marriage registration office, but it does not require that the parties be present for a divorce to be concluded. It does require that appropriate arrangements be made for the care of any children and the disposition of property. However, the Regulations on Marriage Registration, adopted in 1994 and applicable to "Chinese citizens who marry, divorce, or remarry within the national boundaries of China,"² do state in article 14 that, "The parties filing divorce shall apply for divorce registration in person with the marriage registration administrative office in the locality where one party of the marriage has residency registration."

Prior to the adoption of the 1994 regulations, the Supreme People's Court had issued a notification on the subject of the procedures for divorces between parties who are studying abroad at the time they seek a divorce.³ According to this document, when neither party is able to return to China, they may appoint authorized representatives in China to handle the matter. These representatives may be friends, relatives, or lawyers. The representatives may submit statements on the views of the parties on the matter of the divorce in writing to the people's court or to the marriage registration organ. The documents authorizing persons to act as representatives and the statements the representatives submit must be notarized, either by a public notary organ or by the Chinese embassy or consulate in the country where the parties are temporarily residing.

Since the new Regulations make no reference to the case of citizens who wish to divorce while abroad, it is probable that the procedure described in the Supreme People's Court notification is still available. Parties seeking a divorce abroad should seek written confirmation from the Chinese authorities on the validity of the use of proxies.

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Law Library of Congress
December 1995

¹ Promulgated Sept. 10, 1980, and effective from Jan. 1, 1981. Text available in English translation in 1 *The Laws of the People's Republic of China 1979-1982* 185-189 (Beijing, Foreign Languages Press, 1987).

² Art. 2. Adopted Jan. 12, 1994, promulgated on and effective from Feb. 1, 1994. English translation available in Foreign Broadcast Information Service, DAILY REPORT: CHINA, Mar. 9, 1994, at 38-41.

³ Dec. 31, 1985. Text available in Chinese in *Zhonghua renmin gongheguo falü quanshu* [Complete Book of Laws of the People's Republic of China] 509 (Beijing, People's Press, 1989).