



# A Study of the Legal System on Joint Spousal Responsibilities for Debts in China

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**Abstract.** With the continuous development of the social economy, there are more and more joint debts between husband and wife. The joint debts of husband and wife involve third parties of interest, and the proper recognition of joint debts of husband and wife helps maintain social harmony and family stability. In this article, the provisions of the Civil Code on joint debts of husband and wife are analyzed in depth, taking into account the judicial practice in China. The joint debts of spouses are a vital adjustment object of marriage and family law, a complex and complicated issue in judicial practice, and has received wide attention. The Civil Code and relevant judicial interpretations provide rules for the determination of joint debts of spouses, but based on the complexity of the formation of joint debts of spouses, the determination of joint debts of spouses is still a problematic issue in judicial practice. This paper is divided into four parts. The first part introduces the general theory of joint debts of spouses, including the concept, characteristics, and types of joint debts of spouses. The second part analyzes the current situation of the determination of joint debts of spouses. It puts forward the problems such as the unclear characterization of the family agency system, the consensual defects of the rules of the joint signing of joint debts, the lack of rules for the determination of debts of one spouse in tort, and the lack of rules for the determination of joint debts of spouses during the cooling-off period of separation and divorce. The third part examines the current legislation on joint debts of spouses in foreign countries. Finally, the fourth part puts forward corresponding suggestions for improvement given the main problems in the determination of joint debts of spouses, taking into account the legislative experience in foreign countries.

**Keywords:** Spouses joint debt · Determination · Family Representation

## 1 Introduction

### 1.1 The Concept of Spouses' Joint Debts

The joint debts of spouses are not given a specific concept in the legislation, and scholars have different views on it. According to Yang Lixin, under the default legal property system of husband and wife, joint debts are debts established on common property and secured by security, including necessary intercourse, expenses, and financing for those with no statutory obligations. Jiang Yue mentioned in her writings that whether the

couple is indebted to fulfill the legal obligation of support is the criteria for judging the couple's joint debt.

According to the law, the joint debts of spouses occur in the marriage relationship between a man and a woman in a legal union, and the "common life of husband and wife" is its core element. On the one hand, the joint debt of husband and wife can occur during the marriage relationship, and the husband or wife, as the party who entered into the marriage relationship, can engage in civil activities related to family life on behalf of the other party. On the other hand, joint debts of husband and wife can occur before the conclusion of marriage or after the dissolution of marriage, for example, if one of the spouses takes out a loan to buy a house before marriage and uses it for living together after marriage. Debts that occur after the marriage dissolution do not belong to the joint debts of the spouses because the basis for forming the spouses' joint debts has been lost.

## **1.2 Characteristics of Spouses' Joint Debts**

The joint debts of spouses are debts incurred for everyday life and business based on the marital relationship, which is more complicated than ordinary civil law debts and has the following characteristics.

Firstly, the subject has unique characteristics. The joint debts of spouses are based on the specific identity generated by marriage registration, and both men and women need to take a valid marriage relationship as a prerequisite. Therefore, in addition to the legally licensed couples, for the law retroactively valid *de facto* marriage, such as formed before February 1, 1994, or supplemental documents retroactively recognized *de facto* marriage, its men and women are also legal subjects of debt.

Second is the specificity of time. The period in which the debt is incurred is usually considered the duration of the marital relationship. Pre-marital personal debts belong to individual debts under normal circumstances and turn into joint debts under exceptional circumstances. Pre-marital cohabitation or pre-marital for the formation of post-marital debt such particular circumstances, for example, based on the pre-marital agreement between the couple or pre-marital personal debt for post-marital production, the life of the couple, depending on the specific circumstances of the debt is determined differently.

Thirdly, the diversity of causes of formation. The classification of debt in the General Principles of Civil Law is intentional debt and legal debt. In addition to the above reasons, debts are also caused by living together. Both intentional and statutory debts can cause joint debts between husband and wife.

## **1.3 Types of Spouses' Joint Debts**

### **1.3.1 Joint and Several Debts**

The joint and several debts in the spouses' joint debts include large and several debts and small joint and several debts. However, in judicial practice, there is no unified standard for identifying large and small amounts of property, and courts worldwide have adopted a relatively flexible standard when hearing cases related to the joint property of husband and wife. Therefore, in practical cases, there is no absolute boundary between large and small family assets.

When distinguishing large joint and several debts, the common intention of the spouses should be adopted as the criterion for recognition. One of the spouses should obtain the common intention of both spouses when disposing of a large amount of property shared by both spouses. Although the husband and wife are two independent civil subjects, they are based on the formation of the marital relationship, i.e., the origin of the family agency. During the period of marriage, the spouses enjoy the agency of each other based on the spousal relationship, which is the effect that the marriage relationship should give, that is, when one of the spouses disposes of the common property of the spouses based on the domestic agency, it should tend to protect the counterpart of the transaction.

### **1.3.2 Joint Debt**

Article 1062 of the Civil Code of China points out the scope of the common property of husband and wife, and in essence, the judgment standard of the common property of husband and wife is whether it is used for the ordinary life of husband and wife. In practice, there are situations where debts incurred by one of the spouses in their names are recognized as joint debts of the spouses. Family interests, as a criterion to distinguish individual debts of the spouses from joint debts, can distinguish individual debts of the spouses from joint debts.

### **1.3.3 Personal Debt**

Personal debts are incurred by one of the spouses alone, which can occur either before marriage or during the relationship. Debts incurred by each spouse before marriage, debts agreed by both parties to be borne by individuals, and debts incurred by one of the spouses who is engaged in business activities alone and whose income is not used for ordinary life are all personal debts.

## **2 The Current Situation and Problems of the Recognition of Spouses Joint Debts**

### **2.1 The Status Quo of the Recognition of Spouses' Joint Debts**

The law is the basis for the judge's judgment and the code of conduct for the public. According to China's Civil Code, Article 1064, the debts incurred by spouses' joint signature or one of the spouses' subsequent acknowledgment and the debts incurred by one of the spouses for the daily needs of the family in his or her name during the marriage, belong to the joint debts of the spouses. From this, it can be seen that the constitutive elements of the formation of joint debts of husband and wife specifically include the formation of mutual consent of husband and wife, the use of debts for the communal life of husband and wife, and the use of debts for joint business.

Firstly, the formation of spousal consent in the Civil Code is determined by joint signature or subsequent recognition by one of the spouses. If a debt is established based on the spouses' consent, it should be borne jointly by both spouses. The existence of a consensual joint debt is the ideal state in the determination and can effectively solve the

situation where one spouse is forced to bear the debt. The existence of a consensual debt means that both spouses are aware and confident of the debt unless one of the spouses proves that there was coercion, deception, or gross misunderstanding.

Secondly, the debt is used for the ordinary life of the couple. Husband and wife are co-responsible for family life, and husband and wife live together, so husband and wife should share the reasonable consumption within the family, such as clothing, food, housing, transportation, and other regular expenses, even without the consent of the other party, also constitute a joint debt, the husband and wife are jointly responsible. On the other hand, debts exceeding the family's average consumption capacity and not incurred to meet the family's interests are not joint debts.

Thirdly, the debt is used for joint business. A joint business is a business activity carried out by a man and a woman as a community of husband and wife based on the purpose of profit. If one spouse makes investments and participates in the business as an essential company member, it also belongs to a joint business. If the business benefits are used for family life, it does not fall under the category of joint business. Under the legal property system, if the business income is the family's primary income, the debts should be shared because both spouses share the income. It includes joint production and operation where one party operates, but the family shares the proceeds. When the operation is authorized and agreed upon by one of the spouses, the debt is also a spouse's joint debt, even if it is not a joint act.

## **2.2 The Main Problems in Recognition of Spouses' Joint Debts**

### **2.2.1 The Characterization of the Family Agency System is Unclear**

The right of family agency originated from Roman law and is a significant marriage and family law system. China's Civil Code stipulates that both spouses enjoy the right to family agency, but there are no explicit provisions on the family agency system's characterization, scope, and subjects.

Firstly, there is no characterization of the family agency. Our law does not distinguish between a family agency and a general agency, and the agency is divided into the statutory agency and delegated agency, but it does not characterize a family agency as a statutory agency or delegated agency. If the family agency is characterized as the delegated agency, then the scope of the agency should be clearly defined. If the family agency is regarded as a legal agency, then the authority of the agency should be clearly defined by law, and the time of the beginning and end of the agency action and the scope of the agency should be clearly defined.

Secondly, the scope of family representation is not clearly defined. The Civil Code stipulates that the scope of the family agency is limited to "the needs of the common life of husband and wife", but it does not specify what is "the needs of the common life of husband and wife". The ambiguity of the scope of the family agency may easily lead to the abuse of the family agency, which may damage the interests of the neutral party and bring difficulties to judicial practice.

Thirdly, the subject of the family agency is not limited. The current law does not specify whether the scope of the subject of the family agency is limited to both spouses. However, in judicial practice, there are a large number of pre-marital property disputes

and cohabitation property disputes. For pre-marital cohabitation, when the parties can constitute the subject of the family agency has not been clearly defined. At the same time, whether the separated couple enjoys the right of the family agency is also controversial in practice. The ambiguity of the subject of the family agency may lead to the abuse of the right of family agency by one party, which may lead to the increase of joint debt and damage the legitimate rights and interests of the non-borrowing party.

### **2.2.2 There is a Consensual Defect in the Joint Debt Co-Signing Rule**

The co-signing rule is a crucial rule to determine the joint debt of spouses, but in judicial practice, it is found that the co-signing rule has a defect of consent in practical application. Although there is a signed consent on the surface, the joint debt co-signature does not necessarily show the exact form of signature and acknowledgment. In judicial practice, it happens that the spouse of the debtor signs the mortgage or security agreement, the intention of his or her signature is unclear, the recognition is unclear, and even the authenticity is difficult to distinguish. If the debtor's spouse only knows about the debt or is informed of it afterward, if he or she does not object to it or help the other party to pay it in time, it will be considered a consensual act of posterior acknowledgment in the judgment of the case. A specific performance should not always be considered as an acknowledgment of the debt but rather a specific determination of whether there was mutual consent. The debtor's spouse does not necessarily have full knowledge of the debt, but it may be considered consensual under the co-signing rule due to his or her special status. The law should fully protect the spouse's right to know the debt facts to prevent the debtor from abusing the co-signing rule to the detriment of the spouse's interests. In addition, the creditor has to bear a significant risk in the joint debt of the spouse, and the debtor may avoid paying the debt by colluding with his or her spouse or by fake divorce.

### **2.2.3 Lack of Rules for Recognizing the Tort Debt of One Spouse**

The perpetrator infringes on the rights and interests of others, and the resulting debt is a tort debt. If both spouses jointly infringe, it constitutes joint infringement. However, in judicial practice, most tort cases involving joint debts of husband and wife are tort acts committed by one of the spouses, which are not joint tort acts. The tort debt formation is not based on the consent of the husband and wife, and the provisions of the joint debt of husband and wife cannot be applied, so there is a lack of rules to identify the tort debt of one of the husband and wife.

In dealing with tort disputes in tort debt determination, most courts determine whether the purpose of ordinary life is ordinary business as the standard for the typical debt of husband and wife. Although, nevertheless, the complexity of marriage and family life determine whether the tort committed by the infringer is related to family life, there are difficulties. It is not easy to judge based on the purpose of the infringer's behavior. Only by constructing new tort debt settlement rules can we better solve the imbalance of interests between the tortfeasor and the tortfeasor's spouse to better identify the tort debt.

#### **2.2.4 Lack of Rules for Identifying Joint Debts of Spouses During the Cooling-Off Period of Separation and Divorce**

Separation of husband and wife means that the husband and wife do not live and live together and are in a state of living separately. Separation is a special form of the marital relationship between husband and wife and is stipulated by law as a criterion for judging whether the relationship between husband and wife is broken. However, our law does not provide for how to deal with debts during the separation of husband and wife. As a special state of living apart, it is difficult for the third party to know about the separation of husband and wife, and it is difficult to protect the reliance interests of the third party. Moreover, since the husband and wife do not live together, if one is in debt, the other is liable without knowledge, which is unfair. Therefore, determining the joint debts during the separation of husband and wife should be improved.

A divorce cooling-off period is when the government compels both spouses to separate temporarily and think clearly before deciding whether to proceed with the divorce. In order to implement the provisions of the Civil Code regarding the divorce cooling-off period system, China's marriage registration procedures have been adjusted to add a cooling-off period to the divorce process. The newly adjusted divorce registration procedures include application, acceptance, cooling-off period, examination, and registration. The establishment of the divorce cooling-off period allows couples not to dissolve their marriage immediately, and if the couple wants to change their minds, there is still time to withdraw the divorce petition, thus continuing the marriage between the two parties. However, since the divorce cooling-off period extends the waiting time for divorce, it needs to be further studied whether the debt should be considered joint debt if one of the parties raises a debt or forges a debt during this period.

### **3 Current Status of Legislation on Spouses Joint Debts in Foreign Countries**

The issue of spouses' joint debts is relatively common worldwide. Compared with the legislative development process of spouses' joint debts in China, some other countries relevant legal provisions are developed earlier. Studying foreign countries' legislative provisions can help improve the legal system of joint debts of husband and wife in China.

#### **3.1 Provisions Related to Joint Debts of Spouses in Germany**

The German Civil Code considers that either spouse has the right to exercise the right of family representation and to enjoy rights and obligations jointly. However, the law limits the right to daily family representation to the extent that it meets the needs of family life, serves a specific family, and is appropriate to the family's economic level. A separate property regime characterizes German law. The property rights of each spouse, whether before or after marriage, remain personal. If debts arise, they cannot be paid from the common property of the spouses, except in the case of debts incurred for everyday life, and are personal debts. When the couple divorces, if a joint debt has not been paid off or has not reached the repayment deadline, the court will set aside a portion of the couple's joint property for future debt repayment. For debts incurred during the spouses'

separation, the spouses do not live together during the separation and thus do not have daily family agency.

### **3.2 Provisions Related to Joint Debts of Spouses in Japan**

The Japanese matrimonial property regime is mainly based on the separate property system of spouses. The scope of individual property includes not only fixed assets owned by each party before the registration of the marriage but also property acquired during the marriage through their means, abilities, and names. Property acquired jointly by the spouses is the common property of the spouses. Article 760 and Article 761 of the Civil Code of Japan stipulate that in the case of debts incurred in the maintenance of the marital relationship of the family, the allocation of the debt shall follow their respective property and income status; in the case of debts incurred as a result of daily household representation, both the husband and the wife are jointly and severally liable for the debt. Thus, it is clear that only debts incurred within the scope of daily household chores are joint debts and both spouses are jointly and severally liable.

### **3.3 Provisions Related to Joint Debts of Spouses in France**

Article 1409 of the French Civil Code is related to the joint debts of husband and wife. French law not only provides for joint debts but also provides for individual debts. Debts incurred based on personal status are personal debts, such as debts incurred by acceptance of inheritance. In the case of joint debts, both spouses are entitled to exercise the right of daily family representation. The scope of daily family agency mainly includes the daily needs of the couple's life together and the needs of the children's life. The scope does not cover large debts, debts not beneficial to family life, or debts with malicious intent, such as collusion with third parties. In the French community property system, when the spouses manage their property separately, one may settle the debts with the community property and the personal property of the party who raised the debts. However, debts arising from the act of guarantee by one of the spouses during the marriage and the act of borrowing without the spouse's consent are not established as the spouses' joint debts. During the period of separation, the attribute of joint property between the spouses disappears, and the spouses no longer apply the standard property system, and they no longer have the state of living together, so the separate property system applies. However, the mutual assistance obligation between husband and wife is not eliminated by separation, and they should also continue to support their children.

### **3.4 Provisions Related to Joint Debts of Spouses in the U.S**

Since the U.S. is a federal country, each state in the U.S. applies different legal provisions to the joint debts of spouses. The U.S. states of California, Arizona, and Louisiana have adopted the community of spouses' property system. California provides that if the debt is contractual and occurs during the marriage, the spouses shall be liable in the community of property, regardless of whether it is related to family interests. Louisiana provides that debts incurred by both spouses are joint debts if they are based on contractual reasons, and whether the contract is related to the interests of the community of spouses does not affect the establishment of joint debts of spouses.

## **4 Improvement of the Rules for the Recognition of Joint Debts of Husband and Wife**

### **4.1 Improve the Legal Norms Related to Family Agency**

Although China's Civil Code provides for the family agency system, no explicit provisions exist on the characterization, scope, and subject. Moreover, although the family agency system only belongs to the principle provisions, in judicial practice, it is difficult to be used as a standard for determining the joint debt of husband and wife, so the family agency system should be improved.

First is the characterization of the family agency system. Agency is divided into the statutory agency and delegated agency. The family agency should belong to the statutory agency. In judicial practice, many judgments believe that the family agency belongs to the delegated agency, and the part beyond the everyday needs of family life belongs to the apparent agency. However, the agent's right to the agency is based on the agent's delegated authority, and usually, the agent and the agent apply only if there is no underlying relationship and the effect of the delegated agency is assumed by the agent. However, both spouses can exercise domestic agency, and there is no definite agent and agent, and both spouses bear the effect. Therefore, the family agency should belong to the statutory agency rather than the delegated agency.

Secondly, the scope of the family agency should be stipulated. The law stipulates that the scope of the family agency is limited to "the needs of the common life of husband and wife", but it does not define it. The number of family members, the difference in the level of economic development in different regions, and the structure of family consumption will all impact the scope of "the needs of the couple to live together". Therefore, the scope of the "common needs of the spouses" should be defined by considering the regional consumption level and the average annual income.

Finally, the subject of the family agency should be limited. In order to meet the premise of living together, both parties should enjoy the right of family agency when cohabiting. Besides, the relevant provisions of German law can be drawn on because the couple does not live together during the separation, for the debts incurred during the separation of husband and wife should not enjoy the right to daily family agency.

### **4.2 Improve the Rules of Joint Debt and Joint Signature**

Consent is the core of applying the rules of joint debt and signature. Therefore, it is highly unreasonable for a spouse to be judged jointly responsible for debt performance with the debtor without the right to be fully informed.

On the one hand, if the debtor's spouse is aware of the debt but does not sign it, it is necessary to confirm mutual consent. On the other hand, the spouse's failure to object in time or to help the other spouse to repay the debt cannot be directly recognized as a consensual act, which is a retroactive act. The core interest of the spouse is not the right to consent or decide but the right to know. When the debtor's spouse is living with him/her and has the right to know about the debt and does not deny it, the debt can be presumed to be the debtor's spouse's consent to the debt based on the common intention



with the debtor, thus establishing the presumption of consent in the case of the debtor's spouse's "knowledge and non-objection".

On the other hand, the presumption of consent under the protection of creditors' reliance interests is improved by "joint signing". Since the debtor may collude with his or her spouse or use a fake divorce to avoid paying the debt, the creditor may bear a significant risk, so it is necessary to identify the joint debt from the point of view of protecting the creditor's reliance interests. If the creditor shows "reason to believe" that the spouses have reached a consensual agreement to enter into a debt relationship, it can be presumed that the debt is a joint debt of the spouses based on their consensual agreement. However, there is a need to limit the scope of the creditor's reliance. In addition, the debtor is for the everyday needs of the couple or joint production and business reasons to the creditor. Therefore, the creditor must have sufficient reason to believe the authenticity of its purpose, to exercise due care and attention, can be presumed to be a joint debt.

#### **4.3 Improve the Rules for Determining the Tort Debt of One of the Spouses**

There is no clear rule guiding whether the tort debt of one of the spouses is joint, but there are a large number of such cases in judicial practice, and it is necessary to improve the rules for determining the tort debt of one of the spouses.

Firstly, according to the theory, the interests and risks of the couple's community are the same. Therefore, the risks should also be shared if the benefits belong to both spouses. If the tortfeasor's harmful behavior brings vested or expectable benefits to the family life as a whole, and the family members benefit from it, then it can be considered as constituting a joint debt of the spouses. On the other hand, if the tortfeasor commits the tort to satisfy his or her own needs, it cannot be recognized as a joint debt of the spouses.

Secondly, the tort liability theory should be combined with tort liability to determine whether the tort debt of one of the spouses can be recognized as a joint debt of the spouses. Although the tortfeasor does not usually bear tort liability, the current law provides for separating the tortfeasor and the subject of liability. If the subject of tort liability obtains a benefit, the benefit originates from the tort committed by the tortfeasor. Therefore, the damage caused by the tortfeasor is borne by the party who obtains the benefit.

#### **4.4 Improve the Lack of Rules to Determine the Joint Debts of Spouses During the Period of Separation and Divorce Cooling-Off Period**

In the case of separation of husband and wife, since both spouses are living independently, it is difficult for creditors to know the actual situation, and the right to know of the debtor's spouse is difficult to protect, so it is relatively essential to improve the debt system during the separation of husband and wife to clarify the determination of debt during separation. In the case of separation, the spouses can sign a separation agreement to agree on property, debts, and other situations. Although the agreement reached by the spouses is valid for the spouses, it is not valid for third parties if they are unaware of this situation. Based on the separation agreement, it is possible to establish a system of registration of the property agreed upon by the spouses. By establishing a registration

system of the spouses' agreement on a property, the spouses can agree on their property in the state of separation. After the registration, third parties can inquire about their agreement on the property, thus protecting the creditors' interests of reliance. Creditors can inquire whether there is a separation between spouses and understand the agreement on the property and debts of spouses to maintain the security of transactions. However, the registration system of the spouses' agreement on the property should be based on the voluntariness of both parties.

The divorce cooling-off period is an essential procedure in the process of divorce by agreement between the spouses, and it is of great significance to judicial practice to determine whether the debts incurred during the divorce cooling-off period belong to the joint debts of the spouses. Under the premise that both spouses intend to proceed to divorce by mutual consent, there is likely a breakdown of feelings between the spouses. During this particular period, if one of the spouses is in debt, the other spouse is likely unaware of it. As a result, the debtor will likely conceal that he or she has incurred fictitious debts, and the spouse may suffer losses. Therefore, the circumstances in which a joint debt is incurred during the divorce cooling-off period should be strictly limited, and the exercise of the right of family agency resulting in a joint debt should be restricted. However, for some debts involving personal relationships, such as those resulting from alimony and maintenance relationships, both spouses should share the debts.

## 5 Conclusion

The Civil Code encompasses all aspects of social development and has been integrated into the general public's lives, regulating people's behavioral activities. For example, as an essential part of the Civil Code's Marriage and Family Division, the study of joint spouses' debt is closely related to people, and matrimonial debt is also a topic that has been around for a long time.

According to China's Civil Code, Article 1064, the debts incurred by the joint signature of both spouses or the joint intention of one of the spouses, such as the subsequent acknowledgment, as well as the debts incurred by one of the spouses in his or her name for the daily needs of the family during the marriage, belong to the joint debts of the spouses. The elements of the formation of joint debts of husband and wife specifically include the formation of the couple's consent, debt for the ordinary life of the couple, and debt for joint business. However, in the actual judicial practice, there are problems such as the unclear characterization of the family agency system, the defect of consent in the rules of the joint signing of shared debt, the lack of rules for identifying the debt of one of the spouses in tort, and the lack of rules for identifying the joint debt of the spouses during the period of separation and divorce cooling-off period. Therefore, studying the legislative provisions of foreign countries can help improve the legal system related to joint debts of spouses in China. By improving the legal norms related to family agency, the rules for determining the consent of co-debt signing, the rules for determining the debt of one of the spouses in tort, and the rules for determining the joint debt of spouses during the cooling-off period of separation and divorce, the rules for determining the joint debt of spouses in China can better function in judicial practice.

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