

COVID-19 AND MOVEMENT CONTROL ORDER: DIVORCE IN TIMES OF CRISIS?

In light of the recent Coronavirus Disease 2019 (COVID-19) which was declared as a global pandemic by the World Health Organisation on 11.03.2020, the Government of Malaysia announced the Movement Control Order (MCO) which was effective from 18.03.2020 to 31.03.2020. The MCO was extended until 12.05.2020. The Government had on 04.05.2020 eased the MCO restrictions under a Conditional MCO (CMCO) which would be in place until 09.06.2020 at the time of this article.

The “*Stay at Home Order*” may be a nightmare for some spouses as it would mean that they can no longer escape from their out-of-work spouse(s) under the same roof.

If absence makes the heart grow fonder then what happens if the spouses are forced to spend time together in a confined space? Would the pandemic in Malaysia outlast the marriages simply because couples spend too much time together? Each spouse may have their familiar list of marital irritants during MCO such as finance management, too much screen time, uneven distribution of house chores and child care. These reasons combined have been more than enough reasons for a divorce. This trend was observed in China when the COVID-19 started spreading and spouses had to spend almost two months in isolation with their spouses. In China, the divorce cases saw a marked increase leading to massive backlogs at government offices as clerks struggled to keep up with the processing of tons of cases in a single day. It is reported in the Hunan province that one of the clerks commented that “*staff*

members didn't even have time to drink water” due to the long queue of divorce cases after the COVID-19 outbreak.¹ Reasons given range from trivial matters, incompatibilities and domestic violence.²

“*Infidelity used to be the No. 1 reason clients showed up*” said a Shanghai divorce lawyer who experienced an increase of 25% of divorce cases after the city’s lockdown.³ Even when the pandemic subsided and people slowly began to return to normalcy, the psychological and economic stress may continue to exist for months as a post COVID-19 effect. During the surge of 2002 - 2003 Severe Acute Respiratory Syndrome (SARS) pandemic in Hong Kong, a report⁴ has found that divorce in Hong Kong in 2004 was 21% higher than in 2002.⁵

In Singapore, the Circuit Breaker implemented to curb the spread of COVID-19 seems to have affected spouses. A young Singaporean wife ended the marriage after her husband refused to use her scissors to unbox a parcel. A source of argument which seemed to be far-fetched is now becoming a reality during trying times like this.⁶

In Malaysia, registration of marriages as well as filing of divorce have been put on hold during the MCO.⁷ Churches and temples were also not allowed to hold wedding ceremonies. This would undoubtedly mean that couples would have more time to contemplate whether to start or to end their marriage.

Joint Petition – A palatable Option for amicable separation

Unlike a single petition (contested divorce) where parties are required to attend trial to seek for directions regarding to the custody of children and maintenance of spouses, a divorce by way of an uncontested joint petition is provided for in Section 52 of the Law Reform (Marriage & Divorce) Act 1976 where both parties mutually agree to the divorce and the terms such as maintenance, assets,

¹ Prasso, Sheridan. “China’s Divorce Spike Is a Warning to Rest of Locked-Down World.” Bloomberg.com. Bloomberg, March 31, 2020. <https://www.bloomberg.com/news/articles/2020-03-31/divorces-spike-in-china-after-coronavirus-quarantines>

² Ibid.

³ Ibid.

⁴ Antoinette, ML, Josephine, Wong, Grainne, MM, Vinci C, Charlton C, Pak CS, Chu MC, Wong PC, Kenneth WT, Chua SE. (2007). ‘Original Research – Stress and Psychological Distress Among SARS Survivors 1 Year After the Outbreak’, pp.223 – 240.

⁵ Smith, Megan. “Family Law: Divorce Rates Skyrocket in China During Coronavirus Lockdown.” Offit Kurman, May 8, 2020.

<https://www.offitkurman.com/blog/2020/05/08/divorce-rates-skyrocket-in-china-during-coronavirus-lockdown-will-the-trend-also-occur-in-the-united-states/>

⁶ Desperate times! CB Extended Till June? (2020) YouTube video, added by Ryan Sylvia [Online]. Available at <https://www.youtube.com/watch?v=OZMsLGKdv14> [Accessed 22 April 2020]

⁷ National Registration Department, “Soalan Lazim Berkaitan Urusniaga Jabatan Pendaftaran Negara Sewaktu Tempoh Perintah Kawalan Pergerakan (PKP)”, March 18, 2020.

<https://www.pmo.gov.my/wp-content/uploads/2020/03/18-MAC-2020-FAQ-JABATAN-PENDAFTARAN-NEGARA.pdf>

child custody and guardianship. The terms agreed by spouses will be clearly stated in the joint petition which will be filed in the state court where the marriage took place.

It is imperative to note that divorce by way of joint petition is only applicable to non-Muslims in Malaysia who have been married for at least 2 years at the time the petition is filed⁸. In such a case, parties are not obligated to attend marriage counselling at the National Registration Department.

The petition would include important “*agreements*” reached by spouses regarding the marriage which includes (but is not limited to) the custody of any children, distribution/severance of properties and alimony. A joint petition is easier to conduct as both husband and wife have reached consensus as to the terms and conditions of divorce and only one hearing is required to obtain the decree for divorce. The marriage will be formally dissolved after the three (3) months cooling period from the date of the decree whereby the decree nisi will be made absolute⁹. As such, no spouses are allowed to remarry before the completion of the said cooling off period.

We note that some spouses may not be inclined to proceed with the process of divorce due to their concerns on the legal fees, duration/time taken to complete the divorce process or simply due to the reason that they do not have the time to be present at court. As a matter of fact, the process for a joint petition for divorce saves the divorcees’ time by choosing to come to an agreement together before going to Court and contrary to popular belief, the cost of the same is generally affordable as compared to filing of a single petition.

For the purposes of divorce by way of a joint petition, spouses may only need to attend court once on the hearing date where the High Court judge will read out the terms of the joint petition filed by the parties.

What happens after that? The High Court judge will then grant the orders prayed for in the joint petition. The matter does not just end there and as stated above, the parties will only be made formally divorced after 3 months from the date of the

pronouncement by the Judge. The entire process should take less than 6 months to complete.

Frankly speaking, the cost of a divorce may only be just a small fraction of the cost and expenses spent in holding a wedding ceremony. We would highly advise spouses to consult a legal practitioner and obtain legal advice.

Would China’s increase in divorce cases post COVID-19 lockdown be a trend that will happen in Malaysia as well? This remains to be seen in the CMCO period.

To understand more on the process, kindly contact the undersigned.

Authors

Idza Hajar Ahmad Idzam & Lee Sheen Yee



Idza Hajar Ahmad Idzam
idza.hajar@zulrafique.com.my

Idza Hajar Ahmad Idzam is a partner in the Dispute Resolution Practice Group. She often renders opinion and handles matters pertaining to family, probate and trusts.



Lee Sheen Yee
sheenyee.lee@zulrafique.com.my

Sheen Yee is a legal associate in the Dispute Resolution Practice Group. She primarily handles disputes involving family, probate and trusts.

Disclaimer: The contents do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such.

Zul Rafique & Partners
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⁸ Section 52 of the Law Reform (Marriage and Divorce) Act 1976

⁹ Section 61 of the Law Reform (Marriage and Divorce) Act 1976