

Divorcing in Thailand

With the increasing pace of globalisation, marriages between individuals of two different nationalities are now relatively common, and there are many marriages between Thais and foreigners. When such marriages fail resulting in one or both parties wishing to divorce, unlike divorce between two Thai parties, many cross-jurisdictional issues have to be considered, including location of marital assets and child custody issues.

The foreign party may expect that divorce options may be similar to those in his or her own country, and may be surprised to find that there are distinct differences compared to other jurisdictions. In this article, we examine the options for divorcing in Thailand where one party is a Thai national.

If the parties agree to divorce, the divorce process can be easily concluded at any district office, but the parties should have the marriage certificate to present to the officer. If they have lost it, they can request a certified true copy from the district office that issued the marriage certificate.

If the couple registered their marriage abroad, the Thai party will first have to report his or her marriage registration to the district office in the district where the Thai party lives (some specific documents will be required such as a certified copy of the marriage certificate and its certified true translation by the Ministry of Foreign Affairs) and then register the divorce at the district office.

The parties may wish to reach a settlement in respect of division of marital assets and other issues such as spousal/child support and custody/visitation rights. Any divorce agreement giving effect to such settlement must be filed with the officer at the time of registration of the divorce. If the parties are able to reach an amicable agreement, this method of divorce is quicker, cheaper and far less stressful than contested divorce proceedings in the court. The registration of the divorce can be concluded within one day.

However, if the couple does not consent to divorce, the other alternative is to file a divorce action with the Thai family court. Note, however, that to do so the petitioning party must have grounds for divorce. Unlike other western countries, "irreconcilable differences" are not among the grounds for divorce under Thai law. The grounds for divorce are contained in the Thai Civil and Commercial Code and can be summarised as follows:

- ◆ Adultery.
- ◆ Misconduct, whether or not a criminal offence, causing the other to be (a)

seriously ashamed; (b) insulted or hated for being the spouse of the person committing misconduct; or (c) to sustain excessive trouble or injury taking into account the condition, position and cohabitation as husband and wife;

- ◆ Serious harm or torture caused to the body or mind of one spouse by the other, or seriously insulting the other's ascendants.

- ◆ Desertion for more than one year.
- ◆ Sentence by final judgment of the court resulting in one party being imprisoned for one year or more, without the knowledge, consent or participation of the other party, and cohabitation as husband or wife will cause excessive injury or trouble to the other party.

- ◆ Separation for more than three years, whether by choice or order of the court.

- ◆ One spouse has been adjudged to have disappeared or has left his or her domicile or residence for three years or more and the other spouse does not know if he or she is dead or alive.

- ◆ Failure to give proper maintenance and support to the other spouse or committing acts seriously adverse to the relationship of husband and wife, causing the other to be in excessive trouble, taking into account the condition, position and cohabitation as husband and wife.

- ◆ Insanity of one party for more than three years continuously, and such insanity is unlikely to be curable so that continuation of marriage cannot be expected.

- ◆ Breach of a bond of good behaviour.

- ◆ One spouse is suffering from a communicable and dangerous disease that is incurable and may cause injury to the other.

- ◆ One spouse has a physical disadvantage so as to be permanently unable to cohabit as husband or wife.

After a matter is filed with the Thai court, if the parties can reach settlement during the court process, they can file the settlement agreement for the Thai court to review and approve at any time. The agreement would then be made part of the court order for dissolution of the marriage and settlement. The benefit of a court-approved settlement over the first option (registering a divorce by mutual consent) is that a court order is directly enforceable and it would not be necessary to file a separate claim if one party breaches the agreement.

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