

QUESTIONNAIRE

A. GENERAL

1. What is the current source of law for divorce?
2. Give a brief history of the main developments of your divorce law.
3. Have there been proposals to reform your current divorce law?

B. GROUNDS FOR DIVORCE

I. General

4. What are the grounds for divorce?
5. Provide the most recent statistics on the different bases for which divorce was granted.
6. How frequently are divorce applications refused?
7. Is divorce obtained through a judicial process, or is there also an administrative procedure?
8. Does a specific competent authority have jurisdiction over divorce proceedings?
9. How are divorce proceedings initiated? (e.g. Is a special form required? Do you need a lawyer? Can the individual go to the competent authority personally?)
10. When does the divorce finally dissolve the marriage?

If under your system the sole ground for divorce is the irretrievable breakdown of marriage answer part II only. If not, answer part III only.

II. Divorce on the sole ground of irretrievable breakdown of the marriage

11. How is irretrievable breakdown established? Are there presumptions of irretrievable breakdown?

Questionnaire

12. Can one truly speak of a non-fault-based divorce or is the idea of fault still of some relevance?
13. To obtain the divorce, is it necessary that the marriage was of a certain duration?
14. Is a period of separation generally required before filing the divorce papers? If not, go to Question 16. If so, will this period be shorter if the respondent consents than if he/she does not? Are there other exceptions?
15. Does this separation suffice as evidence of the irretrievable breakdown?
16. In so far as separation is relied upon to prove irretrievable breakdown:
 - (a) Which circumstances suspend the term of separation?
 - (b) Does the separation need to be intentional?
 - (c) Is the use of a separate matrimonial home required?
17. Are attempts at conciliation, information meetings or mediation attempts required?
18. Is a period for reflection and consideration required?
19. Do the spouses need to reach an agreement or to make a proposal on certain subjects? If so, when should this agreement be reached? If not, may the competent authority determine the consequences of the divorce?
20. To what extent must the competent authority scrutinize the reached agreement?
21. Can the divorce application be rejected or postponed due to the fact that the dissolution of the marriage would result in grave financial or moral hardship to one spouse or the children? If so, can the competent authority invoke this on its own motion?

III. Multiple grounds for divorce

1. Divorce by consent

22. Does divorce by consent exist as an autonomous ground for divorce, or is it based on the ground of irretrievable breakdown?
23. Do both spouses need to apply for a divorce together, and if not, how do the divorce proceedings vary according to whether one or both spouses apply for a divorce?
24. Is a period of separation required before filing the divorce papers?
25. Is it necessary that the marriage was of a certain duration?
26. Is a minimum age of the spouses required?
27. Are attempts at conciliation, information meetings or mediation attempts required?
28. What (formal) procedure is required? (e.g. How many times do the spouses need to appear before the competent authority?)
29. Do the spouses need to reach an agreement or to make a proposal, or may the competent authority determine the consequences of the divorce?
30. If they need to reach an agreement, does it need to be exhaustive or is a partial agreement sufficient? On what subjects should it be, and when should this agreement be reached?
31. To what extent must the competent authority scrutinize the reached agreement?
32. Is it possible to convert divorce proceedings, initiated on another ground, to proceedings on the ground of mutual consent, or must new proceedings be commenced? Or, vice versa, is it possible to convert divorce proceedings on the ground of mutual consent, to proceedings based on other grounds?

2. Divorce on the ground of fault/ matrimonial offence

33. What are the fault grounds for divorce?
34. If adultery is a ground what behaviour does it constitute?
35. In what circumstances can injury or false accusation provide a ground for divorce?
36. Is an intentional fault required?
37. Should the fault be offensive to the other spouse? Does the prior fault of one spouse, deprive the guilty / fault-based nature of the shortcomings of the other?
38. To obtain a divorce, is it necessary that the marriage was of a certain duration?
39. Does the parties' reconciliation prevent the innocent spouse from relying upon earlier facts as a ground for divorce?
40. How is the fault proved?
41. Are attempts at conciliation, information meetings or mediation attempts required?
42. Can the divorce application be rejected or postponed due to the fact that the dissolution of the marriage would result in grave financial or moral hardship to one spouse or the children? If so, may the competent authority invoke this on its own motion?
43. Is it possible to pronounce a judgment against both parties, even if there was no counterclaim by the respondent?

3. Divorce on the ground of irretrievable breakdown of the marriage and/or separation

44. How is irretrievable breakdown established? Are there presumptions of irretrievable breakdown?
45. Can one truly speak of a non-fault-based divorce or is the idea of fault still of some relevance?

46. To obtain the divorce, is it necessary that the marriage was of a certain duration?
47. How long must the separation last before divorce is possible?
48. Does this separation suffice as evidence of the irretrievable breakdown?
49. In so far as separation is relied upon to prove irretrievable breakdown,
 - (a) Which circumstances suspend the term of separation?
 - (b) Does the separation need to be intentional?
 - (c) Is the use of a separate matrimonial home required?
50. Are attempts at conciliation, information meetings or mediation attempts required?
51. Is a period for reflection and consideration required?
52. Do the spouses need to reach an agreement or to make a proposal on certain subjects? If so, when should this agreement be reached? If not, may the competent authority determine the consequences of the divorce?
53. To what extent must the competent authority scrutinize the reached agreement?
54. Can the divorce application be rejected or postponed due to the fact that the dissolution of the marriage would result in grave financial or moral hardship to one spouse or the children? If so, can the competent authority invoke this on its own motion?

C. SPOUSAL MAINTENANCE AFTER DIVORCE¹

I. General

55. What is the current source of private law for maintenance of spouses after divorce?
56. Give a brief history of the main developments of your private law regarding maintenance of spouses after divorce.
57. Have there been proposals to reform your current private law regarding maintenance of spouses after divorce?
58. Upon divorce, does the law grant maintenance to the former spouse?
59. Are the rules relating to maintenance upon divorce connected with the rules relating to other post-marital financial consequences, especially to the rules of matrimonial property law? To what extent do the rules of (matrimonial) property law fulfil a function of support?
60. Do provisions on the distribution of property or pension rights (including social security expectancies where relevant) have an influence on maintenance after divorce?
61. Can compensation (damages) for the divorced spouse be claimed in addition to or instead of maintenance payments? Does maintenance also have the function of compensation?
62. Is there only one type of maintenance claim after divorce or are there, according to the type of divorce (e.g. fault, breakdown), several claims of a different nature? If there are different claims explain their bases and extent.

¹ For the answers to Questions 55-105, see: K. Boele-Woelki, B. Braat and I. Sumner (eds.), *European Family Law in Action. Volume II: Maintenance Between Former Spouses*, Antwerp: Intersentia, 2003.

63. Are the divorced spouses obliged to provide information to each other spouse and/or to the competent authority on their income and assets? Is this right to information enforceable? What are the consequences of a spouse's refusal to provide such information?

II. Conditions under which maintenance is paid

64. Do general conditions such as a lack of means and ability to pay suffice for a general maintenance grant or do you need specific conditions such as age, illness, duration of the marriage and the raising of children? Please explain.
65. To what extent does maintenance depend on reproachable behaviour or fault on the part of the debtor during the marriage?
66. Is it relevant whether the lack of means has been caused by the marriage (e.g. if one of the spouses has give up his/her work during the marriage)?
67. Must the claimant's lack of means exist at the moment of divorce or at another specific time?

III. Content and extent of the maintenance claim

68. Can maintenance be claimed for a limited time-period only or may the claim exist over a long period of time, maybe even life long?
69. Is the amount of the maintenance granted determined according to the standard of living during the marriage or according to, e.g. essential needs?
70. How is maintenance calculated? Are there rules relating to percentages or fractional shares according to which the ex-spouses' income is divided? Is there a model prescribed by law or competent authority practice?
71. What costs other than the normal costs of life may be demanded by the claimant? (e.g. Necessary further professional qualifications? Costs of health insurance? Costs of insurance for age or disability?)

Questionnaire

- 72. Is there a maximum limit to the maintenance that can be ordered?
- 73. Does the law provide for a reduction in the level of maintenance after a certain time?
- 74. In which way is the maintenance to be paid (periodical payments? payment in kind? lump sum?)?
- 75. Is the lump sum prescribed by law, can it be imposed by a court order or may the claimant or the debtor opt for such a payment?
- 76. Is there an (automatic) indexation of maintenance?
- 77. How can the amount of maintenance be adjusted to changed circumstances?

IV. Details of calculating maintenance: Financial capacity of the debtor

- 78. Do special rules exist according to which the debtor may always retain a certain amount even if this means that he or she will not fully fulfil his maintenance obligations?
- 79. To what extent, if at all, is an increase of the debtor's income a) since the separation, b) since the divorce, taken into account when calculating the maintenance claim?
- 80. How far do debts affect the debtor's liability to pay maintenance?
- 81. Can the debtor only rely on his or her other legal obligations or can he or she also rely on his or her moral obligations in respect of other persons, e.g. a de facto partner or a stepchild?
- 82. Can the debtor be asked to use his or her capital assets in order to fulfil his or her maintenance obligations?

83. Can a 'fictional' income be taken into account where the debtor is refusing possible and reasonable gainful employment or where he or she has deliberately given up such employment?
84. Does the debtor's social security benefits, which he or she receives or could receive, have to be used for the performance of his/her maintenance obligation? Which kinds of benefits have to be used for this purpose?
85. In respect of the debtor's ability to pay, does the income (means) of his or her new spouse, registered partner or de facto partner have to be taken into account?

V. Details of calculating maintenance: The claimant's lack of own means

86. In what way will the claimant's own income reduce his or her maintenance claim? Is it relevant whether the income is derived, on the one hand, from employment which can be reasonably expected or, on the other, from employment which goes beyond what is reasonably expected?
87. To what extent can the claimant be asked to seek gainful employment before he or she may claim maintenance from the divorced spouse?
88. Can the claimant be asked to use his or her capital assets, before he or she may claim maintenance from the divorced spouse?
89. When calculating the claimant's income and assets, to what extent are the maintenance obligations of the claimant in relation to third persons (e.g. children from an earlier marriage) taken into account?
90. Are there social security benefits (e.g. income support, pensions) the claimant receives which exclude his or her need according to the legal rules and/or court practice? Where does the divorced spouse's duty to maintain rank in relation to the possibility for the claimant to seek social security benefits?

VI. Questions of priority of maintenance claims

Questionnaire

91. How is the relationship between different maintenance claims determined? Are there rules on the priority of claims?
92. Does the divorced spouse's claim for maintenance rank ahead of the claim of a new spouse (or registered partner) of the debtor?
93. Does the claim of a child of the debtor, if that child has not yet come of age, rank ahead of the claim of a divorces spouse?
94. What is the position if that child has reached the age of majority?
95. Does the divorced spouse's claim for maintenance rank ahead of the claims of other relatives of the debtor?
96. What effect, if any, does the duty of relatives or other relations of the claimant to maintain him or her have on the ex-spouse's duty to maintain him or her?

VII. Limitations and end of the maintenance obligation

97. Is the maintenance claim extinguished upon the claimant's remarriage or entering into a registered partnership? If so: may the claim revive under certain conditions?
98. Are there rules according to which maintenance may be denied or reduced if the claimant enters into an informal long-term relationship with another person?
99. Can the maintenance claim be denied because the marriage was of short duration?
100. Can the maintenance claim be denied or reduced for other reasons such as the claimant's conduct during the marriage or the facts in relation to the grounds for divorce?
101. Does the maintenance claim end with the death of the debtor?

VIII. Maintenance agreements

102. May the spouses (before or after the divorce or during the divorce proceedings) enter into binding agreements on maintenance in the case of (an eventual) divorce?
103. May a spouse agree to renounce his or her future right to maintenance? If so, are there limits on that agreement's validity?
104. Is there a prescribed form for such agreements?
105. Do such agreements need the approval of a competent authority?