

What you need to know about divorce in Russia

Russian citizens who reside permanently in the UK need to be aware of a number of procedural and substantive law issues if they are facing a divorce.

Jurisdiction

Divorce petitions are usually filed in court at the respondent's place of residence, i.e. in a court in the UK, provided that the spouse to whom the petition is filed permanently resides in this country.

That said, assuming that one or both spouses permanently reside in the UK, can you file for divorce in a Russian court?

In short, yes you can.

The jurisdiction of divorce cases between Russian citizens permanently residing abroad is set out in the Family Code of the Russian Federation. A Russian citizen who lives in another country has the right to dissolve a marriage with a spouse that is also living outside Russia, regardless of his or her citizenship, in a Russian court.

It should be noted that the provisions of this article are applicable regardless of whether the spouses are registered at a place of residence in Russia.

In this instance, having Russian citizenship is of legal importance, and a divorce petition can be filed in a court at the respondent's last known place of residence in Russia.

Moreover, even if a spouse is no longer registered at the place of residence due to his or her permanent residence abroad, this does not prevent the divorce case from being considered in a Russian court.

It should be noted that filing a divorce petition in one country means a similar petition cannot be considered in a different country, and the case has to be considered in the court that first accepted the petition for consideration.

Due notification of the parties

After the petition has been accepted, the court is responsible for notifying the parties of the time and place of the court hearing.

The court usually notifies the parties with summonses that are sent by registered mail with a notification to the address given in the petition submitted to court.

If the summons is not received by the addressee, it will be returned to court after the retention period has expired.

If the court has any doubts as to whether the spouse's address is correct or whether or not the addressee has received the summons, the court is entitled to send a request to the authorities of the Russian Federal Migration Service to obtain information about the citizen's registration at the place of residence.

In 2013 amendments were made to the Civil Code of the Russian Federation, according to which a notification of legal importance is deemed to have been delivered to a person even if it was not actually served on him due to circumstances within his control. In 2015, the Supreme Court of the Russian Federation extended the application of this article to judicial notifications and summonses, which subsequently became well established in judicial practice in cases relating to due notification of the parties.

Based on the current legislation, the interpretations of higher courts and law enforcement practice, when a summons is delivered to the registered place of residence in Russia, the spouse to whom the divorce petition was submitted will be regarded as duly notified of the time and place of the proceedings in a Russian court, even if this person did not actually receive the summons due to his or her permanent residence in the UK.

Under these circumstances, the court is entitled to consider the divorce proceedings and to issue a decision in the absence of this party, who will be regarded as duly notified.

Were this spouse to challenge the decision of a Russian court on grounds of improper notification, the latter has the right to present evidence that he has left Russia and permanently resides in the UK.

The procedure and time frames for considering divorce cases in Russian courts

Before talking about the time frames for consideration of divorce cases, it should be noted that such cases may fall within the jurisdiction of different courts depending on how the claims are formulated.

For example, if a petition is filed solely for divorce and the parties do not have a dispute about children, and the value of the spouses' jointly-held property that is to be divided does not exceed RUB 50,000, these cases fall within the jurisdiction of magistrates. All other cases fall within the jurisdiction of district courts.

The spouse initiating the divorce can file a divorce petition to the magistrate and, at the same time or after the dissolution of the marriage, file a statement of claim in the district court on dividing jointly-held property and (or) a claim on determining the child's place of residence.

In this case, two cases will be considered by different courts in different proceedings, which allows the spouse to dissolve the marriage in a shorter period of time, because the time frame for consideration of cases by a magistrate is shorter, while property division cases, which are considered in district courts, can take quite some time.

Cases are usually considered by a magistrate within a month from the date that the petition is accepted, while the district court must consider a case within two months from when the petition was received in court. In this case it should be noted that under the Russian Family Code, the court is entitled to grant spouses a reconciliation period, and to adjourn the hearing for up to three months in total. The court can exercise this right where one of the spouses disagrees with the divorce petition.

Practice shows that granting spouses a reconciliation period and adjourning the case for up to three months is a right and not an obligation of the court, and is applied by the court based on the petition of one of the spouses rather than on its own motion.

The court can adjourn proceedings several times, granting the spouses a new reconciliation period within a three-month period.

With regards to the grounds for adjourning divorce proceedings, it is worth mentioning that in Russia, a spouse is not entitled, without the other's spouse's consent, to initiate divorce proceedings during her pregnancy or within a year after the child is born, while an initiated case would be subject to termination, which does not prevent the filing of a second divorce petition in court after this period has expired.

The division of spouses' jointly-held property located in two countries

As mentioned above, the division of spouses' jointly-held property can be resolved by a Russian court at the same time as the divorce case is being considered in separate court proceedings, depending on how the claim is formulated.

In this case, practice shows that courts often allocate separate proceedings to the matter of dividing spouses' jointly-held property, even when filed at the same time as the divorce petition.

Under the current legislation, spouses' jointly-held property can be divided both during marriage and within three years after it has been dissolved.

Spouses therefore have the right to divide jointly-held property in court without the marriage having to be dissolved.

The Russian Supreme Court has formulated its position on the three-year limitation period in cases concerning the division of spouses' jointly-held property, according to which the period must be calculated not from the moment of the dissolution of the marriage but from the moment when a party learned or should have learned about the breaching of its rights.

This position allows certain latitude when it comes to filing claims for the division of spouses' jointly-held property beyond the three-year period.

As a general rule, cases regarding the division of spouses' jointly-held real estate located in Russia would fall within the exclusive jurisdiction of Russian courts.

As there is no international agreement between Russia and the UK allowing such disputes to be considered by the English courts, the division of real estate located in Russia can only be carried out by Russian courts, even if both owners of the property permanently reside in the UK.

As regards the Russian courts' consideration of disputes over the division of spouses' real estate located in a foreign country, court practice shows that, in some circumstances, Russian courts can accept such cases when most of the spouses' property is in Russia, and claims are filed within the framework of a counterclaim.

Russian courts can divide spouses' real estate located abroad; in particular, they do consider disputes regarding division of foreign companies' shares.

It is worth pointing out here that when spouses permanently reside in the UK or the last joint residence of the spouses was in the UK, according to conflict of laws provisions, Russian courts must be guided by the UK law when resolving the division of spouses' jointly-held property.

Judicial practice shows that Russian courts can apply the law of a foreign country when considering cases relating to the division of spouses' jointly-held property. For example, in one of the cases reviewed by the Supreme Court of the Russian Federation, the court confirmed that the lower courts had correctly applied the provisions of Finland's substantive law when determining the property rights and obligations of the spouses with respect to real estate located in Russia.

In conclusion, Russian courts have exclusive jurisdiction to consider disputes over the division of real estate located in Russia, and in certain cases they can divide real estate located in a foreign country.

CIS London & Partners will keep you abreast of any developments in the area.



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