

Checklist for filing of divorce petition

(1) File the original Marriage Certificate (see rule 12(2), Cap. 179A)

(2) If the original Marriage Certificate is not available, it is required to seek leave to dispense with filing of the original Marriage Certificate (see rule 12(2), Cap. 179A)

(3) If the petition is in **Chinese**, filing of the original Marriage Certificate together with the certified translation is required.

(4) Petition Form (see Form 2, Cap. 179A and rule 92), Cap. 179A)

(a) Paragraph (1) of petition :

(i) Date of marriage

- State the date correctly, e.g. some common mistakes:-
 - twelfth and 20th
 - twentieth as 12th
 - thirteenth as 30th
 - thirtieth as 13th
- 元月 in the Marriage Certificate but written as 六月 in the petition
- Distinguish between the date of registration and date of actual marriage in some Marriage Certificates
- In cases where the parties have previously gone through a ceremony of marriage, state so

(ii) Name of parties

- Ensure correct spelling of parties

names

- Spelling should correspond with the certified English translation of Marriage Certificate
- Provide supportive document to prove a party has changed his/her name, e.g. deed poll
- Give English names of the parties if the petition is in English and vice versa

(iii) Place of the marriage

- State the city and the country where the marriage took place.

(b) Paragraph (3) of the petition
(see section 3 of Cap. 179) :

- State whether the parties/either of the parties was domiciled in Hong Kong at the date of the petition.
- Where appropriate, to provide supporting facts to establish the domicile of the party to avoid queries from the court.
- State the supporting facts if a party is stated to have substantial connection with Hong Kong at the date of the petition
- State the occupation of the parties
- Give the English translation of Chinese addresses if the petition is in English

(c) Paragraph (4) of the petition :

(i) Particulars of children

- If the parties have living children, state the number
- Give the full names and sexes of the children

- Give the date of birth of the children
- Give English translation of their Chinese names if the petition is in English
- Where a child is suffering from serious disability or chronic illness attach a medical report on that child. (see rule 9(3), Cap. 179A)

(d) Paragraph (5) of the petition :
Select the appropriate paragraph :-

(i) for husband's petition -

“No other child of the family now living has been born to the respondent during the marriage so far is known to the petitioner”

(ii) for wife's petition -

“No other child of the family now living has been born to the petitioner”

(e) Paragraph (6) of the petition :

State the outcome of the previous proceeding in relation to the marriage e.g. whether it was dismissed/stayed or otherwise disposed of

(f) Paragraph (9) of the petition :

- Ensure the separation period is clearly stated. It should be for **more than one, or two years**. For example, a petition of 1 year's separation filed on 30 December 2006 with the separation date stated to be in or about January 2006. As the separation could be from any date in January 2006, it could be less than a period of 1 year immediately preceding to the presentation of the petition.
- Provide sufficient facts of “ living apart” when the parties have been residing under the same roof. Often, some petitions only stated

that the parties were occupying separate rooms but did not state whether the parties had been living in the same household (see section 11C, Cap. 179)

- Provide sufficient facts of unreasonable behaviour.
- Seek direction under rule 13(2) of Cap. 179A to name a third party as co-respondent when a person is named as having an improper association with the respondent (other than adultery).
- Seek direction under rule 105(5) of Cap. 179A if a party is a mentally disordered person.

(g) Prayer :

- Pray for custody of any child who is under 18. (see section 19, Cap. 192)
- No need to pray for custody of any child who is over 18.

(h) Others :

- Remember to sign the petition
- Remember to date the petition

(4) Amendment of petition
(see Para 20/8/2, Hong Kong Civil Procedure)

- Date of the petition should not be amended. The date of separation should not be counted from the amendment date of the petition

(5) Service of the petition
(see rule 14(6), Cap. 179A)

- File an affirmation of service when no Acknowledgement of Service has been returned.
- If there has been service by double registered post, exhibit the original advice of delivery, and identify the signature of the recipient in the affirmation of service

- Observe the requirements of Practice Direction 15.2 on personal service, e.g. admission of the person on whom documents were served that he/she was the respondent
- Exhibit the original advertisement for substituted service which shows the name of the newspaper and the date of publication.

(6) Form 21 – Affidavit in support of petition
(see Form 21, Cap. 179A)

- The separation date in the petition should correspond with the date stated in **Form 21**.
- Each party’s address(es), with duration at each address, if more than one, should be clearly stated in **Form 21** for a petition based on either one year or two years’ separation.
- The petitioner has to identify the Respondent’s signature on the **Form 4** for petition based on one year’s separation by consent.