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International Divorce between Foreigners

How to get divorce in Japan (2)

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I. Introduction

Family life in foreign country sometimes becomes difficult. We have taking difficult family cases in Japan. In a rich international couple, a husband left his wife and lives together with a beautiful young Japanese girl for a while. As demanded by Japanese lover, he requested his wife for divorce. For his fortune his wife agreed to get divorce with him. She, however, she demanded a lot of alimony until she dies. Because he did not accept such alimony, his wife refused to get divorce. The husband had no choice but to file a divorce law suit. The issue here is whether the husband with sole responsibility of breakup of the marriage with his wife may file a divorce law suit under the laws of Japan.

II. Elements of Judicial Divorce

As previously mentioned, Article 770(1) of the Civil Cod of Japan prescribes that a husband (or wife) in general 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.

III. File a Divorce by a Husband Responsible for Breakup of Marriage

Although the language of Article 770(1) does not prohibit a husband (or a wife) responsible for breakup the marriage to file a divorce law suit, the Supreme Court of Japan once prohibited the husband (or the wife) with sole responsibility of breakup of their marriage to file a divorce. The Supreme Court previously believed such request was immoral and the intent behind Article 770(1) did not allow immoral request.

On September 2, 1987, the Supreme Court Grand Bench changed the previous position of the Supreme Court. The 1987 Supreme Court Decision admitted that:

The essence of the marriage is a cohabitation of the husband and wife for the purpose of eternal combination mentally and physically. It is, therefore, not natural to force to keep their marriage legally if a husband or a wife completely loses the intention to cohabite, the essence of their marriage is gone and the possibility of the recoverability becomes.

The court further stated:

Although our legal system allows the husband and wife if there is critical reason not to

continue to get married under Article 770(1) of the Civil Code of Japan, our legal system will be collapsed if a husband so easily get divorce by taking advantage of the facts that his marriage with his wife is completely break up because of his sole activity, such as leaving his wife, living together with other woman without his wife's problem. His activities are in violation of the good faith policy under Article 1(2) of the Civil Code of Japan.

Then, the Court allowed the husband to file a divorce law suit if:

- (1) The duration of separation is considerably long considering the ages of the parties and compared with the duration of co-habitation;
- (2) There are no dependent children of the couple; and,
- (3) There are no outstanding circumstances considerably against social justice or admit a divorce petition such as the situation where the spouse objecting to the divorce will be placed into extremely severe mental, social or economic conditions by divorce.

Under the above criteria, a husband request for divorce is questionable if the separation period is less than 7 years in practice.

IV. Conclusion

Although a husband may file a divorce law suit if his marriage is irrevocably break up, the husband with sole responsibility of breakup of his marriage may have to wait for at least 7 years after the separation with his wife under the judgment of the supreme court of Japan. Other requirements for divorce are case by case basis.

If you are a husband (or wife) with sole responsibility of breakup of his (her) marriage, demanded by your current love to get divorce, you should seek for legal advice of Japanese attorney with expertise of international marriage and divorce such as ourselves.

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