

**Migration Review Tribunal
AUSTRALIA**

MRT RESEARCH RESPONSE

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Questions

1. Please advise how often are household registration (Hukou) documents updated? In particular, if a couple were legally divorced in 1998, custody of the child was formally awarded to the wife and she and the child moved to a new address, would one expect a new household registration document (“Permanent Resident Registry Card”) to be issued reflecting the new situation? What would happen where a new household registration document, dated in August 2005 and certified by the local Notary Public Office in April 2007, showed a woman and her son at the same address as the husband (the former marital home) though their marital status is “divorced.”
2. In such circumstances, would one expect a Notarial certificate describing the results of criminal record checks dated in June 2007 to identify the woman and her son as “now residing” at the former marital home?
3. Similarly, would an ID card which was issued in 2001 and 2004 show the former marital home as the address if the parties resided elsewhere?
4. Are any official checks made in China to ensure that the parties to a marriage are not currently married to other people?

RESPONSE

1. Please advise how often are household registration (Hukou) documents updated? In particular, if a couple were legally divorced in 1998, custody of the child was formally awarded to the wife and she and the child moved to a new address, would one expect a new Household registration document (“Permanent Resident Registry Card”) to be issued reflecting the new situation? What would happen where a new Household registration document, dated in August 2005 and certified by the local Notary Public Office in April 2007, showed a woman and her son at the same address as the husband (the former marital home) though their marital status is “divorced.”

[Information deleted].

In China it is a general requirement that *hukou* items which require a new registration, such as marriage and change in family status, must be reported to the *hukou* authorities. Local Dalian City and national regulations on household registration in China indicate that citizens who change permanent domicile, or to whom a change in household composition is occasioned by divorce, are required to apply to the local police *hukou* authorities for a change in registration. The Dalian city provisions state that this application is to happen within 7–10 days under certain circumstances; while the notification period more generally is 30 days.

Intra-provincial migrants are less likely to register with authorities because of their ability to blend in with the local population.

A number of formal provisions on household registration which include reference to change of *hukou* were found on the Dalian City Government website. Article 4 of the *Provisions of Dalian Municipality on Regulating Lodging Household Register* (Promulgated 6 August 1991 & Amended 10 March 2003), state that “residents (villagers) in urban and rural areas (the eight districts) of Dalian municipality shall apply for to the local police (frontier) substation according to provisions when they leave their permanent domicile and move to a new place within urban and rural areas (the eight districts) of Dalian municipality, or rent (borrow) houses, live temporarily with estimated period over 30 days”. Article 5 stipulates that “To apply for lodging household register, the lodger shall, within 7 days of arrival, give reasons to the local police (frontier) substation together with household register, identification card, or other certificates and go through formalities for lodging household registration”:

Article 1 In accordance with the Regulations of the People’s Republic of China on Household Registration and relevant provisions, the administration provisions are formulated with a view to reinforcing the administration of lodging household register, and maintaining the public security order.

Article 2 The provisions shall apply to the administration of lodging household register within Dalian municipal administrative area.

Article 3 The municipal, county (county-level municipal), and district public security organ is the competent authority for administration of urban lodging household register. It shall organize the auxiliary police (frontier) substations to reinforce the administration of lodging household registration.

Article 4 Lodging household register refers to the household register which residents (villagers) in urban and rural areas (the eight districts) of Dalian municipality shall apply for to the local police (frontier) substation according to provisions **when they leave their permanent domicile and move to a new place within urban and rural areas (the eight districts) of Dalian municipality, or rent (borrow) houses, live temporarily with estimated period over 30 days.**

Article 5 **To apply for lodging household register, the lodger shall, within 7 days of arrival, give reasons to the local police (frontier) substation together with household register, identification card, or other certificates and go through formalities for lodging household registration.**

Article 6 In case the lodger leaves the lodging place, he (she) shall go through formalities for cancellation of lodging household register two days in advance.

...Article 8 The police (frontier) substation shall strengthen the examination and verification of lodging household, establish and improve lodging household administration system. For those who refuse to conduct lodging household registration or possess incomplete lodging household certificates, the substation shall supervise and urge them to go through relevant formalities again according to relevant provisions.

Article 9 **Those who violate these administration provisions shall be given criticism and education by the public security organ; if the violators still refuse to rectify, they shall be punished in accordance with Regulations of the People’s Republic of China on Punishment in Public Order and Security Administration.**

If the parties concerned refuse to accept the administrative punishments, they may apply for administrative reconsideration or bring an administrative lawsuit according to law (*Provisions of Dalian Municipality on Regulating Lodging Household Register* (Promulgated 6 August 1991 & Amended 10 March 2003), Dalian City Government website http://english.dl.gov.cn/info/159882_182117.htm – Accessed 12 August 2009 – Attachment 1).

Article 19 of the national *Regulations of the People's Republic of China on Residence Registration* (1958), referred to above in Article 1, state that “when changes in residence registration are occasioned by citizens...divorcing...the heads of households or the persons in questions shall apply for change of registration at the residence registration organ” (*Regulations of the People's Republic of China on Residence Registration* (Passed & Promulgated 9 January 1958), in *Chinese Law and Government*, 2001, Vol. 34, No. 3, p.56 – Attachment 2).

The *Provisions of Dalian Municipality on Regulating Rural Household Register* are also provided in English on the Dalian Municipal People's Government website. These *Regulations* state (Article 11) that “to change...marital status, householder relations and other items of household register, the party concerned shall apply to the local police (frontier) substation, together with relevant certificates and the change sheet by the villagers' (residents') committee for check and approval”. The *Provisions* also apply penalties to those “who violate these provisions such as non-declaration of domicile, declaration of false domicile, alteration of domicile, forging papers, taking papers of another as his own, as well as immigration and emigration of domicile without authorization”. The relevant articles are provided here in full:

Article 3 The municipal and county (county-level municipal) public security organ is the competent authority for administration of the household register under its jurisdiction. It shall organize the auxiliary police (frontier) substations to fulfill their duties, and reinforce the administration of household register according to law.

Article 4 The people's government of township (town) and villagers' (residents') committee shall support the public security organs actively to conduct the administration of household registration.

The villagers' (residents') committee may create assistant manager(s) to assist the public security organs to carry out the following work:

- (1) Establish the form for registration of the permanent population, and grasp the change of the population precisely;
- (2) Supervise and urge the masses to declare the household registration on time, check the household registration and make statistics of population figures;
- (3) Help the masses to conduct the formalities of birth and death of population, as well as those of household immigration and emigration;
- (4) Report to the public security organ on the administration circumstances of household registration in time.

...Article 9 **For immigration of domicile, the parties concerned shall, within 10 days of arrival at the settled place, declare to the police (frontier) substation for household registration together with the household register, relocation certificate, permit for resettlement, association letter of consent of immigration, and the declaration sheet issued by the villagers'(residents') committee at the settled place.**

...Article 10 With regard to change of domicile between villages within the same township, the party concerned, shall, on the strength of the certificate of consent of immigration by the villagers' (residents') committee at the place of immigration, and the emigration sheet by the villagers' (residents') committee at the place of emigration, declare to the local police (frontier) substation for conducting formalities of change of residence.

Change of domicile for immigration to frontier area or between frontier areas shall be handled in accordance with provisions on the administration of household register at the frontier area.

Article 11 The items of household register are not allowed to change at will. For those who really need to change the name, gender, or birth date, the householder or the principal shall submit the application together with the original materials of proof, then with the check by the local police (frontier) substation, report to the county (county-level municipal) public security organ for approval; **to change job, educational level, work unit, marital status, householder relations and other items of household register, the party concerned shall apply to the local police (frontier) substation, together with relevant certificates and the change sheet by the villagers' (residents') committee for check and approval.**

...Article 12 The public security organs at all levels shall put strict control, strengthen the inspection and supervision, examine the population figures precisely, fill in and submit the statistic report in time, keep the household registration data in accordance with the rules, and not destroy the data without approval.

Article 13 Those who violate these provisions such as non-declaration of domicile, declaration of false domicile, alteration of domicile, forging papers, taking papers of another as his own, as well as immigration and emigration of domicile without authorization, shall be given criticism and education as the circumstance may be, and also punishments in accordance with Regulations of the People's Republic of China on Punishment in Public Order and Security Administration and relevant provisions.

In order to implement administrative punishments, notice of penalties shall be issued. The administrative fine shall apply uniform instruments printed by the financial department, and be turned in to the finance of local governments.

Article 14 If the parties concerned refuse to accept the administrative punishments, they may apply for administrative reconsideration or institute an administrative lawsuit according to law.

Article 15 The administration of household registration, when concerning administration affairs of residents' identification cards, shall be handled in accordance with Regulations of the People's Republic of China on the Administration of Residents' Identification Cards (*Provisions of Dalian Municipality on Regulating Rural Household Register* (Promulgated 21 December 1990 & Amended 10 March 2003), Dalian City Government website http://english.dl.gov.cn/info/159882_182042.htm – Accessed 6 August 2009 – Attachment 3).

Research undertaken in 2005 by the Immigration and Refugee Board of Canada indicated that any “change in family status and relocation” needed to be reported to the *hukou* police but that “Intra-provincial migrants...are less likely to register with the *hukou* authorities, since they can blend more easily with the local population”:

The first page of the *hukou* booklet contains “Noted items” stating the following:

...4. [The] Household holder has to report to the registration authority if there is any change in the number of household members or registered items.

...All altered or deleted items on the *hukou* must be stamped by the issuing authority.

...7.2.1 Changing *hukous*

If a request to change a person’s permanent hukou residence is approved, the individual must notify the PSB office in the original hukou zone to have his/her name deleted, as well as notify the PSB in the new hukou zone, where his/her name would be registered (Wang 9 Jan. 2005). This notification should be done within 30 days (ibid.). According to Beatriz Carrillo, in practice, migrants tend to seek prior approval only when travelling between provinces or to larger urban areas (8 Dec. 2004). **Intra-provincial migrants, on the other hand, are less likely to register with the hukou authorities, since they can blend more easily with the local population** (Carrillo 8 Dec. 2004).

...7.2.7 Changes that must be reported to the *hukou* police

Although the *hukou* police often keep track of a person’s employment information, there is no legal requirement to update the job status of a resident (ibid.). **Changes which require a new registration, on the other hand, such as marriage, change in family status and relocation, must be reported to the hukou authorities** (Immigration and Refugee Board of Canada 2005, *China: Reforms of the Household Registration System (Hukou) (1998-2004)*, February, Section 2 & 7.1 – Attachment 4).

The website of a Shanghai-based legal firm China Family Law Research Center also provides some information on the relationship between divorce and *hukou* changes in China. The firm presents a scenario (said to be uncommon) in which after the divorce, and contrary to the divorce agreement, the female refuses to comply and “the Hukou of the female party is still in the house possessed by the male party after divorce” and on account of which a loss of some kind is incurred. The advice provided by the firm on its website states that in general terms: (1) there exists a “lack of relevant effective regulations” in this area; (2) that courts defer disputes on this matter to the local public security agencies, who in turn cannot “force” someone to change *hukou*; and (3) regulations differ from province to province concerning the “migration of *hukou*”:

How can the couple draw a mature divorce agreement?

8. Agreements and solutions to the household registration (Hukou).

After divorce, the transfer of Hukou is also a difficulty in divorce cases. **For instance, the Hukou of the female party is still in the house possessed by the male party after divorce. Pursuant to the divorce agreement, the female party should move out her Hukou soon after finishing the procedures of divorce.** In the case that the female party refuses to comply with the agreement, causing some loss or troubles, how can the male party deal with the situation? Subject to the current regulations on Hukou management and the court’s

judgment, **usually the court shall not accept the request on the transfer of Hukou but remit to the local public security agencies. However, the party may get such reply from the public security agencies that the request is not subject to situations of forcing the person moving out his or her Hukou.** The problem above is hardly with a way out.

This kind of dispute may occur some time, though the rate of it is not quite high. As the result of the lack of relevant effective regulations, there is always no way for the party involved to take a legal action. Hence, what can we do to prevent the occurrence of such dispute? We consider penalties corresponding to the mental torment and inconvenience on selling the premises as a proper method. Details usually listed as follows:

If the female party is not moving out her Hukou by herself within three month after the procedures of divorce, she shall be fined XX Yuan from the first day of such breach as compensation to the male party. In the process of selling the premises if the Hukou of the female party has exerted any impacts on the housing price, the female party should bear the damages.

Please note that such compensation shall not be defined as fines for breaking the contract, as the moving of Hukou features the character of personal freedom. In case the compensation is defined as contract-breaking fees, the court may not support the party's request, while the compensation for inconvenience is more proper not against relevant laws and regulations.

In addition, in the process of selling the premises, provided that the Hukou of the female party exerts impact on the housing price, the specific price difference shall be clearly stipulated in the housing contract and inform the female party in the written form.

Generally speaking, the above-mentioned agreements will promote the other party to cooperate for the Hukou transfer in the shortest time. Of course, in drawing the divorce agreement, in case one party doesn't agree on the compensation clause concerned in the divorce agreement, the other party shall decide whether to take the pros and cons of bearing legal liability. In the written judgment, the court may add the characters "The female party shall move out her Hukou within 30 days after divorce". But such judgment is usually not easy to execute unless the female party has the destination to move out her Hukou ('Contents: Divorce by agreement: How can the couple draw a mature divorce agreement?' (undated), China Family Law Research Centre website <http://www.familylaw.com.cn/cases/07.htm> – Accessed 14 July 2009 – Attachment 5).

And in a second page, the same website reports on:

When dispute on the migration of Hukou happens, what is the solution?

In practice, some couples only emphasize on the division of the house property while paying no attentions to the migration of Hukou. **At present, different provinces have different regulations concerning this aspect; generally, public securities will not approve the application of moving out the Hukou by force.** What's more, the people's court may not accept this kind of cases, either.

Relevant case

Mr. Zhao and Ms. Li registered divorce by agreement at civil affairs bureau in X District in Guangzhou in August 2004. In their divorce agreement, both parties have come to agreements on the following issues: The premises located at Room XXX, XX, Lane XX Rd in XX District in Guangzhou purchased jointly after marriage is possessed by the male party and he should make a lump-sum of compensation payment of 600,000 Yuan to the female party, while the female party should move out her Hukou from the premises soon after the completion of divorce registration.

After the divorce agreement took effect, the male party Zhao paid off the compensation payment of 600,000 Yuan to the female party, but the female party refused to move out her Hukou from the premises. In May 2005, the housing price in Guangzhou has a tendency of falling down, so the male party decided to offer the premises for sale and go abroad for further study. At the real estate agency, Zhao was told that the house couldn't be sold out as the female party Li's Hukou was in it. Therefore, the male party Zhao strongly demanded the female party to move out her Hukou. To his surprise, the female party Li claimed she wouldn't move out her Hukou unless Zhao gave her another 50,000 Yuan as the economic aids, as she couldn't afford a new house with only 200,000 Yuan left up to now. As for her unreasonable demand, Zhao appealed to the People's Court at XYZ District in Shanghai.

However, the People's Court turned down the plaintiff's appeal for the reason that the issue on moving out Hukou doesn't belong to judicial scope, though they came to agreements in the divorce agreement.

Under the lawyer's mediation, Zhao paid another 20,000 Yuan to Li after the failure of appeal, and the female party moved out her Hukou to her parents ('Contents: Divorce by Agreement: When dispute on the migration of Hukou happens, what is the solution?' (undated), China Family Law Research Centre website <http://www.familylaw.com.cn/cases/13.htm> – Accessed 14 July 2009 – Attachment 6).

Fei-Ling Wang, writing in *The China Quarterly* in 2004, indicated that while the police may have initially aimed to take a much more pro-active role in updating any observed changes in local *hukou* data for the population under its responsibility, this has become difficult in practice from the 1990s reform era:

Social Control and the Targeted People

The PRC police are the administrators of the hukou system and each police station (paichusuo) has full-time hukou officers in charge of a hukou zone. For every 500–700 households in a police precinct (or as many as 2,000 in some areas), there is one nationally mandated full-time field hukou police officer who is responsible for getting to know every resident in the households. **The field officer often works as a plain-clothes but well-known detective in the neighbourhood to collect, verify and update hukou information, in the name of managing the system and safeguarding political order, social stability and public security.**

In the early 2000s, China has a total of over 300 thousand hukou police field officers. They are to collect and update information in eight categories on each resident in the precinct: basic information (the information on the hukou registration form); current behaviour including political friends and relations (including love relations); physical features including body size and body shape; usage of accent and slang; personal character and hobbies; and daily associations and other "consequential" past activities.

...The hukou police rely heavily on the “public security activists” such as the street or residential committee members and the so-called “eyes and ears of public security” (zhi’an ermu), secret informants cultivated and used by the police to collect, verify and update information on every resident in the neighbourhood. According to official regulations, each urban hukou zone usually has one to several street or residential committees. Each committee typically has 100 to 600 households and the households are organized into residential groups of 15 to 40 households each.

The unfeasibility of monitoring everyone, even with massive mobilization of the residents, prompted the police to focus its resources on the most threatening and most undesirable people, the so-called targeted people (zhongdian renkou), from the embryonic days of the PRC hukou system in 1949....The reform era has made comprehensive monitoring of the people even less practical as there has been an impressive advance of the market economy and opening to the world, political decentralization and social relaxation, increased population mobility, deep and extensive political cynicism among the citizens, and the widespread corruption of the PRC officials including the police. Hence an even higher need for the targeted people scheme (Wang, F.L. 2004 ‘Reformed Migration Control and New Targeted People: China’s Hukou System in the 2000’s’, *The China Quarterly*, vol.177, pp.124-125 – Attachment 7).

2. In such circumstances, would one expect a Notarial Certificate describing the results of criminal record checks dated in June 2007 to identify the woman and her son as “now residing” at the former marital home?

In China notarial certificates of no criminal record (无刑事犯罪记录公证书) are to be based on documents issued by the local Public Security Bureau (PSB). If updated residence registration was previously supplied to the *hukou* police, one would expect this to be reflected in any documents subsequently issued by the local Public Security Bureau (PSB), including notarial certificates of no criminal record. However, notarial documents in China can be based not only upon primary evidence, but also secondary evidence, testimony of the applicant or other parties, or even investigation by the notary.

The US Department of State’s ‘Visa Reciprocity and Country Documents – China’ website page discusses the use of notarial documents and certificates in China: it states that notary issued certificates, including those of no criminal record (无刑事犯罪记录公证书), “can be based upon primary evidence, secondary evidence, testimony of the applicant or other parties, or investigation by the notary”, and are “at best, secondary evidence of the events they purport to document”. The website states that certificates of no criminal record issued by notaries “should” be based on information contained in PSB documents:

Documents

Most of the documents listed below can be obtained from one of China’s Notarial Offices (Gong Zheng Chu). All Chinese documentation to be used abroad is processed through the notary offices and issued in the form of notarial certificates. Notarial offices are located in all major Chinese cities and in rural county seats. These offices are part of the Ministry of Justice structure, but are separate from the people’s court system.

Notaries in China do not perform the same functions as their American counterparts. Chinese notaries affix their signatures and office seal to certificates that attest to the probity of claims made by the applicants. **By regulation, notaries are empowered to issue certificates only after they conclude that the applicant’s claims are true.** Notarial certificates of birth,

death, marriage, divorce, **no criminal record and pre-1981 adoptions are, at best, secondary evidence of the events they purport to document.** Although these certificates are secondary evidence, they are used because primary evidence is not standardized, is easily forged, and difficult to evaluate. Notarial certificates are easier to interpret than primary evidence and theoretically represent an expert judgment on the part of the notarial official as to the facts documented.

The certificates can be **based upon primary evidence, secondary evidence, testimony of the applicant or other parties, or investigation by the notary. For most notarial certificates of birth or adoption, the primary underlying documentation is the household register (HHR) which appears to be extremely susceptible to fraud and manipulation, especially if the holder of the HHR lives outside of a major metropolitan area.** Notarial certificates rarely cite the basis for their issuance.*

Thus a certificate in itself may not be adequate evidence of the facts claimed, and is best used in conjunction with primary and contemporaneous secondary evidence: old land deeds and old family registers; letters or money receipts; family records from countries that have reliable public documents; school and medical records. In relationship cases, especially where the petitioner left China years before, the best evidence of relationship, or lack of it, would be the Hong Kong Certificate of Registered Particulars (for petitioners who lived in Hong Kong), or the petitioner's immigration and/or naturalization file.

...Police Records

Generally available, reliable. **Persons should apply for a certificate of no criminal record at the local Public Security Bureau (PSB) (or certain types of employers such as state owned enterprises), then make application to the notary office for a certificate based on the PSB document.** Persons without a criminal record will be able to obtain a certificate to that effect.

...According to a 1957 state council ruling that is still in force, the imposition of a re-education through labor (Lao Dong Jiao Yu) term does not result from a criminal conviction. Administrative organs, rather than courts, impose re-education through labor. It is important to distinguish re-education through labor from labor reform (Lao Dong Gai Zao), which is a sentence meted out for criminal offenses (US Department of State – Bureau of Consular Affairs (undated), 'Visa Reciprocity and Country Documents – China' http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3537.html – Accessed 9 July 2009 – Attachment 8).

The website of the Australian Embassy in China notifies readers that Public Notary Offices' application procedures for Certificates of no Criminal Conviction (CNCC) are specific to a locality:

Public Notaries

There are over 3,000 Public Notary Offices (公证处 gongzhengchu) in counties, autonomous areas, and municipalities across China.

For the contact number of your local Public Notary Office, call directory assistance in China on 114. Public Notary Offices are accredited by the Chinese government to perform a number of notarial roles, including:

Notarising the authenticity of signatures, translations, copies of certificates, and photocopies with originals; and

Notarising facts that amount to civil legal acts such as birth, death, marriage, divorce, kinship, identity and qualifications, and the issuing of the relevant Notarial Certificate – including “Certificates of No Criminal Conviction

Please note that Public Notary Offices’ application procedures for Certificates of No Criminal Conviction (CNCC) differ from region to region, as does the title of the CNCC itself. Depending on the Public Notary Office, a CNCC may be referred to as a “Certificate of No Criminal Record” (无犯罪记录公证 Wufanzui jilu gongzheng), “Certificate of No Criminal Sanction” (无刑事处分公证书/未受刑事处分公证书 Wuxingshi chufen gongzhengshu/Weishou xingshi chufen gongzhengshu), or simply a “Notarial Certificate” (公证书 Gongzhengshu) certifying no criminal record.

To obtain a CNCC, you should contact your local Public Notary Office, who should be able to advise you on the application procedures specific to that locality (‘Additional Information – Partner Migration’ (undated), Australian Embassy in China website <http://www.china.embassy.gov.au/bjng/DIMA090401.html> – Accessed 18 August 2009 – Attachment 9).

3. Similarly, would an ID card which was issued in 2001 and 2004 show the former marital home as the address if the parties resided elsewhere?

Information on Chinese ID cards, including residential address, is based on that found in the household registration documents. Newer versions of the first-generation ID cards, which contain an 18-digit ID number, were first issued in late 1999. The second-generation ID cards began to be issued in 2004. If updated residence registration had previously been supplied to the *hukou* police in 1998, one would normally expect this to be reflected in any documents subsequently issued by the local Public Security Bureau (PSB), including ID cards issued subsequently in 2001 and 2004.

Canadian research undertaken in 2005 for its Immigration and Refugee Board indicated that (a) new second-generation ID cards started to be issued in 2004; (b) if someone changes their residential address during the validity period of his/her ID card, “he/she is not required to amend or replace his/her ID card...The information will be updated if and when a new card is issued for any other reason”; and (c) information on the ID card is based on that found in the *hukou*, including residential address. This and the following information on these issues are sourced from a Ministry of Public Security (MPS) official in charge of the Second-Generation Resident ID Card Replacement Office and an official of the Canadian Consulate General in Hong Kong:

First-Generation ID cards

Prior to 2004, two versions of the first-generation RIC were most widely used in China (Canadian Consulate General in Hong Kong 9 Dec. 2004) (the older version, which contains a 15-digit ID number, and the newer version, which contains an 18-digit ID number (ibid.). The newer version of the ID card was first issued in October 1999 (ibid.).

The first-generation RIC could have one of three different validity periods: 10 years, 20 years and indefinite (ibid.). Residents aged 16 to 25 receive identity cards valid for 10 years; those aged 26 to 44 are issued identity cards valid for 20 years; and those aged 45 and up are issued a permanent identity card (Canadian Consulate General in Hong Kong 9 Dec. 2004).

... Second-Generation ID cards

In order to decrease the incidence of fraud and counterfeiting, the Chinese government introduced the second-generation ID card (also called the “smart card”) (U.S. Law Library of Congress 7 July 2004; AIT Event 2003). In order to avoid duplicates, each resident will be issued a nationally unique identity card number (Canadian Consulate General in Hong Kong 9 Dec. 2004). The second-generation ID cards, which are made with laminated paper, contain personal information on an embedded microchip and a digital photograph of the resident (ibid.). The card, which has new security features, is covered with a special coating and is printed using new technology (ibid.; U.S. Law Library of Congress 7 July 2004). The information is entered using encryption technology, which makes unauthorized access more difficult than with the first-generation cards (ibid.). Although the card contains a digitized version of the bearer’s photograph, which can be accessed by the police, the government has decided not to use biometrics, such as facial recognition, for now (ibid.).

The second-generation ID card began circulating in 2004 (Canadian Consulate General in Hong Kong 9 Dec. 2004). Major cities, including Beijing, Shanghai, Shenzhen and Guangzhou, began issuing the second-generation ID card in the second half of 2004 (ibid.; see also *China Daily* 28 Jan. 2004). Replacement of the old paper cards is expected to be completed throughout China by the end of 2008 (*China Daily* 28 Jan. 2004; Canadian Consulate General in Hong Kong 9 Dec. 2004).

...Issuance Procedures

With respect to application and issuance procedures, the same MPS official [Ministry of Public Security (MPS) official in charge of the Second-Generation Resident ID Card Replacement Office] stated that:

[f]irstly, all citizens who are 16 or over [...] can go to the local public security bureau within three months after they reach the age of 16 to process the application procedure. They shall submit Resident Registered Permanent Residence Book, a photo of the person who applies, fill [in] the Resident ID Card Application Registration Form and pay the production cost for the card. For the person under the age of 16, if they wish to get [the] Resident ID Card, their patronage shall complete the procedure on their behalf. Secondly, after the Public Security Bureau checks and finds no faults with the application material versus the content of the Resident Registered Permanent Residence Book, it will deliver the card application information to the superior organization. Thirdly, the Public Security Bureau at county (city) level and the Public Security Bureau at city district level [are] in charge of the auditing, signing and issuing and then [they] will hand it onward to Resident ID Card Production Center (Station) at provincial Public Security Bureau. Fourthly, Resident ID Card production Center (Station) will produce the card according to the information they have got and then return the card to the organization that is in charge of the card affairs. Fifthly, the organization that is in charge of the card affairs will first make verification and inspection, then it will issue the card to the citizen. According to legislation, the Public Security Bureau should issue the card within 60 days after the citizen has handed in the Resident ID Card Application Registration Form. For the areas where transport is not convenient, the extended time period shall not exceed 30 days (AIT Events 2003).

The PBS of each city and district of permanent residence issues the Chinese Resident Identity Cards (Canadian Consulate General in Hong Kong 9 Dec. 2004). **The new ID card is issued based on the information found in the *hukou*, and the address on the card should be the same as the address of the household registration** (ibid.). When a new card is issued, the old card must be surrendered to the PSB (Canadian Consulate General in Hong Kong 6 Feb. 2005).

Chinese citizens must apply in person to the Public Security Bureau (PSB) to obtain a RIC (Canadian Consulate General in Hong Kong 6 Feb. 2005). The applicant's photograph is taken by the PSB at the time of application (ibid.). A fee is required to obtain a new ID card; a fee is also required if a replacement is requested as a result of loss or damage (ibid.).

When requesting a replacement for a lost card, the applicant must report the circumstances of the loss to the PSB (Canadian Consulate General in Hong Kong. 6 Feb. 2005).

If a person moves to another residential address during the validity period of his/her ID card, he/she is not required to amend or replace his/her ID card (ibid.). The information will be updated if and when a new card is issued for any other reason (ibid.)

(Immigration and Refugee Board of Canada 2005, CHN43360.E – *China: National Resident Identity Cards; background information; description; issuance procedures*, 24 February <http://www.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=416246> – Accessed 30 June 2008 – Attachment 10).

The introduction of the second-generation ID cards was accompanied by the promulgation in June 2003 of the *Law of the People's Republic of China on Resident Identity Cards*, effective 1 January 2004, which replaced the earlier *Regulations of the People's Republic of China Concerning Resident Identity Cards*. This states that on application for the ID card, the applicant must present their “resident household registration book for examination”:

Chapter II

Application and Issuance

...Article 10 **Anyone who applies for the resident identity card shall fill out the Registration Form of Application for Resident Identity Card and present his resident household registration book for examination.**

Article 11 Where the term of validity of a resident identity card expires, or a citizen changes his name, or the card is so seriously damaged that what is registered becomes illegible, the bearer shall apply for a new card; where mistake is found in the items registered in a resident identity card, the public security organ shall put it right without delay and issue a new card; and when getting the new card, the bearer shall return the original one. Anyone who loses his resident identity card shall apply for reissue of a card.

Where any of the circumstances mentioned in the preceding paragraph occurs to a citizen under the age of 16 in respect of his resident identity card, he may apply for a new card, for changing the card, or for reissue of a card.

When a citizen goes through the formalities of changing his permanent residence registration, the public security organ shall record the change of the address of the citizen's permanent residence under the relevant computer-read item in the resident identity card and inform the citizen himself of the fact.

...Chapter III

Use and Examination

...Article 14 Any citizen shall, under any of the following circumstances, produce his resident identity card to prove his identity:

- (1) changing of the permanent residence registration;

... Article 22 **This Law shall go into effect as of January 1, 2004, and the Regulations of the People's Republic of China Concerning Resident Identity Cards shall be abrogated at the same time.**

The resident identity cards obtained in accordance with the Regulations of the People's Republic of China Concerning Resident Identity Cards shall remain valid within their terms of validity before the said cards are changed in accordance with this Law. The specific measures for exchange for the new resident identity cards shall be formulated by the State Council (*Law of the People's Republic of China on Resident Identity Cards* (Promulgated 28 June 2003 & Effective 1 January 2004), National People's Congress (NPC) of the People's Republic of China website

<http://www.npc.gov.cn/zgrdw/english/news/newsDetail.jsp?id=2204&articleId=345150> – Accessed 11 September 2006 – Attachment 11).

The above 2004 law on resident identity cards is likely to apply currently in Dalian City. Article 15 of the Dalian Municipal People's Government *Provisions of Dalian Municipality on regulating Rural Household Register* (2003) states that the “administration of household registration, when concerning administration affairs of residents' identification cards, shall be handled in accordance with Regulations of the People's Republic of China on the Administration of Residents' Identification Cards”. The *Law of the People's Republic of China on Resident Identity Cards* state in Article 22 that “the Regulations of the People's Republic of China Concerning Resident Identity Cards shall be abrogated at the same time”, namely 1 January 2004 (*Provisions of Dalian Municipality on regulating Rural Household Register* (Promulgated 21 December 1990 & Amended 10 March 2003), Dalian City Government website http://english.dl.gov.cn/info/159882_182042.htm – Accessed 6 August 2009 – Attachment 3; *Law of the People's Republic of China on Resident Identity Cards* (Promulgated 28 June 2003 & Effective 1 January 2004), National People's Congress (NPC) of the People's Republic of China website <http://www.npc.gov.cn/zgrdw/english/news/newsDetail.jsp?id=2204&articleId=345150> – Accessed 11 September 2006 – Attachment 11).

4. Are any official checks made in China to ensure that the parties to a marriage are not currently married to other people?

Prior to 2003 certificates or documents attesting to a person's unmarried status were provided by employers or neighbourhood committees. The current *Regulations on Marriage Registration of the People's Republic of China*, introduced on 1 October 2003, simplified marriage procedures in China by *inter alia* no longer requiring couples to obtain a certificates or documents attesting to their unmarried status obtained from employers/neighbourhood committees. By March 2004 the Chinese government began to recognise that single people no longer had the ability to prove their single status, and introduced an amendment to “guarantee that the ministry [of Civil Affairs] will provide testimony whether a person is married or not”, required for procedures such as real estate, loans, and marriages to foreign

parties. The simplified marriage procedures also resulted in an “increase in bigamies... [and] couples providing false registration information”, which led to the government in 2005 instructing officials to begin “collecting citizen’s marriage registration information and inputting it into a computerized database” toward a “nationwide network of online databases...[to] be completed by 2010” (‘Couples line up for marriage as new rules take effect’ 2003, *People’s Daily*, 3 October http://english.peopledaily.com.cn/200310/03/eng20031003_125348.shtml – Accessed 17 December 2007 – Attachment 13; ‘Chinese marriage and divorce registration to be easier and more convenient’ 2003, *People’s Daily*, 22 August – Attachment 14; ‘Certificate to prove single status’ 2004, *China Daily*, 4 March http://www.chinadaily.com.cn/english/doc/2004-03/04/content_311492.htm – Accessed 10 May 2006 – Attachment 15; ‘China to crack down on bigamy with online marriage database’ 2007, *BBC Monitoring Asia Pacific*, source: *Xinhua*, 25 April – Attachment 16).

In April 2007, *BBC Monitoring Asia Pacific* provided the text of report in English by the official Chinese news agency *Xinhua* on this issue:

China is preparing to make its citizens’ marital status details available online to prevent bigamies, sources with the Civil Affairs Ministry said on Tuesday.

A nationwide network of online databases will be completed by 2010, said a document issued by the ministry.

In 2005, the ministry instructed provincial marriage registration offices to begin collecting citizen’s marriage registration information and inputting it into a computerized database.

Chinese couples used to have to get an “introductory letter” from their employers to the local marriage registration office but this formality was dropped in 2003.

The simplification of marriage procedures led to an increase in bigamies with the number of couples providing false registration information on the rise.

According to the ministry, online registration – which should be completed by 2010 – will show when, where and whom a person married.

The ministry has ordered branches at county level and higher to provide computer facilities for the registration.

The ministry also urged provinces in east and central China to get the system up and running locally in 2008 (‘China to crack down on bigamy with online marriage database’ 2007, *BBC Monitoring Asia Pacific*, source: *Xinhua*, 25 April – Attachment 16).

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US Department of State, Bureau of Consular Affairs website

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Australian Embassy in China website <http://www.china.embassy.gov.au/>

Region Specific Links

People's Daily <http://english.peopledaily.com.cn/>

Topic Specific Links

China Family Law Research Centre website <http://www.familylaw.com.cn/>

Search Engines

Google search engine <http://www.google.com.au/>

Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)

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List of Attachments

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