

CLIENT NOTE



DIVORCE BY MUTUAL AGREEMENT

I. THE INTRODUCTION OF DIVORCE BY MUTUAL AGREEMENT

1. With effect from 1 July 2024, married couples contemplating divorce proceedings will be able to avail themselves to the option of Divorce by Mutual Agreement (“**DMA**”) should they decide to dissolve their marriage under the Women’s Charter¹ (“**WC**”) in Singapore.
2. With the introduction of DMA, it is envisaged that parties may avoid laying blame on each other for the breakdown in their marriage or having to wait and put their lives on hold during separation,² which may otherwise be required under the “original five facts” for divorce. This development serves as a significant step towards facilitating therapeutic justice where divorce is inevitable,³ enabling parties and their children to move on with their lives with less acrimony.
3. This write-up aims to provide a comprehensive, yet practical summary of the relevant considerations on this new advancement in the law of divorce as we know it.

II. THE “ORIGINAL FIVE FACTS” FOR DIVORCE

4. Under section 95(3) of the WC,⁴ as the law currently stands (as at the date of writing), parties applying for a divorce are required to prove that their marriage has irretrievably broken down through one (1) or more of the following five (5) “facts”:
 - a. Adultery
 - b. Unreasonable Behaviour
 - c. Desertion
 - d. Three (3) Years’ Separation (With Consent)
 - e. Four (4) Years’ Separation (Without Consent)

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¹ Women’s Charter 1961 (2020 Rev Ed) (“Women’s Charter”).

² *Singapore Parliamentary Debates, Official Report* (10 January 2022) vol 95 (Sun Xueling, Minister of State for Social and Family Development) (“Singapore Parliamentary Debates”).

³ *Ibid.*

⁴ Women’s Charter, *supra* n 1, at s 95(3).

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A. *The “Fault-based” Facts*

5. Prior to 1 July 2024, a married individual applying for divorce could rely on a fault-based fact to prove that his/her marriage has broken down irretrievably (i.e. that the other party had committed adultery,⁵ behaved in a manner such that it was unreasonable to live with him/her,⁶ or deserted him/her for a continuous period of two (2) years⁷) (collectively, the “**Fault-based Facts**”). Unfortunately, the citation of such fault-based elements would inevitably dredge up unhappy memories for parties, which may also undesirably contribute to the acrimony of divorce proceedings.⁸

B. *The “Separation” Facts*

6. Alternatively, parties have to rely on the fact that they have been separated for three (3) years (with consent)⁹ or four (4) years (without consent)¹⁰ (collectively, the “**Separation Facts**”). Worryingly, parties who have relied on the Separation Facts have commonly expressed that their lives were effectively put on hold for three (3) or four (4) years,¹¹ preventing them from moving forward. This had affected their ability to focus on their children during the separation period, who were consequently exposed to the tensions in the parties’ relationship for a prolonged period of time.¹²
7. Fortunately, on 10 January 2022, the Women’s Charter (Amendment) Bill 43/2021¹³ was passed, paving the way for parties to file for divorce on the new “sixth fact” – DMA.

III. THE PURPOSE OF DMA

8. DMA serves to strike a balance between these two (2) important principles:¹⁴
- a. Marriage is a public institution and divorce is a serious matter; and
 - b. When a marriage has truly broken down, the law should permit a divorce without creating unnecessary acrimony.
9. By allowing for an agreement on divorce only after efforts to reconcile have been made, as well as the citation of more “objective” or “neutral” differences for the irretrievable breakdown of the marriage, parties will essentially take joint responsibility instead of blaming each other.¹⁵ Parties also have the freedom that they need to discuss the best path forward. This

⁵ *Id.*, at s 95(3)(a).

⁶ *Id.*, at s 95(3)(b).

⁷ *Id.*, at s 95(3)(c).

⁸ Singapore Parliamentary Debates, *supra* n 2, (Melvin Yong Yik Chye (MP for Radin Mas)).

⁹ *Id.*, at s 95(3)(d).

¹⁰ *Id.*, at s 95(3)(e).

¹¹ Singapore Parliamentary Debates, *supra* n 2, (Sun Xueling, Minister of State for Social and Family Development).

¹² *Ibid.*

¹³ Women’s Charter (Amendment) Bill (Bill 43 of 2021) (“Women’s Charter (Amendment) Bill”).

¹⁴ Singapore Parliamentary Debates, *supra* n 2, (Sun Xueling, Minister of State for Social and Family Development).

¹⁵ *Ibid.*

allows for a less acrimonious process, where parties and their children may be able to heal and move on more quickly with their lives.¹⁶

IV. MAIN REQUIREMENTS UNDER DMA

10. Contrary to what the terminology may suggest, DMA is not a simple “handshake” of a mutual agreement to divorce.¹⁷ There are substantive requirements that need to be fulfilled.

A. Requirement 1: Written Agreement

11. The new section 95A(6)(a) of the WC¹⁸ provides that for the purposes of DMA, there must be a written agreement which contains the following three (3) matters:
- a. Reasons for the parties to conclude that their marriage has irretrievably broken down;
 - b. Efforts that parties have made to reconcile; and
 - c. The consideration that parties have given to the arrangements to be made in relation to their financial affairs and any child of the marriage.
12. A bare agreement without due consideration of the three (3) matters above would not be sufficient.¹⁹ Furthermore, in preparing the written agreement, parties must act voluntarily, have the requisite understanding of the terms, and intend to agree accordingly.²⁰

B. Requirement 2: No Possibility of Reconciliation

13. Under the new section 95A(6)(b) of the WC,²¹ should the Court believe that there is a reasonable possibility of reconciliation, the Court may choose to send the parties for mediation, counselling, and/or family support programmes.²² The Court recognises that such programmes may serve to either salvage the marriage, or help parties to confirm that there is truly no longer a possibility of reconciliation.²³
14. In this connection, the new section 95A(6)(c) of the WC²⁴ states that:

“the court must not accept the agreement if it considers, in all circumstances of the case, that there remains a reasonable possibility that [parties] might reconcile”.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Women’s Charter (Amendment) Bill, *supra* n 13 at cl 29.

¹⁹ Singapore Parliamentary Debates, *supra* n 2, (Sun Xueling, Minister of State for Social and Family Development).

²⁰ *Ibid.*

²¹ Women’s Charter (Amendment) Bill, *supra* n 13 at cl 29.

²² Singapore Parliamentary Debates, *supra* n 2, (Sun Xueling, Minister of State for Social and Family Development).

²³ *Ibid.*

²⁴ Women’s Charter (Amendment) Bill, *supra* n 13 at cl 29.

15. In other words, the Court retains the discretion to reject an application relying on the “fact” of DMA.²⁵ Clearly, the Court would refrain from granting divorces easily when parties could have worked through their differences.

V. FURTHER REQUIREMENTS

16. While the abovementioned criteria are substantive requirements to be fulfilled for DMA, there are additional conditions to be satisfied. These may be viewed as “external” safeguards²⁶ that all divorce applications must necessarily be subject to regardless of whichever “fact” for divorce is relied on.

A. ***Additional Requirement 1: It Must Be Just and Reasonable to Grant the Divorce***

17. Under the new section 95(2)(b) of the WC,²⁷ in addition to the requirement to prove that the marriage has irretrievably broken down, the Court will only grant a divorce if:

“it is just and reasonable to grant the divorce, having regard to all relevant circumstances, including –

- (i) the conduct of the parties; and*
- (ii) how a divorce would affect the parties and any child of the marriage.”*

B. ***Additional Requirement 2: Three-Year Time Bar***

18. Under section 94(1) of the WC,²⁸ barring exceptional circumstances, parties will still have to be married for three (3) years before they can rely on DMA as a fact for divorce.

VI. BENEFITS OF DMA

A. ***Protection of Parties’ Well-Being***

19. With DMA (where it applies), parties may avoid fault-finding or having to wait out a period of separation.²⁹ As DMA encourages parties to take joint responsibility³⁰ in agreeing on the reasons leading to the irretrievable breakdown of the marriage, it is hoped that the acrimony involved in the divorce process will be minimised and thus, help parties preserve their emotional well-being. Parties may even maintain a cordial relationship, which is particularly helpful should they have to remain in the same household for the time being.

²⁵ Singapore Parliamentary Debates, *supra* n 2, (Sun Xueling, Minister of State for Social and Family Development).

²⁶ *Ibid.*

²⁷ Women’s Charter (Amendment) Bill, *supra* n 13 at cl 29.

²⁸ Women’s Charter, *supra* n 1, at s 94(1).

²⁹ Singapore Parliamentary Debates, *supra* n 2, (Sun Xueling, Minister of State for Social and Family Development).

³⁰ *Ibid.*

B. Protection of the Children's Well-Being

20. Similarly, the reduced acrimony involved in the divorce process would also likely minimise tension in the family, especially if parties and their children are still all living together pending the completion of the divorce process. Notably, this is unlike situations where the Fault-based Facts are relied upon, where the children may be caught in the middle of elevated emotional tensions between parties due to the various allegations exchanged.³¹
21. Additionally, the reduced acrimony would also enable parties to better preserve their relationship as co-parents post-divorce.³² This is beneficial for the children's welfare, as they are more likely to remain well-cared for and maintain positive relationships with both parents.

C. Minimisation of Legal Fees

22. The availability of DMA would also allow parties to minimise the legal fees incurred. Under the other "five facts", especially the Fault-based Facts, costs are commonly driven up as parties may (via their instructions to their lawyers) argue over and dispute the particulars leading to the breakdown of the marriage. With DMA, unnecessary exchanges of correspondence, where parties nitpick on such particulars and thereby draw out proceedings, may be avoided.
23. Furthermore, the streamlined nature of DMA would require parties to consider arrangements for their financial affairs and their children in the written agreement from the outset. This would minimise the risk of subsequent, lengthy disputes on ancillary matters³³ (which are often contested) and would serve to assist parties in reducing the costs that may be incurred as a result of having to exchange multiple proposals.

VII. POTENTIAL CONCERNS/CONSIDERATIONS TO NOTE UNDER DMA

24. While DMA aims to minimise acrimony, it does not guarantee that the divorce process will be completely amicable.
25. By itself, DMA would only be relevant in convincing the Court that the marriage should be dissolved. While parties are required to include their consideration of the post-divorce arrangements for their financial affairs and their children in the written agreement, this would only best represent their plans thus far. There is nothing necessarily preventing parties from changing their minds and/or disputing how the financial and child-related matters should actually be decided at the later stage of proceedings.

³¹ Singapore Parliamentary Debates, *supra* n 2, (Sun Xueling, Minister of State for Social and Family Development).

³² *Ibid.*

³³ *Ibid.*

26. In addition, an application to dissolve the marriage by DMA does not guarantee that the duration for the divorce process would be significantly shorter.³⁴ The actual timeframe would ultimately depend on the track that the divorce application proceeds on (i.e. either the “simplified” track or the “normal” track).³⁵ Even if parties were to proceed on the “simplified” track on the basis of DMA, it could still take up to twelve (12) weeks from the filing of the divorce papers to the grant of the interim judgment.³⁶

VIII. THE FAMILY LAWYER’S ROLE IN DMA

27. Family lawyers continue to play an important role and this is especially so even where parties may agree to rely on the “fact” of DMA. As practitioners who specialise in the various aspects of a divorce, family lawyers are best-placed to assist parties in arriving at a fair and practical settlement which would help them to save time and costs while also allowing them to preserve their emotional well-being.

A. *Protection of the Party’s Interests Through a Fair Agreement*

28. In each marriage, the power dynamics and financial standing of the parties may not necessarily be balanced. In such scenarios, a family lawyer may serve as a crucial advisor to ensure that any agreement reached is fair and safeguards his/her client’s best interests.³⁷

B. *Practicality of the Written Agreement and Discussed Arrangements on Ancillary Matters*

29. Under DMA, the Court will still have to assess the sufficiency and substance of the three (3) matters discussed in the written agreement to determine whether the marriage has truly, irretrievably broken down. In this respect, a family lawyer will not only be able to advise if the agreement accurately reflects his/her client’s intention, but also assist to ensure that it is likely to be accepted by the Court.
30. Similarly, should there be a need to negotiate on ancillary matters (such as the division of matrimonial assets, maintenance, and arrangements for the Children), a family lawyer will also be able to expedite discussions by recommending practical proposals while protecting the interests of his/her client.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

C. *Minimisation of the Time, Costs and Acrimony Involved in the Divorce Process*

31. Finally, a family lawyer will assist with the drafting of the relevant divorce documents in accordance with the legal requirements. This would help the party to avoid spending time and incurring further costs in correcting any documents or varying court orders when initial arrangements turn out to be unworkable. If both parties are legally represented, direct personal acrimony may also be minimised as correspondence would take place between their respective lawyers instead.

IX. CONCLUSION

32. While the introduction of DMA is certainly a welcome development in the law of divorce, there may yet exist uncertainties and complexities that could arise in its actual implementation. As such, it is recommended that parties who wish to rely on the new “fact” of DMA should still seek professional legal advice to navigate through the process and to ensure that their interests are adequately safeguarded.

Our Family Law Practice

With a wealth of experience in handling a wide variety of both contentious and non-contentious divorce matters, our firm’s family practice lawyers are well-placed to provide guidance on the various aspects of the divorce process and to also advise if a divorce under DMA is appropriate in the circumstances of each case. Please do not hesitate to contact us for more information and a consultation.

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