

Marriage in Thailand – A Web of Agreements

This month, our article focuses on the various legal issues involved in the civil union of two people under Thai law. This article serves as our first part in a three part series on marriage where we cover how one gets engaged, married and divorced under Thai law.

It is not uncommon in Thailand for foreign men to seek Thai wives to be their life partners and vice versa; be it in Thailand's beach resorts, restaurants, online dating websites and (alas) bars, men and women take part in a treasure hunt to find their soul mate. This month we look to lay out the relevant Thai law which governs the relationship between man and woman in the preparation of their marriage.

Unlike many foreign countries, there are two forms of marriage in Thailand – civil marriages and traditional marriages. These days it is common for couples to do both; a generation ago many couples favored traditional ceremonies without ever having entered into a civil marriage. The differences matter. A marriage by way of a traditional ceremony may have profound moral, emotional and religious meaning for the lucky couple, their families and their God, but it has no legal import. Only a civil marriage, registered at a district office in Thailand, has legal effect. This is comparable to other cultures in which a couple may choose to wed before a pastor in a church to fulfill their religious duties, but must have before or subsequently registered the marriage to achieve the intended legal effect.

As with tradition in other countries, a wedding in Thailand, irrespective of being a civil ceremony or traditional ceremony, is done in 3 stages: the betrothal (i.e. engagement proposal), the marriage and the reception. For the purposes of this article we will be dealing with the betrothal stage and the marriage itself.

The Betrothal

Interestingly, the betrothal (i.e. engagement) is treated by the Civil and Commercial Code (the "Code") as a contract between the fiancés; though the betrothal does not give rise to an action for compulsory performance of the marriage, the parties may claim compensation in situations where there has been a breach of the betrothal agreement.

First it is important to consider whether the couple is legally permitted to get married. In order to legally enter into a betrothal agreement both man and woman must be at least 17 years of age. Generally any betrothal made when either party is under this age is void, unless made after obtaining consent from his/her parents or guardians.

The Code states that the betrothal is not valid until the man gives the woman property (known as the "Khongman") as evidence that the marriage will take place. In addition to the Khongman, the man is also required to give a "Sinsod" to the wife's parents in return for their daughter's hand in marriage. Despite essentially being a "dowry" in this modern age; the Sinsod is often then given by the recipients – the wife's

parents – to the new couple as founding assets for the marriage. Unlike dowries in other cultures such as India, the Sinsod is negotiable and the amount given to the woman’s family is reflective of the woman’s education, status and any previous marriage/children she may have.

As the betrothal itself is considered to be an agreement, the Code provides guidance as to when the Khongman or the Sinsod should be returned, and when they can be retained in the event of a breach of a betrothal agreement. For example, if a woman commits a breach of the betrothal agreement and the marriage is subsequently called off, the Khongman is to be returned to the man and the Sinsod is probably also repayable. In certain situations, should either party commit a breach of the betrothal agreement, such party shall be liable to compensate the other.

The Marriage

Civil marriages in Thailand, whether between Thai nationals, foreign nationals or one of each, are governed by the Code. The civil ceremony involves a trip to the local “Amphur” or “Khet” (district) office, where the couple stands in line and submits the relevant paperwork and fees. The Amphur or Khet office then issues a marriage certificate and the couple is then deemed to be married for the purposes of Thai law. As with the requirements on betrothals, the Code requires that the man and woman: (i) both have attained 17 years of age (or have parental consent); (ii) be of sound mind; (iii) not be related to one another; and (iv) not have a spouse at the time of marriage. Should the couple meet these criteria they are permitted to give a declaration of their union before the registrar. The declaration is given by both parties consenting to take one another as husband and wife; legal consent to marriage is given by affixing a signature in the marriage register.

Historically, Thai wives in a civil marriage had to change their last name to demonstrate to society their union with their husband. A 2005 amendment to the Personal Name Act B.E. 2505 (1962) removed this requirement, but the practice remains common.

In a civil marriage husband and wife are in many ways treated as a single legal entity, such as in relation to medical decision making, taxes, survivorship and property rights. The rules regarding property are particularly complex, and to avoid these common property rules some Thai couples still eschew civil marriages.

Society’s bellwether, the Oxford Dictionary, recently revised its definition of marriage to include same sex couples. Yet despite the great tolerance in Thai society for same-sex couples, Thailand’s Civil and Commercial Code still restricts marriage to a union of a man and a woman. However, same-sex couples are still able to get married in Thailand by way of a traditional ceremony and may live and reside together in their matrimonial home as married in the eyes of (most of) society, but not the law. Similarly, though some jurisdictions like Australia have made it possible for two individuals to get married without ever having to attend a traditional or civil ceremony, these “de facto relationships” or “domestic partnerships” are not recognized by Thai law.

Now that we have dealt with the “how” of marriage, next month we will look to continue our series on marriage to delve into some of the related issues that come with the institution of marriage. Stay tuned!

Authors:

Audray Souche – Partner; Deputy Managing Director, Thailand (audray.souche@dfdl.com)

Kunal Bir Singh Sachdev – Legal Adviser (kunal@dfdl.com)

Thunyaporn Chartisathian – Legal Adviser (thunyaporn@dfdl.com)