

Family Law



Introduction

Mason Hayes+Curran has recently introduced a new and expanded service for private clients which complement our existing business law services. These services have been incorporated into an expanded private client offering which is now called MH+C Private. MH+C Private can now provide private clients a comprehensive range of services including wills, administration of estates, trusts, residential property and family law.

The family law service of MH+C Private is an entirely new practice area which provides a full range of services, in both contentious and non-contentious matters, with a focus on judicial separation and divorce. The service is aimed at individuals who require specialist family law advice and representation. The primary objectives of the team are to provide high quality advice to clients in relationship difficulties, to chart for clients a practical way through those difficulties and to seek to resolve those difficulties by adopting a proactive, results-orientated approach to family law matters.

In line with the sensitive nature of the work undertaken by the family law unit and the nature of the client base of Mason Hayes+Curran, we have developed innovative and market-leading systems within the unit which are designed to protect the confidentiality and security of client information both internally and externally.

While the family law unit provides a full range of services in both marital and non-marital cases, the focus of this article is on the legal consequences of marriage breakdown and the options available to clients who find themselves in that difficult circumstance.

Dispute Resolution

The breakdown of a marriage can be among the most traumatic events that people face in their lives. For this reason, the fundamental approach of the family law unit is to ensure, as best we can, that no undue trauma is caused to our clients by the way we deal with family law cases. The unit has a strong initial focus on seeking to resolve difficulties arising from relationship breakdown in a non-contentious way by ensuring that our clients are aware of all the disputes resolution options available to them, short of taking legal proceedings (including marriage counselling, mediation, negotiated separation agreements), so that our clients can make an informed decision as to the best course of action for them.

Separation Agreements

In the event of marital breakdown and where divorce is not an option, the preferred option is to try to conclude a separation agreement which is, in simple terms, a contract between spouses as to how they will deal with issues arising from the breakdown of their relationship. The typical separation agreement can deal with all issues arising including all financial matters and matters relating to children. Separation agreements are of their nature consensual and generally will only be successfully concluded if both parties adopt a reasonable approach to negotiations.

Judicial Separation

In the event that a separation agreement cannot be concluded, then it can be necessary to issue Court proceedings for judicial separation. These proceedings can be brought where the spouses are still living together or where they have already physically separated and are seeking to deal only with the financial and other consequences of separation. Proceedings for judicial separation (and also divorce) can be commenced in either the Circuit Court or the High Court, depending on the level of assets of the parties, the complexity of the case and other factors. A judicial separation case (and a contested divorce) would normally take between 12 to 24 months to conclude if the case goes to a full hearing but, even if proceedings are commenced, there is nothing to stop the parties trying to settle the case at any time. In fact about 90% of all contested cases ultimately settle without having to proceed to a full hearing before a judge.

Divorce

It is only possible to seek a divorce where the parties to a marriage have been living separate and apart for a total period of 4 years in the last 5 years. This is a strict requirement set out in the Irish Constitution and the courts have no power to grant a divorce unless this requirement is met. The relevant period of separation must have elapsed before proceedings have commenced, so it is not possible to issue proceedings after say 3 years in the expectation that the 4 year period will have elapsed by the time the case comes to court.

Most divorces in Ireland are dealt with on an agreed basis between the parties, often because the financial and other issues between them have been dealt with at an earlier stage either by way of a separation agreement or judicial separation. In those cases a divorce application is often brought simply to bring finality to the marriage or to acquire the right to re-marry which is the primary benefit of a divorce. Consent divorces can normally be processed within 3 to 6 months, or even quicker if there is a particular urgency.

However a significant minority of divorce applications are contested either because the financial and other contentious matters between the spouses were never resolved or because one of the parties is seeking a better financial or other arrangement following on from an earlier separation agreement or judicial separation. These latter cases are known colloquially as “second bite of the cherry” cases. Under Irish law, there is no concept of a “clean break” between spouses and therefore, even if financial matters have been dealt with before, they can be looked at again in the context of divorce. Although a Court, in the context of a divorce application, will look at all of the circumstances of a case including any earlier settlement or Court Order, it must have regard to the respective financial positions of the parties as at the date of the hearing of the divorce application and not as at the date of a separation agreement or earlier court proceedings.

Ancillary Relief

In both judicial separation and divorce proceedings, the courts have power to deal with all matters arising between the parties, both financial and those relating to children. These are dealt with by court orders known as ancillary relief orders, which can include orders in relation to:-

- Spousal or child maintenance;
- Transfers of property, cash sums or other assets from one spouse to the other;
- Pension adjustment orders giving one spouse a share of the other's pension or preserving a spouse's pension entitlement after divorce;
- Extinguishment or preservation of succession rights;
- Custody, access and guardianship of children.

International Dimension

Mason Hayes+Curran has a varied client base which includes many Irish citizens either resident or with interests abroad and many non-Irish clients either resident or with interests in Ireland. As a consequence the family law unit of MH+C Private is specifically geared towards providing advice and expertise on many trans-national issues such as jurisdictional conflicts in matrimonial matters, international child abduction and adoption. In addition MH+C Private can call upon the established contacts of the firm in most other jurisdictions to seek legal and other expertise relevant to any matter with an international dimension.

Conclusion

Mason Hayes+Curran is very excited about the prospect of developing its new family law service. We believe that the provision of this new service and the development of MH+C Private is very much aligned with the needs of our private clients in the transformed Ireland of today.

Attribute to Donagh McGowan, Partner, Mason Hayes+Curran

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