



## **Family Law in Thailand**

**FAMILY LAW** in Thailand is primarily codified in the Civil and Commercial Code. The legal system of Family Law in Thailand is based on the European Civil Law system with main influences from the French Civil Law.

In Civil Law the general rule is codified and works from the top general written law down. Thai law is not made by judges and Thailand does not know case law (judge made law), but in practice it is impossible to understand Civil Law in Thailand without also taking into account the relevant Supreme Court judgments. The Supreme Court of Thailand gives rules for the exact **interpretation of words and sections** of the Civil and Commercial Code in order that written laws may be correctly understood and the extent of their meaning or significance determined. The Supreme Court does not rule over a specific case, or takes in consideration the circumstances and facts of a specific case, but explains the exact meaning and interpretation of the written law applied in the actual matter under ruling of the lower court. The Supreme Court rulings have binding authority, similar to written laws.

The main collection of written Family Laws Thailand can be found in the Civil and Commercial Code. Below the relevant section of the Thailand Civil and Commercial Code (a full index of the code can be found [here](#)).

## **Practical legal knowledge for foreigners in Thailand:**

### **Marriage in Thailand**

Couples wanting to formalize their relationship in Thailand must enter into a civil marriage. Thai law does not recognize same sex marriages, common law or 'de facto' marriages or Buddhist marriages. Only when the marriage is officially registered and entered into the marriage register a marriage is created. A marriage in Thailand cannot take place if the man or woman is already the spouse of another person (section 1452). Bigamy (marrying one person while still legally married to another) is a criminal offense under the Penal Code (section 137 'giving false information to a government official conducting the marriage and registration').

### **Real estate ownership by a Thai married to a foreigner**

Marriage with a foreigner (under Thai or foreign law) does affect the right of a Thai national to own property in Thailand. Prior to 1999 Thais married to a foreigner lost the right to legally purchase and own land in Thailand (or any real estate property prohibited for foreign ownership). Currently a

Thai married to a foreigner is allowed to register ownership in property in Thailand, but a legal procedure is required.

### **Prenuptial agreements in Thailand**

A prenuptial agreement is recognized in section 1465 of the Civil and Commercial Code. A Thai prenuptial agreement is a formal agreement made before the official marriage in Thailand and governs the financial relations between the prospective husband and wife as regards to their properties. The legal requirements which determine the validity of the prenuptial is also found in the Civil and Commercial Code.

### **Divorce in Thailand**

A divorce in Thailand formal or the legal ending of a marriage. A divorce in Thailand means the dissolution of a marriage by the judgment of a court on the grounds for divorce given in the Civil and Commercial Code under the chapter 'termination of marriage' or a divorce on request by both the husband and wife by the Amphur or municipality in Thailand. The amphur or amphoe is the district government administrative office.

### **Inheritance laws in Thailand**

Foreigners' right on properties acquired by inheritance and foreigners right to dispose of property by succession. If a person dies his assets can be transferred either by will or through inheritance and succession laws (where the deceased has failed to execute a valid will). If a person has not made a will his/her wishes may not necessarily be carried out. Foreigners with assets in Thailand should be aware of limitations of transferring interests and ownership by inheritance in Thailand

### **Family Laws Inheritance Laws :**

#### **Thai inheritance laws**

If you have NOT made a Last Will or Testament, or valid will, the law (intestacy rules) will determine what happens to your assets when you die. Under **Thai inheritance laws** this generally means that the assets will be distributed amongst the statutory heirs. Under section 1629 of the Civil and Commercial Code of Thailand there are 6 classes of statutory heirs and they are entitled to inherit in the following order:

1. descendants
2. parents

3. brothers and sisters of full blood
4. brothers and sisters of half blood
5. grandparents
6. uncles and aunts
7. The surviving spouse is a statutory heir, subject to the special provisions of Section 1635 Civil and Commercial Code.

### **Distribution in the absence of a will**

Thai inheritance laws designate intestate heirs and so long as there is an heir surviving in one of the classes, the heir of the lower class has no entitlement to share in the assets. The one exception is where there is a descendant and a parent in which case they take an equal share (section 1630). If there is more than one heir in any one class, they take an equal share of the entitlement available to that class. The surviving spouse is a statutory heir but their entitlement depends on what other class of statutory heir exists. If there are surviving children of the deceased, the spouse and children take the estate between them. Therefore, if there are three children, then the estate is divided in to four equal shares.

Legal foreign wills are acceptable in Thai Courts subject to being translated and authorized at the Ministry of Foreign Affairs, but the legal procedure to enforce it can take a long time. The execution of a foreign will in Thailand is always subject to a court procedure.

### **Making a will in Thailand**

If you have NOT made a last will rules of intestacy will determine what happens to your assets when you die. The legal situation could be different if you live in Thailand and are married to a Thai national, or if you are unmarried and have no family relationships in Thailand. Either way it is recommended to make a last will and testament, but it is not required to make a Thai last will or testament. Making a valid Last Will in Thailand does not have to be difficult, a person must follow the requirements in the Civil and Commercial Code .

There is no minimum portion of the decedent's estate that must be assigned to the surviving spouse in Thailand, but before distribution half of the common property between husband and wife must first be given to the surviving spouse.

### **Trusts created by last will**

Under Thai law trusts (the relationship where someone else holds the property (trustee) subject to certain duties to use and protect it for the benefit of others) created whether directly or indirectly by will or by any juristic act producing effect during lifetime or after death have no effect whatever (section 1686 Civil and Commercial Code). If the testator wants to dispose of his estate in favour of a minor or adjudged incompetent person or quasi-incompetent person he can entrust the custody and management thereof to a person other than the parents, guardian, custodian or curator, he can appoint a controller of the property by will.

## **Inheritance of foreign owned real estate in Thailand**

### **Foreign land ownership by succession**

**Section 93** of the Land Code Act: *"A foreigner who acquires land by inheritance as statutory heir can have an ownership in such land upon a permission of the Minister of Interior. However, the total plots of land shall not be exceeding of those specified in Section 87"*.

Any foreigner who is married to a Thai national is under section 1629 Civil and Commercial Code a **statutory heir** (i.e heirs who are so entitled by Thai law) and can apply for permission of ownership of inherited land from his Thai spouse pursuant to section 93 of the Land Code Act. Right of ownership will not be given to the foreign spouse. The **over fifty year old** Section 93 of the Land Code Act is written for inheritance of land by foreigners under a treaty (section 86 of the Land Code Act) and does not apply to foreigners acquiring land by inheritance from a Thai spouse. There is currently no treaty with any country allowing foreigners to own land therefore no Minister of Interior will or can give permission to any foreigner to own land in Thailand. Note that it is only since 1999 that Thai nationals married to a foreigner are legally allowed to acquire land .

The answer to the question 'can a foreigner inherit land in Thailand' is yes, as a statutory heir, but he cannot register ownership of the land because he will not be given permission. Under present law he must dispose of the land within a reasonable period (meaning up to 1 year) to a Thai national. If the foreigner fails to dispose of the land the Director-General of the Land Department is authorized to dispose of the land and retain a fee of 5% of the sale price before any deductions or taxes.

### **Condominium ownership transfer and inheritance**

A foreigner who acquires a condominium unit by inheritance, either as statutory heir or inheritor under will, shall acquire ownership, however, unless the foreigner qualifies for ownership under Section 19 Condominium Act, it is required by law that the foreigner shall dispose of the unit within 1 year from the date of acquisition. The Condominium Act divides foreign heirs in eligible foreigners (19 section 19/ 5) and ineligible foreigners (section 19/ 7).

**Section 19** Septem (7) Condominium Act: *"An alien or a juristic person **which the law treats as an alien** (foreign), except one prescribed under section 19, which has acquired a condominium unit through inheritance as legitimate heir or legatee of a will or through any other means, as the case may be, shall give written notice to the competent official within sixty days from the date of ownership of the condominium unit and shall dispose of that unit within a period of not more than one year from the date of acquiring possession of the unit. If it is not disposed of within such period of time, the provisions of the fourth paragraph of Section 19 quinque shall apply mutatis mutandis"*.

If the foreigner does not qualify for ownership under the Condominium Act (*the vast majority*) he must dispose of the unit within 1 year. If the foreigner fails to do so, the Director-General of Land Department shall have the power to sell the condominium unit on the foreigner's behalf (condo inheritance section 19 of the Condominium Act)

### **Partly foreign owned Thai real estate holding company**

More complicated, should a foreign director in a Thai limited die the shares (and thus the assets) and control in the company will not automatically transfer to the heirs. Officially, in a normal company, a general meeting of shareholders must be called and a shareholder decision is needed to appoint a new director. The shares (and the most important position of managing director of the company) of the deceased must be transferred at the Ministry of Commerce, however, without the managing authorized director able to sign on behalf of the company this is less simple. It may be recommended to have more than one director in the company and/ or someone authorized to sign on behalf of the company.

**Section 1155** of the Thailand Civil and Commercial Code: *"Any vacancy occurring in the board of directors otherwise than by rotation may be filled up by the directors, but any person appointed so appointed shall retain his office during such time only as the vacating director was entitled to retain the same"*.

**Section 1132** of the Thailand Civil and Commercial Code: *"In the event of death or bankruptcy of any shareholder another person becomes entitled to a share, the company shall, on surrender of the share certificate when possible, and on proper evidence produced, register such other person as a shareholder"*.

The template will include a clause stating that the testator transfers upon his death shares held in his limited company in Thailand **both in the testator's name and names of Thai and other nominees** holding shares for the testator to his beneficiaries.

**NOTE** that many foreigners, especially prior to 2006, have set up Thai companies to receive ownership of land in Thailand on their behalf. In this case you could argue that the foreigner is considered legally the **principal** (and actual owner) under Thai law (chapter 'Agency' in the Civil and Commercial Code) and the company and Thai nominee shareholders are considered his **agent** holding the land (shares) on his behalf. This is illegal, but as the company could technically and legally be considered the 'agent' of the foreigner (different from a normal company) the company must hand over the assets (real estate) to the heirs of the principal (the deceased foreigner). The nominee shareholders cannot claim ownership over the company's assets and the foreign heirs cannot register ownership but can demand, as the successors of the principal, the transfer of shares and control in the company. If not, the foreign heirs as the actual owners by succession have the right to claim the company assets by legal action, but will have to sell the real estate involving land pursuant the Land Code Act within 1 year from the date of acquisition by inheritance.

### **Lease termination due to death**

A lease agreement is terminated on death of the lessee as a lease agreement in Thailand is in essence a tenancy contract and as such a **personal contract right** of the lessee (*as confirmed by the*

*Supreme Court*) and not an asset or property of the lessee. If the lessee dies the remaining lease term and lease agreement will not automatically transfer to the heirs of the lessee. If succession is not included in the lease the land/ property owner may prohibit the lessee's heirs from taking possession of the property as the lease is terminated and the lessee's heirs have no rights to the property. The lease agreement must have an inheritance clause in the agreement granting succession to the lessee's heirs.

There is controversy on the legal status of a succession clause in the lease, meaning if it is a mere **contract promise** of the owner party to the lease or a **real lease right** that will automatically be binding upon third parties should ownership of the leased property transfer (e.g. at death of the owner). Under present interpretation of hire of property laws in Thailand this clause **will not transfer** with ownership under section 569 Civil Commercial Code as it is considered a contract right. If an inheritance clause has been included the heirs of the lessee have the right to claim performance directly from the *original lessor* (section 374 Civil and Commercial Code), but may not be able to successfully enforce this clause by legal action against a successor of the property. It may be recommended to include co-lessees in the lease agreement who each can independently continue the lease in the event of death of one of the lessees .

## **Marriage Property Regime**

### **Matrimonial property law in Thailand**

Thai marriage and assets of husband and wife

**Thai marriage property** law is largely governed by the section property between husband and wife in the Civil and Commercial Code. In general **'benefit and income'** of each spouse acquired **during marriage** will under Thai law become jointly owned property between husband and wife. A prenuptial agreement is an allowed concept in Thailand however it is not possible to exclude the general property regime between husband and wife in a prenuptial agreement.

### **Personal property in a Thai marriage**

Thai family and marriage laws specify that property belonging to either spouse before the marriage remains his or her personal property after the marriage. If during the marriage personal property has been exchanged to other property this **remains a personal property**.

**Section 1471** of the Thailand Civil and Commercial Code: 'Personal property (*Sin Suan Tua*) consists of: (1) property belonging to either spouse before marriage, (2) property for personal use, dress or ornament suitable for station in life, or tools necessary for carrying on the profession of either spouse, (3) property acquired by either spouse during marriage through a will or gift'.

**Section 1472** of the Civil and Commercial Code: 'As regards to *Sin Suan Tua* (personal property), if it has been exchanged to other property, other property has been bought or money has been acquired from selling it, such other property or money acquired shall be *Sin Suan Tua*. Where the *Sin Suan Tua* has been totally or partly destroyed but replaced by other property or the money, such other property shall be *Sin Suan Tua*'.

### **Marital or common property**

**Section 1474** marital assets (matrimonial or common jointly owned property between husband and wife) is under Thai law called '*Sin Somros*' and consists of:

1. property acquired during marriage;
2. property acquired by either spouse during marriage through a will of gift made in writing if it is declared by such will or document of gift to be *Sin Somros*;
3. fruits of *Sin Suan Tua*.

In case of doubt as to whether a property is *Sin Somros* (jointly owned) or not it shall be presumed to be *Sin Somros*

Section 1474 last sentence means that all property acquired throughout the course of the marriage becomes jointly owned marital property between husband and wife regardless of how the title is held except properties that fall under sections 1471 and 1472 of the Civil and Commercial Code, but some proof that a property is personal property will be required. When the marriage ends due to death or divorce marital property will be divided and distributed in equal shares.

Sample of the benefit and income rule in Thai family laws (property between husband and wife): If you have 100,000 Thai baht in your bank account at the time of marriage and at the time of divorce in Thailand you saved together with your Thai spouse (the source does not matter) an additional 15,000 baht from and received 5,000 interest over your savings your spouse shall according to Thai family laws be entitled to half of the increase (i.e. 10,000 baht). An inheritance will not automatically become a marital property but becomes a personal property (*Sin Suan Tua*) of the person receiving the inheritance and the other spouse is not entitled in a divorce to the increase the other spouse received by the inheritance.

### **Management of property during marriage**

Each spouse shall remain the manager of his or her **personal property** during marriage in Thailand. Certain **marital property** must be **jointly managed** and other property can be managed by each spouse. A prenuptial agreement as a pre-marriage contract may give the right to manage *Sin Somros* (jointly owned marital property) to one of the spouses. Without a prenuptial or marriage contract certain legal acts with regards to certain jointly owned properties **must be managed jointly** by husband and wife and requires joint consent.

Section 1476 of the Thailand Civil and Commercial Code 'In managing the *Sin Somros* in the following cases, the husband and wife have to be joint manager, or one spouse has to obtain consent from the other:

1. Selling, exchanging, sale with the right of redemption, letting out property on hire-purchase, mortgaging, releasing mortgage to mortgagor or transferring the right of mortgage on immovable property or on mortgageable movable property.
2. Creating or distinguishing the whole or a part of the servitude, right of inhabitation, right of superficies, usufruct or charge on immovable property.
3. Letting immovable property for more than three years.
4. Lending money
5. Making a gift unless it is a gift for charitable, social or moral purposes and is suitable to the family condition.
6. Making a compromise.
7. Submitting a dispute to arbitration.
8. Putting up the property as guarantee or security with a competent official or the Court.

The management of the *Sin Somros* in any case other than those provided in paragraph one can be made by one spouse without having to obtain consent from the other'.

### **Management of real estate during marriage**

A foreigner married to a Thai is not allowed to have any form of joint ownership in land together with his or her Thai spouse. Any land acquired in Thailand during the course of the marriage with a foreigner cannot be a *Sin Somros* or marital asset according to section 1474 but **must** become a personal asset of the Thai spouse according to section 1471 and 1472. As a non-marital asset it will be managed by the Thai spouse solely. In practice often land and house in Thailand will be registered as a personal property of the Thai national. An important aspect for the foreign spouse is of course the fact that the Thai spouse has full management and control over the property and is able to sell or encumber the property without the consent of the foreign spouse (section 1476 does not apply). In addition, as a non-marital asset at death or in a divorce it will not automatically be divided as a common property between husband and wife (**read up** on division of the marital home).

Also if the Thai spouse dies the foreigner has to deal with the heirs of the Thai spouse unless a last will has been made.

If protection is required the first protection for the foreign spouse lies in obtaining joint or sole ownership over the building separate from the land. It's only the land aspect of the property that is restricted for foreign ownership, not the structures upon on the land or immovable property as a whole. The structures on the land can be a jointly owned property or even owned as a personal property of the foreign husband (section 1472). By assuring ownership or co-ownership over the house in a separate procedure at the Land Department the foreign spouse prevents a situation where the Thai spouse is able to sell the whole property without the consent of the other spouse (see section 1476 management of *Sin Somros* above). When the house is regarded as a *Sin Somros* it must be jointly managed by both spouses and selling would need both spouses consent (unless a prenuptial agreement to this regard has been made).

**Section 1475** (*Civil and Commercial Code*): 'Where any *Sin Somros* is property of the kind mentioned in Section 456 (meaning immovable property) of this Code or has documentary title, either husband or wife may apply for having his or her name entered in the documents as co-owners'

The second option for protection lies in a right of usufruct, or in case of undeveloped land a right of superficies over the property registered in the foreign spouse's name at the Land Department. A right of usufruct or superficies registered on the title deed is an acceptable protection for a foreign spouse, especially if the money expended on the property comes from what is considered personal property of the foreign spouse.

### **Land Ownership and Thai Spouse**

Foreigners are not allowed to have co-ownership in land together with a Thai spouse.

Land acquisition by a Thai married to a foreigner



If a Foreigner has a Thai spouse then land could be bought on the name of the Thai spouse but obviously this carries some risk. The property will be registered in the Thai spouse's name and for the spouse to buy the land proof is required that the money used to purchase the property is legally from the Thai spouse, with no foreign claim to it. The same applies in case of the purchase of a condominium unit exceeding the foreign ownership quota in such condominium. In case of acquisition of land, land and house or in some cases condominium and registration of ownership at the Land Department the Thai spouse;

1. has to show evidence that all money paid is a personal property (*Sin Suan Tua*) according to Section 1471 and Section 1472 of the Civil and Commercial Code, or;
2. must together with his/her foreign spouse at the Land Department's provincial or local land office confirm in a standard certify letter of confirmation that all money paid for the property is personal property (*Sin Suan Tua*) and not a common property (*Sin Som Ros*). It is in this case not the Land Department's policy to investigate the actual sources of funds. (\*) If the foreign spouse does not live in Thailand it can be recorded by ambassador / consular or notary public in such country.

It is only since the Ministry of Interior regulation dated March 23, 1999 (*Most Urgent Letter Mor.Thor 0710/Wor.792*) that a Thai national married to a foreigner is allowed to legally acquire and register ownership of land in Thailand. Prior to the regulation a Thai national married to a foreigner lost the right to acquire land in Thailand because without the procedure the foreign spouse could acquire an illegal interest in land as property between husband and wife (continue: the registration procedure). The procedure in the 1999 regulation issued by the Ministry of Interior is based on the principle of section 1472 of the Civil and Commercial Code that if personal property has been exchanged for other property during the marriage that property becomes and remains a personal property and not a jointly owned property between husband and wife. This way the foreign spouse does not obtain any ownership rights in the land based on Thai family laws (property between husband and wife). Without the joint confirmation in the certify letter or proof the acquisition is paid with personal property of the Thai spouse the request for ownership registration must be referred to the Land Department in order to obtain an approval from the Minister. Without written evidence the land office will not allow registration of ownership.

Note: Any foreigner's minor having Thai nationality may purchase or accept land as a gift with no consideration and register the ownership of such land if it does not appear after investigation that he/she has done so to avoid the law (primarily aimed at tax laws).

Management of the land by the Thai spouse married to a foreigner

The land must become a **separate and personal property** (*Sin Suan Tua*) of the Thai spouse according to section 1471 and section 1472 of the Civil Code, and not a jointly acquired or community property between husband and wife (*Sin Som Ros*). As opposed to *jointly owned* marital realty property (section 1476) the Thai spouse can sell, mortgage, transfer or exchange the property without consent of the foreign spouse .

Inheritance of land by a foreign spouse as statutory heir

In theory a foreigner can acquire land by inheritance as **statutory heir** (as opposed to legatees or heirs who are entitled by last will) and register ownership after having obtained permission from the Minister of interior. **Section 93** of the Land Code Act: *'A foreigner who acquires land by inheritance as statutory heir can have an ownership in such land upon a permission of the Minister of Interior. However, the total plots of land shall not be exceeding of those specified in Section 87'*.

It should be noted that the over 55 year old section 93 applies **only** to foreign ownership of land **under a treaty** (section 86 Land Code Act) and NOT to foreigners receiving land as a statutory heir from a Thai spouse. The last treaty allowing foreigners to own land in Thailand was terminated in 1970 therefore there is currently NO legal ground for the Minister of Interior to allow any foreigner to acquire land in Thailand as a **statutory heir**.

This in practice means that any foreign spouse who acquires land by inheritance as a statutory heir has to transfer the land within 1 year to a Thai national. The forgoing applies only to foreigners inheriting land as a statutory heir and not to foreigners heirs who acquire land under a last will.

#### Inheritance of a condominium

Any foreigner who acquires a condominium unit by inheritance, either as statutory heir or inheritor under will, shall obtain ownership of such unit, but must **qualify** under section 19 of the Condominium Act to actually register ownership with the Land Department. If he does not qualify under section 19 or if he qualifies but his ownership would exceed the allowed 49% foreign ownership in the condominium building it is required by law that the unit shall be disposed of within 1 year from the date of acquisition of such condominium unit. If the foreigner fails to do so, the Director-General of Land Department shall have power to sell the condominium on the foreigner's behalf, read up 'condominium acquired by inheritance'.

### **Family Laws Personal Assets :**

#### **Prenuptial and Divorce in Thailand**

Thai Marriage Prenuptial Agreements and Divorce: Division of assets upon divorce

#### **The (limited) freedom of contract in a prenuptial agreement in Thailand**

Prenuptial/premarital agreements in Thailand can cover matters relating to personal and common property between husband and wife. A prenuptial must be made in contemplation of marriage, must be in writing and signed by both parties and registered in the marriage registers together with the registration of the marriage. A prenuptial agreement can in its content not eliminate the statutory system of property between husband and wife but it can modify the management over certain common property. A prenuptial agreement in Thailand between a couple planning to marry is commonly used to list personal assets of each spouse and to establish rights and responsibilities regarding management of the properties during the marriage. It can include the intention how common assets are to be divided upon termination of the marriage, but the prenuptial should not cover subjects like child and spousal support or the making of a will.

#### **Advantage of a Thai prenuptial agreement**

Everything that is owned before the marriage remains personal property during the marriage under Thai matrimonial laws. The first benefit of a prenuptial agreement in Thailand lies in simple proof in case of a possible divorce and could prevent disputes over property. By listing each parties assets in a prenuptial agreement the couple could prevent unnecessary arguments over ownership of certain items in case the marriage is later dissolved. In a possible future divorce the parties do not have to prove what they brought in the marriage as this is listed in the prenuptial agreement. In this case it is possible to simply ignore a claim from the other spouse on personal property when the marriage ends in a divorce.

The second benefit of a pre-marital or prenuptial agreement lies in the right to manage certain marital properties. A prenuptial agreement may grant the sole right of management over jointly owned assets as listed in section 1476 of the Civil and Commercial Code to one of the spouses. As section 1476 among others refers to **real estate property** it is important to realize that real estate in Thailand often will be held as a **personal property** of the Thai spouse. The aspect of **management** of marital assets in a prenuptial does in any case not apply to land acquired as a personal property of the Thai spouse (read: division of the marital home).

The third benefit of a prenuptial agreement is that it can state possible division of assets in case the marriage is later dissolved. In a possible divorce in Thailand all properties must be taken out of the marriage and common property divided equally. For personal property this should not be a problem when it is listed in a prenuptial agreement. If there is a dispute whether or not an asset is a marital property or a personal property the division could become more complicated and the parties have to find agreement between them or a judge will decide for them. It is recommended during the course of the marriage to keep a record of personal and marital assets signed by both spouses that can be used as evidence. The reason for this is section 1474 Civil and Commercial Code, as in case of doubt if an asset is personal or common property it is assumed to be a community property between husband and wife, **unless there is evidence that proves the contrary**. All property acquired or gained by either spouse during the course of marriage is presumed to be marital/community property. The exception to this rule can be found in the last sentence of section 1474.

To determine the valuation of property which consists out of personal and marital property is complex. The court has the discretion to value it based on individual circumstances and of course according to the laws of Thailand.

If the couple can't agree on the division of property and the terms the divorce could become contested, meaning it has to be referred to a court instead of a simple divorce on **mutual consent** at the amphur in Thailand which requires only agreement between the parties read more...

### **Will the prenuptial in Thailand be enforced**

The content of the prenuptial cannot be against the **law** or good **morals**. Any terms in the prenuptial agreement against the statutory legal system of property between husband and wife will quickly be set aside by a court in Thailand as against public policy or good morals and therefore null and void (section 1465 Thailand Civil Code). The prenuptial agreement can include possible division of properties, however as the concept of a prenuptial agreement is rather new the legal literature on prenuptial agreements is still underdeveloped. A prenuptial agreement in Thailand cannot exclude the general statutory system of personal and common property between husband and wife. It is slightly unpredictable how the courts deal with arrangements on the division of properties made in a prenuptial agreement in a contested divorce.

NOTE: Division of real estate in a divorce: irrespective if a foreign spouse has signed away his rights to land or property purchased by his Thai spouse during marriage, in a divorce procedure a Thai court can ignore the signed '**letter of confirmation**' by which the foreign spouse has signed away his rights if there is a conflict **between the regulation** by the Ministry of Interior and the **system of 'property between husband and wife'** in the Civil and Commercial Code. As the regulation by the Ministry of Interior is lower legislation the court must in principle apply the system of the Civil and Commercial Code and must ignore the letter of confirmation in its decision how to deal with properties between husband and wife (i.e. if the property is paid for by the foreign husband it will not be dealt with as a personal property of the Thai spouse).

## **Prenuptial Agreement for Thailand**

Thai English Prenuptial Agreement

### **Drafted Under Thai Law**

**Thai marriage** and the matrimonial property regime between husband and wife is primarily governed by the chapter **property between husband and wife** in the Civil and Commercial Code. A prenuptial agreement in Thailand governing assets of the spouses and management over personal and matrimonial property is an allowed contract and is a valid contract between husband and wife as long as:

1. both parties understand the contract's (prenup's) content;
2. its clauses are not against good morals or the law, and;
3. is registered together with the marriage in the marriage registers.

Independent legal advice for husband and wife is not required for making a valid prenuptial agreement in Thailand under Thai law, however when a valid prenuptial agreement has been made the family courts in Thailand will have to determine the enforceability of the clauses in the prenuptial contract in a contested divorce. Any clauses in the agreement made against good morals or the law in the opinion of the court are null and void and not enforceable by legal action in Thailand. What husband and wife can agree upon in a Thai prenuptial agreement is limited and generally the system of property of husband and wife (as laid down in the Civil and Commercial Code) is considered of public order (these are basically mandatory rules from which husband and wife have no freedom to derogate).

### **Thai lawyer drafted prenuptial agreement**

Our Thai English language template prenuptial agreement drafted under Thai law with a choice of law for Thai law is ideal to have your rights and current assets in writing. It arranges management over assets and will prevent any unjustified claims by the other spouse on personal property in a divorce. This complete lawyer drafted contract template is sufficient for most couples planning to marry in Thailand.

Provisions included in the prenuptial:

- personal property
- management of personal property
- common property
- management of common property
- miscellaneous provisions
- validity of the agreement
- alternation and termination
- division of common property upon
- สินส่วนตัว
- สินสมรส
- การจัดการสินส่วนตัว
- การจัดการสินสมรส
- ข้อกำหนดอื่นๆ
- ความสมบูรณ์แห่งสัญญาก่อนสมรส
- การเปลี่ยนแปลง เพิกถอนสัญญาก่อนสมรส

- divorce
- language
- severability
- governing law

- การแบ่งสินสมรสเนื่องจากการหย่า
- ภาษา
- โฆษะแยกส่วน
- กฎหมายที่ใช้บังคับ

## **Last Will and Testament for Thailand**

Foreigners with assets in Thailand can choose to make a Thai last will and testament specifically for assets inside Thailand and expressly excluding assets outside Thailand. It is recommended to make this a valid will under Thai law to ensure that at the time of death your assets are divided according to your wishes and not in a way you did not intend. This template is written for foreigners with assets in Thailand who specifically want to dispose of their Thailand estate (*limited to the jurisdiction of Thailand*), separate from their worldwide estate.

**You can use this general will template by just filling in the blank spaces and/or editing the text.**

### **Enter:**

- your personal details
- the details of the beneficiary or beneficiaries
- the details of substitute beneficiaries (*not required*)
- the name of an executor (*not required*)
- the number of original copies of the will and where these are kept (*e.g. one is kept with the testator and one is kept with the testator's foreign will*)
- the names and details of 2 witnesses you trust

## **Family Laws Divorce in Thailand :**

### **Divorce in Thailand**

#### **Divorce grounds under Thai law**

A Thai divorce formally terminate a marriage and is the legal ending of a marriage.

**DIVORCE IN THAILAND** means the dissolution of a marriage **by the judgment of a court** on one of the 12 grounds for divorce as listed in Section 1516 of the Civil and Commercial Code or **by the Amphur** (local municipality office) in Thailand upon a joint request and mutual consent by husband and wife. The Amphur or Amphoe is the district government administrative office (in Bangkok these offices are also called 'Khet'). The district offices are responsible for marriage registrations and have the authority to again dissolve a marriage in case of a divorce on mutual consent.

Grounds of action for divorce for a judgment of a court are as follows:

1. the husband has given maintenance to or honoured such other woman as his wife, or the wife has committed adultery, the other spouse may enter a claim for divorce;
2. one spouse is guilty of misconduct, notwithstanding whether such misconduct is a criminal offence or not, if it causes the other: (a) to be seriously ashamed; (b) to be insulted or hated or account of continuance of being husband or wife of the spouse having committed the misconduct; or (c) to sustain excessive injury or trouble where the condition, position and cohabitation as husband and wife are taken into consideration; the latter may enter a claim for divorce;
3. one spouse has caused serious harm or torture to the body or mind of the other, or has seriously insulted the other or his or her ascendants, the latter may enter a claim for divorce;
4. one spouse has deserted the other for more than one year, the latter may enter a claim for divorce; (4/1) one spouse had been sentenced by a final judgment of the Court and has been imprisoned for more than one year in the offence committed without any participation, consent or in the knowledge of the other, and the cohabitation as husband and wife will cause the other party sustain excessive injury or trouble, the latter may enter a claim for divorce; (4/2) The husband and wife voluntarily live separately because of being unable to cohabit peacefully for more than three years, or live separately for more than three years by the order of the Court, either spouse may enter a claim for divorce;
5. one spouse has been adjudged to have disappeared, or as left his or her domicile or residence for more than three years and being uncertain whether he or she is living or dead;
6. one spouse has failed to give proper maintenance and support to the other, or committed acts seriously adverse to the relationship of husband and wife to such an extent that the other has been in excessive trouble where the condition, position and cohabitation as husband and wife are taking into consideration, the latter may enter a claim for divorce;
7. one spouse has been an insane person for more than three years continuously and such insanity is hardly curable so that the continuance of marriage cannot be expected, the other may enter a claim for divorce;
8. one spouse has broken a bond of good behavior executed by him or her, the other spouse may enter a claim for divorce;
9. one spouse is suffering from a communicable and dangerous disease which is incurable and may cause injury to the other, the latter may file a claim for divorce;
10. one spouse has a physical disadvantage so as to be permanently unable to cohabit as husband and wife, the other may enter a claim for divorce.

### **Divorce in Thailand on mutual consent**

The above grounds for divorce do not have to be proven in a divorce on mutual consent by the Amphur District Office. A divorce before the Amphur in Thailand requires agreement to divorce between both spouses and agreement on the division of marital or jointly owned assets, custody of children and, if any, how much alimony will be paid. A prenuptial agreement could be helpful in negotiating a settlement as the prenuptial states the parties intentions in the event of a divorce at the time of marriage.

If no agreeable solution can be found on these matter between the parties each party can file a petition (only on the grounds given in the Civil and Commercial Code) for the dissolution of the marriage by the court and the court will decide for them on these matters according to Thai law and individual circumstances. If a **prenuptial agreement** has been made the court will assess the validity and enforceability of its content. **Section 1465** Civil and Commercial Code: *'Any clause in the prenuptial agreement contrary to public order or good morals, or provided that the relations between them as regards such properties are to be governed by foreign law shall be void'* .

If both parties agree on the terms of the divorce (**mutual consent**) the procedure at the local Amphur will be shorter, less expensive and less time consuming. No direct Thai lawyer representation is required, but a divorce settlement agreement could be pre-drawn up, but not necessarily. Parties must agree on all types of potential issues such as division of properties, spousal



maintenance and child custody. It is not required that the parties request a divorce at the same location where the marriage is registered, but both husband and wife must be **personally present** when filing for a divorce on mutual consent at the Amphur.

A **contested divorce**, i.e. dissolution of the marriage by the judgment of the court in Thailand, will take considerably more time, money and requires several court appearances and representation of a Thai lawyer.

## Family Laws Thai Family Laws :

### Thailand Family Marriage Laws

#### BOOK V FAMILY

##### TITLE I

##### MARRIAGE

##### CHAPTER I

##### BETROTHAL

**Section 1435.** A betrothal can be effected only when the man and the women have completed there seventeenth year of age.

The betrothal contrary to the provision of paragraph one is void.

**Section 1436.** If a minor will conclude a betrothal, the consent of the following persons is required:

- (1) his or her parents, in case booth of his her father and mother are still alive;  
his or her parent, in case his or her father or mother died, or is in condition of state of being
- (2) unable to give consent, or is under the circumstances that make the minor unable to ask for such consent;
- (3) his or her adopter, in case the minor is and adopted child
- (4) his or her guardian, in case there is no person giving consent under (1), (2) and (3), or such person is deprived of parental power.

A betrothal concluded by the minor without the said consent is voidable.

**Section 1437.** Betrothal is not valid until the man gives or transfers the property which is **Khongman** to the woman as evidence that the woman after the betrothal has taken place.

The **Khongman** shall become the property of the woman after the betrothal has taken place.

Sinsod is property given on the part of the man to the parents, adopter of guardian of the woman, as the case may be, in return of the woman agreeing to marry. If the marriage doe not take place causing mainly from the woman or on account of any circumstances that make the woman



responsible therefore and make the marriage unsuitable for the man or make the man unable to marry that woman, the man may claim the return of the **Sinsod**.

The provisions of Section 412 to Section 418 of this Code on undue enrichment shall apply to the return of the **Khongman** or **Sinsod** under this Chapter, *mutatis mutandis*.

**Section 1438** Betrothal does not give rise to an action for compulsory performance of the marriage. An agreement to pay a penalty in case of breach of the betrothal agreement is void.

**Section 1439.** After the betrothal has taken place if either party commits a breach of the betrothal agreement, such party shall be liable to make compensation. In case the woman commits a breach of the betrothal agreement, the **Khongman** shall also be returned to the man.

**Section 1440.** Compensation may be claimed as follows:

- (1) for injury caused to the body or reputation of the man or woman;
- (2) for appropriate expenses or debt incurred in good faith by the betrothed, his or her parents or a person acting in the capacity of his or her parents in preparation for the marriage;  
for damage suffered by the man or woman through having taken appropriate measures
- (3) affecting his or her property or other affairs relating to his or her occupation or earning in expectation of the marriage.

In case where the woman is entitled to the compensation, the Court may decide that the **Khongman** which has become her property is the whole or a part of compensation she will receive, or the Court may order for payment of the compensation without regard to **Khongman** that has become property of the woman.

**Section 1441.** Where one of the betrothal dies before the marriage, there shall be no claim for compensation. As for the **Khongman** or **Sinsod**, it need not be returned by the woman or on the part of the woman, irrespective of the death of either party.

**Section 1442.** In case where there is an essential event happening to the betrothed woman that makes the marriage to the woman unsuitable, the man is entitled to renounce the betrothal agreement and the woman shall return the **Khongman** to the man.

**Section 1443.** In case where there is an essential event happening to the betrothed man that makes marriage to the man unsuitable, the woman is entitled to renounce the betrothal agreement and the **Khongman** need not to be returned to the man.

**Section 1444.** If the ground that makes the one betrothed renounce the betrothal agreement is the gross misconduct of the other taken place after the conclusion of betrothal, the betrothed who had committed the gross misconduct shall be liable to make compensation to the other who has exercised his or her right to renounce the betrothal agreement as if the former had committed a breach of the betrothal agreement.

**Section 1445.** A man who is betrothed to a woman may, after the betrothal agreement having been renounced under the Section 1442, claim compensation from any man who has sexual intercourse with the woman and has known or should have known of her betrothal.

**Section 1446.** A man who is betrothed may, without requiring him to renounce the betrothal

agreement, claim compensation from any man who has had sexual intercourse or attempted to have sexual intercourse with the woman against her will, and the fact that the woman had been betrothed has been known or ought to have known to him.

**Section 1447.** The Court shall determine the compensation claimed under this Chapter according to the circumstances.

The claim under this Chapter, except to one in Section 1440 (2), cannot be transferred or inherited unless such claim has been acknowledged in writing or the action for compensation has been entered by the injured person.

**Section 1447/1.** The prescription for the claim for compensation under Section 1439 shall be six months from the date of the breach of the betrothal agreement.

The prescription for the claim for compensation under Section 1444 shall be six months from the day when the commission of gross misconduct which is the cause of renunciation of the betrothal agreement is known or should have known to the other betrothed, but no later than five years from the date of the said commission.

The prescription for the claim for compensation under Section 1445 and Section 1446 shall be six months from the day when the betrothed man knows or should have known the commission of any other man which is the cause of the claim and the person bound to make the compensation is known, but not later than five years from the date of such commission.

**Section 1447/2.** The prescription for the claim for return of the **Khongman** under section 1439 shall be six months from the date of the breach of the betrothal agreement.

The prescription for the return of the **Khongman** under Section 1442 shall be six months from the date of denunciation of the betrothal agreement.

## CHAPTER II

### CONDITIONS OF MARRIAGE

**Section 1448.** A marriage can take place only when the man and woman have completed their seventeenth year of age. But the Court may, in case of having appropriate reason, allow them to marry before attaining such age.

**Section 1449.** A marriage cannot take place if either the man or the woman is an insane person or adjudged incompetent.

**Section 1450.** A marriage cannot take place if the man and woman are blood relations in the direct ascendant or descendant line, or brother or sister of full or half blood. The said relationship shall be in accordance with blood relation without regard to its legitimacy.

**Section 1451.** An adopter cannot marry the adopted.

**Section 1452.** A marriage cannot take place if the man or woman is already the spouse of another person.

**Section 1453.** In case of the woman whose husband died or whose marriage has become

terminated, the marriage can only take place if not less than three hundred and ten days have elapsed since the termination of her previous marriage; unless

- (1) a child has been born during such period;
- (2) the divorced couple remarry;
- (3) there is a certificate issued by a qualified doctor who is a lawful physical practitioner in medicine showing that the woman is not pregnant;
- (4) there is an order of the Court allowing the woman to marry.

**Section 1454.** In case of marriage of a minor, the provisions of Section 1436 shall apply *mutatis mutandis*.

**Section 1455.** Giving consent to the marriage may be made:

- (1) by affixing signature of the person giving consent in the Register at the time of registration of the marriage;
- (2) by a consent document stating the names of the parties to the marriage and signed by the person giving consent;
- (3) by verbal declaration before at least two witnesses in case of necessity.

The consent having been given cannot be revoked.

**Section 1456.** In case where there is no person having the power to give consent under Section 1454, or if the person refuses to give consent or is in the position of being unable to give consent, or the minor cannot, in such circumstances, ask for the consent, the minor may file an application with the Court for giving consent to the marriage.

**Section 1457.** Marriage under this Code shall be effected only on registration being made.

**Section 1458.** A marriage can take place only if the man and woman agree to take each other as husband and wife, and such agreement must be declared publicly before the Registrar in order to have it recorded by the Registrar.

**Section 1459.** A marriage in foreign country between Thai people or between a Thai people and a foreigner may be effected according to the form prescribed by Thai law or by the law of the country where it takes place.

If the spouses desire to have the marriage registered according to Thai law, the registration shall be effected by a Thai Diplomatic or Consular Officer.

**Section 1460.** In case where there exists special circumstances that make the marriage registration by the Registrar unable because either or both of the man and woman were in imminent danger of death or in the state of armed conflict or war, if a declaration of intention to marry has been made by the man and woman before a person of sui juris living there, who would have noted down as an evidence such intention, and if the registration of marriage between the man and woman was effected thereafter not later than ninety days as from the date of first possible opportunity to apply for registration of marriage with production of the evidence of the intention in order to have the date and place of declaration of intention to marry and the special circumstances recorded by the Registrar in the Marriage Register, the day on which declaration

of intention to marry has been made to the said person shall be deemed as the date of registration of marriage.

The provisions of this Section shall not apply to the marriage that is void if it should take place on the date of declaration of intention.

### CHAPTER III

#### RELATIONSHIP OF HUSBAND AND WIFE

**Section 1461.** Husband and wife shall cohabit as husband and wife.

Husband and wife shall maintain and support each other according to his or her ability and condition in life.

**Section 1462.** Where the physical or mental health or happiness of either spouse is greatly imperiled by continuance of cohabitation, the spouse so imperiled may apply to the Court for authorization to live apart while the danger persists; and in such case, the Court may order such amount of maintenance to be furnished by one of the spouses to the other as may be proper according to the circumstances.

**Section 1463.** If one of the spouses is adjudged incompetent or quasi-incompetent, the other becomes guardian or curator by operation of law. But on application of any interested person or of Public Prosecutor, the Court may on substantial grounds, appoint another person as guardian or curator.

**Section 1464.** If one of the spouse becomes insane, irrespective of whether he or she has been adjudged incompetent or not, and the other fails to give proper maintenance to the insane spouse under Section 1461 paragraph two, does or fails to do any thing to the extent that it plunges the insaw spouse into the position which is likely endangering the latter's body or mind, or causing any undue loss to the latter's property, the persons as specified in Section 28 or the guardian may enter an action against the other claiming maintenance for the insane spouse, or apply for any order of the Court to protect the insane spouse.

If, in case of entering the action for maintenance under paragraph one, no order has yet been given to effect the insane spouse to become incapacitated person, an application shall be made 10 the Court in the same case for an order effecting such insane spouse to be an incapacitated person and to appoint the applicant himself or herself as the guardian. If such order effecting the incapacitated person on the insane spouse has been given, an application for removal of the old guardian and appointment of a new one may be made.

In applying for any order of the Court for protecting the insane spouse without claiming maintenance, the applicant may not request the Court to order effecting the insane spouse to be an incapacitated person or to change the guardian. If the measures for protection as requested, in the opinion of the Court, requires an appointment or change of the guardian, the Court shall firstly give an order effecting the carrying out of the similar activities as provided in paragraph two, and then give a protection order as it is deemed suitable.

**Section 1464/1** During the Court trial under Section 1464, the Court may, upon request, determine any temporary measures concerning the maintenance or protection of the insane spouse as it is deemed suitable. If it is a case of emergency, the provisions on the request in case

of emergency under the Civil Procedure Code shall apply.

## CHAPTER IV

### PROPERTY OF HUSBAND AND WIFE

**Section 1465.** Where the husband and wife have not, previous to their marriage, concluded a special agreement concerning their properties, the relations between them as regards to their properties shall be governed by the provisions of this Chapter.

Any clause in the anti-nuptial agreement contrary to public order or good morals, or provided that the relations between them as regards such properties are to be governed by foreign law shall be void.

**Section 1466.** The ante-nuptial agreement is void if not entered in the Marriage Register at the time of marriage registration terms of the ante-nuptial; or if not made in writing and signed by both spouses and by at least two witnesses and entered in the Marriage Register at the time of marriage registration stating that the ante-nuptial is thereto annexed.

**Section 1467.** After marriage the ante-nuptial agreement cannot be altered except by authorization of the Court.

When there is final order of the Court to effect the alteration or cancellation of the ante-nuptial agreement, the Court shall notify the Marriage Registrar of the matter in order to have it entered in the Marriage Register.

**Section 1468.** Clauses in the ante-nuptial agreement shall have no effect as regards the rights of third persons acting in good faith irrespective of whether they be altered or cancelled by the order of the Court.

**Section 1469.** Any agreement concluded between husband and wife during marriage may be avoided by either of them at any time during marriage or within one year from the day of dissolution of marriage; provided that the right of third persons acting in good faith are not affected thereby.

**Section 1470.** Properties of husband and wife except in so far as they are set aside as **Sin Suan Tua**, are **Sin Somros**.

**Section 1471.** **Sin Suan Tua** consists of:

- (1) property belonging to either spouse before marriage
- (2) property for personal use, dress or ornament suitable for station in life, or tools necessary for carrying on the profession of either spouse
- (3) property acquired by either spouse during marriage through a will or gift
- (4) **Khongman**.

**Section 1472.** As regards to **Sin Suan Tua**, if it has been exchanged to other property, other property has been bought or money has been acquired from selling it, such other property or

money acquired shall be **Sin Suan Tua**.

Where the **Sin Suan Tua** has been totally or partly destroyed but replaced by other property or the money, such other property shall be **Sin Suan Tua**.

**Section 1473.** Each spouse is manager of his or her **Sin Suan Tua**.

**Section 1474.** **Sin Somros** consists of:

- (1) property acquired during marriage;
- (2) property acquired by either spouse during marriage through a will of gift made in writing if it is declared by such will or document of gift to be **Sin Somros**;
- (3) fruits of **Sin Suan Tua**.

In case of doubt as to whether a property in **Sin Somros** or not shall be presumed to be **Sin Somros**.

**Section 1475.** Where any **Sin Somros** is property of the kind mentioned in Section 456 of this Code or has documentary title, either husband or wife may apply for having his or her name entered in the documents as co-owners.

**Section 1476.** In managing the **Sin Somros** in the following cases, the husband and wife have to be joint manager, or one spouse has to obtain consent from the other:

- (1) Selling, exchanging, sale with the right of redemption, letting out property on hire-purchase, mortgaging, releasing mortgage to mortgagor or transferring the right of mortgage on immovable property or on mortgageable movable property.
- (2) Creating or distinguishing the whole or a part of the servitude, right of habitation, right of superficies, usufruct or charge on immovable property.
- (3) Letting immovable property for more than three years.
- (4) Lending money
- (5) Making a gift unless it is a gift for charitable, social or moral purposes and is suitable to the family condition.
- (6) Making a compromise.
- (7) Submitting a dispute to arbitration.
- (8) Putting up the property as guarantee or security with a competent official or the Court.

The management of the *Sin Somros* in any case other than those provided in paragraph one can be made only by one spouse without having to obtain consent from the other.

**Section 1476/1.** The husband and wife can manage the **Sin Somros**, differently, in whole or in part, from provisions of Section 1476, provided that the ante-nuptial agreement under Section 1465 and Section 1466 has been made. In such case, the management of the **Sin Somros** shall be made in accordance with the prenuptial agreement.

In case the specifications of the management of the **Sin Somros** in the ante-nuptial agreement are only part in difference to the provisions of Section 1476, the management of the *Sin Somros* other than those specified in the ante-nuptial contract shall be made in accordance with Section



1476.

**Section 1477.** Either spouse is entitled to litigate, defend, take legal proceedings concerning maintenance of the **Sin Somros** or for the benefit of the **Sin Somros**. Debts incurred by the said litigation, defense and legal proceedings shall be regarded as the obligation to be performed jointly by the spouses.

**Section 1478.** Where one spouse has to give consent or to affix a signature together with the other in the management of the property, but unreasonably refuses to give such consent or to affix such signature, or is not in a position to give such consent, the latter may apply to the Court for an order granting the necessary permission.

**Section 1479.** Where an act by either spouse requires the consent of the other spouse, and if such act is required by law to be made in writing or registered by the competent official, such consent must be given in writing.

**Section 1480.** In the management of the **Sin Somros** which has to be made jointly or has to obtain the consent from the other spouse under Section 1476, if either spouse has entered into any juristic act alone or without consent of the other, the latter may apply in Court for revoking such juristic act, unless it has been ratified by the other spouse, or the third person was at the time of entering into such juristic act, acting in good faith and make the counter-payment.

The litigation for revocation of the juristic act by the Court under paragraph one cannot be made later than one year from the day when such cause as being the ground for the revocation is known, or later than ten years since the juristic act was done.

**Section 1481.** Neither spouse is entitled to dispose of the **Sin Somros** by will in favour of the other persons to an extent exceeding his or her own portion thereof.

**Section 1482.** In case either spouse is the sole manager of the **Sin Somros**, the other spouse is nevertheless entitled to manage household affairs or provide for the necessaries of the family, and the expenses therefore would bind the **Sin Somros** and **Sin Suan Tua** of both parties.

If such management of household affairs or provision for the necessaries of the family by the husband or wife results in the undue loss, the other spouse may apply to the Court to forbid or limit his or her power.

**Section 1483.** In case either spouse is the sole manager of the **Sin Somros**, if the manager is going to commit or is committing any act in the management of the **Sin Somros** which would appear to result in undue loss, the other spouse may apply to the Court for an order forbidding commission of such act.

**Section 1484.** If either spouse who is the manager of **Sin Somros**:

- (1) causes undue loss to it;
- (2) fails to support the other spouse;
- (3) becomes insolvent or incurs debts to an amount exceeding one half of the **Sin Somros**;
- (4) hinders the management of **Sin Somros** by the other spouse without reasonable ground;
- (5) is found to have circumstances that will ruin the **Sin Somros**;

the other spouse may apply to the Court for an order authorizing him or her to be the sole manager or dividing the **Sin Somros**.

In case there is an application is made under paragraph one, the Court may determine temporary protective measures in the management of the **Sin Somros**. If that is the case of emergency, the provisions on the request in case of emergency under the Civil Procedure Code shall apply.

**Section 1484/1.** In case where has been an order of the Court forbidding or limiting the power of either spouse to manage the **Sin Somros**, if the cause which was the ground for the Court order or the circumstances have later changed, either spouse may apply to the Court revocation or change of the order forbidding or limiting the power to manage the **Sin Somros**. The Court in this effect may give any order which is deemed suitable.

**Section 1485.** The husband or wife may apply to the Court for authorizing him or her to be the manager of any particular **Sin Somros** or participate in the management, if such management or participation will bring about more benefit.

**Section 1486.** When the Court has pronounced a final judgment or given an order under Section 1482 paragraph two, Section 1483, Section 1484, Section 1484/1 or Section 1485 in favour of the applicant, or Section 1491, Section 1492/2 or Section 1598/17, or the husband and wife has been relieved of becoming bankrupt, the Court shall notify the marriage Registrar of the matter in order to have it entered in the Marriage Registrar.

**Section 1487.** No spouse can seize attach any property of the other during the marriage, except the seizure or attachment made in the case which has entered for the purpose of exercising his or her duty or for maintaining rights between husband and wife as specially provided in this Code or as specially provided by this Code allowing one spouse to sue the other, or for allowance due for maintenance and cost under the judgment of the Court.

**Section 1488.** Where either spouse is personally liable to perform an obligation incurred before or during marriage, such performance shall be first made out of his or her **Sin Suan Tua**; if the obligation is not performed in full, it shall be satisfied out of his or her portion of the **Sin Somros**.

**Section 1489.** Where both spouses are common debtors, the performance shall be made out of the **Sin Somros** and the **Sin Suan Tua** of both spouses.

**Section 1490.** Debts that both spouses are jointly liable to perform, shall include the following debts incurred by either spouse during marriage:

- debts incurred in connection with management of household affairs and providing for the
- (1) necessaries of the family, or maintenance, medical expenses of the household and for proper education of the children;
- (2) debts incurred in connection with the **Sin Somros**;
- (3) debts incurred in connection with a business carried on by the spouses in common;
- (4) debts incurred by either spouse only for his or her own benefit but ratified by the other.

**Section 1491.** If either spouse is adjudged bankrupt, the **Sin Somros** is divided by operation of law as from the date of adjudication.



**Section 1492.** After the **Sin Somros** has been divided under Section 1484 paragraph two, Section 1491 or Section 1598/17 paragraph two, the portion so divided becomes **Sin Suan Tua** of each spouse. Any property obtained after the division by either spouse shall be **Sin Suan Tua** of that spouse and not be regarded as **Sin Somros**. And the property acquired thereafter by the spouse through a will or gift made in writing under Section 1474 (2) shall become **Sin Suan Tua** of the husband and wife equally.

Fruits of the **Sin Suan Tua** accrued after the division of the **Sin Somros** shall be **Sin Suan Tua**.

**Section 1492/1.** In case the division of the **Sin Somros** is made by the order of the Court, the revocation of the division shall be made upon the request of either spouse and the Court has given the order to that effect. If either spouse raises an objection to such request, the Court cannot give an order for the revocation of the division of the **Sin Somros** unless the cause for division of the **Sin Somros** has ceased to exist.

After the division of the **Sin Somros** under paragraph one having been revoked, or suspended due to the husband or wife having been relieved from being bankrupt, the property which is the **Sin Suan Tua** on the date of the order of the Court, or on the date of his or her relieving from being bankrupt shall remain the same as **Sin Suan Tua**.

**Section 1493.** In case where the **Sin Somros** has been disposed of, both spouses are liable to pay for the household expenses in proportion to the amount of their respectation **Sin Suan Tua**.

## CHAPTER V

### VOID OF MARRIAGE

**Section 1494.** The marriage will be void only as provided in this Chapter.

**Section 1495.** The marriage which is made against Section 1449, Section 1450, Section 1452 and Section 1458 shall be void.

**Section 1496.** It is only a judgment of the Court that effects the void of the marriage which is made against Section 1449, Section 1450 and Section 1458.

The spouses, parents or descendants of the spouse may apply for a judgment of the Court effecting the void of the marriage. If there is none of the said persons, any interested person may request the Public Prosecutor to apply to the Court for such judgment.

**Section 1497.** Any interested person may allege or apply for a judgment of the Court effecting that the marriage made against Section 1452 is void .

**Section 1497/1.** In case there is a final judgment of the Court effecting the void of any marriage, the Court shall notify the Marriage Registrar of the matter in order to have it entered in the Marriage Register.

**Section 1498.** The void of marriage will not create property relation between husband and wife.

In case of marriage has been adjudged void, the property possessed or acquired by either party before or after the marriage as well as the fruits thereof remain as that party's property. As for the property jointly earned, they shall divided equally unless the Court deems it proper and order

otherwise by taking into consideration the obligation in the family and earnings of both parties as well as their station in life, including all other circumstances.

**Section 1499.** The marriage adjudged void as being against Section 1449, Section 1450 or Section 1458 shall not prejudice the right acquired through such marriage before pronouncing the final judgment effecting the void of the marriage by the party who has married in good faith.

The marriage adjudged void as being against Section 1452 shall not prejudice the right acquired through such marriage before the cause that the maker the marriage void is known to the man or woman. But the said marriage shall not make one spouse become statutory heir of the other and have the right of inheritance to the other spouse.

In case of the marriage adjudged void as being against Section 1449, Section 1450, Section 1458 or Section 1452, if one party only acted in good faith, such party may claim compensation. However, if such marriage makes the party in good faith become destitute deriving insufficient income out of his or her property or business which used to be carried on before pronouncing the final judgment to effect the void of the marriage, or before the void of his or her marriage becoming known, as the case may be, that party can also claim living allowance, and the provisions of Section 1526 paragraph one and Section 1528 shall apply to the claim for living allowances in this case, *mutatis mutandis*.

The prescription for claiming compensation or living allowances under paragraph three shall be two years from the date of pronouncing the final judgment to effect the void of the marriage in case of the marriage made against Section 1449, Section 1450 or Section 1448, or from the day when the void of his or her marriage becoming known in the case of the marriage made against Section 1452.

**Section 1499/1.** In case of the marriage adjudged void, the agreement between the spouses as to which party to exercise the parental power over any child, or either party or both of them to be responsible for the amount of contribution of the maintenance of the child shall be made in writing. If the agreement cannot be reached, the Court shall make decision on the matter. In making such decision, if there are grounds for depriving that spouse of parental power under Section 1582, the Court may give an order depriving that spouse of the same and appoint a third person as a guardian by taking into consideration the happiness and interest of the child, and the provisions of Section 1521 shall apply, *mutatis mutandis*.

**Section 1500.** The marriage adjudged is void shall not prejudice the rights acquired by third person acting in good faith before entering the void of the marriage into the Marriage Register under Section 1497/1.

## CHAPTER VI

### TERMINATION OF MARRIAGE

**Section 1501.** Marriage is terminated by death, divorce or being cancelled by the Court.

**Section 1502.** A voidable marriage terminates upon cancellation decided by judgment of the Court.

**Section 1503.** An application to the Court for cancellation of marriage on the ground of its avoidable shall be made only in the case where the spouses have not complied with Section 1448,

Section 1505, Section 1506, Section 1507, and Section 1509.

**Section 1504.** An interested person other than the parents or guardian who have given their consent to the marriage is entitled to apply for cancellation of the marriage on the ground of its voidability.

If the court has not cancelled the marriage until both man and woman have completed the age required under Section 1448 or if the woman has become pregnant before such completion, the marriage shall be deemed to be valid from the time it was made.

**Section 1505.** A marriage which is made on account of mistake as to the identity of the other spouse shall be deemed to be voidable.

The right to apply for cancellation of the marriage on account of mistake as to the identity of the spouse shall be terminated after the lapse of ninety days from the date of marriage.

**Section 1506.** A marriage is voidable if it is made by the spouses on account of fraud to such an extent that without it the marriage would not have been made.

The provisions of paragraph one shall not apply to the case not apply to the case where the other spouse has not known the fraud committed by a third person.

The right to apply for cancellation of the marriage on account of fraud shall be terminated after the lapse of ninety days from the day on which the spouse has known or should have known of the fraud, or after the lapse of one year from the date marriage.

**Section 1507.** A marriage is voidable if it is made by the spouses on account of duress to such an extent that without it the marriage would not have been made.

The right to apply for cancellation of the marriage on account of duress shall be terminated after the lapse of one year from the day on which the spouse is free from duress.

**Section 1508.** Where the marriage is voidable on account of mistake as to the identity of the spouse, fraud or duress, only the spouse who mistook the identity of the other, or was induced by fraud or duress to contract the marriage may apply for the cancellation of such marriage.

In case where the person entitled to apply for the cancellation of the marriage has been adjudged incompetent, the person who may apply to the Court for an order effecting an insane person to be an incapacitated person under Section 29, may also apply for the cancellation of such marriage. Where the person entitled to apply for the cancellation of the marriage is an insane person not yet adjudged incompetent, the said person may apply for the cancellation of such marriage but must apply concurrently to the Court for an order effecting him to be an incapacitated person. If the Court gives an order revoking the application for an order effecting him to be an incapacitated person, the Court shall also order revoking the application made by the said person for the cancellation of the marriage.

The order of the Court revoking the application made by the person for cancellation of the marriage under paragraph two does not effect the right of the spouse to apply for the cancellation of the marriage; provided that the spouse exercise his or her right within the remaining period of time. If the remaining period of time is less than six months as from the day on which the order of the Court revoking the application made by the said person for cancellation of the marriage is

given, or if there remains no such period, the period of time shall correspondingly be extended to the completion of six months as from the day on which the order of the Court revoking the application made by the said person for the cancellation of the marriage is given.

**Section 1509.** The marriage made without consent of the persons mentioned in Section 1454 is voidable.

**Section 1510.** Where the marriage is voidable on account of having been made without consent of the persons mentioned in Section 1454, only the person who can give the consent under Section 1454 may apply for the cancellation of the marriage.

The right to apply for the cancellation of the marriage under this Section is extinguished when the spouse has completed the age of twentieth year or when the woman has become pregnant.

The action for the cancellation of the marriage under this Section is barred by prescription after one year from the day where the marriage is known.

**Section 1511.** The marriage which is cancelled by judgment of the Court shall be deemed to have terminated on the day when the judgment becomes final; provided, however, that it may not be set up to the prejudice of the rights of third persons acting in good faith unless the cancellation of the marriage has been registered.

**Section 1512.** The provisions concerning the result of divorce by judgment of the Court shall apply to the result of cancellation of the marriage *mutatis mutandis* [Ed. Latin, the necessary changes having been made].

**Section 1513.** If it appears that the spouse sued on cancellation of the marriage has known of the ground of the avoidability, such spouse is required to make compensation for the damage to the body, reputation or property of the other arising from such marriage, and the provisions of Section 1525 shall apply *mutatis mutandis*.

If the other spouse becomes destitute due to the cancellation of the marriage under paragraph one and derives insufficient income out of his or her property of business which used to be carried on during the marriage, the spouse against whom the action has been brought is also required to be liable to living allowances as provided in section 1526.

**Section 1514.** Divorce may be effected only by mutual consent or by judgment of the Court.

Divorce effected by mutual consent must be made in writing and certified by the signatures of at least two witnesses.

**Section 1515.** Where marriage has been registered as provided by this Code, divorce by mutual consent is valid only if the registration thereof is effected by both the husband and wife.

**Section 1516.** Grounds of action for divorce are as follows:

- (1) the husband has given maintenance to or honored such other woman as his wife, or the wife has committed adultery, the other spouse may enter a claim for divorce;
- (2) one spouse is guilty of misconduct, notwithstanding whether such misconduct is a criminal offence or not, if it causes the other:

- (a) to be seriously ashamed;
  - (b) to be insulted or hated or account of continuance of being husband or wife of the spouse having committed the misconduct; or
  - (c) to sustain excessive injury or trouble where the condition, position and cohabitation as husband and wife are taken into consideration; the latter may enter a claim for divorce;
- (3) one spouse has caused serious harm or torture to the body or mind of the other, or has seriously insulted the other or his or her ascendants, the latter may enter a claim for divorce;
- (4) one spouse has deserted the other for more than one year, the latter may enter a claim for divorce;
- (4/1) one spouse had been sentenced by a final judgment of the Court and has been imprisoned for more than one year in the offence committed without any participation, consent or in the knowledge of the other, and the cohabitation as husband and wife will cause the other party sustain excessive injury or trouble, the latter may enter a claim for divorce;
- (4/2) The husband and wife voluntarily live separately because of being unable to cohabit peacefully for more than three years, or live separately for more than three years by the order of the Court, either spouse may enter a claim for divorce;
- (5) one spouse has been adjudged to have disappeared, or as left his or her domicile or residence for more than three years and being uncertain whether he or she is living or dead;
- (6) one spouse has failed to give proper maintenance and support to the other, or committed acts seriously adverse to the relationship of husband and wife to such an extent that the other has been in excessive trouble where the condition, position and cohabitation as husband and wife are taking into consideration, the latter may enter a claim for divorce;
- (7) one spouse has been an insane person for more than three years continuously and such insanity is hardly curable so that the continuance of marriage cannot be expected, the other may enter a claim for divorce;
- (8) one spouse has broken a bond of good behavior executed by him or her, the other spouse may enter a claim for divorce;
- (9) one spouse is suffering from a communicable and dangerous disease which is incurable and may cause injury to the other, the latter may file a claim for divorce;
- (10) one spouse has a physical disadvantage so as to be permanently unable to cohabit as husband and wife, the other may enter a claim for divorce.

**Section 1517.** No action for divorce may be instituted by the husband or wife, as the case may be if such spouse has consented to or connived at the acts under Section 1516 (1) and (2) upon which the actio for divorce is based.

If the ground of action for divorce under Section 1516 (10) has resulted from the act of the other spouse, the action for divorce based upon such ground may not be instituted by such other spouse.

Where the action for divorce based upon the ground under section 1516 (8) has been instituted, the Court may not pronounce judgment to effect the divorce if the behavior of the husband or wife that causes the bond to have been executed is a minor cause or of no importance in relation to peaceful cohabitation as husband and wife.

**Section 1518.** The right to institute an action for divorce would be terminated if the spouse entitled thereto has committed any act showing his or her forgiveness to the act done by the other that has caused the right to institute the action for divorce.

**Section 1519.** In case where one spouse is an insane person and if there gives rise to the ground of action for divorce irrespective of whether it arises before or after the insanity, the person entitled to apply to the Court for an order effecting the insane person to be an incapacitated person under Section 28\* shall have the power to enter an action against the other spouse for divorce and liquidation of the property. In such a case if no order of the Court effecting the insane spouse to be an incapacitated person has yet been given, the said person shall apply to the Court in the same case for an order effecting the insane spouse to be an incapacitated person.

The said person may, if deemed suitable, also apply to the Court for giving the order under Section 1526 and Section 1530.

In case where the spouse alleged to be an insane person has not yet been adjudged incompetent, and if the Court deems that such spouse should not be judged incompetent, the case shall then be dismissed. If the spouse is deemed suitable to be adjudged incompetent but an order to effect the divorce should not yet be given as yet, the Court shall adjudge the spouse to be an incapacitated person and may not give order concerning the guardian or appointing other person to be guardian under Section 1463 while the application for divorce will be dismissed, and the Court may in this connection give an order determining living allowances. In case where the spouse is deemed to be insane and should be adjudged incompetent by the Court and the application for divorce should also be granted, the Court shall issue an order in the judgment effecting such spouse to be an incapacitated person, appointing a guardian and allowing the divorce.

In case where the Court deems that the ground upon which the claim for divorce is based is not proper to the condition of the incapacitated spouse who is going to divorce the other spouse, if it is not proper under such circumstances that divorce should be allowed, the Court may not pronounce the judgment to effect the divorce.

**Section 1520.** In case of divorce by mutual consent, the spouses shall make an agreement in writing for the exercise of parental power over each of the children. In the absence of such agreement or an agreement thereon cannot be reached, the matter shall be decided by the Court.

In case of divorce by judgment of the Court, the Court trying the divorce case shall also order that the parental power over each of the children belongs to any party. If, in such trial, it is deemed proper to deprive that spouse of the parental power under Section 1582, the Court may give an order depriving that spouse of the same and appointing a third person as a guardian, by taking into consideration the happiness and interest of the child.

**Section 1521.** If it appears that the person exercising parental power of the guardian under Section 1520 behaves himself or herself improperly or there is a change of circumstances after the appointment, the Court has the power to give an order appointing a new guardian by taking into consideration the happiness and interest of the child.

**Section 1522.** In case of divorce by mutual consent, an arrangement shall be made and contained in the agreement of divorce as to who, both of the spouses or either spouse, will contribute to the maintenance of the children and how much is the contribution.

In case of divorce by judgment of the Court or in case the agreement of divorce contains no



provisions concerning the maintenance of the children, the Court shall determine it.

**Section 1523.** In case of divorce by judgment of the Court on the ground as provided in Section 1516 (1), the husband or wife is entitled to compensation from the husband or wife and other woman or adulterer, as the case may be.

The husband is entitled to claim compensation from any person who has wrongfully taken liberties with his wife in an adulterous manner, and the wife is entitled to claim compensation from other woman who has openly shown her adulterous relations with the former's husband. However, the husband or wife is not entitled to claim compensation if he or she has consented to or connived at the act done by other party under Section 1516 (1) or allowed other person to act as provided in paragraph two.

**Section 1524.** If the ground of action for divorce under Section 1516 (3), (4) or (6) has arisen through an act of the party at fault with the intention to make the other party so intolerable that action for divorce has to be entered, the other party is entitled to compensation from the party at fault.

**Section 1525.** The compensation under Section 1523 and Section 1524 shall be decided by the Court according to the circumstances, and the Court may give an order for a single payment thereof or payment in instalments as may be deemed suitable by the Court.

In case where the person who has to make the Compensation is a spouse of the other party, the share of the property received by the former from the liquidation of the **Sin Somros** on account of divorce shall also be taken into consideration.

**Section 1526.** In a case of divorce, if the ground for divorce has derived from the guilt of only one party, and the divorce will make the other become destitute deriving insufficient income out of his or her property or business which used to be carried on during the marriage, the latter is entitled to apply for the living allowances to be paid by the party at fault. The Court may decide whether the living allowances be granted or not by taking the ability of the grantor and the condition in life of the receiver into consideration, and the provisions of Section 1598/39, Section 1598/40 and Section 1598/41 shall apply *mutatis mutandis*. The right to claim the living allowances is extinguished if it is not raised in the plaint or counter-claim in the action for divorce.

**Section 1527.** If a divorce is effected on the ground of insanity under Section 1516 (7) or on the ground of suffering from a communicable and dangerous disease under Section 1516 (9), the other spouse shall furnish living allowances to the spouse who is insane or is suffering from the disease, according to Section 1526, *mutatis mutandis*.

**Section 1528.** If the party receiving living allowances remarries, the right to receive living allowances is extinguished.

**Section 1529.** Rights of action based upon any of the grounds provided in Section 1516 (1), (2), (3) or (6), or Section 1523 are extinguished after one year when the fact which can be alleged by the claimant has been known or should have been known to him or her. Grounds upon which a claim for divorce can no longer be based may still be proved in support of another claim for divorce based upon other grounds.

**Section 1530.** Where an action for divorce is pending, the Court may, on application of either

party, make any provisional order which it thinks proper such as those concerning the **Sin Somros**, the lodging, the maintenance of the spouses and the custody and maintenance of children.

**Section 1531.** In case where a marriage has been registered according to law, divorce by mutual consent takes effect from the time of registration.

Divorce by judgment of the Court takes effect on and from the time when the judgment becomes final; however, such judgment may not be set up to the prejudice to the rights of third persons acting in good faith unless the divorce has been registered.

**Section 1532.** After divorce, the property of the husband and wife shall be subject to liquidation.

But as between the spouses,

- (a) in case of divorce by mutual consent, the liquidation shall apply to the property of the husband and wife as it was on the date of registration of divorce;
- (b) in case of divorce by judgment, the liquidation shall apply to the property of the husband and wife as it was on the day when the action for divorce was entered in Court.

**Section 1533.** Upon divorce, the **Sin Somros** shall be divided equally between man and woman.

**Section 1534.** Where either spouse has made disposal of the **Sin Somros** for his or her exclusive benefit, or has made disposal thereof with an intention to cause injury to the other, or has made disposal thereof without the consent of the other in the case where such disposal is required by law to have consent of the other, or has wilfully destroyed it, it shall, for the purpose of division of the **Sin Somros** under Section 1533, be regarded as if such property had still remained. If the share of the **Sin Somros** that the other will receive is not complete to what he or she should have received, the party at fault is required to make up for the arrears from his or her share of the **Sin Somros** or his or her **Sin Suan Tua**.

**Section 1535.** Upon termination of the marriage, the man and woman shall be liable for common debts equally.