

Family law in the United Arab Emirates

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Jurisdiction and conflict of law

Regulatory framework

1. What are the primary sources of law in relation to marriage, marital breakdown and the welfare of children and give a brief overview of which courts will have jurisdiction to hear the dispute?

Sources of law

The United Arab Emirates (UAE) is a federation of seven emirates: Abu Dhabi, Dubai, Sharjah, Ajman, Umm al-Quwain, Ras al-Khaimah and Fujairah. This federation was formally established on 2 December 1971.

The UAE legal system is founded on civil law principles (most heavily influenced by Egyptian law) and Islamic Sharia law, the latter constituting the guiding principle and source of law (Public Order).

UAE legislation is formulated into a number of major codes providing for general principles of law with a significant amount of subsidiary legislation. The UAE has over the last 30 years expanded its legislation to include a comprehensive body of federal legislation in the form of federal codes of law and emirates' laws issued as decrees by the ruler of each emirate.

The relevant laws regarding family matters are:

- Federal Law No. 28 of 2005 (Personal Status Law).
- Federal Law No. 11 of 1992 (Civil Procedure Code).
- Federal Law No. 5 of 1985 (Civil Transactions Code).

The UAE's Sharia-based Personal Status Law covers marriage, divorce and succession. The courts' interpretation of family law provisions are based on Sharia, which the UAE mandates is used as the primary legal justification on matters involving family law. The commentary of this law is heavily oriented and related to Sharia principles following the Imam Malik School.

The Sharia-based Personal Status Law applies to non-Emiratis, unless they choose their own home country's law (Article 1, Personal Status Law). It also applies to all Emiratis "except where non-Muslim Emiratis have special rules relating to their specific creed or sect". The exceptions to this rule arise when the husband holds two or more passports. Exceptions also arise when the foreign law does not cover a particular aspect of the case, or wherever there is ambiguity in the foreign law or when the foreign law relevant provision is in conflict with Sharia; in these cases the law of the UAE will be applicable exclusively. To safeguard the rights of non-Muslims, they can have special regulations relating to their religion and sect (Article 1.2, Personal Status Law), but the above exceptions also apply.

The Personal Status Law also governs child custody, guardianship and maintenance of children. This law is a complete guide to dealing with all matters of divorce, custody and guardianship within the UAE (in particular, Articles 142, 143, 144, 149 and 150). The issue of custody relies wholly on the best interests of the child, according to the ruling judge's discretion, as the right of custody is the child's right, not the mother's or father's.

Court system

The judicial system is twofold and includes local judiciary and the federal judiciary. The relationship between the two systems is regulated by Articles 94 to 109 of the UAE Constitution, which describe the broad principles of both systems, while leaving details to the discretion of local judiciaries, which must not violate or contradict the principles laid down by the Constitution.

All emirates have courts of first instance and courts of appeal, either federal or local, in addition to the Sharia courts, which mainly deal with matters of personal status, such as marriage, divorce and inheritance, among others. The primary source of legislation is Sharia (Islamic law), which is based on the Quran and the traditions of the Prophet.

Jurisdiction

2. What are the main requirements for local courts to have jurisdiction in relation to divorce, property and children proceedings?

Divorce

Generally, the court of first instance of each emirate is competent to deal with family law cases lodged with it by citizens who have their domicile or a place of residence in the emirate (Article 5, Personal Status Law). The court also has jurisdiction in other instances, which are included in 14 Articles under the Book of Jurisdiction of the Personal Status Law. In certain circumstances, the UAE courts also have the power to hear actions against foreign nationals with no address or place of residence in the country (Article 20, Civil Procedure Code).

If the UAE courts have jurisdiction, they will ignore a choice of jurisdiction clause.

Property

The courts will also ignore a choice of jurisdiction clause in certain types of commercial matters, including commercial agency or distributorship, real property, employment and government contracts.

Jurisdiction in matters relating to property is as follows:

- In actions in rem regarding real property and actions for possession, jurisdiction is vested in the court in whose area the real property, or a part of it (if the property is located in the areas of more than one court), is located (Article 32, Civil Procedure Code).
- In actions in personam for real property, jurisdiction is vested in the court in whose area the real property is located or the defendant is domiciled (Article 18, Civil Procedure Code) .

Children

The court has jurisdiction over children in divorce cases in relation to custody, visitation and expenses.

Domicile and habitual residence

3. How do the concepts of domicile and habitual residence apply in relation to divorce, financial arrangements, and children?

In the UAE, domicile has the same meaning as residence, which is "the place in which a person usually resides" (Article 81, Civil Transactions Code of the United Arab Emirates). The legislature has made

actual residence the basis for the concept, requiring that residence in the UAE is not less than six months of a year.

There is no definition of "habitual residence" in the UAE.

Conflict of law

4. What procedure applies for a party applying to stay proceedings in favour of a foreign jurisdiction? What factors do local courts take into account when determining forum issues?

Procedure

The UAE courts will not continue with a case if it is proven that proceedings have been concluded with a judgment in another state. The court will decide to stay proceedings immediately unless the foreign judgment is found in conflict with UAE laws or public order, in which case the court will resume its jurisdiction and continue. If the foreign proceedings stop before a final and binding judgment, for any reason, the UAE courts will also resume proceedings.

Factors

In applying the principle of the "first in time", the UAE courts always take into account the date the case was filed. The case is also considered opened from the time it is filed with the conciliator (see Question 7, Divorce).

Pre- and post-nuptial agreements

Validity of pre- and post-nuptial agreements

5. To what extent are pre- and post-nuptial agreements binding?

There is no similar concept in the UAE law to that of the Anglo-Saxon pre- and post-nuptial agreement.

However for Muslims, it is customary that the groom gives the bride a "late dowry", which is an amount of money or wealth for her to have as a financial backup if he divorces her or on his death. The Personal Status Law provides that the dowry is due to the woman if it is specified in the marriage contract (Article 51.1, Personal Status Law).

Dowry agreements must be given priority over inheritance matters and must be considered conclusive. Any property that is owed to the deceased's wife must be transferred to her before distributing the rest of the estate. Therefore, the specified dowry is considered as a binding contract and will be enforced upon divorce instantly unless disputed by the husband. Some people may think that dowry and pre-nuptial agreements are the same contract; however, not everyone agrees that they are.

The provisions of a pre-nuptial agreement may be recognised and enforced, if the applicable foreign law recognises it as valid, provided that it is not in conflict with UAE Law. Pre-nuptial agreements are rendered void or voidable when they are in conflict with Islamic Sharia, in the context of divorce proceedings (Article 27, Civil Transactions Code).

The UAE courts only enforce pre-nuptial agreements when factored into divorce agreements in the UAE through a process of attestation when entered between the parties before the conciliation and issued by the

court as a divorce judgment. Therefore, to increase the likelihood that the court enforces the terms of the pre-nuptial contract, a number of different elements must be taken into account, for example:

- Both parties must understand the pre-nuptial deed and its effect.
- Both parties should, independently, be legally advised about this pre-nuptial agreement.
- There must be no coercion on either party to sign the agreement.
- Parties should exchange information about their financial circumstances: disclose all assets (purchased before or during the marriage) to their spouse and obtain information from their spouse about all assets.
- The terms of the agreement must be "fair" at the time the agreement is entered into.

Pre-nuptial agreements cases will not be considered by the UAE courts independently from a divorce case.

Post-nuptial agreements are drawn up after the couple is married, dealing with specific issues in the marriage and providing for solutions to any problem. Post-nuptial agreements can go into detail about financial issues and emotional aspects. Although the UAE courts may be involved at the conciliatory level with these agreements, they will not issue them as judgments, which gives reasons to believe that they may not be enforced in the UAE even when they are valid under the applicable foreign law.

Divorce, nullity and judicial separation

Recognition of foreign marriages/divorces

6. Are foreign marriages/divorces/civil partnerships recognised?

Marriages

A marriage contract entered into abroad is valid in the UAE in most cases. To be recognised, the original certificate of marriage must be legalised before the Ministry of Foreign Affairs, translated into Arabic by an official translator and then attested by the Ministry of Justice.

Certain marriages are not recognised in the UAE because of Sharia law, even if a valid marriage certificate was issued by the country in which the marriage took place. This is the case for:

- Marriage between partners of the same sex.
- Marriage between a Muslim woman and a non-Muslim man.
- Marriage of a Muslim man with a woman of another religion other than Christian and Jewish.
- Civil marriages between Muslims; only religious marriage ceremonies between Muslims are recognised.

Divorces/annulment

A foreign divorce or annulment of marriage is recognised in the UAE under the same procedure as marriage (see above, Marriages).

Civil partnerships

Civil partnerships are recognised as long as they are entered into and attested abroad, provided that they are not one of the above mentioned unrecognised marriages (see above, Marriages).

Divorce

7. What are the grounds for divorce?

Divorce

Divorce is the dissolution of a marriage contract in a legally prescribed form (Article 99.1, Federal Law No. 28 of 2005 (Personal Status Law)). One of the characteristics in the UAE is that divorce can be verbal or in writing. However, in the case of a verbal divorce, the court must pass it by judgment, through witnesses or by oath.

Divorce can be secured by either:

- The wife divorcing the husband in return for monetary compensation paid by her to him (Al Khol'e).
- Separation by a court order.

The grounds for divorce are regulated by the Personal Status Law (Articles 110 to 135), as follows:

- For defects such as insanity, leprosy, impotence, vaginal occlusion and so on.
- For failure to pay the prompt dowry.
- For prejudice and dissension.
- For non-maintenance.
- For absence and loss.
- For detention, such as a jail sentence of any spouse.
- For Ila'a and Zihar (Ila'a if the husband swears not to have sexual intercourse with his wife for four months or more unless he goes back on his oath before the lapse of the four months; divorce in this case will be irrevocable; Zihar, where the husband compares his wife's body to another woman forbidden for him to marry (mother, sister and so on)).

The above list of grounds for divorce is not exhaustive. They are rather limited for a woman applying for a divorce. There is no list of grounds for a man to apply for divorce. A Muslim man does not need a ground to divorce his wife, while a non-Muslim man must have a ground for divorce before the UAE courts.

The divorce process in the UAE begins by either of the parties opening a file at court asserting their decision to sever the marriage. A meeting with a conciliator follows. The conciliatory procedure is mandatory in divorce proceedings (Article 98, Personal Status Law). It is a forum for the spouses to voice their concerns about the marriage, without their respective legal representatives. The conciliation process offers couples the opportunity to discuss their issues and attempt to resolve them.

At this stage, an amicable divorce can be concluded and accordingly, parties will need to draft a settlement agreement. This settlement does not need to adhere to UAE law and Sharia regulations, and can be based on terms mutually agreed by the parties. If the conciliator agrees with the terms of the settlement agreement, the parties sign it before the conciliator and then the judge executes it. The parties also obtain the certificate of divorce and the attested settlement agreement at this time.

If the parties fail to reach an agreement before the conciliator, he will provide the claimant with a referral letter, permitting the claimant to proceed before the court to conclude the divorce case. Once at the court, the particulars of the divorce case are subject to the court's discretion and the onus is on the parties to provide evidence to support their claims against one another, as well as their own defence. Non-Muslims can petition for the law of their home country to be applied before the court. This is permissible under the Personal Status Law (Article 1). However, whenever the law of the parties' home country fails to cover an aspect of the divorce, the courts hold discretion to apply UAE law. A foreign law will not be applied in the following cases:

- It is contrary to public order, morals or Islamic Sharia (Article 27, Civil Procedure Law).
- Its effect cannot be determined (Article 28, Civil Procedure Law).
- Its application is requested by a party who has dual nationality or whose nationality is unknown. (Article 24, Civil Procedure Law).

A divorce can be contested by either party to the divorce.

Nullity

The marriage contract can be nullified by the court for reasons of conflict with public policy or conflict with Sharia law (for example, if the parties entered into a marriage agreement in the absence of the guardian of the female, or if a Muslim female married a non-Muslim male).

However, the court will correct the nullity on its own discretion, to safeguard the children, if any, from the serious impacts of a nullified marriage contract.

If, however, the court finds the marriage contract nullified, the marriage will be severed and the parties will return to their previous status. The Personal Status Law provides for the instances of nullity under Articles 39 and 48.

Judicial separation

Judicial separation does not exist within the UAE. Separation by court order is not the same as what is known as judicial separation in some jurisdictions. Separation by court order is considered as a divorce in the UAE.

Finances/capital and property

8. What powers do the courts have to allocate financial resources and property on the breakdown of marriage?

Usually, each party retains the assets and property held in their respective names. The court will divide assets such as bank accounts and shares that are in joint names equally or according to the percentages, unless there was evidence to the contrary in accordance with general civil laws. The dispute over assets is filed with the settlement of disputes section of the courts.

Through her practice, the author had a case where the joint asset was registered in both names. However, when the court found that the share of the husband was already gifted to the wife, the court decided to give the wife her share and the 'husband's share, as it was already given to her as a gift according to the Civil Procedure Code.

9. What factors are relevant to the exercise of the court's powers?

If the parties entered into an agreement outlining the division of property, this agreement is considered only for the assets located within the UAE. Assets held in other jurisdictions will never become subject to any proceedings of family law in the UAE unless the parties agree to have the UAE court apply the foreign law, where sharing of assets is provided by that law.

10. What is the court's current position on the division of assets?

There is no law regarding the allocation of assets following marital breakdown. Therefore, judges uphold the principle that each party retains the assets held in their respective names.

For assets held in a foreign country, the court where the assets are located applies international private law to determine the law applicable to the distribution of these assets.

Finances/maintenance

11. How does ongoing spousal maintenance operate following marital breakdown?

In the UAE, a husband can never claim spousal maintenance from his wife even if he is granted custody of the children.

The UAE does not provide for sharing of assets, wealth or income on divorce. The only payments made are by the father for the children's education and living expenses, which include rent and salaries for help at home and which are always assessed and determined according to the father's income. These payments are limited to 30% of his income. However, the husband can pay more if he is willing to do so. The courts may have issues with separating assets and with certain ways of paying alimony if it appears too complicated. Higher courts may consider a more structured and complex maintenance order, but not the courts of first instance.

There is no spousal support on separation under Sharia and UAE law. The Personal Status Law provides that the wife will be provided support by her divorcee for three months following the divorce (Idda months). During this time the wife is not permitted to remarry due to the possibility of pregnancy, where paternity would have to be verified (Article 69, Personal Status Law).

Women can also claim compensation in the following two circumstances:

- For the period of time that the husband failed to provide her with maintenance (Article 67, Personal Status Law).
- For moral and psychological damages as a result of being divorced (Article 68, Personal Status Law). The payments will also be determined based on the husband's wealth.

12. Is it common for maintenance to be awarded on marital breakdown?

Maintenance (Nafaqa) is decided on a temporary basis during the time the divorce is not final and the case is pending before the courts.

Usually, temporary maintenance for the wife and children is quite minimal (Article 68, Personal Status Law). On the wife's request, the judge can decide to allocate temporary maintenance for the child and wife.

See also Question 14.

13. What is the court's current position on maintenance on marital breakdown?

The courts comply with the Personal Status Law, under which the amounts of money awarded by the court for maintenance can vary. However, generally, the courts give about 30% of the husband's monthly income.

Child support

14. What financial claims are available to parents on behalf of children within or outside of the marriage?

Child support covers all expenses required to care for the child. Therefore, child maintenance comprises several components such as:

- Housing.
- Food.
- Clothes.
- School.
- Extracurricular activities.
- Medical expenses.
- Home help.
- Flight tickets.

The father is responsible for ensuring that the above maintenance is provided to his child following divorce.

The father is not required to transfer capital to his child, provided that he pays for the child's maintenance. A father may transfer capital to his minor child or children, but the courts will still have a structured child maintenance payment in place.

15. On what basis is child maintenance calculated?

The father must support the children and provide a standard of living similar to the living and spending conditions of the life they experienced during the marriage.

Child support covers all expenses required to care for the child (see Question 14). The payment amounts are assessed and determined according to the father's wealth and are usually limited to 30% of his income, provided that the father can afford it.

16. What is the duration of a child maintenance order (up to the age of 18 years or otherwise)?

A father is responsible for maintenance for boys until they complete their education, and for girls until they marry.

17. Can children make direct claims against their parents?

A child can make a claim for their education costs against their father, as maintenance is expected to be paid until the child has completed their education.

Reciprocal enforcement of financial orders

18. What is the legal position on the reciprocal enforcement of financial orders?

There are treaty arrangements within the Gulf Cooperation Council and other states, under which judgments of these countries are recognised and enforced in family and personal status matters. However, the rule of enforcement of foreign judgments according to the civil procedures law is applied by the family courts. Foreign judgments are respected and enforced when they are final and binding, unless those judgments are rendered in conflict with public order. The UAE is not a signatory to the Reciprocal

Enforcement of Maintenance Orders (REMO); however, foreign financial orders can be enforced within the UAE subject to certain conditions (see below).

The Civil Procedure Code provides a mechanism for the enforcement of foreign judgments provided a number of conditions are satisfied (Article 235, Civil Procedure Code). Foreign judgment must be final and irrevocable with no right of appeal. All of the documents submitted to the court in the case must be translated into Arabic and notarised by the relevant authorities.

The Dubai court can enforce foreign orders if it lacks jurisdiction to hear the case (Article 235, Civil Procedure Code). The order must be final, issued by a competent court with both parties taking part in the litigation and must not be in conflict with local laws, public order (Sharia) or morals.

Enforcement of foreign judgments in the UAE has been quite difficult, especially in the area of family law. The reason is that most of the foreign judgments are found to be in conflict with Sharia law, which is rendered public order, and this is the reason many attempts to enforce such judgments fail.

A foreign court order can be enforced with the consent of the parties. This process relies heavily on the co-operation and compliance of the two parties. Mirror orders and undertakings can be attested before the UAE courts and can take effect if they are not contrary to Sharia law. There is nothing equivalent to a "mirror procedure" where a mirror order can be automatically obtained in a local UAE court. However, it is possible for foreign parties to submit an agreement to the UAE court that can be attested by the court. Therefore, the agreement will be locally enforceable as a judgment of the UAE court. The agreement can comprise the provisions of a foreign court order.

Financial relief after foreign divorce proceedings

19. What powers are available to the court to make orders following a foreign divorce?

The financial relief obtained will always be awarded according to the judgment passed by the competent court in accordance with a foreign law or UAE law. When applying a foreign law, the courts only follow the provisions related to financial relief of the foreign law if those provisions comply with public order in the UAE.

Children

Custody/parental responsibility

20. What is the legal position in relation to custody/parental responsibility following the breakdown of a relationship or marriage?

Under Sharia law, parents do not share equal parental responsibility for the children. Parental responsibility is not included in Sharia law as an identical concept to the one recognised by other laws in other jurisdictions, and the law in the UAE assigns different roles to the mother and the father.

Federal Law No. 28 of 2005 (Personal Status Law) states that the judge should take the best interests of the child into consideration when deciding on custody (Articles 144, 145 and 146, Personal Status Law).

Under the Personal Status Law, there are two main principles that affect the care of young children under Islamic law: custody (hadana) and guardianship (wilaya). Custodians are considered the caretakers of the

child, responsible for their day-to-day needs, such as feeding, clothing and sanitation, as well as having physical custody of the child (Article 142, Personal Status Law). On the other hand, guardians are considered the providers of financial and substantial means, such as maintenance, expenses, school fees, and the provision of a house for the child (Article 148, Personal Status Law).

In light of these principles, and usually as soon as the marriage relationship is terminated, the mother becomes the custodian and the father becomes the guardian.

However, the mother may be rendered unfit for custody if she remarries, becomes insane or is indicted for a criminal felony. If the mother loses custody, the father becomes the custodian of the children, provided that he has a female to take care of them, such as his mother or sister, or a wife. Custody awarded to women ends when the male child reaches 11 years of age and the female child reaches 13 years of age, unless the courts decide it is in the child's interest to extend this period until the male reaches the age of majority, which is 21 years old, and the female marries (Article 156, Personal Status Law). Additionally, the father waives his rights to custody if he does not request custody within six months after the child has reached the legal age (that is, either 11 or 13) (Article 152-3, Personal Status Law).

In practice, when the judge decides on a matter where he has discretion, the interest of the child is his first concern. The child's welfare is really the focus of the legislation as, for example, the words "for the child's interest" appear frequently in the Personal Status Law (Article 145, Article 146.7, Article 156.1 and Article 156.2) and the law provides that the judge should "choose the most suitable custodian for the child" (Article 155, Personal Status Law).

21. What is the legal position in relation to access/contact/visitation following the breakdown of a relationship or marriage?

Federal Law No. 28 of 2005 (Personal Status Law) specifies who has visitation rights (Article 154, Personal Status Law). Access to the children for the non-custodian parent is guaranteed under the Personal Status Law and left to the discretion of the court. The non-custodian parent has the right to visit or ask to be visited by the child as decided by the judge. The time, place and the person responsible for the child must be specified (Article 154, Personal Status Law).

The father's visitation rights are protected (Article 150.2 and 152.2, Personal Status Law) and the mother cannot relocate the child if it causes undue hardship to the father for visiting the child. She would also take the risk of losing custody.

International abduction

22. What is the legal position on international abduction?

The UAE is not a signatory to the HCCH Convention on the Civil Aspects of International Child Abduction 1980. However, the UAE has implemented a process called "travel ban".

Travel bans are issued by the civil courts summary judges, and are usually issued to the applicant on the same day, due to their urgency. The applicant must prove fear of abduction by the respondent. If the judge is satisfied that there is a real fear that the child will be moved away from the applicant and the fear is established before the court, the judge will order a travel ban on the child. In practice, the child's name is listed at all entry points to the UAE, such as airports, ports, borders with neighbouring countries, where

the officers on duty will not allow the child to leave. Travel ban orders are issued by the court without informing the other party, mother or father (an ex-parte proceeding). However, following incidents caused at airports by parents who were unable to travel with their children due to travel bans, the courts now notify the other parent in the case a travel ban is imposed. The proceedings are taken before the summary court by the applicant and no service of summons is required.

Leave to remove/applications to take a child out of the jurisdiction

23. What is the legal position on leave to remove/applications to take a child out of the jurisdiction? Under what circumstances can a parent apply to remove their child from the jurisdiction against the wishes of the other parent?

The custodian must obtain a written agreement of the guardian before taking the child out of the UAE, whether the custodian is the mother or another person (Personal Status Law). Additionally, where the guardian refuses to give a written agreement, the custodian can refer the matter to the courts.

However, no guardian, father or otherwise, can take a child for purposes of travel within the custody period without the written consent of the child's custodian (Articles 149 and 151, Personal Status Law).

Therefore, both parents should seek consent from the other to take their children out of the country.

A parent can ask the judge to revoke a travel ban to travel with the child in custody out of the country. The motion for revoking a travel ban requires the applicant to submit to the court a form of guarantee that the child in custody will be brought back to the country, in order for the other parent not to be harmed by the court's decision. A judge will not take the risk of lifting a travel ban, allowing one of the parents to leave the country while the other parent is still resident of the country, as the other parent may not be able to carry out their rights and duties towards child custody due to the distance between the child and that parent.

Surrogacy and adoption

Surrogacy agreements

24. What is the legal position on surrogacy agreements?

Surrogacy agreements do not exist in the UAE. In the author's view, a surrogacy agreement will be treated as a criminal offence and will be punished under Federal Law No. 3 of 1987 (Penal Code) (Article 356, Penal Code). (As these agreements may be considered as indecent assault and the crime of indecent assault with mutual consent is punished by detention for at least one year (Penal Code)).

Adoption

25. What is the legal position in relation to adoption? Is adoption available to individuals and cohabiting couples (both heterosexual and same-sex)?

Adoption within the UAE is illegal. Adoption is prohibited in Islam under verse 5 of Surah 33 Al-Ahzab in the Quran. In accordance with this principle, UAE nationals and Muslims cannot adopt a child. However, they can care for and look after an orphan or an abandoned child if they do not give the child their family name; therefore, they can only be foster carers.

Under Article 2(e) of Federal Law No. 17 of 1972 concerning nationality and passport, an orphan or an abandoned child will be deemed to be born in the UAE, will obtain UAE nationality and will be deemed a citizen by law, unless otherwise established.

Adoption is available for expatriate resident couples, but only outside the UAE. While adoptions are not conducted in the UAE, adoptions carried out abroad are accepted in the country. Therefore, the adopted children will receive the same rights and protection as biological children. The conditions of adoption are subject to the national law of the adopting parent and to the national law of the adopted child. However, adoption can never be pronounced if the national law of both spouses prohibits it. Adopting couples should contact their own embassy to comply with the adoption process.

Adoption orders issued elsewhere can be recognised in the UAE if the child has the same name as the adoptive parents. This means that, for example, if an adoption is conducted in the UK and the child's name is duly changed to the same surname as the adoptive parents, this adopted child can then come to the UAE, receive a residency sponsorship as their legal offspring, and be protected under the law as their child. UAE law will not, in this case, differentiate between a biological child and an adopted child.

Cohabiting couples or individuals are not permitted to adopt under UAE law.

Cohabitation

26. What legislation (if any) governs division of property for unmarried couples on the breakdown of the relationship?

In the UAE, it is a criminal offence for men and women who are not married or related to live together (even in a platonic sense). Sharia law strictly punishes unmarried people living in the same house.

Anyone who engages in consensual sex with someone other than their spouse will be penalised by detention for a minimum jail term of one year (Article 356, Penal Code).

Family dispute resolution

Mediation, collaborative law and arbitration

27. What non-court-based processes exist to resolve disputes? What is the current status of agreements reached through mediation, collaborative law and arbitration?

Filing for a divorce in the UAE begins with a reconciliation process. The Family Guidance, which is the reconciliation entity, determines whether there is sufficient cause for divorce. The conciliator is the adjudicator who establishes whether the causes are sufficient to grant a divorce. The conciliatory process is mandatory under law; therefore, a conciliation proceeding is considered a court proceeding.

The conciliator's role is primarily to assist an amicable separation (to reach a settlement agreement). If the terms of the settlement agreement are disputed before or during the conciliation process, the case is referred to a judge of the Family Court.

If reconciliation is effected before the reconciliation committee (Committee for Family Guidance), the minutes will be signed and authenticated by a competent judge, who has the power of writ of execution.

These decisions are not contestable unless they are contrary to the law, for example, granting custody of a child to a neighbour by the parties to the settlement agreement.

If the conciliator feels that an agreement is not realistically attainable, he refers the case to a judge of the Family court.

28. What is the statutory basis (if any), for mediation, collaborative law and arbitration?

The courts cannot exercise any action based on family law unless the matter has been presented to the reconciliation committee or a no-objection letter has been issued by the committee (see Question 27).

A case cannot be accepted before the courts with regards to personal status until it has been referred to the court by the Committee for Family Guidance; the onus is on the Committee to settle the matter between the parties (Article 16, Federal Law No. 28 of 2005 (Personal Status Law)).

Civil partnership/same-sex marriage

29. What is the status of civil partnership/same-sex marriage? What legislation governs civil partnership/same-sex marriage?

Civil partnership does not exist within the UAE. Additionally, relations between same-sex couples are prohibited by Islam and are considered as a criminal offence, which is punishable by a minimum of one year's imprisonment because it could be considered as an illegal act of consensual sex (Article 356, Penal Code).

Media access and transparency

30. What is the position regarding media access to and press reporting of family law cases?

Family law hearings are usually held in private. Only the parties and their counsel can attend the hearings.

The media have access to family law cases through counsel. Media coverage of interesting and unusual cases is quite common, with no names or private information being disclosed. No photographs of the court room or the parties are allowed.

Controversial areas and reform

31. What areas of the law (if any) are currently undergoing major change? Which areas of law are considered to be particularly controversial?

There are a number of controversial issues that have been submitted to the UAE courts and have sparked debate in the UAE. These issues include:

- Non-custodian parents visiting children via Skype.
- Custody of surrogate children.
- Foreign judgments coming through the courts of the Dubai International Financial Centre as a conduit for enforcement in onshore UAE courts.