International FAMILY LAW GROUP LLP

iGuide: Recognition of Foreign Divorce

If you were divorced outside of England and Wales it is important to know whether your divorce will be recognised here.

Recognition of foreign divorce is important as it can affect ability to remarry, issues such as wills and inheritance, nationality, immigration, tax, welfare benefits, marital status, the status of any children and the financial remedies available to the parties.

Will my foreign divorce be recognised?

A divorce obtained by any other civil court within the United Kingdom will be recognised in England. Any other form of divorce, such as a religious divorce through a Sharia Council or a Beth Din, will not be recognised.

A divorce granted within the European Union whilst the UK was a member of the EU, in accordance with the laws of another member state of the European Union, will almost always be automatically recognised in England. A certificate of divorce, properly translated and certified, is valid across the whole of the European Union.

If the divorce is outside of European Union, or was obtained after the UK left the EU, the question of whether it will be recognised in England is more complicated.

If the divorce was granted in a country which is a signatory to the 1970 Hague Divorce Recognition Convention, it will be recognised. Approximately 50% of countries in the EU are members although there are some significant countries in Western Europe which are not.

If the divorce was granted after the UK left the EU in a country that is not a signatory to the 1970 Convention, recognition will depend of whether the divorce as obtained by way of *‘proceedings’* or *‘other than by means of proceedings’.*

As well as including divorces obtained through the courts, *'proceedings'* includes non-court proceedings but this requires a degree of state or other official involvement. Some religious divorces abroad are considered to fall within this category.

Provided a foreign divorce obtained by means of *'proceedings'* satisfies the following criteria it will almost always be recognised in England:

The divorce must be valid in the country in which it was obtained

At the time the divorce was obtained either spouse must have been resident or domiciled or a national of the country where it was obtained (see below)

Both spouses must have had notice of the proceedings

Recognition is more uncertain where a divorce has been obtained *'other by means of proceedings'*. The requirements are more vigorous especially the requirement for notice of the proceedings to the respondent spouse.

In order for the divorce to be recognised neither spouse can be habitually resident in the United Kingdom for a year before the divorce and each party must be domiciled in the country where the divorce occurred, or in a country which recognises the form of divorce. This category includes religious divorces such as Islamic Talaqs and Jewish gets.

What is fundamental, in terms of recognition, is that the divorce should have started, and finished, in the same country. England will not recognise a foreign divorce in which any part of the divorce took place in England, for example if a Jewish Get was written in London and sent to Jerusalem, or where a Talaq was pronounced in England and sent to a wife in Pakistan.

In some circumstances a foreign divorce may not be recognised for reasons of English public policy. Whilst there are a number of reported cases in which the courts have refused to recognise a marriage, the instances of this are in fact rare.

If you have been divorced abroad, and are not sure of its status, legal advice should always be taken, often in conjunction with advice from a lawyer in the country where the divorce occurred.

Domicile and Habitual Residence

You will note above that a spouse's domicile or habitual residence at the time of a foreign divorce may have an impact on whether or not it is recognised.

What is domicile?

Domicile is the country with which one has, or considers themselves to have, the closest long term connection. It is not necessarily the country where someone lives, or works in the short or medium term. For many who live or work abroad, they may retain a long term intention to return to their home country or to another country, which is therefore their Domicile.

Everyone has a domicile at the time of their birth. This is known as a *'domicile of origin'* and will often be the country where they are born or the country of which their parents are domiciled.

From the age of 18, a person may acquire a new domicile, a country with which they have the closest long term connection. This is known as a '*domicile of choice'*. If they then leave this country and lose their long term connection with it, then their domicile will revert to their domicile of origin.

You can only have one domicile at any one time. Everyone has to have a domicile. The definition of domicile can be different abroad.

Evidence of domicile can be found in many ways, mostly connected with longer term allegiance and commitment. Some people spend many years working in a country and yet retain a domicile of choice in their home country.

What is residence?

Unhelpfully, residence is an issue rarely defined by law. In many instances it is where a person has their primary home. Sometimes the law requires a minimum period of residence. The law also refers to both *'habitual residence'* and *'simple residence,'* the latter often referred to as just *'residence'.*

Habitual residence is where a person has a settled intent, a centre of their interests and there is a habitual element to their residency. Habitual residence can end immediately, and a new Habitual residence can be created quite quickly although it often requires an accompanying

period of simple residency or other strong connections with the new country. A person cannot have two habitual residences at the same time.

In contrast, simple residency is the mere fact of residency in a location. A person can have two residences at the same time in different countries, for example if they spend six months of each year at different homes. A person can be resident even under a deportation order or in other very short term residency or circumstances where there are issues about their immigration status.

You should be cautious about admitting residency or domicile as both have tax implications under English tax law, including liabilities for income tax, capital gains tax and/or inheritance tax. Often tax advice as well as family law advice should be taken before admitting either residence or domicile.

If you have been divorced abroad and are unsure as to whether your marriage will be recognised please contact iFLG for further advice.

For more information about recognition of foreign divorces, or other questions you may have, please contact a member of our specialist family law team.

You can do so via our website, by email to enquiries@iflg.uk.com or telephone on +44 (0) 203 178 5668.