

# United Arab Emirates



Diana Hamadé



Khulud Jarrar



Meeral Mia Abu-Ltaif

Diana Hamade Attorneys at Law

## 1 Divorce

### 1.1 What are the grounds of jurisdiction for divorce proceedings? For example, residence, nationality, domicile, etc.?

There are no nationality restrictions for divorce proceedings. UAE courts shall have jurisdiction for divorce where UAE citizens or foreigners have a domicile, residence, or place of business in the UAE and are defendants as per Article 5 of Federal Law 28/2005 on Personal Status (for Muslims) (amended by Federal Laws 8/2019, 5/2020 and 29/2020), and this applies to divorce for non-Muslims under Federal Law 41/2022 on Civil Personal Status. Jurisdiction also exists where Parties were married under UAE law. Based on Article 3(1) of Federal Law 5/1985 on Civil Transactions, matters based on marriage contracts will be governed by the country in which the legalisation of the marriage took place.

Divorce for non-Muslims and for foreigners from countries not subject to Islamic Law under Abu Dhabi Law 14/2021 (amended by Abu Dhabi Law 15/2021) are not subject to the above and can divorce in Abu Dhabi, even if they are visitors.

### 1.2 What are the grounds for a divorce? For example, is there a required period of separation; can the parties have an uncontested divorce?

For all divorce proceedings, no separation is required for the divorce to be sought or granted. Private divorces are not recognised as parties or their legal representatives must appear before the court. Divorce proceedings cannot occur without court involvement as divorce needs to be pronounced in a judgment. Amicable settlements for divorce may be the closest to private divorces, but need to be filed with the courts' conciliatory services, then issued as a judgment by a judge, without any trial hearings required.

Muslim nationals and foreigners are subject to Federal Law 28/2005 (amended by Federal Laws 8/2019, 5/2020 and 29/2020) in which men and women can file for divorce for harm. Men can also divorce by (Talaq) repudiation and women can file for divorce by (*Khul'*), which requires the husband's consent

against what the wife is willing to give back or pay. Divorcing parties under this law must first undergo mandatory conciliation before the Family Guidance Committee. In the event of an unsuccessful mediation, the party seeking divorce shall, upon the failure of the conciliation, be referred to the court.

Non-Muslims can only file for a no-fault divorce and do not need to provide justification or demonstrate harm under Federal Law 41/2022 on the Personal Status of Non-Muslims.

In Abu Dhabi, Muslims from non-Islamic law countries and non-Muslims are subject to Abu Dhabi Law 14/2021 as amended by Law 15/2021 and can only file for a no-fault divorce.

### 1.3 In the case of an uncontested divorce, do the parties need to attend court and is it possible to have a "private" divorce, i.e. without any court involvement?

For all divorce proceedings, the parties or their legal representatives must appear before the court. Divorce proceedings cannot occur without court involvement, as private divorces are not permitted in the UAE.

### 1.4 What is the procedure and timescale for a divorce?

Mutual consent divorces take approximately one to two months depending on the time of the year and number of pending cases. Contested divorces may take between one to two years. The procedure for uncontested divorces includes the drafting of an amicable settlement agreement, translating it to Arabic, and signing it before a judge to be passed as a judgment.

No-fault divorces for non-Muslims are filed with the court in the relevant Emirate and, once a court date is given, the judge will pass a divorce order on the same day.

Muslim men and women divorcing for harm are required to file a case with the relevant court and must prove harm has occurred to justify the divorce. Men filing for divorce by repudiation require two witnesses to testify before the judge or an avowal. Women filing for *Khul'* will not be granted said divorce without the man's consent. However, it is within the court's discretion, in instances where the husband is acting in an arbitrary manner to hurt the wife, to grant the wife her divorce.

### 1.5 Can a divorce be finalised without resolving other associated matters? For example, children and finances.

Yes, divorces are finalised prior to the resolution of other associated matters. Once a divorce is granted, parties may file for other relevant matters such as child custody, maintenance, spousal alimony and other finances in a separate case or a settlement agreement.

### 1.6 Are foreign divorces recognised in your jurisdiction? If so, what are the procedural requirements, if any?

Foreign divorces are recognised, and the court holds the power to apply foreign judgments that comply with public order and UAE law. Under Article 222 of the Civil Procedures Code, Federal Law 42/2022, foreign orders may be executed and implemented in the UAE, including foreign divorces.

A writ of execution must be requested where the applicant shall submit the required case details and documents through the relevant application and the judge shall issue a decision five working days from the date of submission. Once the writ of execution is obtained for the judgment, it can then be legally implemented in the UAE.

### 1.7 Does your jurisdiction allow separation or nullity proceedings?

Legal separation and nullity are not supported by UAE law; however, upon the application of a spouse to the relevant court, a marriage deemed invalid in the UAE may be annulled by the judge.

### 1.8 Can divorce proceedings be stayed if there are proceedings in another country?

Ongoing foreign divorce proceedings or final judgments performed prior to the filing of a divorce case in the UAE are likely to fall under the jurisdiction of the foreign country. If divorce proceedings have begun in the UAE first, it will uphold its jurisdiction in the matter.

## 2 Finances on Divorce

### 2.1 What financial orders can the court make on divorce?

UAE courts can make financial orders on all matters related to divorce including spousal maintenance payments, housing, travel, education, medical fees, custodian fees to the mother (where relevant) and other child maintenance fees.

There is no alimony on separation under Federal Law 28/2005 (amended by Federal Laws 8/2019, 5/2020 and 29/2020) for Muslims; however, Article 69 of the same law states 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. Women can also claim compensation for the time that the husband failed to provide her with maintenance during marriage, as per Article 67 of Federal Law 28/2005 and for moral and psychological damages due to divorce, as per Article 68 of Federal Law 28/2005. Maintenance (*Nafaqa*) is decided on a temporary basis for the time period in which the divorce is not final and the case is pending before the courts. Child maintenance is paid for by the father under Article 148 of Federal Law 28/2005 and housing to be provided.

Under Article 9 of Federal Law 41/2021 for Non-Muslims, payment must be made by the father for the costs and expenses of a mother's custody over children during joint custody for an interim period not exceeding two years pursuant to the outcomes of the accounting expert report. As the default position under this law is shared, once the two-year period expires, child maintenance payments are shared by the father and the mother. The wife may also obtain spousal maintenance and custodian fees depending on the extent of her care of the children and can be awarded housing for the length of her custody of the children. Compensation by one spouse to the other may be awarded for any material or moral harm caused by divorce. Financial damages sustained by either spouse from unilateral divorce can also be ordered by the courts.

Article 23 of Abu Dhabi Resolution 8/2022 creates an obligation on the father to spend on his children after the divorce, and this includes education, residence fees, treatment and other daily or periodic expenses that he paid for before the divorce. Article 16 of the same resolution allows a wife to be awarded a lump sum alimony upon divorce and Article 21 allows for her a temporary alimony until the divorce is final. Housing support is available for a divorced woman under Article 19 or for her and her children under Article 20, with housing utilities included.

### 2.2 Do matrimonial regimes exist and do they need to be addressed by the court on divorce? Is there a default matrimonial regime?

There is no matrimonial property regime in the UAE. If a prenuptial agreement does not exist, each partner keeps the property that is registered in their name, provided that they have financially contributed to the property's ownership. The courts deal with any contested or shared property separately from family law procedures, regardless of whether it was acquired jointly or individually by either side.

### 2.3 How does the court decide what financial orders to make? What factors are taken into account?

For Federal Law 28/2005 (amended by Federal Laws 8/2019, 5/2020 and 29/2020), the courts have guides to determine the financial awards and amounts in assessment of the financial capacity of the father/husband, number and ages of the children and their standard of living. These guides differ between different courts in other UAE jurisdictions.

Federal Law 41/2022 assesses under Article 9: the length of marriage; the age of the wife; the financial situation of each spouse as demonstrated by an accounting expert report; the extent of husband's contribution to divorce by neglect, error, or any act resulting in divorce; and compensation by one spouse to the other for any material or moral harm caused by divorce and financial damages sustained by either spouse as a result of unilateral divorce. Alimony ceases for the wife if she remarries. The implementing regulations for the law, once released, shall clarify how amounts are calculated.

Article 8 of Abu Dhabi Law 14/2021 assesses financial orders on the same factors as Federal Law 41/2022 above. However, Article 18 of Abu Dhabi Resolution 8/2022 sets out the calculation criteria for estimating the financial rights arising from divorce in the assessment of a husband's monthly income of a cash percentage of no less than (25%) of the husband's last monthly income x number of years of marriage, a percentage of the husband's property and wealth and the joint money between the spouses and the extent of their participation in it.

#### 2.4 Is the position different between capital and maintenance orders? If so, how?

Capital orders are not usually issued in judgments. Judgments only order the amount of money for maintenance payments. Execution orders include how to seek and obtain that amount of money in maintenance or how to find and extract this money from a property or lump sums transfers.

#### 2.5 If a couple agrees on financial matters, do they need to have a court order and attend court?

If a couple agrees on financial matters, they may incorporate their terms into a settlement agreement to be signed before a judge and passed as a judgment by UAE courts.

#### 2.6 How long can spousal maintenance orders last and are such orders commonplace?

Spousal maintenance does not extend further beyond the point prescribed by law unless the judge views it as necessary. Refer to question 2.1 for more on spousal maintenance orders.

#### 2.7 Is the concept of matrimonial property recognised in your jurisdiction?

Yes, matrimonial property is recognised in the UAE.

#### 2.8 Do the courts treat foreign nationals differently on divorce? If so, what are the rules on applicable law? Can the court make orders applying foreign law rather than the law of the jurisdiction?

Foreign nationals are subject to UAE law but can choose their own home country's law or the law of marriage.

#### 2.9 How is the matrimonial home treated on divorce?

The judge may order for the matrimonial property to be the residence of the children and mother and maintain the children's usual standard of living until the children are of legal age, where the matrimonial home shall be divided between the parties based on the financial contribution of each party to property ownership. The same applies if the parties have no children.

#### 2.10 Is the concept of "trusts" recognised in your jurisdiction? If so, how?

Trust laws exist across the country in three jurisdictions: the DIFC; the ADGM; and onshore, through an onshore UAE Federal Trust Law (Federal Decree Law 19 of 2020 Concerning Trusts).

#### 2.11 Can financial claims be made following a foreign divorce in your jurisdiction? If so, what are the grounds?

Financial claims following a foreign divorce can only be made in instances where such matters are under the UAE's jurisdiction and have not been dealt with in the foreign jurisdiction or for matters that are only specific to the UAE's jurisdiction such as for jointly owned assets in the UAE.

#### 2.12 What methods of dispute resolution are available to resolve financial settlement on divorce, e.g. court, mediation, arbitration?

Federal Law 28/2005 (amended by Federal Laws 8/2019, 5/2020 and 29/2020) requires mediation as a mandatory procedure that parties must complete prior to registering a court case. Such a step is not mandatory under Federal Law 41/2022 or Abu Dhabi Law 14/2021 (amended by 15/2021); however, parties legislated by these laws may opt for a mediator if they wish.

In any instance, where a resolution cannot be reached by the Parties, financial disputes between parties shall be resolved by a judge.

### 3 Marital Agreements

#### 3.1 Are marital agreements (pre- and post-marriage) enforceable? Is the position the same if the agreement is a foreign agreement?

Pre-nuptial (referred to as marriage contracts) and post-nuptial agreements are enforceable in the UAE, as are foreign agreements; however, they must be legalised in the originating country and the UAE. A mirror agreement can be drafted in the UAE based on the foreign agreement and then translated into Arabic and passed as judgment through the relevant UAE court.

#### 3.2 What are the procedural requirements for a marital agreement to be enforceable on divorce?

Marital agreements drafted and legalised in the UAE will be enforceable on divorce. Foreign marital agreements must be translated into Arabic and attested by the UAE embassy in the origin country then in the UAE to be enforceable on divorce. Certain issues that fall under the marital agreement, such as child custody, may need to be filed with the execution court in the relevant Emirate for its enforcement.

#### 3.3 Can marital agreements cover a spouse's financial claims on divorce, e.g. for maintenance or compensation, or are they limited to the election of the matrimonial property regime? Can they deal with financial claims regarding children, e.g. child maintenance?

A marriage contract allows for the coverage of a spouse's financial claims on divorce including spousal alimony and can also cover financial claims regarding children such as child maintenance. However, in practice, most couples complete their marriage contract before having children and do not typically include child maintenance in their marital agreement. For Muslims, Sharia law does not recognise matrimonial property as it views property acquired throughout the marriage as solely owned by the spouse that purchased it. Instead, the financial status of the spouses is considered, and the arrangement cannot contradict the wife's right to claim expenses paid by the husband.

### 4 Cohabitation and the Unmarried Family

#### 4.1 Do cohabitants, who do not have children, have financial claims if the couple separate? What are the grounds to make a financial claim?

Cohabitants who do not have children do not have grounds for any financial claims.

#### 4.2 What financial orders can a cohabitant obtain?

A cohabitant mother may make a claim for child maintenance payments if she has been residing with the father of the child. These child maintenance payments can include accommodation for the child, schooling, medical fees, food, and transportation. She will not be able to claim alimony for herself.

#### 4.3 Is there a formal partnership status for cohabitants (for example, civil partnerships, PACS)?

Civil partnerships are not conducted in the UAE. Civil Marriages can be attained solely by non-Muslims under Federal Law 41/2021 or under Abu Dhabi Law 14 /2021 (amended by 15/2021) on Personal Status for Foreigners for Non-Muslims or Muslims from a country not subject to Islamic Law.

Non-Muslims' civil partnerships and marriages conducted abroad are recognised provided the relevant certificate has been attested by UAE authorities.

#### 4.4 Are same-sex couples permitted to marry or enter other formal relationships in your jurisdiction?

Same-sex marriages are not permitted or recognised in the UAE, even if a marriage contract was issued in the country where the marriage took place.

## 5 Child Maintenance

#### 5.1 What financial claims are available to parents on behalf of children within or outside of marriage?

It is the father's role to maintain child maintenance payments. Mothers shall be able to claim from fathers a custodian fee for the care of the children, and payments for accommodation, utilities, food and groceries, clothing, education, medical fees, transportation, travel and holiday expenses, and a domestic maid or nanny for the care of the children if the mother has been accustomed to this in her own household.

#### 5.2 How is child maintenance calculated and is it administered by the court or an agency?

Please refer to question 2.1.

#### 5.3 For how long is a parent required to pay child maintenance or provide financial support for their children? For example, can a child seek maintenance during university?

Federal Law 28/2005 on Personal Status (amended by Federal Laws 8/2019, 5/2020 and 29/2020) requires child maintenance to be paid by the father until marriage for the daughter and the completion of higher education for the son.

Federal Law 41/2022, Abu Dhabi Law 14/2021 (amended by Abu Dhabi Law 15/2021) and Abu Dhabi Resolution 8/2021 do not specify a limit for child maintenance; however, as Federal Law 28/2005 is the default and primary law on personal status in the UAE, it shall apply.

#### 5.4 Can capital or property orders be made to or for the benefit of a child?

Yes, capital orders can be made to provide a child with accommodation and other child maintenance payments if needed.

#### 5.5 Can a child or adult make a financial claim directly against their parents? If so, what factors will the court take into account?

Yes, children can make a financial claim against their parents. If the child is a minor, he or she will have to be represented in a case by the parent who is acting as a custodian in order for the maintenance to be awarded. An adult over the age of 18 can file a claim on their own, and they can make financial claims against their parents directly. Refer to question 2.3 for the courts' assessment criteria.

## 6 Children – Parental Responsibility and Custody

#### 6.1 Explain what rights of custody both parents have in your jurisdiction whether (a) married, or (b) unmarried.

For married Muslim parents, the guardianship role is the father's and the mother's is the custodian, at least until the son is 11 and the daughter is 13. The father's duties concern the child's affairs including finances, travel, education, and upbringing. The mother's duties involve the children's everyday life, safety, and care. For unmarried Muslim parents, the father will not have guardianship rights over the child unless he chooses. For married and unmarried non-Muslim parents, the mother and father hold equal rights to joint custody of their children.

#### 6.2 At what age are children considered adults by the court?

Children are considered adults at the age of 21 according to the constitution, and 18 under Federal Law 28/2005. Federal Law 41/2021 and Abu Dhabi Law 14/2021 (amended by 15/2021) do not say anything about when children become adults, but they do terminate the age of custody at the ages of 18 and 16 respectively, which is reaching adulthood. When the daughter is married, it is the only time she is not paid maintenance. Maintenance is paid to a son until he completes his higher education and, culturally, until he finds a job.

#### 6.3 What is the duration of children orders (up to the age of 16 or 18 or otherwise)?

Parents are required to care for their children until they can provide for themselves – either when they have completed their education or when a daughter is married. However, Federal Law 41/2022 allows for children to determine their custodial parent at 18 and the Abu Dhabi Law 14/2021 at 16.

#### 6.4 What orders can the court make in relation to children? Does the court automatically make orders in relation to child arrangements in the event of divorce?

The court governs child custody and child maintenance including visitation, tuition, housing, transport, daily expenses,



and travel, in instances of divorce. For Muslims, it is common that the court provides the mother with custodianship and the father with guardianship, particularly when a son is under 11 and a daughter is under 13. For non-Muslims, joint custody of the children is automatic but can be challenged or appealed.

#### 6.5 What factors does the court consider when making orders in relation to children?

The courts prioritise the child's best interests, particularly in terms of education, health, and their mental and physical well-being. The court also considers the parents' ability to financially and physically support the children in custody.

#### 6.6 Without court orders, what can parents do unilaterally? For example, can they take a child abroad?

In the UAE, children require the consent of both parents to travel abroad.

#### 6.7 Is there a presumption of an equal division of time between separating or divorcing parents?

For Muslims, there is no presumption of equal division of time between parents upon divorce. For non-Muslims, equal joint custody is presumed unless challenged by either parent or the children reach the age where they can choose their custodial parent as prescribed by the relevant law.

#### 6.8 Are unmarried parents treated in the same way as married parents when the court makes orders on separation or divorce?

Unmarried parents are not treated the same as married parents in the UAE. Unmarried parents will not be granted spousal alimony by the courts and are only able to make financial claims based on child maintenance.

#### 6.9 Is a welfare report prepared by an independent professional or is the decision taken by the judge alone? If so, does the child meet the judge?

In certain cases, a judge may appoint a social welfare professional to meet the child and prepare a report for the court. Additionally, a psychologist or psychiatrist may also submit a psychological evaluation of the child in custody.

#### 6.10 Is there separate representation for children in your jurisdiction and, if so, who would represent them, e.g. a lawyer?

Children are not provided with separate representation through a lawyer. Instead, the courts appoint an expert to assess the children's needs and the court determines custody based on the expert report. However, Federal Law 41/2021 allows children to choose the custodial parent at 18 and Abu Dhabi Law 14/2021 (amended by 15/2021) at 16.

#### 6.11 Do any other adults have a say in relation to the arrangements for the children, e.g. step-parents or grandparents or siblings? What methods of dispute resolution are available to resolve disputes relating to children?

For Muslims, the mother is the custodian by default followed by the father. If custody is not provided to either parent, the grandmother from the mother's side and upwards is granted custody. Otherwise, the grandmother from the father's side and upwards followed by the parents' sisters onwards are provided custody. Guardianship is granted to the father followed by the grandfather from the father's side. Otherwise, guardianship is given to other members of the father's family by order of inheritance based on Sharia law. It is also within the rights of the father to appoint a guardian for their minor son. Therefore, adults other than the child's parents may play a role and have a say in child arrangements if they are granted custody or guardianship. For non-Muslims, the courts determine who is given custodial rights other than the children's parents.

## 7 Children – International Aspects

#### 7.1 Can the custodial parent move to another state/country without the other parent's consent?

Neither parent may move to another state/country with the children without the other parent's consent. However, a parent need not the consent of the other parent to move to another state/country on their own, but must maintain contact and visitation of the children and child maintenance payments.

#### 7.2 Can the custodial parent move to another part of the state/country without the other parent's consent?

The custodial parent must obtain the consent of the other parent before moving to another part of the UAE with the children.

#### 7.3 If the court is making a decision on relocation of a child abroad, what factors are taken into account?

The legal standards that apply to relocation issues typically focus on the following:

- the best interests of the child;
- the capacity of the non-custodial parent to visit the child and leave on the same day;
- whether the guardian should lose custody and the other parent be given custody;
- whether the other parent or another suitable relative should receive custody;
- the guardian's capacity to carry out his responsibilities if the child resides in another nation or city inside the Emirates;
- whether the mother wants to move because of a possible second marriage (in which case she might not retain custody of the child); and
- the relocation's financial repercussions.

Where the relocation is permanent, the courts are generally hesitant to permit a relocation as the child is best looked after in the UAE's jurisdiction unless the courts deem it necessary.

In cases of temporary relocation, the procedure is to file an "urgent" (without notice) application with the court, outlining the where, when, and why of the move. Within seven to 10 working days, a judge normally decides whether to give conditional permission, request a meeting with the applicant to make their judgement, or deny permission.

**7.4** If the court is making a decision on a child moving to a different part of the state/country, what factors are taken into account?

The relevant factors are listed under question 7.3.

**7.5** In practice, how rare is it for the custodial parent to be allowed to relocate internationally/interstate?

It is indeed rare to find a judgment that allows relocation internationally; however, interstate relocation is allowed. International relocation is somewhat conditional upon certain requirements.

In certain cases, mothers did relocate internationally and fathers who fought against the relocation did not get judgments to return children so the courts have, in a way, approved the relocation. Requirements are for relocation to be back to the original country of the parent who is relocating, that the job of the parent had terminated in the UAE and the parent cannot continue to live in the UAE. There must also be a home, and schools for the children in the country of relocation. All relevant factors to the relocation must be shown to the courts.

**7.6** How does your jurisdiction deal with abduction cases? For example, is your jurisdiction a party to the Hague Convention?

The UAE is not a party to the Hague Convention, which forbids the keeping of children across international borders and calls for their return to their usual residence. International custody orders are not enforced by UAE courts. However, there are some situations in which the UAE and other nations have a bilateral agreement relating to international child abductors and their extradition. Nevertheless, the UAE generally abides by a complete set of child custody regulations that are outlined in its own federal legal framework.

## 8 Overview

**8.1** In your view, what are the significant developments in family law in your jurisdiction in the last two years and anticipated in the next year?

The last couple years have been significant in the UAE's development of family law. The release of Abu Dhabi Law 14/2021 (amended by Law 15/2021) regarding Civil Personal Status was the first step in implementing civil principles to family matters. In the last two years, this progress reached a federal level upon the establishment of Federal Law 41/2022 published in the *Official Gazette* in February 2023. The implementation of civil principles for non-Muslims throughout the UAE and foreign Muslims in Abu Dhabi has incorporated automatic joint custody in the event of divorce and the option of no-fault divorce.

**8.2** To what extent and how has the court process and other dispute resolution methods for family law been adapted in your jurisdiction in light of the COVID-19 pandemic – e.g. virtual hearings, remote access, paperless processes? Are any of these changes likely to remain after the COVID-19 crisis has passed?

The UAE adapted well to digitalisation as a response to the COVID-19 pandemic. The courts were able to conduct virtual hearings and other forms of technological advancement, including the submission of court documents online and the digital signature of documents. Currently, these changes are still in place as the UAE legal system currently operates in a hybrid format, which has proven to be convenient and efficient.

**8.3** What are some of the areas of family law that you think should be considered in your jurisdiction, i.e. what laws or practices should be reformed?

The UAE continues to further develop the practice of family law. As some developments have been made recently, particularly the release of the new federal personal status law for non-Muslims, it is expected that it will take time to sufficiently implement. The further enhancement and clarity regarding the practice of family law in the UAE is expected to accompany the future release of the Implementing Regulations of Federal Law 41/2022.



**Diana Hamadé** is the founder of Diana Hamade Attorneys at Law and a UAE-licensed lawyer with right of audience before all UAE courts including DIFC courts. She started her career setting up the two arbitration centres in Dubai and was involved in drafting DIFC arbitration law. She was the Vice Chair of the Arab Regional Forum and the first UAE female lawyer in the IAFL and STEP. Her authored legal commentaries are published in *The National*, the *ICLG* series, *LexisNexis*, *Thomson Reuters*, and *Chambers*. Diana was recognised by *Thomson Reuters* as the Most Influential Female Lawyer in the UAE in 2011 and as the Best Legal Writer by *The National* in 2012. She has been presented numerous awards by *LexisNexis*, including best woman law firm of the year in 2022, and has been ranked by *Chambers* as a band 1 HNW succession and matrimonial lawyer since 2020. Diana is a visiting professor of UAE Family Law at Sorbonne University Abu Dhabi. Diana has an LL.M. from the University of Aberdeen and an LL.B. from the United Arab Emirates University Faculty of Sharia & Law.

**Diana Hamade Attorneys at Law**  
Office 301, Mirdif Hills, Corner 47/78  
Mirdif, Dubai  
United Arab Emirates

Tel: +971 4 273 3029  
Email: [diana@dianahamade.ae](mailto:diana@dianahamade.ae)  
URL: [www.dianahamadelaw.ae](http://www.dianahamadelaw.ae)



**Khulud Jarrar** is an associate at the firm and joined its Private Client practice in April 2022. She graduated from Middlesex University London with an LL.B. in Law and is presently preparing for the New York Bar examination.

**Diana Hamade Attorneys at Law**  
Office 301, Mirdif Hills, Corner 47/78  
Mirdif, Dubai  
United Arab Emirates

Tel: +971 4 273 3029  
Email: [info@dianahamade.ae](mailto:info@dianahamade.ae)  
URL: [www.dianahamadelaw.ae](http://www.dianahamadelaw.ae)



**Meeral Mia Abu-Ltaif** is an associate at the firm. She graduated from the London School of Economics and Political Science with an LL.M. specialising in Corporate and Commercial Law and has an LL.B. in Law with International Relations from the University of Sussex. She is training for the UK Solicitors Qualifying Exam.

**Diana Hamade Attorneys at Law**  
Office 301, Mirdif Hills, Corner 47/78  
Mirdif, Dubai  
United Arab Emirates

Tel: +971 4 273 3029  
Email: [associate@dianahamade.ae](mailto:associate@dianahamade.ae)  
URL: [www.dianahamadelaw.ae](http://www.dianahamadelaw.ae)

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