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## Can I get divorced in Hong Kong? The jurisdiction for a divorce in Hong Kong

Not everyone can get divorced in Hong Kong. Section 3 of the Matrimonial Causes Ordinance (Cap 179) sets out when the Hong Kong Court has jurisdiction over divorce proceedings.

The Ordinance states that either of the parties must be:

- 1) Domiciled in Hong Kong at the date of the divorce petition or application; or
- 2) Habitually resident in Hong Kong throughout the period of three years immediately preceding the date of the divorce petition or application; or
- 3) Have a substantial connection with Hong Kong at the date of the divorce petition or application.

In the case of *Z, SN also known as K, SN v K, VSF* [2020] HKCU 92, Her Honour Judge Melloy summarized the law on jurisdiction for a divorce in Hong Kong.

### ***Facts***

The husband was American. His father was American and his mother was Vietnamese American. He travelled a lot during his childhood and lived in Hong Kong, Taiwan, Beijing, Singapore and the USA. In 2001, he moved to live and work in Shanghai and remained there until August 2017, where he then came to Hong Kong.

The wife was also an American citizen, born and educated in China and was of Chinese parentage. She went to the USA for tertiary education and worked there for four years after graduating. She returned to Shanghai and lived there since.

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The parties had two children who held US passports and had only ever lived in Shanghai.

The wife attempted to issue proceedings for divorce in Shanghai on three separate occasions, but the husband refused to participate each time. The Court was told that the parties were unable to divorce in Shanghai unless both parties consented.

The wife then issued proceedings in Hong Kong. The husband claimed that the wife did not meet the jurisdictional requirements for divorce proceedings in Hong Kong.

The Hong Kong Court was asked to decide whether the husband was domiciled in Hong Kong and/or had a substantial connection with Hong Kong to enable the wife to have jurisdiction to issue divorce proceedings in Hong Kong. Judge Melloy considered the meaning of domicile and substantial connection.

## ***Domicile***

The Domicile Ordinance (Cap 596) states that a person is domiciled where he has his permanent home. For an adult to obtain a new domicile in Hong Kong, he must be present in Hong Kong and there must be an intention to make Hong Kong their home for an indefinite period.

The party asserting domicile (the wife in this case) has the burden of proof to show it exists on a balance of probabilities.

In determining domicile, the Court will consider factors such as:

- 1) Length and condition of residence: how long has he lived there, was he living in a purchased or leased property or in a hotel
- 2) Marriage with a local partner
- 3) The fact of naturalization
- 4) Whereabouts of the family
- 5) Whereabouts of personal belongings
- 6) Decision made as to the nationality of children
- 7) Education of the children
- 8) Membership of clubs or religious associations
- 9) Place of work

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10) Any business interests

11) Whereabouts of property and investments

Holding a permanent ID card is not sufficient in itself to establish domicile.

Judge Melloy held that the husband was not domiciled in Hong Kong.

## ***Substantial Connection***

The Court is required to conduct a two-stage enquiry in considering substantial connection. It must first determine whether or not there is a connection to Hong Kong before it ascertains whether or not that connection can be said to be substantial.

The exercise is fact sensitive and the Court will determine whether a connection is substantial based on a broad objective assessment, taking all relevant factors into account.

The connection must be real, and not engineered for temporary tactical advantage. A person can have substantial connection with more than one jurisdiction, unlike domicile.

In *ZC v CN* [2014] 5 HKLRD 43, the Court of Appeal said:

- Whether a person has substantial connection with Hong Kong is a question of fact. No definition of this term will be succinct or comprehensive enough.
- One may look at the surrounding factors in determining substantial connection.
- As a starting point one begins to see if that person has a connection, and then decides whether the connection is substantial.
- In terms of connection, there must be a physical presence in Hong Kong, but because of the requirement of “substantial”, the presence cannot be one of transitory nature, otherwise that will encourage “fly in” and “fly out” divorces.
- The fact that a party has resident status is only a factor to be taken into account, as he or she may not be living here on a long-term basis.
- One has to look at other factors such as the parties’ past pattern of life, the frequency of visits to Hong Kong, the length and purpose of the stay, whether the party is engaged in business or work here, whether the rest of the family is here and whether a home has been established here and whether the children are at school here.

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In *ZC v CN*, the Court of Appeal found that the fact that the husband came to Hong Kong frequently, owned property in Hong Kong, held Hong Kong bank accounts and had a company registered in Hong Kong, and had a Hong Kong ID was not sufficient to establish a substantial connection.

In this case, Judge Melloy found that the husband had a connection with Hong Kong, but also a connection with Shanghai, Thailand and the US. There were no matrimonial related factors connecting the husband to Hong Kong and considering the factors relied upon by the wife, the Judge found that the husband did not have a substantial connection to Hong Kong. The husband therefore succeeded in his application for the Court to dismiss the wife's divorce proceedings for want of jurisdiction.

## Conclusion

As Hartmann J (as he then was) said in *S v S* [2006] 3 HKLRD 751, *"Increasingly we are living in a world without borders. Capital sums are moved in moments from one side of the world to the other with little or no regard for national boundaries. The Internet is universal. It is commonplace for even the modestly affluent to have homes in two countries. It is no longer only in the world of fiction that successful business people may at the same time live and work in two countries."*

Parties may find themselves in a limbo when their marriage ends but they are unable to get divorced due to lack of jurisdiction. Even in cases where both spouses believe the Hong Kong Court has jurisdiction, they may be asked to provide proof of domicile, habitual residence or a substantial connection. The Hong Kong Court will only have jurisdiction if one of these limbs are satisfied.

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