The coronavirus (COVID-19) pandemic has had a significant impact on our daily lives. To avoid being infected by the deadly coronavirus, we prefer staying in the safety of our homes, avoid going out, and have cancelled long-awaited trips. Since the end of January this year, Hong Kong government offices and courts have been closed in view of public health concerns and have only slowly started to reopen earlier this month. As a result, the outbreak of COVID-19 has been an especially despairing time for happy couples who have invested days on end planning their “big wedding day”; and on the flip side, the not-so happy married couples looking for a way out.

In this article, we will explore the practical impact of COVID-19 on these couples and alternative options.

“Save the date”

For those looking to get married, good news — the Marriage Registry is now open for business as usual.

Even so, an increasing number of couples have opted to postpone their wedding ceremonies and receptions to a later date. With concerns about the lack of RSVPs and the health and safety of guests, who can blame them? On 21 February 2020, more than fifty police officers were quarantined after attending a banquet with a COVID-19 infected police officer (1). As a result, the Hong Kong health authorities have since then warned against large social gatherings. All the same, most people don’t listen — recently, horse-owner Yvonne Chow Hau Yee has been tested positive for COVID-19. She and her brother attended his daughter’s wedding banquet late in February and since then, her brother, his wife and others have also been tested positive for the virus (2).

Couples have nevertheless found creative ways to work around these troubled times. In one instance, a Singaporean couple, who spent Chinese New Year in Hunan, attended their own wedding via livestream (3).

Being at each other’s throats

For couples seeking a divorce, the Hong Kong Courts closure can be a real headache. For now, court proceedings remain adjourned and the court registries closed, except for urgent and essential hearings. With regards to family matters, this means the court will only hear urgent applications for injunctions to prevent the removal or dissipation of matrimonial property and/or the removal of children from the jurisdiction, and possibly other matters relating to children’s issues. With the growing backlog of applications and cases accumulated, there will certainly be a long wait. In the meantime, we suggest couples to consider the following alternative methods of resolution:

a. Marriage Counselling

As a first step, we suggest marriage counselling. Marriage counselling can help couples discuss their problems, learn the skills to work out conflicts, and get to know the options ahead of them. Often relationships between married couples break down due to a lack of communication. Marriage counselling provides a secure and safe space for couples to open up to one another, and perhaps even save their marriage.

b. Family Mediation
Family mediation is a voluntary problem-solving process designed to help divorcing couples reach a win/win agreement regarding the arrangements for their children and/or financial matters with the assistance of a trained, impartial third person, i.e. the mediator. An increasing number of divorcing couples in Hong Kong use mediation to settle their differences. This is especially so for child disputes because the parents can make detailed arrangements for their child post-separation. They are encouraged to prepare a parenting plan which focuses on their child’s daily routine and what is best for them, rather than the “win or lose” mindset a court case can generate. It puts the child firmly back into the centre of the parties’ minds.

Mediation not only reduces the conflict between parties and improves their relationship, but also saves time and costs. There is no prescribed form to mediation – parties are free to conduct the mediation at any time anywhere with a mediator of their choice. This way, parties are able to take hold of the process themselves, and do not need to wait around for the courts to reopen. If issues are less complicated and the mediation process goes smoothly, mediation may only take two to three mediation sessions for the parties to reach agreement.

c. Collaborative Practice

Collaborative practice is another means of resolving disputes amicably without the court proceedings. Couples work together with their lawyers and other professionals (such as child psychologists, financial consultants and divorce counsellors, if necessary) as one team to come up with tailor-made solutions for the couple. It offers couples the necessary support, protection, and guidance from legal professionals when going through a divorce.

The process requires the lawyers to cease to act if the couple ultimately decides to resolve their differences through the courts instead. As such, the process allows lawyers to set aside their traditional adversarial mindset and look out for the interests of both parties as a whole.

A parting of ways (but, wait not yet)

In cases where the divorce petition has already been filed and the couple is just waiting on the next court date, their lives are in limbo. They do not know when their case will be heard – yet, they still need to sort out their financial, children and personal matters.

While the courts are still adjourned and court registries closed, there are a number of private avenues divorcing couples may consider for resolving disputes in relation to financial matters:

a. Private FDR

Many may be familiar with court FDR. This is where divorcing couples are required to attend a compulsory court appointment before a judge who gives a non-binding indication of the likely outcome of the case should the matter go to trial. The couple is then given the opportunity to settle the case, knowing that if they fail to do so, they will most likely have to incur the hefty costs of a trial.

Instead of waiting for the courts to reopen, couples can consider private FDR. In a private FDR, the divorcing couple seeks the advice from an experienced judge (or barrister, solicitor or retired judge) on their own accord as to the likely outcome of the case and try to negotiate an agreement. Private FDR requires parties to invest financially on the process, which often means that it is taken more seriously, and as a result has a very high rate of settlement.

b. Private Adjudication

Private adjudication in the context of matrimonial and family proceedings was only introduced to Hong Kong in 19 January 2015. Therefore, it is fairly new. In a private adjudication, couples agree upon a private adjudicator who would decide on their financial issues. A private adjudication is still governed by the same formalities as a normal court proceeding dealing with financial issues (such as, the exchange of financial disclosure), however parties are able to set their own timetable. The unique USP of a private adjudication as compared to the other ADR methods is that the parties agree to be bound by the decision of the private adjudicator.

Conclusion

The above sets out ADR methods couples can consider to fast track their divorce and cut ties while the courts remain closed in Hong Kong. The use of these ADR methods are encouraged and more generally can be used as an alternative to litigation. All-in-all, these ADR methods offer a more cost efficient, time saving and amicable way of resolving divorce disputes.

Click here to read more insights on how we can weather the coronavirus outbreak with you.

FOOTNOTES

(1) Clifford Lo, Zoe Low and Kanis Leung, Hong Kong Police caught up in coronavirus crisis after first officer tests positive and more develop symptoms, SCMP Online, 21 February 2020
(2) Terri-Ann Williams, Now a DOG tests positive for coronavirus: Patient’s pet Pomeranian comes down with the disease in Hong Kong, The Daily Mail Online, 4 March 2020
(3) Couple attends own wedding via video call amid coronavirus scare, The Jakarta Post Online, 12 February 2020
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