

Hong Kong

Matrimonial Causes Ordinance of 20 January 1967

Chapter 179 Long title

To make further and better provision in respect of the law governing matrimonial causes and for matters incidental thereto or connected therewith.

[...]

Part: II Jurisdiction of Court

Section: 3 Jurisdiction in divorce

The court shall have jurisdiction in proceedings for divorce under this Ordinance if–

- (a) either of the parties to the marriage was domiciled in Hong Kong at the date of the petition or application;
- (b) either of the parties to the marriage was habitually resident in Hong Kong throughout the period of 3 years immediately preceding the date of the petition or application; or
- (c) either of the parties to the marriage had a substantial connection with Hong Kong at the date of the petition or application.

Section: 4 Jurisdiction in nullity

The court shall have jurisdiction in proceedings for nullity under this Ordinance if–

- (a) either of the parties to the marriage was domiciled in or had a substantial connection with Hong Kong at the date of the petition;
- (b) either of the parties to the marriage was habitually resident in Hong Kong throughout the period of 3 years immediately preceding the date of the petition;
- (c) both parties to the marriage were resident in Hong Kong at the date of the petition;
- (d) the respondent in the proceedings was resident in Hong Kong at the date of the petition; or
- (e) the marriage was celebrated in Hong Kong.

Section: 5 Jurisdiction in judicial separation

The court shall have jurisdiction in proceedings for judicial separation under this Ordinance if–

- (a) either of the parties to the marriage was domiciled in Hong Kong at the date of the petition;
- (b) both parties to the marriage were resident in Hong Kong at the date of the petition;
- (c) (Repealed)
- (d) either of the parties to the marriage had a substantial connection with Hong Kong at the date of the petition.

Section: 6 Jurisdiction in presumption of death

(1) The court shall have jurisdiction in proceedings for presumption of death and dissolution of marriage under this Ordinance if–

- (a) the petitioner was domiciled in or had a substantial connection with Hong Kong at the date of the petition; or
- (b) the petitioner was habitually resident in Hong Kong throughout the period of 3 years immediately preceding the date of the petition;
- (2) (Repealed)

[...]

Section: 8 Law of Hong Kong applicable

In any proceedings in which the court has jurisdiction under this Ordinance, the issues shall be determined in accordance with the law which would be applicable thereto if both parties were domiciled in Hong Kong at the time of the proceedings.

[...]

Part: IV Nullity

[...]

Section: 20A Foreign marriages

(1) Where apart from this Ordinance, any matter affecting the validity of a marriage would fall to be determined (in accordance with the rules of private international law) by reference to the law of a place outside Hong Kong, nothing in section 20 shall—

- (a) preclude the determination of that matter as aforesaid; or
- (b) require the application to the marriage of the grounds or bars mentioned therein except so far as applicable in accordance with those rules.

(2) In the case of a marriage which has taken place outside Hong Kong and purports to be a marriage under common law, section 20(1) is without prejudice to any ground on which the marriages may be void by virtue of the rules governing the celebration of marriages outside Hong Kong under common law.

[...]

Part: IX Recognition of Overseas Divorces and Legal Separations

Section: 55 Recognition in Hong Kong of overseas divorces and legal separations

(1) Sections 56 to 58 shall have effect, subject to section 61, as respects the recognition in Hong Kong of the validity of overseas divorces and legal separations.

(2) For the purposes of subsection (1) ‘overseas divorces and legal separations’ (外地離婚及合法分居) means divorces and legal separations which—

- (a) have been obtained by means of judicial or other proceedings in any place outside Hong Kong; and
- (b) are effective under the law of that place.

Section: 56 Grounds for recognition

(1) The validity of an overseas divorce or legal separation shall be recognized if, at the date of the institution of the proceedings in the place in which it was obtained—

- (a) either spouse was habitually resident in that place; or
- (b) either spouse was a national of that place.

(2) In relation to a place the law of which uses the concept of domicile as a ground of jurisdiction in matters of divorce or legal separation, subsection (1)(a) shall have effect as if the reference to habitual residence included a reference to domicile within the meaning of that law.

(3) (Repealed)

Section: 57 Cross-proceedings and divorces following legal separations

(1) Where there have been cross-proceedings, the validity of an overseas divorce or legal separation obtained either in the original proceedings or in the cross-proceedings shall be

recognized if the requirements of paragraph (a) or (b) of section 56(1) are satisfied in relation to the date of the institution either of the original proceedings or of the cross-proceedings.

(2) Where a legal separation the validity of which is entitled to recognition by virtue of the provisions of section 56 or of subsection (1) of this section is converted, in the place in which it was obtained, into a divorce, the validity of the divorce shall be recognized whether or not it would itself be entitled to recognition by virtue of those provisions.

Section: 58 Proof of facts relevant to recognition

(1) For the purpose of deciding whether an overseas divorce or legal separation is entitled to recognition by virtue of this Part, any finding of fact made (whether expressly or by implication) in the proceedings by means of which the divorce or legal separation was obtained and on the basis of which jurisdiction was assumed in those proceedings shall—

(a) if both spouses took part in the proceedings, be conclusive evidence of the fact found; and

(b) in any other case, be sufficient proof of that fact unless the contrary is shown.

(2) In this section, ‘finding of fact’ (就事實所作的裁斷) includes a finding that either spouse was habitually resident or domiciled in, or a national of, the place in which the divorce or legal separation was obtained; and for the purposes of subsection (1)(a), a spouse who has appeared in judicial proceedings shall be treated as having taken part in them.

Section: 59 Certain existing rules of recognition to continue in force

This Part is without prejudice to the recognition of the validity of divorces and legal separations obtained outside Hong Kong—

(a) by virtue of any rule of law relating to divorces or legal separations obtained in the place of either spouse’s domicile or obtained elsewhere and recognized as valid in that place;

(b) by virtue of any enactment other than this Ordinance, but, save as aforesaid, no such divorce or legal separation shall be recognized as valid in Hong Kong except as provided in this Part.

Section: 60 Non-recognition of divorce by third place no bar to remarriage

Where the validity of a divorce obtained in any place is entitled to recognition by virtue of this Part or of any rule or enactment preserved by section 59, neither spouse shall be precluded from remarrying in Hong Kong on the ground that the validity of the divorce would not be recognized in any other place.

Section: 61 Exceptions from recognition

(1) The validity of a divorce or legal separation obtained outside Hong Kong shall not be recognized in Hong Kong if it was granted or obtained at a time when, according to the law of Hong Kong (including its rules of private international law and the provisions of this Part), there was no subsisting marriage between the parties.

(2) Subject to subsection (1), recognition by virtue of this Part or of any rule preserved by section 59 of the validity of a divorce or legal separation obtained outside Hong Kong may be refused if, and only if—

(a) it was obtained by one spouse

(i) without such steps having been taken for giving notice of the proceedings to the other spouse as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken; or

(ii) without the other spouse having been given (for any reason other than lack of notice) such opportunity to take part in the proceedings as, having regard to the matters aforesaid, he should reasonably have been given; or

(b) its recognition would manifestly be contrary to public policy.

(3) Nothing in this Part shall be construed as requiring the recognition of any findings of fault made in any proceedings for divorce or separation or of any maintenance, custody or other ancillary order made in any such proceedings.

Section: 62 Interpretation and transitional provisions

(1) In this Part, 'place' (地方) includes a colony or other dependent territory of the United Kingdom but for the purposes of this Part a person shall be treated as a national of such a colony or dependent territory only if it has a law of citizenship or nationality separate from that of the United Kingdom and he is a citizen or national of that colony or dependent territory under that law.

(2) The provisions of this Part relating to overseas divorces and legal separations and other divorces and legal separations obtained outside Hong Kong apply to a divorce or legal separation obtained before 1 April 1972 as well as to one obtained on or after that date and, in the case of a divorce or legal separation obtained before that date—

(a) require, or, as the case may be, preclude, the recognition of its validity in relation to any time before that date as well as in relation to any subsequent time; but

(b) do not affect any property rights to which any person became entitled before that date or apply where the question of the validity of the divorce or legal separation has been decided by the court before that date.

Section: 63 Transitional

The amendments to sections 48 and 48A of this Ordinance made by sections 19 and 20 of the Marriage and Children (Miscellaneous Amendments) Ordinance 1997 (69 of 1997) ('the amending Ordinance') do not apply in relation to orders for the care or supervision of a child made under this Ordinance before the commencement of the amending Ordinance, and the provisions of this Ordinance in force immediately before the commencement of the amending Ordinance continue to apply in relation to those orders as if the amending Ordinance had not been enacted.