

Should I stay or should I go?

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Sun, sea and income tax free: an attractive proposition for any UK family. International relocation has become a major draw in recent years; the prospect of a better climate, standard of living, company funded school fees, and low taxation are certainly factors to think about, particularly for those whose relationship could do with a boost. For many families however, what may seem a glamorous lifestyle can end in disaster if not everything turns out as expected and the relationship breaks down. Being stranded in a foreign country, without family, friends or a job may be just the straw which breaks the camel's back in the once happy relationship. Government statistics show us that over 40% of English marriages break down. Divorcing here is traumatic enough for most couples, but the financial and emotional consequences of an overseas divorce (often in a foreign language) are often unexpected and overlooked. Although within Europe there is harmonisation determining which country shall deal with the divorce, a spouse cannot assume that the process itself will necessarily mirror English law, or that divorce and money will all be dealt with in the same place. A number of European countries, such as Ireland and Italy (although note the law in Italy is currently under review), require parties to be separated for a period of time before they can file for a divorce. This 'waiting period' can cause immense frustration to a spouse who just wants to "get on with it" and move on and who had not anticipated when they left the UK that if the relationship broke down they could be locked into their marriage for years with no easy way out once the proceedings are underway overseas. Let us not also forget that it was only recently that some European countries, notably Malta, have allowed divorce at all, and others, such as our Scandinavian counterparts have the general principle that neither party should have but the shortest of ongoing obligations towards the other. Remaining within the EU leaves open the door for forum shopping and for the financially weaker spouse to commence proceedings first in time in England (if both parties remain domiciled here) and to be sure that their divorce will be dealt with here. Whilst moving out of the EU does mean there is no longer a "slam dunk" if proceedings are commenced in one place first, it is not always easy to determine which is the 'forum conveniens', as recently demonstrated by Miss Malaysia's divorce and the eye-watering £1.6m incurred in disputing the issue. Significant costs can be spent in fighting in two countries, with two sets of lawyers; none of which would have happened if everyone had remained in the UK. From a financial perspective the family may have been living the ex-pat 'life of Riley' with the cost of living substantially reduced, and lower rates of taxation. However, the non-working spouse cannot necessarily expect that standard of living to continue if he or she later returns here. Any spousal maintenance order made overseas is likely to take into account the cost of living in that foreign country. The financially weaker party may then find themselves back home, on a low maintenance package, which is then potentially further reduced if the former working spouse returns home (to be with the children perhaps) and is then back within the UK tax net. In some jurisdictions there is simply no possibility of spousal maintenance at all. For example, in Singapore, house husbands have significantly lower chances of securing maintenance from their breadwinner wives than if roles were reversed. That spouse cannot necessarily assume that when they return they will be able to obtain a "top-up" by the English Court under Part III of the Matrimonial and Family Proceedings Act 1984. There is also the question of residency and rights to remain. This can cause severe headaches where children have the right to remain in the ex-pat country (perhaps because they were born there), but the mother (most usually) does not after a divorce. It may well be that financial considerations are on the back burner and the crucial question is who is to have care of the children. Whilst most European countries more or less favour the principle that it is in a child's best interests to have regular and meaningful time with both parents, that is not necessarily the case, such as in some Middle Eastern countries where a mother's role can be curtailed on a divorce there. And if ex-pat life has just got too much and one parent really wants to come back home, they are often surprised to know that jumping on a plane with the children would constitute abduction. That parent is likely to have to go through a lengthy, expensive and traumatising application for court permission to remove the children from the ex-pat jurisdiction. Whilst to some extent it is possible within a Pre-nuptial Agreement to regulate the financial consequences of a divorce, and which country should deal with the matter (although query whether the foreign ex-pat court will uphold the agreement), there is simply no way of securing a spouse's consent in advance to a return home in the event of a break down of the relationship. And finally, what if you are living in a country where the foreign divorce is not recognised in England? In these circumstances, a spouse may find that any remarriage is declared invalid and any claims which he or she may have when they return home, such as for welfare benefits or survivors pensions, could be extinguished. It would not be fair to say that many ex-pats make the decision to become ex-pats to try to revive their relationship, but if you do fall within that category, it is best to be aware and not assume that the lawns of the divorce Courts will be greener abroad.

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