

Divorce in Thailand: What foreign couples need to know

Mismatched expectations have led many foreigners to lose faith in the Thai Family Court, when in truth, failures in communication and understanding is what actually leads to perceived injustices, write Sasirusm B. Chunhakasikarn and David Lawrence of regional law firm Tilleke & Gibbins

DIVORCE in Thailand is becoming more common among Thais, Thai-foreign couples, and foreign couples. In the past, most divorces handled by our firm were between a foreign man and a Thai woman, with the occasional high-profile Thai divorce. Recently, however, the number of Thai couples divorcing and the number of foreign couples seeking divorce while residing in the Kingdom have significantly increased.

The focus of this article is foreign couples – and to a lesser extent Thai-foreign couples – as they tend to bring their home jurisdiction expectations to a Thai divorce, which can lead to serious difficulties between the parties and with their respective lawyers. This article provides a comparative perspective to foreign couples contemplating divorce in Thailand, so they may plan and adjust their expectations accordingly.

Divorce in the West

Divorce in the West varies widely from jurisdiction to jurisdiction, but most tend to have some basic principles in common. A few of these basic principles are as follows.

- *Grounds for Divorce:* Just as parties have the right to get married, the right to divorce has been embodied in practice, if not in principle. No-fault or irreconcilable differences are common methods for divorcing in the West. Courts are reluctant to even address matters of adultery or to



dig through the “he said, she said” issues of why the parties are seeking a divorce.

- *Presumption of Joint Child Custody:* Most courts presume that the parties are entitled to joint custody of children and the courts are authorized to award joint custody over the objection of either party, absent exceptional circumstances.

- *Leveling the Playing Field between the Parties:* Courts have long recognized that most families have a single breadwinner, and therefore the courts are authorized to issue temporary orders to reallocate family resources to the financially disadvantaged spouse and preliminarily determine other rights. Courts regularly issue temporary orders of custody, visitation, support, alimony, property possession, and interim attorneys’ fees to ensure that one party does not abuse

their financial position to obtain an unfair advantage or outcome. Importantly, these orders are regularly and easily enforced through the courts’ contempt powers.

- *Court Intervention in Parties’ Problems:* Emergency motions seeking urgent court assistance to compel one party to undertake an act, such as deliver the passports of a child for an agreed vacation, are extremely common and effective tools.

- *Discovery and Standards for Determining Support:* Both parties are often required to complete financial disclosure statements very early in the proceedings. In addition, failing to fully disclose information, secreting assets, or diverting income is often swiftly and harshly punished by the court. Those financial disclosure statements are then used to calculate a base amount of

child support, usually a percentage of net income per child, plus the equitable division of various other expenses.

- *Formal Alternative Dispute Resolution Procedures:* Courts have professional mediators on staff to work with the parties to try to settle the cases. And more recent efforts, such as collaborative law, push parties toward an amicable, manageable process resulting in less emotional damage to the parties and their children.

In our experience, these factors have the most significant impact on our clients’ expectations and decisions. They often come into divorce proceedings in Thailand with an expectation that the process and outcomes will be similar to the West, when in fact Thai Family Courts operate under different laws, procedures, and practices.

Divorce in Thailand

For clients who are unfamiliar with the details of Thai divorce law, the following are some of the key issues that differ from the West.

- *Grounds for Divorce:* Except where the parties' marriage is registered in Thailand, there is no right to divorce and the law takes a more traditional view requiring a party to cite one of various specified grounds for divorce including adultery, desertion, separation, serious abuse, and mental torture, among others. These grounds are taken seriously by the courts, are often technical in nature, and must be proven or admitted by one party before the court will grant a divorce.

- *No Presumption of Joint Child Custody:* Thai courts are not authorized to award joint custody unless the parties reach a settlement agreement on all of the issues. In other words, if the case goes to trial and there is no settlement, the court is forced to decide on sole custody for one party or the other.

- *Little Leveling of the Playing Field between the Parties:* Managing resources is an important aspect of divorce litigation in Thailand. While extreme cases may warrant court intervention, the parties are generally expected to fund their own litigation and living expenses while the proceedings are pending. Each party must secure access to a source of funds or a "war chest" in order to litigate the case on even terms.

- *Minimal Court Intervention in Parties' Problems:* The Thai courts have set a high



standard for determining what constitutes an emergency in the context of a family law matter. Parties are expected to behave in a civil manner toward each other and the court is reluctant to intervene in all but the most serious matters.

- *Discovery and Standards for Determining Support:* The parties may seek to have subpoenas issued for bank records and directed to their spouse's employer and bank, which routinely result in documents being produced for inspection and use as evidence. However, when it comes to unknown accounts and other hidden assets or income streams, it is incumbent

on the suspecting spouse to try to obtain evidence to support a subpoena request. Child support and alimony or maintenance are awarded based on Thai standards, with some allowances being given for major expenses such as international school tuition.

- *Formal Alternative Dispute Resolution Procedures:* Thai courts rely heavily on the mediation process to resolve cases. All cases are mandatorily referred to mediation, which is conducted by a lay-judge who is not assigned to the main case. The court will conduct repeated mediation sessions until the parties resolve the case or the court determines that settlement is simply not possible, and only then will the case be set for trial. Afterward, the court will continue to make attempts to get the parties to settle all the way up to and even after trial.

The differences between the two systems are apparent and it is easy to see why there is much confusion and disappointment among some foreign litigants with their experience in the Thai Family Court. Mismatched expectations have led

many foreigners to lose faith in the Thai Family Court, when in truth, failures in communication and understanding is what actually leads to perceived injustices. As with anything, being aware of the differences and adjusting expectations accordingly will allow you to plan, prepare, and decide on the best way forward under the circumstances.

Summary

This article has highlighted and explained some of the main differences between most systems in the West and the Thai Family Court. Below, you will find a summary of the differences.

Issue	Thailand	West
Grounds	Specific, provable, and enumerated grounds required	Irreconcilable differences or no-fault often permissible
Child Custody	No joint custody without agreement	Joint custody presumed
Reallocation of Resources	Very rare	Common and routine
Court Intervention in Problems	Rare	Common and routine
Discovery and Support Level	Limited discovery and Thai-standard support	Required disclosures with strong enforcement and income-based approach to support
Alternative Dispute Resolution	Court mediation required	Multiple ADR options

Of course, we believe that an amicable settlement reached between the parties before any court proceedings begin is the least painful and most effective way to end a marriage. It is important to find the right lawyer who can answer your questions and proactively identify settlement opportunities, yet can skillfully litigate the case if needed. There are many considerations involved in the decision to get divorced, including where and when to proceed. Each case is unique and requires specific advice and planning to ensure you can achieve an equitable and acceptable result.

This article was written by Sasirusm B. Chunhakasikarn, attorney-at-law, and David Lawrence, consultant, of Tilleke & Gibbins. The authors regularly advise clients on issues such as divorce, child custody and parental access, spousal and child support, child abduction, and more. The summary above is intended to provide general information only and is not offered as specific advice on any particular matter. The authors can be contacted at sasirusm.c@tilleke.com and david.la@tilleke.com.