



International Divorce

Choosing which country to have your case heard in

Divorce can be messy, distressing and hurtful, so it's no surprise that some people strive to bring divorce proceedings not in the place where they currently reside, but in their home countries, if they believe a favourable judgement is more likely there. We asked Managing Director FRANCA CIAMBELLA and Senior Legal Associate AISHAH WINTER of **Consilium Law Corporation** about the pros and cons of couples undergoing divorce proceedings in Singapore or abroad.

What is "forum shopping"?

It's a legal practice used by divorcing parties to commence divorce action in a jurisdiction where they will be most likely to obtain a favourable judgment. In a recent case, the Australian Court refused a husband's application to prevent his wife's court application for financial relief to be processed in Australia; the couple and their two children were residing in Singapore at the time.

Forum shopping is generally seen in many jurisdictions as inappropriate – and is not encouraged. Courts have the discretion to restrict parties from forum shopping.

So, even if I live in Singapore, my divorce can potentially be heard in another country?

Yes, an expatriate here may be able to file for divorce in multiple jurisdictions. For example, a UK citizen who has retained her residence status in her native country while residing in Singapore for three years, and who has dual citizenship in Italy, may be able to file for divorce in any of those three countries. The question for the spouse is, which country is best suited to handle the divorce? The general principle is that the court of the country in which a spouse has filed the divorce will hear the case first.

What about the division of assets?

Depending on the extent and location of the marital assets, the contributions of each spouse to the family and their assets, their nationalities and the country of residence of the children, one jurisdiction may offer better results for a particular spouse. For example, in the United Kingdom and in Hong Kong, the starting point with respect to the division of the matrimonial assets is that they may most likely be shared equally between the parties. In Singapore, there is no presumption of equal division and the assets will be divided in accordance to the parties' contributions (financial and/or non-financial) to the marriage.

What if children are involved?

Different jurisdictions have varying laws on child-related issues, such as custody and permanent relocation. In Singapore, the guiding principle is the welfare of the child, and there is no legal presumption in favour of relocation overseas, in contrast to more permissive jurisdictions such as some US states. Moreover, Singapore is one of the signatories of the Hague Convention on the Civil Aspects of International Child Abduction, a multi-lateral treaty that provides a quick method to return an internationally abducted child by a parent from one member country to that of the child's habitual residence. The Hague Convention was designed to prevent, amongst other things, international forum shopping in custody cases. As such, a country's acceptance and/or application of the Hague Convention will play a part in the spouse's decision-making process.

What else should divorcing couples consider?

While there may be advantages to commence divorce in a particular jurisdiction, it may also be more expensive and time-consuming in the long run, which may create more stress for the family. Beyond the differences in the laws of the countries in question, other factors to consider include logical constraints, timing, language barriers and, particularly, the recognition of the foreign divorce judgment in the couple's native country. *EL*

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