

**IAFL Family Law Conference**

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**Presentation Prepared By**

**Elham Ali Hassan**

**Partner at Elham Ali Hassan & Associates**

**Kingdom of Bahrain**

**Marriage & Divorce**

**In Bahrain**

In this presentation, and whenever appropriate, I will make a distinction between marriages and divorces of Muslims and non- Muslims.

## I. Marriages in Bahrain

<b>Muslims</b>	<b>Non Muslims</b>
<p>1. Family Law of 2017</p> <p>2. Resolution No. 1 of 2016 in Respect of Marriage Officials and the Rules of Notarization of Social Status Instruments.</p> <p><b>Only religious marriages are recognized.</b></p>	<p>The Law of Notary of 1971.</p> <p>Article 6 of the law provides partly that: <i>“As to non-Muslims, they may notarize their social status instruments before a notary public or before the notarization authority at their consulates”.</i></p>

**1. Are there any criteria or exclusion that apply before the parties are allowed to marry?**

<b>Muslims</b>	<b>Non-Muslims</b>
<p><b>Under Bahrain Family Law of 2017:</b></p> <p>- Article 7: In order for a marriage to be valid, a woman must not be prohibited to marry the man by either a temporary prohibition or a permanent one.</p> <p>Example on temporary prohibition: a woman who is in “<i>eddah</i>” which is the period during which a woman cannot marry another man due to her recent divorce or death of the husband.</p> <p>Example on permanent prohibition: marriage to incest, uncles, aunts, offspring, etc.</p> <p>- The consent and presence of the “<i>wali</i>” (the guardian) of the woman.</p> <p>- Age requirement: applies only to women. Under Article 20 of the Law provides that a girl who is less than 16</p>	<p><b>1. Marriage before the Notary Public:</b></p> <p>A list of requirements that must be met is prepared by the Notary and should be complied with. These requirements are:</p> <ol style="list-style-type: none"> <li>1. Premarital certificate for each party to the marriage;</li> <li>2. Permission or NOC from the respective authorities in the country/ies or Embassies which must state that the parties are free to marry under their respective laws.</li> <li>3. In case of a divorcee, a widow, or a widower party, a legalized proof of the same must be produced upon notarizing the marriage.</li> <li>4. Permission or NOC from the parties’ respective employers/sponsors.</li> <li>5. Two male witnesses, who must be 21 years of age or above.</li> </ol> <p><b>2. Marriages before</b></p>

<p>years of age may not be married except with a permission of the Sharia court which should verify that the marriage is convenient for her.</p> <ul style="list-style-type: none"> <li>- A man must not be married to more than four wives.</li> <li>- A Muslim woman is prohibited from marrying a Non-Muslim man unless he converts.</li> <li>- Marriage must be between a consenting man and a woman.</li> <li>- A dowry must be paid by the man to the woman.</li> </ul>	<p><b>religious authorities:</b> requirements differ according to the religion of the parties and their religious authority.</p>
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**2. What is the legal definition of marriage and if there is none, what are the minimum requirements for a ceremony to become a legally valid marriage? Are there any special requirements or process for particular religious or ethnic groups?**

<b>Muslims</b>	<b>Non-Muslims</b>
<ul style="list-style-type: none"> <li>- The Family Law defines marriage under Article 5 being</li> </ul>	<p>As there is no law apart from the Notary Law to regulate non-Muslim</p>

<p><i>“a legitimate contract, subject to terms and conditions and no deterrent, between a man and a woman to form a family for the purpose of habitation and protection, out of which arise mutual rights and obligations”.</i></p> <p>A marriage official who is authorized by the Ministry of Justice is the only authority to sermonize Muslim marriages in Bahrain. Resolution No. 1 of 2016 in Respect of the Marriage Officials and the Rules of Notarizing Social Status Instruments regulates marriage ceremonies and the requirements thereof.</p>	<p>marriages, all matters in relation to marriage shall be observed according to the Notary rules set out above or as per their religious authorities.</p>
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**3. What is the process for the recognition of a domestic and foreign marriage?**

- A domestic marriage is recognized if it took place before the concerned authority and is legalized or notarized (in the case of non-Muslims).
- A foreign marriage is recognized usually before any authority by producing the marriage contract, even if it has not been legalized by the concerned foreign authority. Only if a party challenges the marriage that

the other party should produce a legalized marriage contract.

## **II Divorce**

### **4. What is the process for the recognition of a domestic and foreign divorce?**

- A domestic divorce is normally decided by the competent court. This is the Sharia court for Muslims and the High Civil Court for Non-Muslims. In the event that the marriage was between non-Muslims and has taken place at the Notary, a divorce instrument can be notarized alike by the Notary and it shall have similar effects to a court's divorce judgment.
- A foreign divorce is usually recognized if a legalized divorce instrument or judgment is produced.

### **5. What conditions have to be satisfied before one or both parties can proceed with a divorce?**

<b>Muslims</b>	<b>Non-Muslims</b>
No conditions have to be satisfied on the part of a man to divorce his wife. It follows that a man is at liberty to divorce his wife when he wishes so provided that he then formalize the divorce with the Sharia court.	Non-Muslims divorces are heard by the High Civil Court and the applicable law is the law of the nationality of the husband at the time of the divorce. Accordingly, the conditions that have to be satisfied before proceeding with a divorce differ depending on the applicable law.
The grounds for divorce applies only when a woman seeks a divorce. These grounds are: uncured	If the defendant spouse is not Bahraini and does not

<p>illness of the husband whether mental or physical; harm caused by the husband which renders the marital life extremely difficult; complete unjustified desertion of the wife by the husband; the husband not paying the maintenance to his wife; the absence of the husband; if the husband is imprisoned, and if he is consuming alcohol or drug in a manner that the wife is harmed as a result.</p> <p>- A Muslim couple can seek a divorce if they both consent to it.</p>	<p>reside in Bahrain, the divorce case shall not be admissible.</p>
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**6. What if any, financial remedies are available to each spouse during the marriage?**

<b>Muslims</b>	<b>Non-Muslims</b>
<p>Under sharia and the Family law, only the wife has the right to maintenance. It follows that if her husband does not pay her the maintenance, she may seek a court order to oblige him to pay. The amount of maintenance depends on the income and financial</p>	<p>It depends on the applicable foreign law of the husband.</p>

situation of the husband.	
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**7. Can any form of agreement be settled before, during or after the marriage for the protection of any wealth?**

Yes, provided that such agreement does not include anything that is against the public order or morals in Bahrain.

**8. What if any, financial remedies are available following a divorce?**

<b>Muslims</b>	<b>Non-Muslims</b>
A wife may be awarded maintenance only for the “ <i>eddah</i> ” period which follows a divorce or death of the husband. If the wife has custody of a child or children, she will have the right to an accommodation, and maintenance will be paid to her to cover children expenses and not that of hers.	Depends on the applicable foreign law which is the law of the husband.

**9. What is the most contentious area at this time in relation to the recognition of marriage and divorce in my jurisdiction?**

Given Bahrain’s small geographical size and small population, recognition of marriage and divorce does hardly come to the surface. The only case that I am aware of which I am currently handling is about a woman who



forged a marriage license which was allegedly issued by an authority of an African country.

Recognition of divorces between Muslim spouses may be challenged at times. This is because a man may divorce his wife verbally and proceeds with its formalization at a later stage. It happens at times that a husband will deny the fact that he divorced his wife verbally, or the wife will deny it. This may create an issue because the number of divorces counts when the same couple wishes to remarry to one another. The number of divorces between the same couple should not exceed three times, or else, they are not allowed to remarry except in the even that the wife remarries with another man and divorces the latter that she can remarry her former husband.

**10. In your view, what area or reform is required in relation to clarifying the threshold of marriage and divorce?**

In respect of Muslim marriages and divorces, as this is restricted by Sharia, no reform could take place except by a fatwa, which makes it near to impossible.

The threshold of marriage and divorce for non-Muslims is governed by their religions or laws, therefore it is not possible for the legislator in my jurisdiction to make any reform in this respect.