

Divorce in the Cayman Islands

I MADE A MISTAKE - AFTER WHAT TIME PERIOD MAY I GET DIVORCED?

Parties cannot petition for divorce until the expiry of two years' from their marriage date. Departure from this general rule can be granted with the permission of the court, but only in circumstances where a party can show that to remain in the marriage until the prescribed period, would cause exceptional hardship. This would not include, for example, being the victim of a violent marriage (as there are alternative steps which could be taken), but requires something 'outside of normal' that cannot be remedied in any other way.

WHAT ARE THE GROUNDS FOR DIVORCE?

In divorce proceedings, the party issuing a divorce petition is referred to as the "Petitioner"; his or her spouse is referred to as the "Respondent".

In order to obtain a 'Decree of Dissolution of Marriage', the Court must be satisfied that since the celebration of marriage, either:

- (a) the Respondent has committed adultery, and the Petitioner finds it intolerable to live with the Respondent;
- (b) the Respondent has behaved in such a way that they cannot reasonably live with them;
- (c) the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition;
- (d) the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition, and the Respondent consents to a decree of dissolution being pronounced; or
- (e) the parties to the marriage have lived apart for a continuous period of at least five years' immediately preceding the presentation of the Petition; in which case, it is unnecessary for the Respondent to consent to a decree of dissolution being pronounced.

From the above, it is clear that Divorce in the Cayman Islands requires a degree of 'fault' on the part of the "Respondent" except where there has been a separation in the relationship as in (d) and (e) above.

ALTERNATIVES TO DIVORCE

Where the parties have decided to separate before the expiry of two years' from the date of marriage or do not wish to apportion 'fault' on the other party, they can enter into a Deed of Separation which is a form of nuptial agreement. In effect, this is an agreement whereby the parties agree financial aspects resulting from the break-up and arrangements for any children involved.

THE DIVORCE PROCESS

The Petitioner files a Petition with the court which in essence, is the document making the request that the marriage is dissolved. At the same time, the Petitioner will file an Affidavit which is a sworn statement setting out material facts in support of the Petition.

Other documents required from the outset are a certified copy of the marriage certificate and an Acknowledgement of Service, the latter being a document which is served on the Respondent to provide an opportunity to indicate whether the divorce will be defended or consented to.

The process is then determined by how the Respondent replies: if the divorce is not being defended and is straightforward, then the Petitioner can make an application to the court to 'prove' the Petition. In the event there are no financial claims or children involved (or there is full agreement), a decree of dissolution can be quickly obtained - within a couple of months.

Where there are disputes regarding financial matters and/or issues involving children, divorce proceedings will undoubtedly be more protracted. The introduction of the Mediation Information & Assessment Rules 2016, presumes that where there are issues between parties in family proceedings, the court should consider whether Mediation would be an appropriate alternative to court proceedings in resolving disputes.

THE DIVORCE PROCESS (CONT'D)

However, in circumstances where mediation has either failed or is determined as not being appropriate, a family Judge will seek to manage court proceedings by making orders which will set a timetable for a final trial of issues and set out a process to be followed to ensure that by the date of final hearing, each party is ready to proceed.

This is likely to involve orders for disclosure of each parties' financial affairs, including property and asset valuations, details of income etc.

COSTS AND HOW LONG DOES IT TAKE?

Where the parties to a marriage have no property or income claims against the other, and no children, the divorce process is straightforward and therefore low in cost; if the parties choose to use lawyers, it should not cost more than US\$3,500 (approx).

Further, if the parties are able to communicate effectively with each other and cooperate, and they can make agreements regarding their financial affairs and any children, this will reduce the necessity for significant intervention by the court and will ultimately minimise any legal costs involved.

It is a simple recognition, that legal costs in divorce proceedings are dramatically increased when parties to a marriage are simply unable to agree matters between themselves; in some cases, every aspect of a party's marriage can become a 'contest' which requires court intervention and judicial determination.

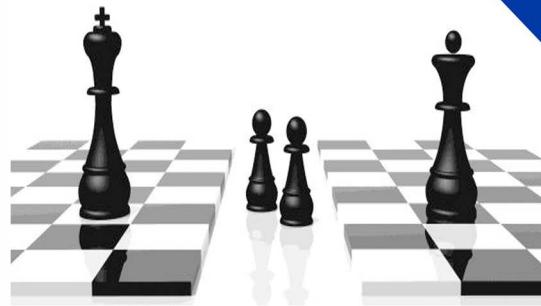
It follows, therefore, that legal costs can often become disproportionate to the issues in dispute and lead to financial results which from the outset, neither party would have contemplated.

At HSM, we encourage parties to take a sensible approach and where possible, to agree with each other most, if not all, the general areas of their divorce.

However, we appreciate this may not always be possible as a marriage separation is generally a difficult experience where emotions 'run high', but the words of Mr. Justice Mumby (as he was then) in *KSO v. MJO & Others [2008] EWHC (Fam) 3031 KSO* are worthy of attention, who observed upon the effect of the high costs in litigation:

The picture is deeply dispiriting. And it is not as if it is only the adults who suffer from the consequences of such folly. The luckless children do as well. The present case is a sobering, and for me deeply saddening, example. If, instead of spending – squandering – over £430,000 in costs, the wife and the husband had been able to resolve their differences at a more modest and, dare I say it, more seemly level of costs, there might very well have been enough left in the matrimonial 'pot' to house the wife and children and to enable the children to remain at their school, whilst still leaving something more than a mere consolation prize over for the husband. As it is, it is hard to see much being left from the wreck...and the wife and the husband – and for this purpose I refer to them as the mother and the father, for that is what they are – are faced now with the wretched and thankless task of trying to explain to their daughters how it has all come to this.

HSM



CONCLUSION

We know that any breakdown in a relationship will be a difficult experience. The consequences affect finances, where you live and most importantly, any children involved. Additionally, there may be immigration issues which arise.

We will advise you on your entitlements and guide you through the process necessary to achieve your objective needs.

HSM brings a constructive approach to the resolution of family disputes. Where appropriate, we can offer mediation rather than process the dispute through the courts. Whilst we strive for solutions that consider the needs of the family without the drama of Court appearances, we also have excellent standing as court advocates.

We can also assist on matters such as nuptial agreements, family trusts, wills, estate administration, immigration and property transactions. We guide you through the process to minimise your worries and concerns.

KEY CONTACT



Lisa Donalds
Associate
Tel: +1-345-815-7437
ldonalds@hsmoffice.com

This publication is intended only to provide a summary of the subject matter covered. It does not purport to be comprehensive or to provide legal advice. No person should act in reliance on any statement contained in this publication without first obtaining specific professional advice. Alternative solutions also exist which may better suit the requirements of a particular individual or entity.