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Polish

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**Divorce and legal separation**

Poland

**1 What are the conditions for obtaining a divorce?**

In order to obtain a divorce a divorce petition must be lodged with the regional court with jurisdiction over the last joint place of residence of the spouses. The court hands down a judgment after a hearing. A separation decision is not a condition for divorce. It must be found that the marriage has broken down completely and irretrievably.

**2 What are the grounds for divorce?**

The grounds for divorce are that a marriage has broken down completely and irretrievably. Both conditions must be met (Article 56(1) of the Family and Guardianship Code).

However, even if the marriage has broken down completely and irretrievably, divorce cannot be pronounced if this would harm the interest of underage children born to the marriage or if it would be incompatible with the rules of social co-existence for other reasons. Nor is divorce permitted when the petition is lodged by a spouse who bears sole responsibility for the breakdown of the marriage, unless the other spouse agrees to the divorce or their refusal to consent to the divorce is, in the circumstances, incompatible with the rules of social coexistence.

**3 What are the legal consequences of a divorce as regards:****3.1 the personal relations between the spouses (e.g. the surname)**

A divorced spouse who changed their surname when they married may revert to their surname before marriage up to three months after a divorce decree becomes final. To that end a declaration must be submitted to the head of the registry office or a consul. In addition, a divorced spouse is free to remarry.

**3.2 the division of property of the spouses**

Upon marriage joint property of the spouses is established by law (statutory joint ownership), which covers the property acquired by one or both spouses throughout the duration of statutory joint ownership (joint property). Property not caught by statutory joint ownership constitutes the personal property of the spouse. At the request of either spouse, the court may divide the joint property in the divorce decree as long as division of property does not cause excessive delay in the proceedings. Both spouses have equal shares in the joint property. For important reasons, however, either spouse may request the court to divide the joint property according to the extent to which each spouse has contributed to the acquisition of that property.

If the spouses share accommodation, in the divorce decree the court determines how the accommodation is to be used while the divorced spouses continue to share it. In extraordinary circumstances in which one of the spouses makes cohabitation impossible by their grossly reprehensible conduct, the court may order their eviction at the request of the other spouse. If both parties so request, the court may also decide in the divorce decree to divide the shared accommodation or to award the accommodation to one of the spouses if the other agrees to leave the place without being provided with replacement accommodation and substitute facilities, in so far as it is possible to divide or award the accommodation in this way. When deciding upon the shared accommodation, the court takes into account, first and foremost, the needs of the children and the spouse to whom parental responsibility is entrusted.

**3.3 the minor children of the spouses**

In a divorce decree the court decides on the parental responsibility for any minor children of both spouses and on contact between the parents and the children. It also determines the amount to be paid by each spouse for the children's maintenance and upbringing. The court takes into account a written agreement between the spouses on the manner in which parental responsibility is to be exercised and on contact arrangements with the child after divorce, as long as the agreement is in the best interest of the child. Siblings should be brought up together unless otherwise required in the best interest of the child. In the absence of agreement between the spouses, the court, taking into account the child's right to be brought up by both parents, decides upon the manner in which parental responsibility is to be exercised and contact arrangements after the divorce. The court may entrust the exercise of parental responsibility to one parent, limiting the parental responsibility of the other to specific obligations and rights with regard to the child(ren), if this is in the best interest of the child.

If both spouses so request, the court may refrain from deciding on contact arrangements.

**3.4 the obligation to pay maintenance to the other spouse?**

A divorced spouse who has not been found to be solely responsible for the breakdown of the marriage and who is in financial difficulties may demand from the other spouse maintenance that corresponds to their reasonable needs and the financial capacities of the other spouse.

If one of the spouses has been found to be solely responsible for the breakdown of the marriage and the divorce entails a substantial deterioration in the financial situation of the other spouse, the court may order, following a request by the non-responsible spouse, that the solely responsible spouse be obliged to contribute to the reasonable needs of the non-responsible spouse, even if the latter is not in financial difficulties.

The maintenance obligation towards a spouse expires when that spouse remarries. However, where a divorced spouse who has not been found to be responsible for the breakdown of the marriage is obliged to pay maintenance, the maintenance obligation also expires 5 years after the divorce decree, unless the court extends this five-year period, at the request of the person entitled to maintenance, due to exceptional circumstances.

**4 What does the legal term "legal separation" mean in practical terms?**

It is a formal separation, i.e. it is decreed by the court under Articles 611 to 616 of the Family and Guardianship Code.

**5 What are the conditions for legal separation?**

The condition for separation is finding that a marriage has completely broken down. Even if a marriage has broken down completely, however, the separation may not be granted if this would harm the interest of underage children born to the marriage or if the separation would be incompatible with the rules of social co-existence for other reasons. If the spouses have no common minor children, the court may issue a separation order if both parties so request.

**6 What are the legal consequences of legal separation?**

The legal consequences of separation are, as a rule, the same as those of a divorce. However, a separated spouse cannot remarry.

## **7 What does the term “marriage annulment” mean in practice?**

‘Marriage annulment’ means the cancellation of all the effects of a marriage with retroactive effect. The marriage is treated as if it had never existed. The only exception is that children from an annulled marriage retain the status of children born in wedlock.

## **8 What are the conditions for marriage annulment?**

The reasons for annulling a marriage are listed in the Family and Guardianship Code: These include:

a spouse is below the marriageable age (Article 10 of the Family and Guardianship Code),

a spouse is completely legally incapacitated (Article 11 of the Family and Guardianship Code),

a spouse is mentally ill or has an intellectual disability (Article 12 of the Family and Guardianship Code),

a spouse is already married to another person (Article 13 of the Family and Guardianship Code),

the spouses are related by lineal consanguinity, collateral consanguinity (brothers and sisters, including stepbrothers and stepsisters, and brothers and sisters born out of wedlock) or lineal affinity (Article 14 of the Family and Guardianship Code); However, for important reasons the court may allow the marriage be entered in spite of lineal affinity,

the spouses are related by adoption (Article 15 of the Family and Guardianship Code),

a statement has been submitted that when entering into the marriage a spouse was, for whatever reason, unable to consciously express his or her will, mistaken as to the identity of the other party or under an unlawful threat (Article 151 of the Family and Guardianship Code),

if a marriage was contracted by proxy, the authorising party may request that the marriage be annulled if no court decision was issued allowing marriage to be contracted through a proxy, or if the power of attorney was invalid or effectively revoked. It is impossible to invoke this ground for annulment, however, if the spouses cohabited.

Each of the causes mentioned above must have existed when the marriage was entered into. Additionally, if the grounds for annulment ceased to apply, a marriage entered into cannot be annulled irrespective of the earlier existence of such grounds.

## **9 What are the legal consequences of marriage annulment?**

A judgment annulling a marriage is constitutive and has consequences for third parties (*erga omnes*). There are two types of consequences:

*ex tunc*, i.e. consequences that go back to the date on which the marriage was entered into, for example, the spouses return to the marital status they had before the marriage and revert to their previous surnames, the spouse and the family of the other spouse are no longer related by affinity and statutory inheritance is impossible;

*ex nunc*, i.e. consequences that arise only after the judgment annulling the marriage becomes final, for example, with regard to property relations.

The consequences of marriage annulment for the relationship between the spouses and the children from their marriage and for property relations between the spouses are governed by the relevant divorce rules. Importantly, a spouse who entered into a marriage in bad faith is deemed to be the spouse responsible for the breakdown of the marriage.

## **10 Are there alternative non-judicial means for solving issues relating to the divorce without going to court?**

Spouses in Poland can turn to family mediation. Its primary aims are to resolve conflicts between spouses in such a way as to avoid divorce or separation. If this is impossible, however, mediation is designed to work out the terms of a divorce (property issues, childcare). Mediation services are provided mainly by non-governmental organisations, foundations and associations. Spouses can also benefit from various forms of family therapy, assistance of psychologists, psychotherapists, support groups, etc. Mediation is also possible when court proceedings are pending.

## **11 Where should I lodge my application (petition) for divorce/legal separation/marriage annulment? Which formalities must be respected and which documents should I attach to my application?**

Applications for divorce, separation or marriage annulment must be lodged with the regional court (sąd okręgowy) having jurisdiction over the last common place of residence of the spouses. In the absence of such a court, applications must be lodged with the regional court having jurisdiction over the place of residence of the applicant.

A court fee is charged on such applications.

The following documents must be attached to an application: copies of civil status documents (marriage certificate, children's birth certificates), document authorising a lawyer to represent a party (if that person has elected to choose his or her own lawyer) and other certificates that may be relevant to the case (medical certificates), certificates issued by public bodies, administrative decisions, etc.

## **12 Can I obtain legal aid to cover the costs of the procedure?**

Yes. A party whose financial situation does not allow them to pay the requisite fee may apply to the court for full or partial exemption from court costs, and may also request the court to appoint a lawyer *ex officio* for them.

A person applying for full or partial exemption from court costs or *ex officio* appointment of a representative must attach to the application a statement of his or her financial situation (on the appropriate form, available from the court), proof of earnings (income) and other information on property and family circumstances.

## **13 Is it possible to appeal against a decision relating to divorce/legal separation/marriage annulment?**

Yes, in all these cases it is possible to appeal to a court of second instance. Spouses may appeal to appeal courts against the decisions of regional courts.

## **14 What should I do to have a decision on divorce/legal separation/marriage annulment issued by a court in another Member State recognized in this Member State?**

In accordance with Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (hereinafter referred to as the ‘Brussels IIa Regulation’), such decisions are automatically recognised in Poland without any special recognition procedure being required (Article 21 of the Brussels IIa Regulation).

## **15 To which court should I turn to oppose the recognition of a decision on divorce/legal separation/marriage annulment issued by a court in another Member State? Which procedure applies in these cases?**

Any interested party may apply for a decision that a judgment be or not be recognised (Article 21(3) of the Brussels IIa Regulation). In Poland, such applications are submitted to regional courts. The local jurisdiction is determined by reference to the place of habitual residence of the person against whom an application for a decision that a judgment be or not be recognised is lodged. If neither of the places referred to above is located in Poland, the local jurisdiction is determined by reference to the place of enforcement (Article 29(2) of the Brussels IIa Regulation).

## **16 Which divorce law does the court apply in a divorce proceeding between spouses who do not live in this Member State or who are of different nationalities?**

Poland is a party to many international agreements that govern the above issue. Such rules take precedence over Polish private international law. Thus, different rules may be applicable whenever spouses are of different nationalities. In the absence of an international agreement, the Private International Law Act of 14 February 2011 is applicable. In accordance with Article 54 of this Act, a marriage is dissolved under the common native law of the spouses applicable at the time when a request for marriage dissolution is submitted. In the absence of a common native law of the spouses, the applicable law is the law of the country in which both spouses reside at the time when a request for marriage dissolution is submitted. If the spouses do not share a place of

residence at the time when such a request is submitted, the applicable law is the law of the last country in which both spouses shared a place of residence, provided that one of the spouses still has his or her habitual residence there. In other cases, marriages are dissolved under Polish law.

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