



## HARAGUCHI INTERNATIONAL LAW OFFICE

KDX Toranomom Building 9<sup>th</sup> F,  
4-3, Toranomom 1-chome, Minato-ku,  
Tokyo 105-0001, JAPAN  
Phone: 81(3)6205-4404  
Fax: 81(3)6205-4405  
E-mail: kharaguchi@haraguchi-law.com

### **International Divorce between Foreigners**

#### **Alimony (2)**

**Kaoru Haraguchi**

**Founding Partner**

**Haraguchi International Law Office**

#### **I. Introduction**

As mentioned in the previous reports, the divorce of the husband and wife with different nationality or national law living in Japan for a long time is governed by the laws of Japan.

Under Article 2 and 4 of Act on the Laws Applicable to the Obligation of Support (“ALA”), the governing law of Alimony (or post-divorce spousal support) is governed by the governing law of the divorce, which is the law of Japan in this case. Under the case law and prevailing scholastic opinion, the governing law of the asset distribution is also the governing law of the divorce, the laws of Japan.

In the report, we will discuss the elements of judicial divorce, properties distribution and alimony (post-divorce spousal support). It should be noted that the above areas of law of Japan are highly arguable and litigated, therefore legal advice by expert is highly

commendable.

## **II. Elements of Judicial Divorce**

Under Article 770 (1) of the Civil Code of Japan, the husband (or wife) may file a divorce law suit if:

- (1) A spouse has committed an act of unchastely;
  - (2) A spouse was abandoned by the other spouse in bad faith;
  - (3) It is not clear as to whether a spouse is dead or alive for not less than 3 years;
  - (4) A spouse is suffering from severe mental illness and there is no prospect of recovery;
- or,
- (5) There is any other grave cause making it difficult to continue the marriage.

The last element is interpreted in practice as irrevocable breakup of the marriage. Factors often brought to claim these elements include violence, abuse, serious insult, alcoholism, gambling, commitment of crimes, failure to work despite the ability to work, failure to cooperate with the spouse to run the family, conflict with the spousal family, difference in personal characteristics, etc.

The length of separation is often considered as one of the most important factors in establishing the irrecoverable breakup of the marriage, although separation is not an indispensable factor.

It is said that a marriage of a wife and husband is irrecoverably break up when both of them lose the intention to keep their marriage completely, but a wife (or a husband) refuses to get divorce because of obtaining more property distribution upon the divorce or large amount of alimony unnecessary to survive.

### **III. Properties Distribution**

Upon the divorce, a wife (or a husband) may request the distribution of properties to her husband (or his wife) in accordance with Article 768(1) and (2) of the Civil Code of Japan.

In the case of judicial divorce, one party may file a claim or distribution of properties in accordance with Article 771 and 768 of the Civil Code of Japan, and Article 32(1) of the Personal Status Litigation Act.

In practice, any property obtained during the marriage, no matter what the name of the title holder, is assumed as the property obtained by mutual contribution of a wife and a husband and the level of the contribution by them is assumed equal. In other words, the property distribution is in general 50:50 split in practice.

### **IV. Alimony (Post-Divorce Spousal Support)**

There is no legal requirement under the laws of Japan for a husband (or a wife) to support his wife (or her husband) after the divorce. Under the prevailing opinion among the scholars, alimony or post-divorce spousal support is required if the property distribution upon divorce is not sufficient for a wife (or a husband) to survive (Supplemental Nature of Alimony in Japan).

### **V. Conclusion**

Under the laws of Japan, a husband (or wife) may file a divorce law suit if his/her marriage is irrecoverably broken up. In that case, a wife (or a husband) may request the property distribution in equal basis.

Alimony is available only when it is necessary for a wife (or a husband) to survive. It

should be noted that the above conclusion depends on the facts and highly arguably in the court. Accordingly, we recommend you to obtain legal advice by expert like us.

(Over)