



FANGDA PARTNERS
方達律師事務所

Community Property Law & Trust

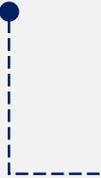
Jane Ren

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1. Community Property Law of Mainland China

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

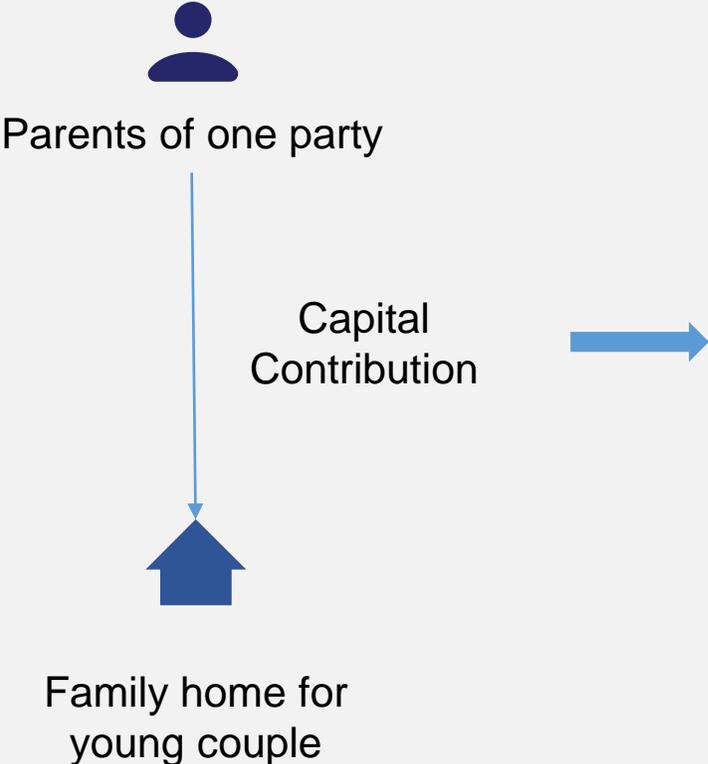
Article 1063 of Civil Code

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

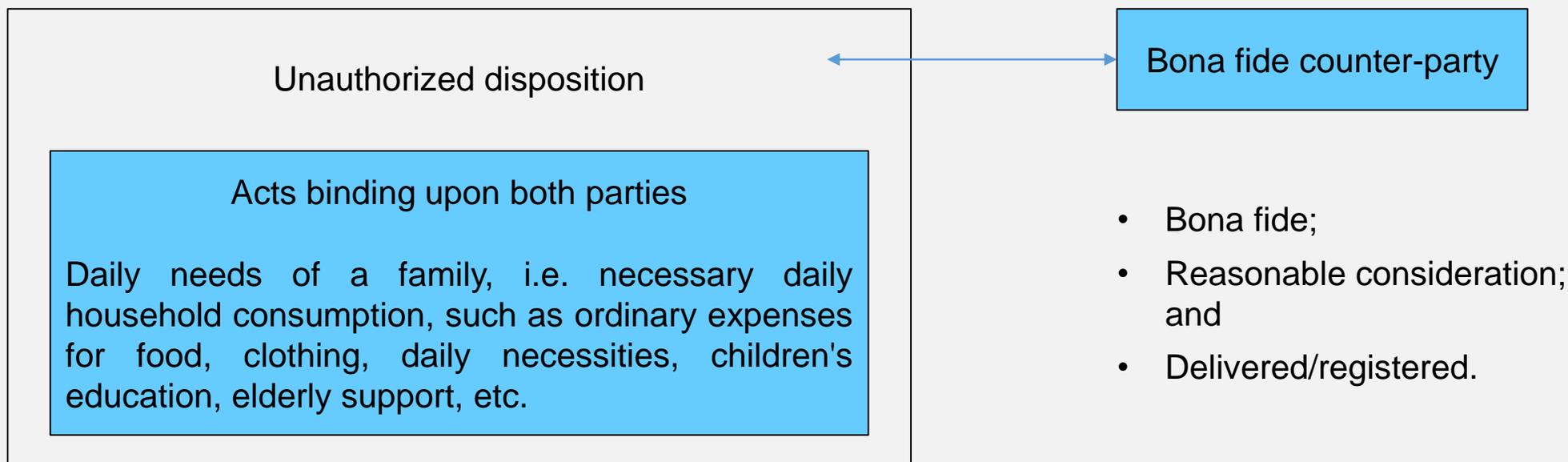
After Marriage



- 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

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

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.



PRC Family Trust



Year 2001
PRC Trust Law
was effective

Year 2013
“the first year
of an era of
private trust”

Year 2018
Xin Tuo Han [2018] 37
Notice on Strengthening
Trust Supervision during
the Transitional Period of
Regulating Asset
Management

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..

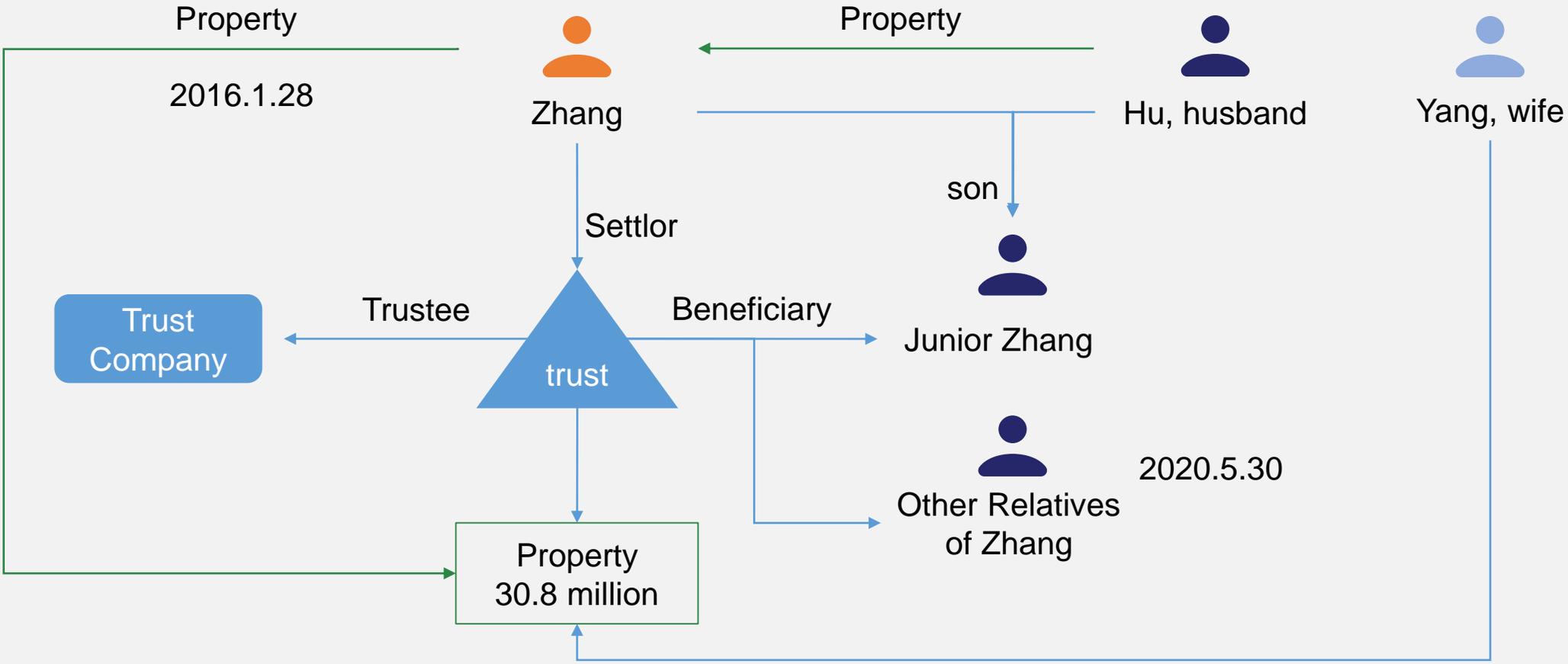
PRC Family Trust

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

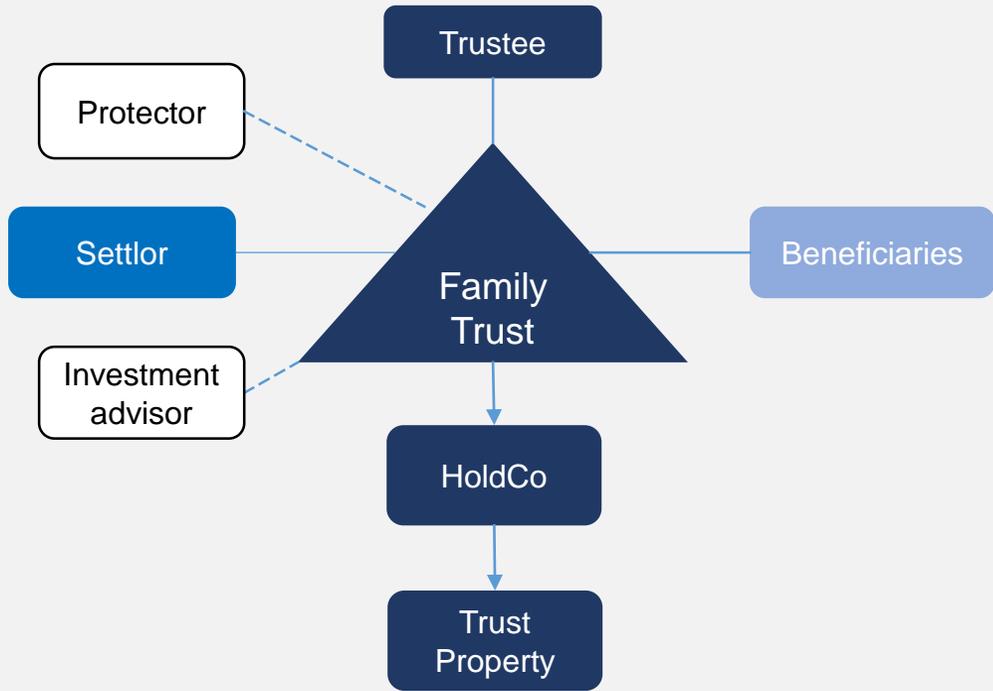
- (1) **prior to** the establishment of a trust, a creditor already has the rights of a **priority creditor** in relation to the trust property and has exercised these rights in accordance with the law;
- (2) in administering trust affairs trustees have run up debts and creditors have demanded the discharging 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

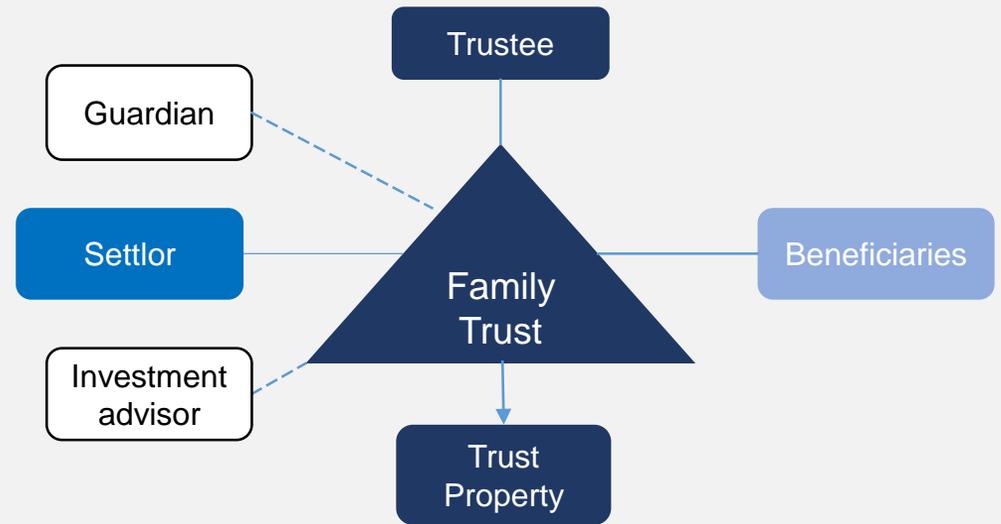
Case Study



Offshore Trust

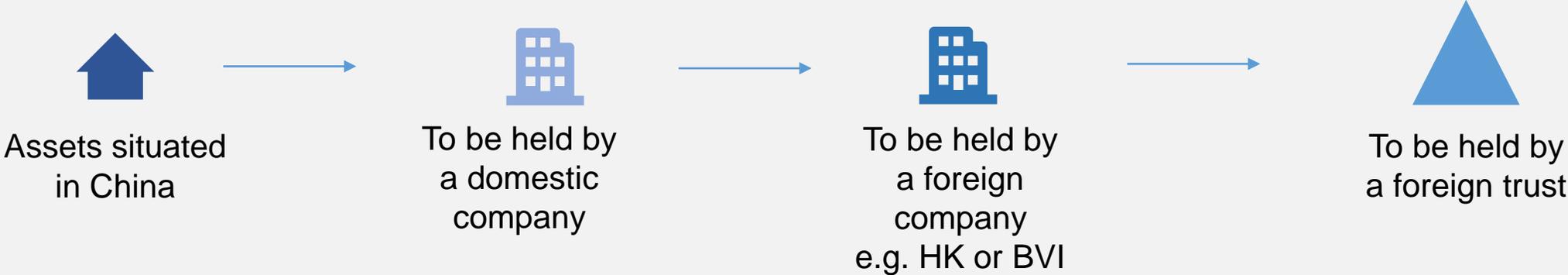


PRC Trust



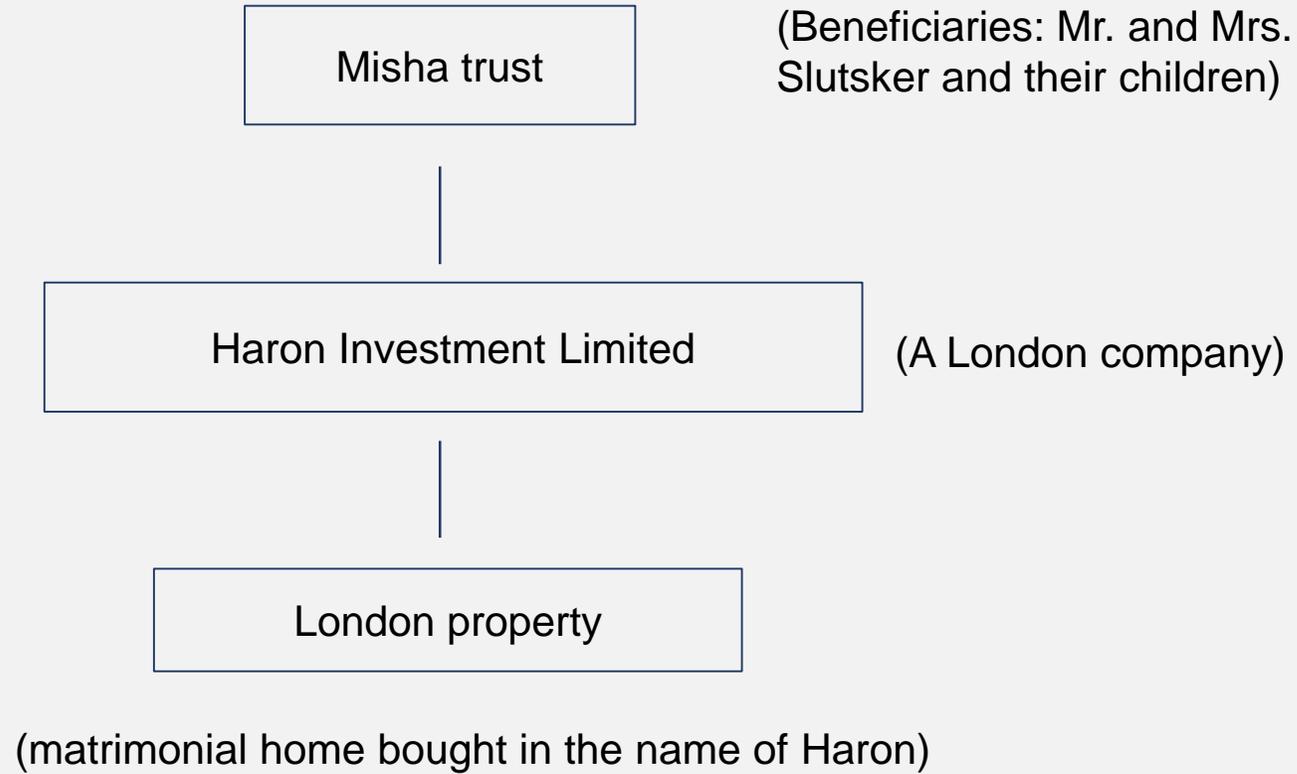
3. Offshore Trust

China Assets & Foreign Trust



(Regulatory Restrictions & Tax Implication Should Be Considered.)

Slutsker v Haron



Russian Law vs. PRC Law

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

**China Matrimonial
Property Law**

Foreign Court

China Court

Foreign Trust Law

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