

How do I leave my spouse?

Cross-border marriages are becoming more and more common. In this two-part series, we discuss many of the questions of international law that arise whether we are forming new bonds of matrimony, or ending existing ones across international borders. Our previous column last week addressed questions of international marriage and premarital agreements. Today, we look at international divorce.

Divorce proceedings must normally be brought in the country where the parties reside. This is the law in nearly all nations and cannot be varied by agreement of the parties. When foreign couples married abroad expatriate to Thailand, they often do not realise that by abandoning their residence abroad they also abandon their right to bring a divorce proceeding there. Once having established residence in Thailand, even a foreign couple married abroad can initiate an action for divorce here.

Alternatively, a foreign spouse may be able to return to his/her foreign country, re-establish residence, and initiate divorce there. However, if an action has already been initiated in Thailand, by the time residency is re-established in the foreign country, it may already be too late. Foreign jurisdictions will likely refuse to proceed with a divorce action if another action is already pending in Thailand. The result is often a race by one or the other spouse to initiate a divorce action and effect service within their preferred jurisdiction.

Yet even when a divorce action is first initiated in Thailand, a foreign court may entertain a second action to address any issues that are excluded from the Thai divorce action. US courts will examine the pleadings in the Thailand divorce action to see if all property and support issues are properly addressed. If the complaint for divorce before the Thai

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court action is poorly drafted, then the US court may permit a separate action to address any issues that have been left out.

Note, however, that foreign money judgments are not enforceable in Thailand. While a divorce order entered abroad may be recognised in Thailand, foreign divorce judgments that grant alimony or child support awards will not. The Thai Family Court has exclusive discretion to make its own determination of child support and alimony, which can be considerably less. As a result, foreign support judgments will be limited to collection against assets that may exist in the foreign jurisdiction only.

An increasing number of foreign nations recognise the problem of enforcing support judgments against expatriate spouses. The United States, for example, has authorised alternate means of enforcement such as confiscation of the expatriate spouse's US passport or even imprisonment upon re-entry by the expatriate spouse into the United States (even in the case of non-US citizen spouses).

In the case of Thai citizens who marry foreign spouses and relocate abroad, there are additional immigration issues. It is quite common for foreign spouses to terminate any immigration or visa applications on behalf of their Thai spouse in the face of impending divorce. Once a Thai spouse is forced to return to Thailand, it is very difficult for the Thai spouse to seek support or other relief against his/her foreign spouse. The foreign spouse can proceed with the divorce on default, leaving the Thai spouse abandoned in Thailand without any means of relief. A Thai spouse in such a situation must move quickly to start a

divorce action in the appropriate foreign court before being forced to return to Thailand. Foreign courts

can potentially order the foreign spouse to continue with the immigration application/visa on behalf of the Thai spouse as a form of emergency relief.

In the case where the Thai spouse is forced to return to Thailand, or where the foreign spouse married in Thailand abandons his/her Thai spouse in Thailand and returns to his/her country of origin, relief is still possible for the Thai spouse. There is little point in bringing any action for support in Thailand when the foreign spouse has no assets here and any judgment will not be enforceable in the foreign spouse's country. However, it is still legally possible for a Thai spouse to initiate an action in the foreign spouse's country for support and/or divorce.

Foreign courts will usually cooperate in assisting a Thai spouse in obtaining support for herself and her children against a foreign spouse who has abandoned them. Most difficulties arise in retaining foreign legal counsel to appear on their behalf to begin the action. Foreign counsel fees will be high. However, foreign courts, such as in the United States, will direct the foreign spouse to reimburse the Thai spouse's counsel fees if the foreign spouse earns a higher income. Foreign courts are also likely to award temporary support for the Thai spouse until the divorce case is complete.

Armed with the right knowledge, spouses involved in cross-border marriages can protect themselves and their children when divorce is inevitable.

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