

This article discusses international divorce and settlement and details what it includes, such as the complexities that may arise with a family law matter involving an international aspect.



#### **A. WHAT IS 'INTERNATIONAL DIVORCE AND PROPERTY SETTLEMENT'?**

International divorce relates to the breakdown of a marriage, where both parties or one party reside in a country other than Australia and/or are citizens of a country other than Australia. Similarly, international property settlement relates to the settlement (arrangement) of assets (accumulated in a relationship) that are located in a country or countries other than where the owner/s live. As such, divorce or property settlement cases that entail an international element may include complexities such as determining:

1. Whether the marriage (if it occurred overseas) is recognised in Australia;
2. If the married couple is able to get divorced in Australia;
3. Which country to file for a divorce and settle property in;
4. Whether a foreign divorce will be recognised in Australia; and
5. The enforceability of a divorce and property settlement across different countries with distinctive legal systems.

#### **B. MARRIAGES RECOGNISED IN AUSTRALIA**

Under Part VA of the *Marriage Act 1961* (Cth), marriages that have taken place overseas can be registered and/or recognised in Australia provided that:

- The marriage is recognised as being valid under the law of the foreign country in which the marriage took place; and
- Had the marriage taken place in Australia, it would have been valid under Australian law.

Under the *Marriages Act 1961* (Cth), a marriage will generally not be recognised in Australia if:

- At the time of the marriage, either party is/was legally (and validly) married to another person.
- A party or both parties to the marriage were not considered to be of marriageable age (18 and over) at the time of the marriage – court approval may be granted in exceptional cases where a party is of an age between 16 to 18.
- The consent provided by either party was not real and/or freely given.
- The parties are considered to be within the degree of a prohibited relationship – for instance, if the relationship is between a parent, grandparent or sibling.

#### **C. WHEN CAN THE PARTIES/PARTY GET DIVORCED IN AUSTRALIA**

To be able to apply for a divorce in Australia, at least one person from the married couple must:

- Be an Australian citizen;
- Be domiciled in Australia and intend to live in Australia indefinitely; or
- Have been a resident (ordinarily living) in Australia for at least twelve months.



Pursuant to section 48(1) of the *Family Law Act 1975* (Cth), divorce in Australia can only be granted on the basis of an irretrievable breakdown of marriage. To prove an irretrievable breakdown of marriage, the parties must have been separated for at least twelve months with there being no reasonable prospect of them getting back together. For more details regarding applying for a divorce in Australia read our earlier article on [Marriage and Divorce](#).

#### **D. WHERE SHOULD THE PARTIES/PARTY GET DIVORCED AND SETTLE PROPERTY?**

Generally, the parties or a party should apply for a divorce in the country that they have the closest connection with – for instance, a closest connection could be established with the country which holds most of the parties’ assets. Consideration should also be given to the:

- Legal requirements to file for a divorce and settle property in other countries – for example, in America parties can file for a no-fault or fault divorce on several different grounds such as legal separation, criminal conviction and adultery, whereas in Australia the only ground for divorce is the irretrievable breakdown of marriage.
- Enforceability of the outcome/orders across different countries – for instance, countries that are not part of the Commonwealth may not recognise an Australian court order.

It should be noted that while Australian courts do have powers to make orders relating to foreign property, they do not have the power to enforce these orders in other countries. Some countries, however, may recognise an Australian court order and decide to enforce it in their jurisdiction.

#### **E. FOREIGN DIVORCES RECOGNISED IN AUSTRALIA**

Under section 104 of the *Family Law Act 1975* (Cth), divorces (and annulments) that have occurred overseas are generally recognised in Australia depending on whether:

- The divorce is recognised as valid under the law of the foreign country in which the divorce took place;
- A party or both parties of the divorce was or were:
  - Citizens (nationals) of the foreign country;
  - Domiciled in the foreign country; or
  - Ordinarily residents of the foreign country.

#### **F. CONCLUSION**

Breakdown of relationships in today’s progressively globalised society is relatively common. Complexities, however, are likely to arise with cases where individuals are divorcing and/or settling their property internationally.

Comasters is able to assist clients in either commencing or responding to family law matters that involve international aspects.

Comasters Law Firm can advise and assist clients with matters relating to international divorce and settlement.

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