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The law is as stated at January 2003

The law relating to divorce in Hong Kong is complex. This pamphlet is written simply as a guide and a brief introduction to the issues involved. This pamphlet is not meant to be exhaustive and does not constitute legal advice. If you require legal advice on any of the topics raised in this pamphlet, you should consult a solicitor.

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Solicitors & Notaries

Hong Kong

LAW GUIDE SERIES No.9

Divorce Law in Hong Kong

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CAN I PETITION OR APPLY FOR DIVORCE IN HONG KONG?

- Yes, if either of the parties to the marriage is domiciled in Hong Kong (i.e. permanently resident in a legal sense) at the date of the divorce petition, or was habitually resident in Hong Kong throughout the period of 3 years immediately preceding the date of the petition or the joint application.
- Yes, if either of the parties to the marriage had a substantial connection with Hong Kong at the date of the petition.
- The proceedings for divorce may be instituted either by a petition for divorce by either a party or by joint application for divorce by both parties to the marriage.

THE 1-YEAR RULE

The court will not usually accept a divorce petition before the expiration of one year from the date of the marriage. However, if the petitioner has an exceptional case the court may accept a petition for divorce within the one-year period. An exceptional case may be "exceptional hardship" suffered by the petitioner or "exceptional depravity" on the part of the respondent (i.e. the petitioner's spouse). Such cases are rare, and parties invariably have to wait for the 1 year period to expire before petition.

GROUND FOR DIVORCE

Contrary to popular belief, there is in fact only one ground for divorce, namely, the marriage has broken down irretrievably.

THE 5-FACTS RULE

The court will find that a marriage has broken down irretrievably if the petitioner can satisfy the court of one or more of the following five "facts" :-

- that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent
- that the respondent has behaved in such way that the petitioner cannot reasonably be expected to live with the respondent
- that the respondent had deserted the petitioner for a continuous

period of at least one year immediately preceding the petition

- that the parties to the marriage have lived apart for a continuous period of at least one year immediately preceding the petition and the respondent consents to divorce
- that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the petition

IS THERE ANY DEFENCE TO A DIVORCE PETITION?

Yes. If the respondent can show that none of the five facts has been proved or that, despite the evidence of any of the five facts, the marriage has not broken down irretrievably, the court will dismiss the petition.

THE "SPECIAL PROCEDURE"

The present practice of the court is that unless the respondent contends the proceedings by filing an answer, a special procedure will be adopted to dispense with the hearing. In this case, the petitioner is simply required to file an affidavit to confirm the contents of the petition.

However, if the respondent file an answer, a hearing in court is required.

DECREE NISI AND DECREE ABSOLUTE

Upon the court is satisfied that the petition is proved, a decree nisi for divorce will be pronounced. Upon the expiration of six weeks from the date of the decree nisi is granted and all matters relating to ancillary relief and custody has been settled, the decree nisi will be made absolute.

CUSTODY/ACCESS TO CHILDREN

Unless there is agreement between husband and wife as to custody and access to the children of the family, the court will adjourn the matter to be heard in chambers and will call for a Social Welfare Report to be made concerning the matter. The decree absolute for divorce will not be pronounced unless and until the court declares that it is satisfied that the arrangements

for the children have been made and are the best that can be devised in the circumstances.

FINANCIAL MATTERS ON DIVORCE

Financial matters on divorce are mainly regulated by the Matrimonial Proceedings and Property Ordinance.

Either party to the marriage may apply to court for an order for her or his maintenance, as well as for the children.

In deciding what orders to make, the court shall consider factors such as :-

- earning capacity of the parties
- the relative income and other financial resource of the parties
- the financial needs and obligations of the parties
- the age of each party and duration of marriage
- contributions made by each party to the marriage and to the welfare of the family
- standard of living enjoyed by the family before the breakdown of the marriage