

Chapter

07

Registration of Marriage and Divorce

Why it is important: Registration of marriage is important in helping to prevent marriage fraud, bigamy, and child marriage. In addition, marriage registration is important for the realization of certain rights, such as rights to inheritance, family benefits, marriage allowances, collection of pension and insurance of a deceased spouse, and the right for a spouse to acquire a nationality, among others. Divorce registration helps demonstrate a person's right to remarry and provides evidence of termination of rights of a former spouse.

Introduction

Because marriages are conducted in a manner that is dependent on particular societal conventions, there is no standard registration process across countries. However, there are common elements that are often addressed in legislation or regulations concerning marriage registration, including: place of registration; application for marriage, including proof of age; issuance of the marriage certificate; and the process for registering marriages that occurred abroad. Some countries' law also address customary marriage. This section focuses on these common elements and good practices across countries, with a focus on determining whether a country's practices create any barriers to marriage registration.

This chapter covers the following topics:

1. Universal application
2. Place of registration
3. Application for marriage (or other legally recognized partnership)
4. Ceremony: Officiants and Witnesses
5. Marriage Certificate
6. Registration of Customary, Traditional, and Religious Marriages
7. Registration of marriage that occurred abroad
8. Transmittal of Divorce Decree to Registrar
9. Divorce Certificate or Copy of Divorce Decree

1. Universal application

Best Practice: The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (effective since 1964) states: "All marriages shall be registered in an appropriate official register by the competent authority." This right to register a marriage must be universally available to all, and should capture all legally valid marriages occurring in every geographical area and every population group in the country.¹

The UN defines marriage as "the act, ceremony or process by which the legal relationship of spouses is constituted." The legality of the union may be established by civil, religious or other means as recognized by the laws of each country. Some countries also have procedures to legally recognize and register civil unions and other domestic partnerships. A registered partnership usually refers to a legal construct, registered with the public authorities according to the laws of each country, that leads to legal conjugal obligations between two persons.² Like marriages, registered partnerships should be recorded in the civil registration system.

Customary, traditional, religious and other types of marriages not recognized as legally valid are discussed in Section 6 below.

Guidance: Describe whether registration of all legally valid marriages and partnerships is compulsory. Indicate whether the law applies to all legally valid marriages and partnerships that occur in the country. Consider all forms of discrimination that may take place, including based on geography; racial, ethnic or religious groups; nomadic, displaced, native or aboriginal populations; refugees or asylum seekers within the country; resident foreign nationals; or any other characteristics. In the comments section, describe whether the law aligns with good practice and note any recommendations for regulatory reform.

a. Is registration required for all legally valid marriages and partnership?

¹ United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 128.

² United Nations, Principles and Recommendations for a Vital Statistics System, Revision 3, New York, 2014, Para. 2.

Citation:

Comments:

2. Place of registration

Good practice: Country practices vary regarding place of registration. Some countries require marriage registration in the location where the marriage ceremony takes place. Others require registration at the place where one or the other or either spouse resides. Some countries may permit marriage registration at any registration location within the country, particularly if the system is centrally networked. Flexibility regarding the location of marriage registration may help increase marriage registration rates in some countries. Conversely, rigidly requiring marriage registration in a specific location - for example, at the registration office in the area of residence of one of the spouses - may create barriers to registration if the marriage ceremony occurs outside that area.³

Guidance: State the required place of registration for a marriage. Note any issues that may create barriers to registration. In the comments section, describe whether the law aligns with good practice and note any recommendations for regulatory reform.

a. Describe the required place of registration.

Citation:

Comments:

3. Application for marriage (or other legally recognized partnership)

Good Practice: A country's family law will generally address substantive requirements for marriage, including for example, the age at which a person can consent to marriage, and restrictions on remarriage, polygamous unions, and marriage between persons who are related. There must be a process to ensure that these requirements are met. Generally, this occurs through an application process, sometimes referred to as an application for a marriage license or a notice of marriage. Along with the application, generally both spouses must present proof of identity and proof of legal age to marry. If either spouse has been married previously, they must also present proof of dissolution of the previous marriage or proof of death of a spouse. There may also be a statement demonstrating the persons who are to marry are not close relatives.⁴

In some jurisdictions, the application must be filed by a specified time period before the marriage ceremony - referred to as the waiting period - in other jurisdictions, no waiting period is required. There also may be a requirement that notice of the marriage be published at the registration office or other location during the waiting period. The application is usually valid for a specified period of time, for

³ United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 382.

⁴ United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 383-384.

example one year, during which the marriage ceremony must take place and/or completion of registration occur at the registration office.⁵

Guidance: Describe the application process. Specifically note whether any of the requirements present a barrier to registration, or if the lack of any requirement (such as no requirement to prove age) permit underage marriages to occur. In the comments section, describe whether the law aligns with good practice and note any recommendations for regulatory reform.

a. Describe the application process. Specifically address what documentary or evidentiary proof is required, waiting period, period of the validity of the application.

Citation:

Comments:

4. Ceremony: Officiants and Witnesses

Good practice: Some countries require that a civil marriage ceremony take place at the registrar office (after the waiting period and before the validity of the application expires, if applicable) in order for the marriage to be valid. A religious or other type of ceremony may be celebrated after the civil ceremony. Other countries, however, do not require that the marriage take place in front of the registrar and recognize religious or other ceremonies as creating a legal valid marriage. In this case, if a religious officiant or other marriage officiant conducts the marriage ceremony, that marriage officiant is required to submit documentation to the registrar verifying that the marriage ceremony took place. The registrar then registers the marriage and issues the marriage certificate. Many jurisdictions require the presence of one or two witnesses at the ceremony, regardless of whether it is a civil or religious ceremony, and the witness signature on the registration form or other documentation.⁶

Guidance: Describe whether a civil registrar must conduct a marriage ceremony or whether other types of officiants are permitted to conduct a marriage ceremony. If other officiants are permitted, describe the required actions of the officiant to complete marriage registration. Note whether anything in the process creates a barrier to registration. Note whether witnesses are required. In the comments section, describe whether the law aligns with good practice and note any recommendations for regulatory reform.

a. Must a marriage ceremony be conducted by civil registrar? If no, describe the process for registration of marriages conducted by other officiants.

Citation:

Comments:

b. Are witnesses required?

⁵ United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 385.

⁶ United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 387-388.

Citation:

Comments:

5. Marriage Certificate

Best practice: Upon completion of marriage registration - either after a civil marriage at the registrar's office or after a religious or other officiant submits the required paper work - the registrar should issue a marriage certificate to the spouses. A marriage certificate may be needed for many legal purposes, such as insurance, inheritance, and social benefits. As with birth and death certificates, the local registrar should have the authority to issue a marriage certificate in order to speed up the issuance of the certificate.⁷

Guidance: State whether the local registrar has the authority and capacity to issue marriage certificates in a timely manner. In the comments section, describe whether the law aligns with best practice and note any recommendations for regulatory reform.

a. Does the local registrar have the authority and capacity to issue a marriage certificate in a timely manner?

Citation:

Comments:

6. Registration of Customary, Traditional, and Religious Marriages

Good practice: Some countries have low marriage registration rates because couples are “married” in customary, traditional, or religious ceremonies that are not recognized as marriage under the law. A process for registering these unions or marriages is important for legitimation of children, property rights, inheritance and other legal purposes. Therefore, there should be a process by which such unions or marriages can be registered retroactively by providing proof that the union or marriage occurred at some time in the past, such as affidavits or statements of witnesses to the wedding ceremony.⁸

Guidance: Describe any process for registration of customary, traditional or religious unions or marriage celebrated in a manner that is not legally recognized as marriage. In the comments section, describe whether the law aligns with good practice and note any recommendations for regulatory reform.

a. Describe any process for registration of unions or marriages celebrated in a manner that is not legally recognized as marriage.

Citation:

⁷ United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 392.

⁸ United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 390.

Comments:

7. Transmittal of Divorce Decree to Registrar

Best practice: A divorce should only be granted by a court of competent jurisdiction. All divorces must be registered to ensure protection of rights. The court that granted the divorce should be responsible, as the informant, for reporting the divorce to the civil registrar.

The UN defines divorce as: "the legal final dissolution of a marriage, that is, that separation of spouses that confers on the parties the right to remarriage under civil, religious and/or other provisions, according to the laws of each country." Some countries' laws provide for other types of dissolution of marriage, such as judicial separation and annulment. The UN defines judicial separation as: "The disunion of married persons, without there being conferred on the parties the right to remarriage, according to the laws of each country." The UN defines annulment as: "Invalidation or voiding of a legal marriage by a competent authority, according to the laws of the country, thereby conferring on the parties the status of never having been married to each other."

As recognized by the United Nations Economic and Social Council, a divorce or judicial separation should only be granted by a competent judicial authority,⁹ as this best protects the interests of women and children. While some countries allow a civil registrar to grant a divorce, this is not best practice as civil registrars often do not have the qualifications to ensure that the legal rights of the parties and their children are protected.

All divorces, judicial separations, annulments, and dissolution of registered partnerships should be registered with the civil registration agency. The most efficient way to ensure that a divorce (or other dissolution ordered by a court) is registered is to place responsibility on the courts, as the informant, to report divorces/dissolutions to the civil registration agency. Relying on the former spouses to report the divorce/dissolution may result in a failure to report and an inaccurate marriage register. Therefore, courts should be required to collect specified information about each divorce/dissolution granted under their jurisdiction and to submit this information to the civil registration agency.¹⁰ (For more information on what information should be collected see Chapter 7 on Vital Statistics). The civil registrar then matches the information to the information in the marriage register to ensure that the marriage register reflects the divorce/dissolution. Legislation should require the courts to submit this information within a specified time period.¹¹

Guidance: Answer the question below regarding the process for registering a divorce or other dissolution of a marriage or partnership. In the comments section, describe whether the law aligns with best practice and note any recommendations for regulatory reform.

a. Describe the process for transmitting information about a divorce or other dissolution to the civil registration agency. Specifically address who is required to report the information and the time frames.

Citation:

Comments:

⁹ United Nations Economic and Social Council, Resolution 1068 F of 1965.

¹⁰ United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 399-400.

¹¹ United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 399-400.

8. Divorce Certificate or Copy of Divorce Decree

Good practice: Upon dissolution of the marriage, the parties to the dissolution should each be given a copy of the divorce decree or a certificate of divorce. In most jurisdictions the court issues a copy of the divorce decree, in other jurisdictions the registrar may also issue a certificate of divorce.¹² If a certificate of divorce is issued, the local registrar should have the authority and capacity to issue the certificate.

Guidance: Describe the process by which the parties receive documentation of the divorce (or other dissolution of marriage or partnership). In the comments section below, describe whether the law aligns with good practice and note any recommendations for regulatory reform.

a. Describe the process by which the parties receive documentation of the divorce (or other dissolution of marriage or partnership).

Citation:

Comments:

¹² United Nations, Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems, New York, 2019, Para. 403.