

DIVORCING FROM ABROAD

10 Steps for South Africans Overseas | Bregman Moodley Attorneys Inc | Taking the Sting Out of Legal Problems Since 1974

- **1. Check where each spouse is actually domiciled**
Domicile is your permanent legal home, not your passport. If you have settled abroad indefinitely, you have probably lost your South African domicile, and with it the right to divorce here.

- **2. Check the one-year residence rule**
A South African court can also hear your divorce if one spouse has been ordinarily resident in South Africa for the full year before summons is issued. Living overseas rules this out.

- **3. Do not rely on citizenship or your wedding venue**
South African nationality, birth, and a South African wedding give the courts no jurisdiction under section 2(1) of the Divorce Act 70 of 1979.

- **4. Read your antenuptial contract, but read it correctly**
A clause choosing South Africa as the divorce forum cannot create jurisdiction. The contract still governs your property, so keep it central to the foreign proceedings.

- **5. Obtain a certified copy of your ANC**
If you no longer hold the notarially executed original, request a certified copy from the Deeds Office where it was registered. Foreign courts will want it.

- **6. Identify the right foreign forum**
Usually the country of habitual residence, for example Ireland or England and Wales. Take advice there before anyone issues proceedings anywhere.

- **7. Brief a South African attorney for an expert opinion**
Foreign courts deciding your finances will be assisted by an expert report on South African matrimonial property law and the effect of your ANC.

- **8. List your South African assets separately**
Immovable property, retirement funds, trusts and bank accounts here may need local steps to transfer or release after the foreign divorce.

- **9. Confirm the foreign divorce will be recognised in South Africa**
Section 13 of the Divorce Act recognises a foreign divorce if either spouse was domiciled, resident or a national of that country when it was granted.

- **10. Update your South African will immediately**
Divorce changes the effect of bequests to a former spouse. Review your will, your beneficiary nominations and any trusts as soon as the divorce is final.

This checklist is general information, not legal advice. For advice on your circumstances, call **+27 (0)11 646 0335**, email **roy@bmalaw.co.za** or visit **bregmans.co.za**. We return every enquiry within 24 hours.