

Your law or mine? The UAE overhauls personal status laws and reaffirms its openness

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The United Arab Emirates is a cultural melting pot of over 200 nationalities and has an expat community comprising c. 90 per cent of the total population. The UAE government is constantly undertaking initiatives, in line with its principles of tolerance, coexistence and acceptance of the other, to provide a more attractive living environment for expatriates. The latest such endeavour undertaken by the UAE government is the introduction of amendments to several articles in federal laws relating to marriage, separation, and divorce. These amendments aim to allow for the application of foreign laws with regard to these issues.

Below we set out a summary of the main changes whilst also providing our analysis on their potential practical application and ramifications.

The new amendments

Previously, the UAE Personal Status Law No. 28 of 2005 (the 'PSL'), which is based on Islamic Sharia principles, would have applied to all divorces in the UAE, whether between Muslims or non-Muslims, UAE nationals or expats. A party could petition the UAE court to apply the law of their nationality, with the law of the husband's nationality taking precedence.

The recent amendments have introduced a significant change whereby rather than the law of nationality; the marriage would instead be governed by the law of the country in which the marriage took place. Indeed, the law of the place where the marriage was performed would not only govern the validity of the marriage but also any ensuing divorce and financial elements, including division of assets and alimony.

This is significant in today's world where many couples opt for a destination wedding, outside of both their country of nationality and/or residence.

What do these amendments mean for expatriates?

The amendments open up a gateway for expatriates to request the application of either the law of where their marriage was performed or alternatively, the PSL that is based on Islamic Sharia principles (as before) to matters related to marriage, separation, division of assets and divorce. It paves the way for divorce law forum shopping, such that a party has a wider option to choose the law that is more favourable to them given their individual circumstances.

However, it is important to note that this option is neither absolute nor guaranteed.

By default, as per Article 1 of the PSL, the UAE PSL shall apply to expatriates with regard to the personal and financial effects of marriage, separation, or divorce, unless one or the both spouses insist on the application of their law of citizenship. But a request to apply the law of citizenship must not contradict Article 13 of Civil Transactions Law No. 5 of 1985 (the 'CTL').

Article 13 of the CTL provides that the law of the state where the marriage took place shall govern issues related to marriage, separation, or divorce, that would result in the fact that the law of citizenship will only apply if the marriage took place in the same country of citizenship of the spouse(s) requesting the application of their law. Otherwise, the law of the country where the marriage took place will apply even if it is not the country of citizenship.

Many couples of the same or of different nationalities have tied the knot at popular locations other than their country of citizenship, not knowing that the laws of where they got married could govern their marriage and divorce in the UAE. In light of the newly introduced amendments that came into effect as of 1 October 2020, this is the new and perhaps unexpected reality of getting married in exotic locations such as the Maldives, Seychelles, Greece, Bali or other such romantic destinations.

In summary, the options for expatriates regarding the applicable law as per the new amendments will either be the UAE PSL No. 28 of 2005 or the law of where the marriage took place.

Special considerations for the application of a foreign Law

Notwithstanding the above, requesting the application of a foreign law before the UAE Courts is not a given and remains subject to two conditions:

Firstly, presenting the court with a legally attested copy of the applicable foreign law or the relevant parts thereof. For example, if the law in question regulates different aspects of the matrimonial relationship, and the case before the UAE court involves divorce and determination of alimonies, then only a copy of the relevant sections is needed. This is particularly important as the copy must be attested and it must be translated into Arabic in order to be accepted by the UAE court; this process of translation and attestation itself can be a lengthy and costly exercise.

Secondly, the law (or its relevant parts) must be straightforward and easy to interpret in regulating the disputed issues thereby enabling its direct application by the UAE Court.

However, it should be noted that in presenting only the relevant parts of the foreign law, the requesting spouse must make sure that none of the applicable articles in the relevant parts are required to be read or interpreted in light of other articles not included in the selected parts as that would render these parts inapplicable directly, hence, failing to meet the second condition.

Failure to satisfy any of the above conditions will result in the court reverting to the application of the PSL law.

Certainly, the spouse invoking the application of the foreign law will incur, depending on the circumstances, considerable effort and cost in obtaining, attesting, and translating the foreign law with no absolute certainty of its application if the foreign law fails to satisfy the second condition.

Hence why, before even filing a request for the application of the foreign law, legal consultation in both the UAE as well as the country of marriage must be sought to carefully assess the situation.

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