


 Expat Counsel

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## FAMILY LAW IN THAILAND

### Part XXIII: Same-sex marriages in Thailand

**W**e have been asked about same-sex marriage in Thailand, particularly in light of Thailand's procedures on other issues of marriage and divorce, which are quite progressive.

Same-sex couples cannot be married in Thailand. The principle provisions of Thai law refer to marriage as being between "a man and a woman" and scholars consider this wording to prevent same-sex marriages.

Let's look at an example. Let's say there are two men, one Thai and the other foreign. One of them disguises himself as a female and they are married at the local amphur or, in Bangkok, at the district office. What's the legal status of this relationship?

Scholars consider that this marriage would be neither void nor voidable as discussed in earlier articles. Legally, it would be considered not to have taken place at all.

You'll recall that for void or voidable marriages, there has to be a court decision terminating them. In this case, if the judge becomes aware of the fact that the couple is of the same sex, he or she will not make such a decision and, though the couple may separate, there will be no court decision that will affirm this or declare the relationship over.

If a same-sex couple has been married in a jurisdiction outside Thailand where such marriages are not recognised, the Thai legal system will likewise treat the marriage never to have taken place. If the marriage was celebrated in a jurisdiction where same-sex marriage is recognised, however, the Thai legal system will recognise the marriage for some purposes.

With respect to divorce, same-sex couples cannot be divorced in Thailand, even if they were married in a jurisdiction that recognised same-sex marriage. If a same-

sex couple separates and they have jointly-earned income or property, the general provisions of Thailand's Civil and Commercial Code relating to co-owned property will be applicable.

How would this work in practice? Let's say there is a same-sex couple, Mr A and Mr B, living in Thailand and they were married in a country that recognised same-sex marriages. They would be entitled under Thai law to hold themselves out as married to the rest of the world.

But let's say while they were living in Thailand as married, Mr A had a significant income and Mr B has had no income at all. As you know from earlier columns, if married parties split up, income during the marriage is generally treated as joint and split equally.

Mr A and Mr B cannot be divorced in the Thai courts, as discussed above. If they are divorced in another country that recognises single-sex marriage and divorce, it is likely

that the Thai courts would enforce a court order from that country regarding division of property worldwide, but there is little practical experience or precedent in the Thai legal system to date to confirm this point. In any case, if Mr A and Mr B simply split up in Thailand without a foreign court order and a dispute arises between them about how to divide property, the rules of co-ownership of property for unmarried persons would be applied to the situation by the court. ■

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