

New matrimonial age for non-Muslim expats in the United Arab Emirates

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Non-Muslims in the United Arab Emirates now have their own personal status law. In November 2021, Sheikh Khalifa Bin Zayed Al Nahyan, Ruler of Abu Dhabi, issued Abu Dhabi Law No. 14 of 2021 on Personal Status for Non-Muslim Foreigners in the Emirate of Abu Dhabi (the "New Law"). The New Law was published in the Official Gazette of the Emirate of Abu Dhabi, Issue No. 11, dated 15 November 2021, and came into force on 15 December 2021, one month following its publication.

The New Law is considered a revolutionary legislative step in the UAE and the wider Gulf region. The New Law, for the first time, provides new personal status legislation that is not based on Islamic Shari'a law, thereby bringing considerable peace of mind to non-Muslim expats living in the United Arab Emirates.

It is a significant further step in making the UAE a more inclusive and attractive country for expats of different faiths, lifestyles, and cultures and promotes retirement in the UAE.

This article provides a general overview of the New Law and our observations of the opportunities it presents.

Application:

The New Law applies to non-Muslim living in the UAE unless they request the application of the law of their own country and governs marriage, divorce, custody of minor children, inheritance, wills, and proof of lineage.

Principles:

The New Law sets new rules for non-Muslims living in the United Arab Emirates, such as:

- The application of civil marriage :

All of the Gulf countries conduct their marriage agreement or contracts according to Shari'a law, and non-Muslims residing in these countries, to date, have had to comply with the rules of Shari'a. With the introduction of the New Law, non-Muslim in the UAE can now apply civil law rules to their matrimonial contracts. This gives greater flexibility and freedom when deciding which terms and conditions go into their contracts.

- No-fault divorce (unilateral divorce):

Previously, pursuant to Federal Law No. 28 of 2008, in order for a woman to file a divorce in the Family Court, she had to prove a fault or damage caused on the part of her husband, failing which she would lose

all of her financial rights.

With the passing of the New Law, either party to the marriage can file for a divorce without having to evidence specific damage or fault caused by their partner.

- Joint custody:

Joint custody is the equitable right for each parent to see, raise and care for their minor children. Article 9 of the New Law states the following:

"2- The principle of custody is to share the responsibility of raising children between the mother and the father upon divorce, unless one of them requests in writing before the Court to waive the right of custody, or in case of submitting an application to the Court to eliminate the other party from Joint Custody and to drop their custody right for any reason that may be accepted by the Court such as the legal capacity or the risk of sharing custody with such party or in case such custodian does not assume his duties."

The new custody rules differ from those provided in the Federal personal status law no. 28 of 2005, where the mother remains as a custodian to the male child until he is eleven years old and the female child until she is thirteen years old, with minimal visitation rights for the father. Therefore, the new custody rules will provide more stable parenting with balanced time spent with both parents.

- Gender equality in testimony before the Court:

Article 16, paragraph 1 of the New Law states:

"Testimony: equality in testimony before the Court, as the testimony of a female, shall be taken into consideration before the Court same as the testimony of a male foreigner without distinction."

Based on the foregoing, a woman's testimony will have the same legal weight as a man's testimony in the Personal Status Court for non-Muslim foreigners.

- Wills & inheritance:

The New Law established a new rule concerning succession; it gives a non-Muslim foreign testator the right to distribute his assets after his death freely. Furthermore, non-Muslim residents can write their wills to whomever they want.

In addition, the Article 4, paragraph 2 of the New Law established a system of inheritance for non-Muslims in the absence of a will:

"2- In case of absence of a Will, then half of the inheritance shall be entitled to the husband or wife, and the other half shall be equally distributed among the children with no difference between males and females. In case the deceased has no children then the inheritance shall equally belong to the parents thereof, or half of such inheritance shall be transferred to one the parents in case the other one is not present and the other half shall be granted to the siblings. In case of absence of the parents, then the inheritance shall be equally distributed between the siblings without distinction between males and females."

Opportunities:

- The New Law provides non-Muslim couples in the UAE with the opportunity to conduct and design their marriage contract freely and decide how their relationship will be governed from both a financial and child custody perspective in the unfortunate event of a divorce occurring.
- The New Law raises awareness and the possibility of prenuptial agreements vis a vis their role in establishing a secure and worry-free start to a marriage. Prenuptial agreements oblige the partners to have the necessary, tough conversation about financial and parenting responsibilities at the outset. This notwithstanding, it secures a positive and mindful environment to plan for all eventualities, ultimately saving energy and time later.

Conclusion:

The introduction of a new personal status regime for non-Muslim in the UAE welcome and timely. The New Law is another one of several development that the UAE has made in order to align itself with international best standards. The New Law is a testament of the progressive and modernized mindset in the UAE and provides for greater women empowerment and equality.

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