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International Divorce between Foreigners

How to get divorce in Japan (1)

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I. Introduction

As mentioned in the previous report, 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.

Although the husband and wife could get divorce by mutual agreement under Article 763 of the Civil Code of Japan, they are not able to get divorce without litigation if they do not reach an agreement to divorce.

It should be noted that you may not be able to get divorce in Japan without full knowledge of the technical requirement to get divorce under the laws of Japan.

II. How to get divorce in Japan

Under the laws of Japan, there is no statutory requirement as to the requirement for the commencement of the litigation for divorce, but the Supreme Court in general requires the domicile of the defendant in Japan. For example, if the husband wants to get divorce with his wife, he is, in general, not able to file divorce law suit in Japan if his wife is not live in Japan.

Furthermore, the husband is not able to commence the divorce law suit without filing divorce mediation against his wife under Article 257 (1) of the Domestic Relation Case Procedure Act (“DRCPA”). If the husband files a divorce law suit without mediation, the court will order the case to be transferred to mediation under Article 257(2) of DRCPA. Noted, however, the divorce law suit filed by the husband is not rejected by the court but merely suspended. This is very important.

The clever wife may leave for Japan if the mediation is failed to reach agreement before the husband file a divorce law suit against his wife (or complaint has not yet served to his wife).

It is, therefore, highly recommendable for the husband to file a divorce law suit against his wife while she is in Japan even if the law suit is to be transferred to the mediation. In that case, the divorce law suit shall commence upon the failure of the mediation which reaches the agreement without the husband’s commencing the divorce law suit.

III. Conclusion

To get divorce in Japan requires the highly technical knowledge of divorce litigation proceedings. It is, therefore, highly recommendable to obtain the legal advice of competent and experienced attorney-at-law.

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