



iGuide: Divorces Outside of Europe



Introduction

Where England and a non-EU country are “competing” as to which is the most appropriate jurisdiction to deal with the divorce and financial matters, a discretionary approach is applied by the Courts of England & Wales. This is in contrast to the position within the EU (as to which see our section on divorces in Europe) or where two UK jurisdictions are competing.

To which countries does this section apply?

Broadly, all countries with the exception of the following:

Austria, Belgium, Bulgaria, Croatia (from July 2013) Cyprus (Southern), Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Republic of Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and The United Kingdom (including Gibraltar but not the Isle of Man or Channel Islands).

So where the other potential jurisdiction for a divorce is not one of those mentioned above, the Courts of England and Wales have discretion as to whether to allow a divorce to proceed here or whether to impose a stay, effectively pausing the English proceedings.

For ease of reference this section will refer to these countries as “non-EU” (albeit Denmark, despite being within the EU is dealt with as being a non-EU country for these purposes) and/or “foreign” countries.

Jurisdiction for divorce

If the parties satisfy one of the following criteria then a divorce petition can be issued in England and Wales:

- The spouses are habitually resident here, or
- The spouses were last habitually resident, insofar as one of them still resides here, or
- The respondent is habitually resident here, or
- The applicant is habitually resident here and he or she has resided here for at least a year immediately before the application was made, or
- The applicant is habitually resident if he or she resided here for at least six months immediately before the application was made and is domiciled here;
- England is the sole domicile of one or both of the parties (so long as none of the above are available and no other EU state has jurisdiction).

What if another country has jurisdiction?

Where there are divorce proceedings in a foreign country the English Court may exercise its discretion to impose a “stay” on the English proceedings; effectively the English proceedings will be paused whilst the foreign divorce proceeds.

The English Court will assess, on the balance of fairness and convenience, whether to allow the English divorce to proceed. Some relevant factors to this decisions include:

- The availability or otherwise of divorce and other remedies, including financial remedies and proceedings in relation to children, in the foreign country
- The links to the respective parties to the competing countries including cultural and societal familiarity, parties’ backgrounds, nationality, domicile and citizenship, the time the parties have spent in the countries and whether the parties have worked in the countries



- Where the children were born
- All factors relevant to a financial application
- The availability of a claim in England after the foreign divorce should the foreign divorce fail adequately to provide for a party financially
- The location and control of financial assets including the prospect of enforcing order in the foreign country
- Any marital agreement
- Availability of legal aid in the foreign country
- Length of proceedings in the foreign country
- To a much lesser extent than within the EU the Court may also consider which proceedings were issued first in time.

Why does it matter which country the divorce takes place in?

Different countries provide very different financial outcomes upon divorce, and as a consequence there is a huge importance in securing the jurisdiction in which you will obtain the most favourable financial outcome.

The ways in which financial outcomes vary across the world are as follows:

- The treatment of pre-nuptial agreements
- The treatment of pre-marital and post separation acquired assets, inheritances and gifts
- Whether they take marital conduct, such as adultery or financial conduct, into account
- The courts powers of disclosure
- Whether the courts will order ongoing maintenance

For this reason it is important that you take immediate and specialist family law advice.

What should you do if there is potentially jurisdiction for a divorce in another country?

Jurisdiction disputes are often hotly disputed and it is essential that on your relationship breakdown you take specialist family law advice as quickly as possible. It may be necessary for you to take advice in more than one country and we work closely with specialist family lawyers in other countries.

Whilst speed to issue is not vital (unlike within the EU) it is often advantageous to be the first to issue and progress proceedings within your favoured jurisdiction.

Your spouse may be doing the same, and they may be looking to issue a divorce in the country most favourable to them.

For more information about divorces outside Europe 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.

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