



# INTERNATIONAL FAMILY LAW - THE UAE

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There have been significant changes to family laws in the United Arab Emirates over recent years. The changes in law recognise the family law needs of the significant expatriate population in the UAE. Previously, the only statutory provision relating to family law in the UAE was the Federal Personal Status Law 28 of 2005, which applied in all Emirates and to Muslim and non-Muslim families alike. There are now four operable family law regimes. Namely, Personal Status Law, Foreign law as applied within the Personal Status Court, Federal Decree Law No 41 and Resolution No 8 of 2022 concerning the Marriage and Civil Divorce Procedures in Abu Dhabi. Arabic is the only language across the abovementioned family law regimes except in the latter regime in Abu Dhabi where English is also used.

## How is jurisdiction established in the UAE?

### **Resolution No 8 of 2022 - Abu Dhabi Civil Family Court**

An individual will have jurisdiction if:

- either party to the marriage has domicile, residence, or a current or former place of work in Abu Dhabi;
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- the money and/or property in dispute is in Abu Dhabi, or
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- the parties were married in Abu Dhabi.

Applications are only accepted where:

- neither party to the marriage is Emirati;
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- neither party is from a country that is a Muslim state, or
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- the parties' marriage was held in a country that does not apply Islamic law for family law.

### **Personal Status Law:**

- Subject to exceptions, courts will have jurisdiction over a case filed by or against a citizen or foreigner who is domiciled, resident or has their place of business in the UAE. Residence Visa for the UAE is usually required.



### **Federal Law 41:**

- Jurisdiction exists for non-Muslims who are citizens of the UAE, or foreigners residing in the UAE.

### **Divorce in all Emirates except Abu Dhabi**

#### **Muslims**

The starting point is Personal Status Law. However, subject to exceptions, Muslims can apply the law of the country in which they were married if both parties request to do so. Applications of foreign law can be put before the UAE Personal Status Law. The seven grounds for divorce are set out in the Personal Status Law, Articles 112-132. Muslims can obtain a divorce by either pronouncement of the Talaq or by application to the court.

#### **Non-Muslims**

The starting point for non-muslims is the new Federal Law 41 of 2022 which came in to force in February 2023, unless the parties ask the court to apply the law of the state which the marriage was concluded. The procedural guidelines for Federal Law 41 have not yet been published but we anticipate that these will further elaborate on how financial remedies will be applied.

### **Divorce in Abu Dhabi**

Resolution No 8 of 2022 applies to Muslims and non-Muslims, unless one party to the marriage is Emirati, or from a country that applies Muslim family law. If Resolution No 8 of 2022 does not apply for one of these reasons, the applicable law will be the Personal Status Law. If Resolution No 8 of 2022 applies, both husband and wife can apply online and there is no need to prove fault.

### **Financial provision for application in all Emirates other than Abu Dhabi**

Women divorcing under Federal Law 41 of 2022 can claim spousal maintenance. Once the divorce judgment is granted, a wife may apply for spousal maintenance from her ex-husband



(a husband may not claim spousal maintenance from a wife). Interim maintenance is not possible. The judge will use their discretion when deciding on the quantum and term of maintenance payments, considering the following factors:

- the number of years of marriage
- the wife's age
- the financial circumstances of each party
- the extent of the husband's contribution to the breakdown of the marriage through negligence or fault
- compensation for moral damage caused by the divorce, and
- the financial damage caused as a result of the divorce

The spousal maintenance payments come to an end if the wife remarries or loses custody of the children. Child maintenance is also paid to the mother by the father during the period of joint custody but initially for two years only. However, capital claims remain limited.

### **Financial provision for applications within the Abu Dhabi Civil Family Court**

The Abu Dhabi Civil family court has made progressive developments in family law by allowing for capital claims on divorce, not previously provided for in family laws in the UAE. However maintenance (spousal and child) remains only payable from husband to wife. A capital 'compensation' claim may be made by husband or wife against the other. The parties are required to provide financial disclosure and the court will appoint an accounting expert to ascertain the financial status of both spouses. As per Art 16 of Resolution No 8 of 2022, parties may receive a lump sum compensation based on several factors including but not limited to the years or marriage and the age of the parties for example.

Muslims in all Emirates falling outside the scope of Federal Law 41 of 2022 and Resolution No 8 of 2022 are subject to the Personal Status Law.

### **Private children disputes**

#### ***Custody through the Abu Dhabi Civil Family Court***

A significant development in this new law is that the starting point for separating couples in Abu Dhabi is joint custody. If one parent does not agree to a joint custody order being made, they must complete a 'custody dispute form' involving a tick box list of why a joint custody order should not be made. The party who wants to avoid joint custody must satisfy certain requirements including but not limited to the child being at risk of domestic violence or abuse for example.

If joint custody is not awarded, the court will order a custody arrangement by applying 'rules of justice and fairness'.

### ***Custody in all Emirates other than Abu Dhabi***

As per Federal Law 41 of 2022, joint custody is the starting point, unless the parties agree other arrangements for the children, or an alternative is ordered by the court. If either parent disputes custody, they must submit an application to the court. The court will consider the ability of both parents to perform their duties and any potential impediments to each parent having custody. The court has discretion to consider what is in the best interests of the child.

Muslims in all Emirates falling outside the scope of Federal Law 41 of 2022 and Resolution No 8 of 2022 are subject to the Personal Status Law. In this case, criteria under Articles 143 and 144 of the Personal Status Law will be considered to decipher who the custodian of the children will be. The mother will have custody of young children, unless the court orders otherwise.

### **Cohabitants in the UAE**

Until recently, cohabitation outside of marriage was a criminal offence. This has now changed to permit the cohabitation of unmarried non-Muslim couples in the UAE. The change in the law also permitted the birth of a child outside marriage and the registration of birth of a child to unmarried parents. Parentage may be proven by marriage, or by the acknowledgment of the mother and father. If parentage is in dispute, the court may order a paternity test.

Currently, it is not possible for unmarried individuals (whether Muslim or non-Muslim) to make contested family law applications in the UAE courts. However an application can be made to the Abu Dhabi Civil Family Court if the parties both agree to the application, for example for a consent application for joint custody.

These sweeping changes to family law in the UAE are to be applauded. Whilst the laws are new and still being tested, they represent a significant shift from the previous Sharia based laws.

