Myerson **Family**

Our Guide to International Divorce

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Welcome

We understand the complexities of modern life and, therefore, everything we do is ultimately about you, and it is important you get to know the team that will be working with you every step of the way. It's a deep source of satisfaction that so many clients choose Myerson as their trusted adviser.

Why Myerson?

Our highly experienced and discreet family lawyers, provide clear and supportive legal advice, tailored towards your individual family needs.

As a Top 200 UK Law Firm, we are also proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500**, and commended by The Times '**Best Law Firms 2023**'. This means you can be certain that you will be receiving the highest quality legal advice.

Being a full-service law firm means we are well placed to provide wide-ranging, tailored legal advice to meet your individual needs. We work closely with other departments internally including Real Estate, Corporate, Commercial and Private Wealth Lawyers to ensure that your needs are protected comprehensively.

You can find out more about our **Family Team** by clicking here.

International Divorce

When couples either live overseas, or have assets located in different countries, deciding where to start divorce proceedings can be complex.

There are rules determining when you can and cannot issue divorce proceedings in England and Wales, as well as how those proceedings might be served if the other party is overseas.

This guide outlines the key issues involved in international divorce.

What is international divorce?

It has various meanings, such as:-

- Either spouse may be living overseas; or
- Assets may be based in the UK or overseas; or
- Where the dissolution of marriage occurs outside of England and Wales.

When you can issue divorce proceedings in England and Wales?

You can issue divorce proceedings in England and Wales if you have been married for at least one year, your marriage has irretrievably broken down, you can provide a valid marriage certificate, and if the courts have jurisdiction under section 5 of the Domicile and Matrimonial Proceedings Act 1973.

In general, the court will have jurisdiction if one of the following criteria are met:

- Both parties are habitually resident in England and Wales;
- You were habitually resident in England and Wales, and one of you still resides here;
- The respondent is habitually resident in England and Wales;
- In joint applications only, either of you is habitually resident in England and Wales;
- The applicant is habitually resident in England and Wales and has resided there for at least one year immediately before the application was made;
- The applicant is domiciled and habitually resident in England and Wales and has resided there for at least six months before the application was made; or
- Either of you is domiciled in England and Wales.

“Domicile” means your main permanent resident where your home is. Domicile is automatically acquired on birth, but domicile can change if you move to a different country with the intention of making your home there permanently (a Domicile of Choice),

“Habitually resident” is where your day-to-day life and activities happen, and you intend to stay there long term. It doesn’t require an intention to make that place your permanent home. To establish Habitual residence, factors such as where you live ordinarily, where you work and set up banking arrangements, the location of your GP and dentist and where you pay tax are important.

When you cannot issue divorce proceedings here

Proceedings cannot be issued in England and Wales if:

- Neither of you is domiciled or habitually resident in England and Wales;
- Proceedings have already been validly issued in another jurisdiction (i.e. where one party has a closer connection). However, in such cases, there may be grounds to issue divorce proceedings in England or Wales if either of you has sufficient connection to this country, in which case there will be a preliminary dispute to be resolved at court as to which jurisdiction is the more appropriate jurisdiction to entertain the divorce/financial remedy application. It is no longer fatal to issue first.
- There is an ongoing divorce process in another court that is recognised as the more appropriate or "competent" forum to deal with the matter.

If proceedings are issued in another country first, the courts may pause or dismiss the case to avoid conflicting judgments.

Process of serving divorce proceedings overseas if the respondent is overseas

When the respondent lives abroad, the applicant must ensure that the divorce is properly served in accordance with the Family Procedure Rules, and also international service conventions.

The proceedings must be served within 28 days of issue, but the petitioner can apply to extend this period. You may need to employ a process server in the overseas country and translate the petition and other documents, if

necessary.

The court can order service by alternative method, (such as email,) as long as it does not contravene the laws of the country where service is taking place.Where an order for alternative service is not sought, the different options for service are explained below.

Methods of service:

If the respondent lives in a participating Hague Convention country:

- Service can be made under the Hague Service Convention:
    - This requires participating countries to designate central authorities to act as sending/receiving agencies. In England and Wales, this is the Foreign Process Section at the Royal Courts of Justice.
    - Rule 6.46 of the Family Procedure Rules provides that an application seeking to serve, as per the Hague Service Convention, must file with the original court where proceedings are pending: the application, any translation and a request for service that specifies the mode of service preferred (Form N224).
    - The applicant must complete the model form annexed to the Convention.They must also supply a translation of the application form and other documents if necessary.
    - The Family Procedure Rules says that the original court then sends the documents to the Royal Courts of Justice, however, in practice it is quicker to take the documents there directly.
    - The Royal Courts of Justice will affect service as per the preferred method identified.
    - The applicant will be liable to pay or reimburse the costs of service and must make an undertaking (a promise) that they will be responsible for any expenses incurred.
    - Some countries will require legalisation of documents to be served,

whereas others will ask for a formal letter of request from the Royal Courts of Justice

- If the law of the country permits, service can be made through the judicial authorities of that country, or through a British Consular authority in that country.

If the respondent lives in a country not part of the Hague Convention:

- Service is effected via the Foreign and Commonwealth Office:
    - The process is then very similar to that under the Hague Service Convention – the applicant must file with the original court where the proceedings are pending: the application, any translation and a request for service that specifies the mode of service preferred (Form N224), for onwards transmission to the Royal Courts of Justice.
    - As above, a translation of documents to be served may be required.
    - Once the documents are lodged with the Royal Courts of Justice, they will forward them to the Foreign and Commonwealth Office with a request that they arrange service in the foreign country per the applicable local laws.
    - The applicant will be required to give an undertaking to be responsible for the service costs incurred.
    - If the laws of the country permit, service may be permitted through the government of that country where the government is willing to serve it or through a British Consular authority in that country.

Direct service:

- Whether the country is within the Hague Convention or not, another option is to serve the proceedings directly on the respondent provided that the jurisdiction allows personal service. The method of service must comply with the county's laws.

Is it preferrable to issue divorce / financial remedy proceedings in England and Wales?

England and Wales is often viewed as one of the fairest and most generous jurisdictions for financial claims arising from divorce, particularly for the financially weaker spouse. It is a well-defined legal system which attempts to resolve issues in a non-confrontational way.

Reasons why it may be advantageous to issue in England include:

- In England and Wales, the no-fault divorce rules mean it is not necessary to establish the grounds for divorce. It just needs to be confirmed that the marriage has irretrievably broken down.

- Decisions regarding the division of finances are based on fairness and equity, and the court favours the financially weaker parties by taking a 50/50 split of assets as its starting point. The court takes into consideration the parties' needs and standard of living, rather than strict division based on contribution.

- There are strong financial disclosure requirements.

- Pre-acquired assets are not automatically ringfenced in England and Wales.

- Valid pre-nuptial agreements are more likely to be recognised in England and Wales than in some other jurisdictions.

- The court has wide discretion to redistribute assets under the Matrimonial Causes Act 1973, including worldwide assets. For example, the court may order the transfer of property anywhere in the world, the sharing of a pension, or monthly maintenance payments, potentially up until the death of either party.

Other countries may favour men over women in the way they deal with divorce proceedings. It also might be more expensive and take longer to get divorced in some countries.

Part III of the Matrimonial & Family proceedings Act 1984 section 15

Even where a divorce order has been obtained overseas, an application can sometimes be made in England and Wales for a financial order if certain conditions are met. These conditions are very restrictive.

- The divorce must be recognised as legally valid in the country in which it was obtained;
- The applicant must not have remarried;
- The applicant must be either domiciled in England & Wales (or was domiciled on the date the overseas divorce took place); or
- The applicant must be habitually resident (or was resident throughout the period of one year ending with the date on which the overseas divorce took effect);or
- The applicant has a beneficial interest in a property in England or Wales which was occupied by the parties at some point during their marriage as a matrimonial home.

The application for financial provision after an overseas divorce involves a two-stage process. The first stage involves an application to the court for permission to make the application. An applicant must be able to establish a sufficient connection with England or Wales by virtue of being domiciled or habitually resident here or having a property occupied as a matrimonial home in this country. The applicant must have substantial grounds to make an application.

If permission is granted, the second stage involves the court considering the applicant's needs, the welfare of any child of the family; all the circumstances of the case including what provision was provided overseas; whether those overseas orders are enforceable and the length of time that has passed since

the overseas order was made. The legislation does not allow an applicant a "second bite of the cherry."

The court has powers to make property adjustment orders, property transfers, lump sum orders, spousal, child maintenance and pension sharing orders.

However, issuing divorce proceedings in England and Wales may not always be appropriate. For example, if the majority of the couple's assets or income are located abroad.Such assets could include a foreign holiday home, overseas bank accounts, or overseas pension funds.

There may be other practical implications to consider when divorcing overseas, such as how long it takes to get divorced. For example, in Ireland, spouses must live apart for at least two out of the three years before proceedings are issued.

Unlike in England and Wales, other countries may not require a minimum duration of one year of marriage before initiating divorce proceedings. For example, in Spain marriage need only have lasted three months.

The timescale for the divorce process may be a lot longer in other countries than in England.

Issue with forum conveniens and power of the court

The concept of forum conveniens determines which country's court is best placed to deal with the divorce. The courts here may decline jurisdiction if another country has a closer connection to the marriage, such as if the parties lived there, assets are based there, or if the children attend school there. The court has power to stay or dismiss proceedings. This may be problematic if the approach of the competing state is entirely different.

The case of *SK v RR* [2024] EWHC 1418 (Fam) highlighted how the court can apply the forum conveniens test. Despite the husband filing for divorce in India, the court ruled that proceedings should take place in England which is where the couple held their only matrimonial asset. Further, the wife's safety concerns and stronger ties to England played a significant role in the court's decision.

The court can retain jurisdiction even if there are competing proceedings abroad.

If the parties cannot agree on the jurisdiction where the divorce proceedings should continue, the court will have to decide where the divorce will continue.This is a "forum dispute" which is often a lengthy and costly process.

With the increased globalisation of families, it is likely that more people will have to seek legal advice on which jurisdiction would be most appropriate for them to issue divorce proceedings

You're in safe hands!

If you would like further information about how we can help you with **International Divorce**, or if you have any questions, please don't hesitate to contact a member of our **Family Law Team** today.

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