

Courts may ask divorcing couples with reasonable shot of reconciling to get help to save marriage



As at the end of August, about 8 per cent of divorce applications were filed under divorce by mutual agreement. PHOTO ILLUSTRATION: PIXABAY



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SINGAPORE – The courts may direct couples hoping to end their marriage amicably to work on saving it instead, if they believe the couples have a “reasonable possibility of reconciliation”.

For example, couples who cite divorce by mutual agreement have to state their attempts to salvage their marriage. The courts will then decide if further efforts at reconciliation will have a reasonable chance of success, a Family Justice Courts (FJC) spokeswoman told The Straits Times.

Since July 1, couples have been able to cite divorce by mutual agreement as a “fact” to prove that their marriage has broken down irretrievably.

In September, FJC Presiding Judge Teh Hwee Hwee said during the Law Society of Singapore’s Family Conference that the court “will not grant a divorce if it believes there remains a reasonable possibility of reconciliation” for couples citing divorce by mutual agreement.

Justice Teh added: “In line with legislation and Parliament’s intent, the courts seek to strike a balance – ensuring that the mutual agreement is carefully considered and that sufficient particulars are provided to demonstrate that reconciliation efforts have been made but have borne no fruit, while avoiding the need for parties to

exchange accusations or engage in recriminations to obtain a divorce.”

Couples citing divorce by mutual agreement have to state in writing the reasons why they concluded their marriage has “irretrievably broken down”, their efforts to reconcile, and their considerations regarding financial arrangements and their children.

In response to ST’s queries on what constitutes a “reasonable possibility of reconciliation”, the FJC said divorcing couples have to state in their applications their efforts or attempts made to reconcile.



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For example, they have to say whether they have gone for counselling sessions with professionals trained to provide such help. Or they have to state the reasons why they did not or could not seek help to salvage their marriage.

The FJC spokeswoman said: “Where the parties have confirmed that the marriage has broken down irretrievably, the court will consider whether further attempts at reconciliation have a reasonable chance of success, given the reasons provided for the breakdown of the marriage and the interest of the children involved.

“The court will also consider other matters, such as whether the parties have been separated for a period of time, or if one or the other has formed another relationship.”

The FJC can direct the couple to trained counsellors within the FJC, for example, to help them save their marriage. If the couple have already consulted external counsellors or mediators, they may be asked to go back to these professionals.

The spokeswoman said: “Even though it is not mandatory for the parties to attend, it is nevertheless a court direction to do so.

“The failure to adhere with court directions will have a bearing on the court’s eventual decision as to whether the marriage is really beyond salvage.”

And the court may defer or delay granting the couple a divorce, the spokeswoman added. This is because, under the Women’s Charter, it cannot do so if there remains a reasonable possibility of reconciliation.

As at the end of August, about 8 per cent of divorce applications were filed under divorce by mutual agreement, the spokeswoman said.

Before the introduction of divorce by mutual agreement in July, couples had to cite one of five facts to prove their marriage had irretrievably broken down. Three of the five facts are based on attributing fault: adultery, desertion and unreasonable behaviour.

There are also two facts of separation. They are separation of three years with the spouse’s consent, or four years if there is no consent.

Lawyers interviewed said divorce by mutual agreement, which is aimed at reducing acrimony, is the only fact where the couple have to show they made attempts to mend their marriage.

During the 2022 debate on amendments to the Women’s Charter, Minister of State for Social and Family Development Sun Xueling said that proving one of the three fault-based facts of divorce may force the couple to point fingers at each other or dig up past hurts.

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She added: “This can cause the child to be caught in the middle as allegations of misdeeds are being made by either or both of their parents against the other.”

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Lawyers interviewed said some of their clients waited for the divorce by mutual agreement fact to come into effect before filing for divorce, as they wanted to end their marriage amicably.

They also did not want to wait out the separation period of at least three years or pin blame by choosing a fault-based fact of divorce.

Ms Angelina Hing, managing director of Integro Law Chambers, said: “Many desire to part amicably and are sensitive to the possibility of escalating acrimony by alleging unreasonable behaviour on the part of the other party.”

Ms Michelle Pang, senior counsellor at Care Corner Counselling Centre, said that some clients have told her why citing mutual agreement is preferable to the alternatives.

She added: “On the surface, they said they don't want to cite a fault to protect their children. Like if they don't talk bad about daddy, daddy would not talk bad about them.

“But they have also checked out of their marriage. They don't want to work on their marriage, and they don't want to be married any more.”

Ms Hoon Shu Mei, a director at Drew & Napier, said the couples she saw who cited divorce by mutual agreement had made “significant” efforts to try to resolve their differences.

This includes going for marital and individual counselling, and getting family members to mediate before they decided to call it quits.

Ms Dorothy Tan, senior associate director of the Family Law and Probate Department at PKWA Law Practice, said she has acted for a couple in their 40s with a child in pre-school who cited divorce by mutual agreement.

The pair, who are both executives, attended more than 15 private counselling sessions at three different counselling centres over the past few years before concluding that they could not salvage their union.

Ms Tan added: “Regardless of each party's personal grievances about the other, neither wishes to open old wounds and they much preferred the neutral ground of divorce by mutual agreement.”

In 2022, Ms Sun said that divorce by mutual agreement “will not lead to a quick and easy divorce”.

She highlighted the safeguards in place to prevent couples from seeking an easy way out. For example, they have to be wed for at least three years before they can file for divorce, among other things.

Mr Rajan Chettiar, managing director of Rajan Chettiar LLC, said: “I take the view that couples should not get too excited by this fact and feel that this is an easier way to obtain the divorce. It is not.

“The law requires a high threshold of facts to satisfy this fact.”

In 2023, the top fact cited for civil divorces was unreasonable behaviour, with 54 per cent of plaintiffs citing this.

Coming in second was separation of three years or more, which was cited by 44 per

cent of plaintiffs, according to the [STATISTICS ON MARRIAGES AND DIVORCES 2023](#) published by the Department of Statistics.

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