

Divorce principles

Chapter I: General Principles

1:1 Permission of divorce

- (1) The law should permit divorce.
- (2) No duration of the marriage should be required.

1:2 Procedure by law and competent authority

- (1) The divorce procedure should be determined by law.
- (2) Divorce should be granted by the competent authority which can either be a judicial or an administrative body.

1:3 Types of divorce

The law should permit both divorce by mutual consent and divorce without consent of one of the spouses.

Chapter II: Divorce by mutual consent

1:4 Mutual consent

- (1) **Divorce should be permitted upon** the basis of the spouses' mutual consent. No period of factual separation should be required.
- (2) Mutual consent is to be understood as an agreement between the spouses that their marriage should be dissolved.
- (3) This agreement may be expressed by a joint application of the spouses or by an application by one spouse with the acceptance of the other spouse.

1:5 Reflection period

- (1) If, at the commencement of the divorce proceedings, the spouses have children under the age of sixteen years and they have agreed upon all the consequences of the divorce as defined by Principle 1:6, a three-month period of reflection shall be required. If they have not agreed upon all the consequences, then a six-month period shall be required.
- (2) If, at the commencement of the divorce proceedings, the spouses have no children under the age of sixteen years and they have agreed upon all the consequences of the divorce as defined by Principle 1:6 (c) and (d), no period of reflection shall be required. If they have not agreed upon all the consequences, a three-month period of reflection shall be required.
- (3) No period of reflection shall be required if, at the commencement of the divorce proceeding, the spouses have been factually separated for six months.

1:6 Content and form of the agreement

- (1) The consequences upon which the spouses have reached an agreement are:
 - (a) their parental responsibility, where necessary, including the residence of and contact

- arrangements for the children,
(b) child maintenance, where necessary,
(c) the division or reallocation of property, and
(d) spousal maintenance.
(2) Such an agreement should be in writing.

1:7 Determination of the consequences

- (1) In all cases the competent authority should determine the consequences for the children as mentioned in Principle 1:6 (a) and (b), but any admissible agreement of the spouses should be taken into account insofar as it is consistent with the best interests of the child.
(2) The competent authority should at least scrutinise the validity of the agreement on the matters mentioned in Principle 1:6 (c) and (d).
(3) If the spouses have not reached an agreement or reached only a partial agreement on the matters mentioned in Principle 1:6 (c) and (d), the competent authority may determine these consequences.

Chapter III: Divorce without consent of one of the spouses

1:8 Factual separation

The divorce should be permitted without consent of one of the spouses if they have been factually separated for one year.

1:9 Exceptional hardship to the petitioner

In cases of exceptional hardship to the petitioner the competent authority may grant a divorce where the spouses have not been factually separated for one year.

1:10 Determination of the consequences

- (1) Where necessary, the competent authority should determine:
(a) parental responsibility, including residence and contact arrangements for the children, and
(b) child maintenance.
Any admissible agreement of the spouses should be taken into account insofar as it is consistent with the best interests of the child.
(2) On or after granting the divorce the competent authority may determine the economic consequences for the spouses taking into account any admissible agreement made between them.