

# Community Property Law & Trust

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# **1. Community Property Law of Mainland China**



## Basic Rules

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The basic rule from the **Marriage and Family Chapter** (Chapter V) of **PRC Civil Code** (January 1, 2021):



**Community property** regime will apply by default, but could be changed through a marriage contract.



## Marital Property

### Article 1062 of Civil Code

The following property acquired by the spouses during their marriage constitutes marital property and are jointly owned by the spouses:

- (1) salaries and wages as well as bonuses and other remuneration received from services rendered;
- (2) proceeds obtained from production, business operation, and investment;
- (3) proceeds arising from intellectual property rights;
- (4) property acquired from inheritance or given as a gift, except as otherwise provided in Subparagraph (3) of Article 1063 of this Code; and
- (5) other properties that shall be jointly owned by the spouses.

The spouses have equal right to dispose of marital property.

## Separate Property

### Article 1063 of Civil Code

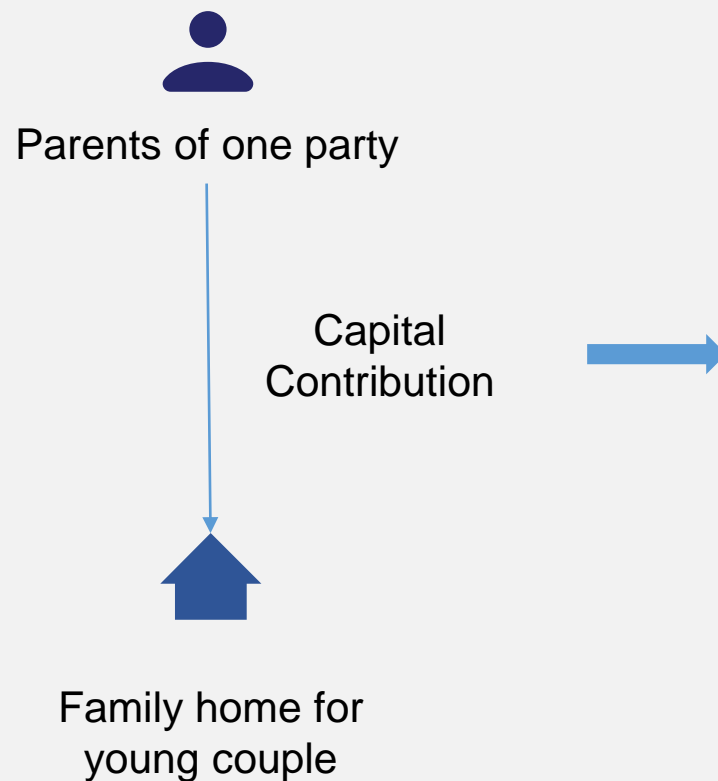
The following property constitutes separate property of one of the spouses:

- (1) premarital property of one spouse;
- (2) compensation or indemnification received by one spouse for injury inflicted upon him;
- (3) property that belongs to only one spouse as provided in a will or gift contract;
- (4) articles exclusively used by one spouse for daily life; and
- (5) other property that shall be owned by one spouse.



# Case Study

## After Marriage

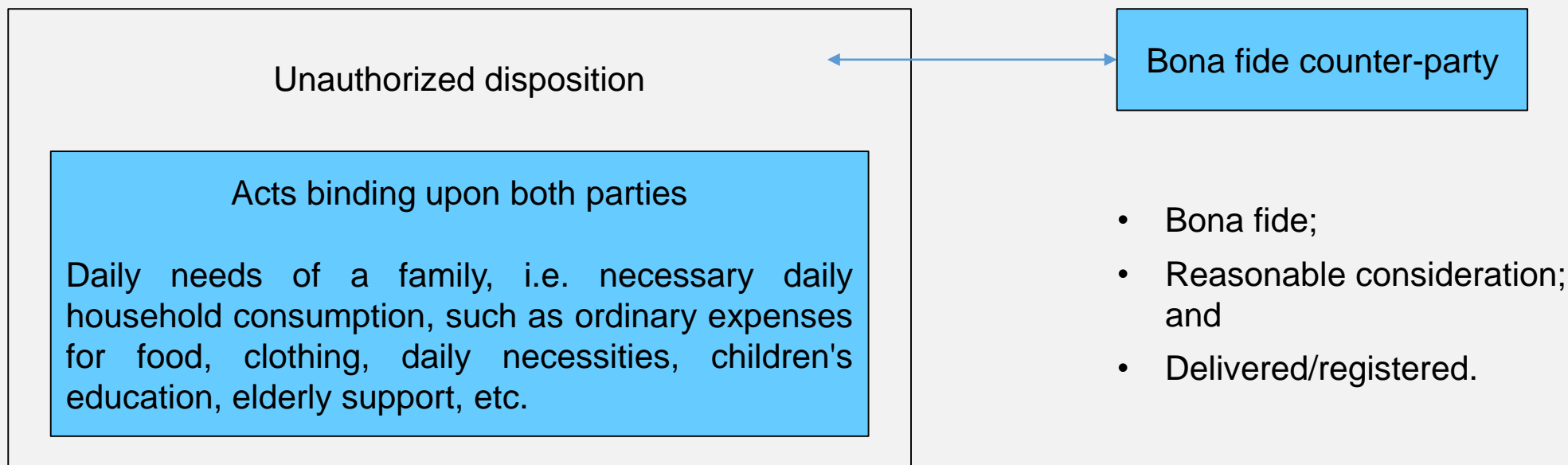


- Step 1: In absence of a contract, deemed as community property
- Step 2: In accordance with contract, if any



# Disposition of Marital Assets

Article 1060 of Civil Code: Agency Right for Daily Family Matters





## Law of the People's Republic of China on the Application of Law to Civil Relations Involving Foreign Interests

In 2011

### With contract

habitual residence of either party  
or  
lex patriae of either party  
or  
lex situs of their main property

### Without contract

common habitual residence



common lex patriae



## English Conflict Rules

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Rule 165 from Dicey, Morris & Collins, The Conflict of Laws (15 th ed.) :

"In the absence of a contract or settlement, the rights obtained by the husband and wife in each other's **movable property** as a result of the marriage, whether that property is possessed at the time of the marriage or acquired afterwards, are determined by **the law of the matrimonial domicile**.

Where, **at the time of the marriage, both parties are domiciled in the same country**, the matrimonial domicile is (in the absence of special circumstances) that country."



## **2. PRC Domestic Trust**



# Industry Overview

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As of the end of June 2020, there are 9,049 existing family trusts with total trust assets value of 186.352 billion yuan; 2,950 insurance premium trusts with a value of 6.303 billion yuan; and 394 charitable trusts with a scale of 3.609 billion yuan.

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RMB 186.352  
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# PRC Family Trust





# PRC Family Trust

2018.8.17 Banking and Insurance Regulatory Commission

《信托部关于加强管产管理业务过渡期内信托监管工作的通知》

家族信托是指信托公司接受单一个人或者家庭的委托，以家庭财富的**保护**、**传承**和**管理**为主要信托目的，提供**财产规划**、**风险隔离**、**资产配置**、**子女教育**、**家族治理**、**公益（慈善）事业**等定制化事务管理和金融服务的信托业务。

Xin Tuo Han [2018] **37** defined “family trust” for the 1st time

Family trust is a trust business in which a trust company is entrusted by an individual or a family to provide customized management and financial services for the purpose of **family wealth protection**, **succession** and **management**, such as **estate planning**, **asset allocation**, **risk isolation**, **children's education**, **family governance**, **philanthropy**, etc..



## PRC Family Trust

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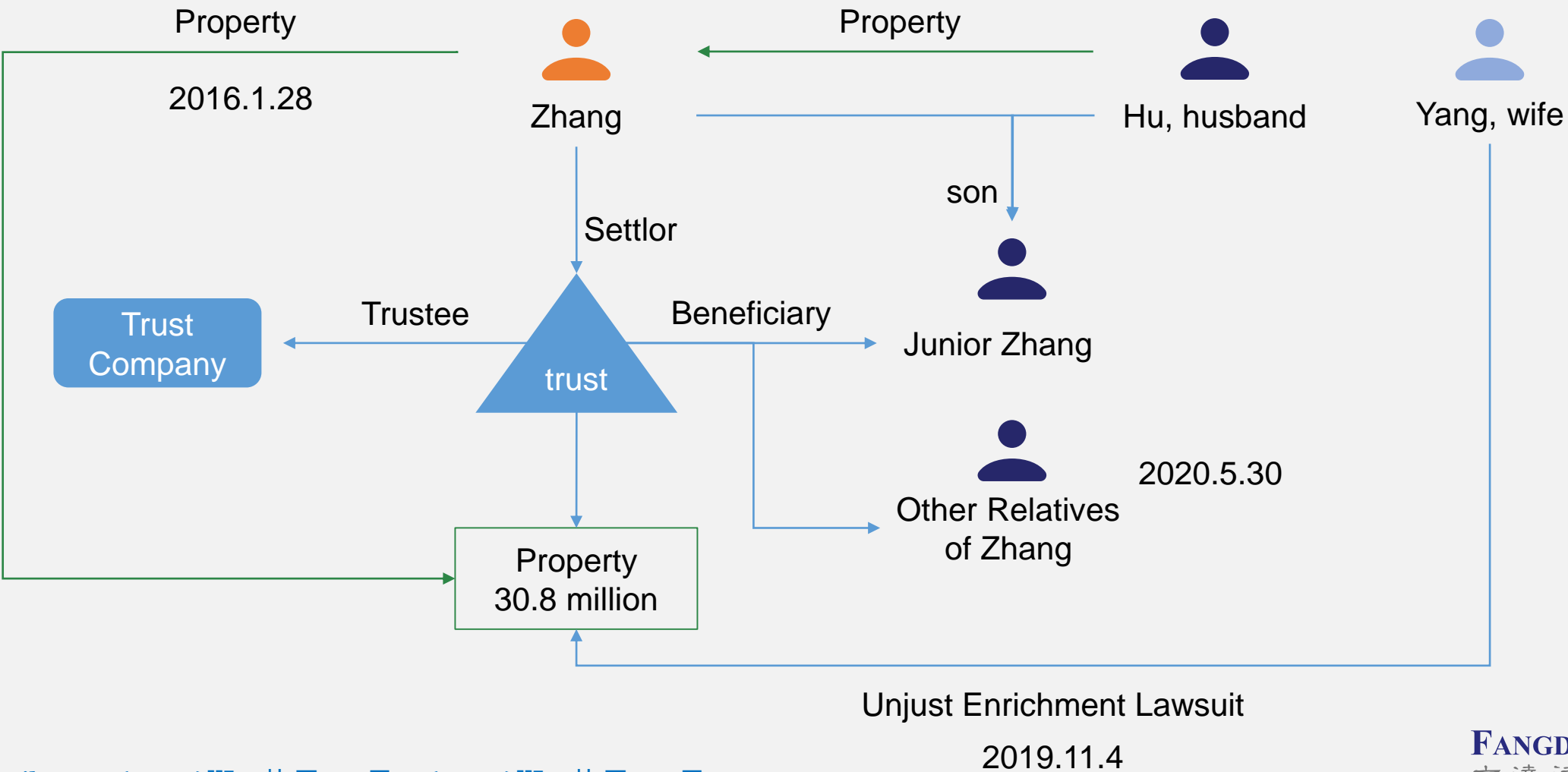
“Compulsory execution of the trust property shall not be carried out except in one of the situations listed below:

- (1) **prior to** the establishment of a trust, a creditor already has the rights of a **priority creditor** in relation to the trust property and has exercised these rights in accordance with the law;
- (2) in administering trust affairs trustees have run up debts and creditors have demanded the discharging of these debts;
- (3) tax that shall be borne by the trust estate itself needs to be paid; or
- (4) other situations stipulated by the law.”

—— Article 17 of PRC Trust Law

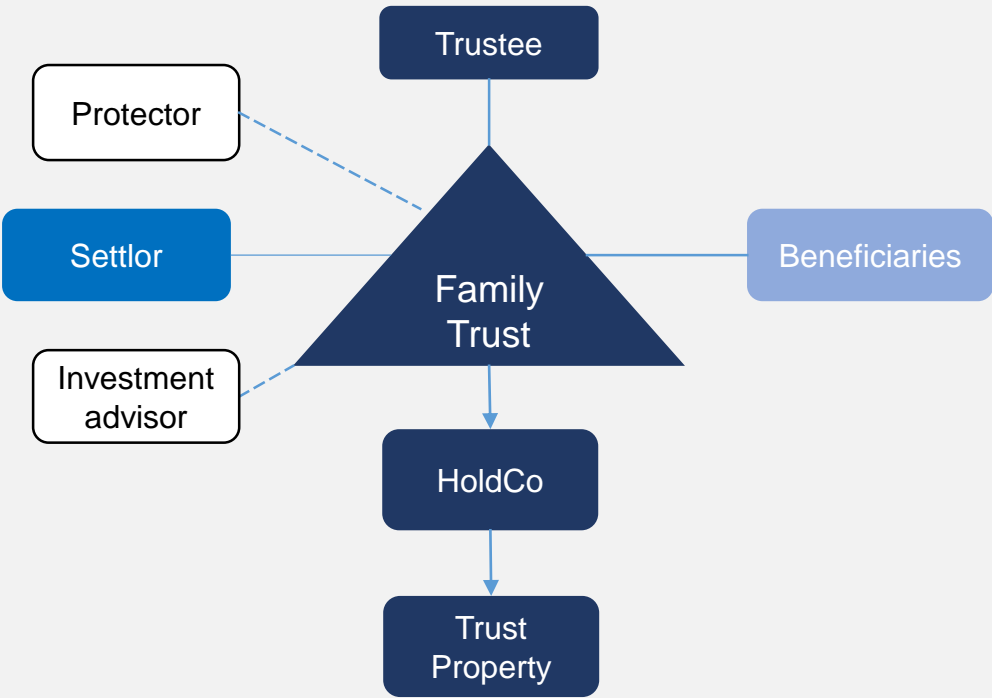


# Case Study

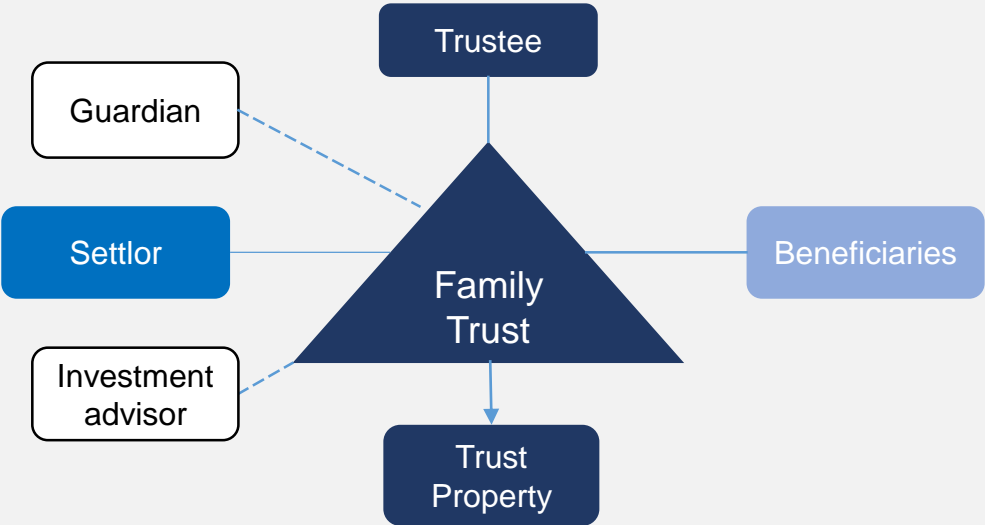




# Offshore Trust



# PRC Trust



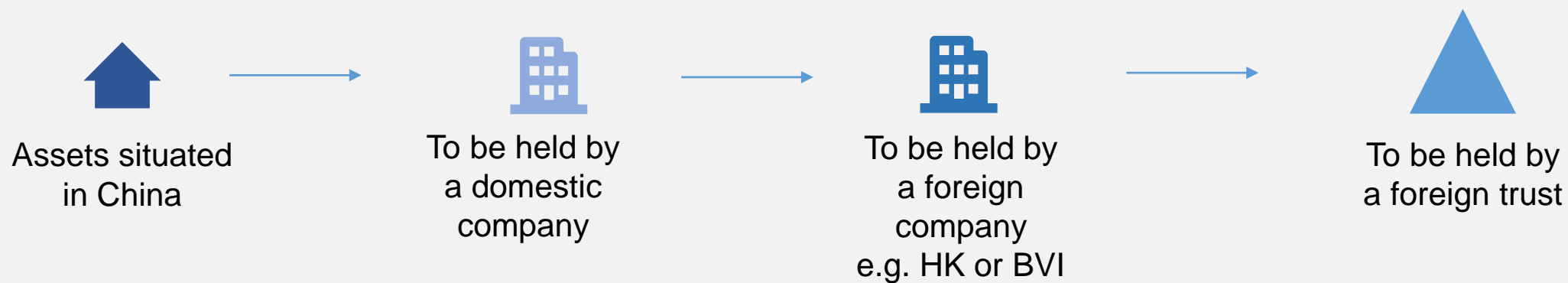


# 3. Offshore Trust



# China Assets & Foreign Trust

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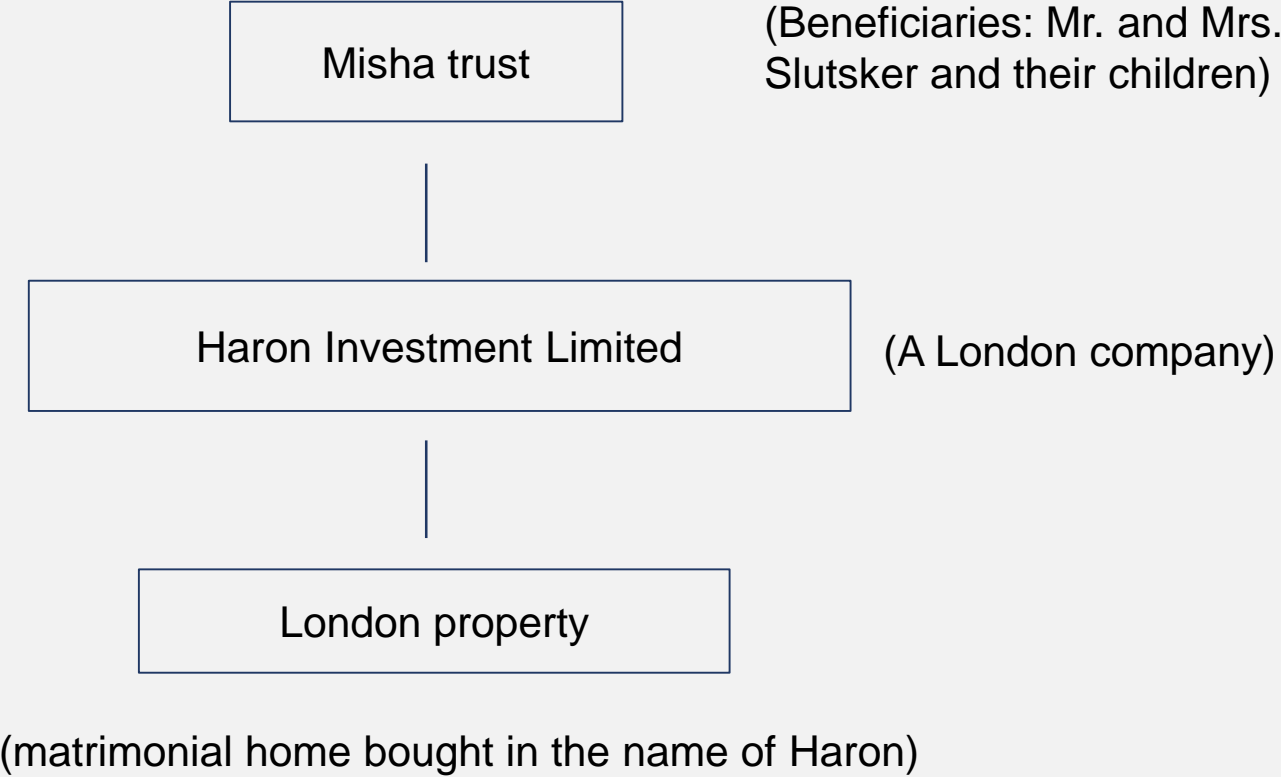


(Regulatory Restrictions & Tax Implication Should Be Considered.)



# Slutsker v Haron

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# Russian Law vs. PRC Law

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## 1. Disposition of the Joint Family Property

### Family Code of Russian Federation:

When one of the spouses executes a transaction, it should be presumed that he or she acts on the basis of consent of the other spouse unless other spouse proves otherwise within a specified time period.

### PRC Civil Code:

For any transaction exceeding the scope of daily-life agency right, it should obtain both spouses' consent, unless that transaction satisfies the requirements of bona fide acquisition.

## 2. Trust

Russia Law: do not recognize trust

PRC Trust Law: came into effect since 2001



# Major elements of Chinese divorce case involving foreign trusts

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**China Matrimonial  
Property Law**

**Foreign Court**

**China Court**

**Foreign Trust Law**



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