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# Family Law 2024

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## **Armenia: Law & Practice**

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Concern Dialog



# ARMENIA



## Law and Practice

### Contributed by:

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### Concern Dialog

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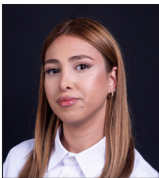
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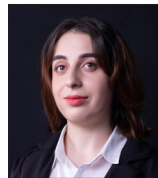
**Concern Dialog** is a top-tier, full-service law firm, headquartered in Yerevan, Armenia. It has been a trusted partner for businesses and individuals seeking legal counsel and representation since 1998. The firm is renowned for its work in the areas of corporate law, labour law, competition law, tax law, contract law, family law (including child abduction cases) and regulatory issues. The firm has extensive experience in regulatory matters in technology, media, and telecommunications (TMT), mining, energy, utili-

ties, banking and finance, medical services, real estate and not-for-profit sectors. In addition to its renowned consulting and transaction practice, the firm's litigation practice is regarded as one of the leading ones in Armenia for landmark litigation and arbitration cases. The firm's membership of TagLaw and Nextlaw networks, as well as its co-operation with individual law firms from various jurisdictions, allow it to provide services to its Armenian clients virtually worldwide.

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## 1. Divorce

### 1.1 Grounds, Timeline, Service and Process

In the Republic of Armenia (RA), a woman and a man of marriageable age have the right to marry and create a family with each other with the free expression of their will. Only marriages registered in the civil acts registration services are recognised in the RA, and persons in an unregistered marriage do not have any legal protection as spouses. There are no legal grounds for registering a divorce in the RA – the voluntary declaration of both spouses is sufficient to register a divorce, and in other cases prescribed by law, only one spouse's declaration can also be sufficient.

Divorce can be performed in the civil acts registration service, as well as through a judicial procedure. As a rule, a joint application of two spouses for divorce by mutual consent is required in the civil acts registration service, while, in certain cases, an application from one of the spouses is sufficient, if the other spouse:

- has been recognised as missing;
- has been recognised as having no active legal capacity as prescribed by law; or
- has been sentenced to custodial punishment for a period not less than three years.

The state registration of divorce is done one month after the date of filing the application for divorce. A state fee is charged for the registration of the divorce (payment should be made on the same day of the filing of the application).

In the absence of the above-mentioned conditions for the registration of divorce in the civil acts registration service, the divorce can be performed through judicial procedure. It is note-

worthy that in order to lighten the workload of the courts, the judicial practice has developed in such a way that the courts as a rule do not accept the claim for proceedings and do not discuss the dispute regarding divorce if the parties did not try to dissolve the marriage in the civil acts registration service.

As already mentioned, only state-registered marriages are recognised in the RA, so religious marriages, like unregistered marriages, do not have legal force; marriages registered outside the territory of the RA are valid and recognised in the presence of consular legalisation in the RA and relevant international agreements concluded between the countries. The same rules apply to religious divorces.

In addition to the above-mentioned grounds for divorce, the recognition of the marriage as invalid is also an independent basis for the termination of marriage, in the event that the marriage was concluded in the presence of circumstances prohibiting the marriage, or when either one of the spouses the spouses or both of them registered the marriage without the intention of creating a family (“false marriage”).

Circumstances prohibiting marriage are, for example:

- not having reached the age of marriage (ie, 18 years);
- being in another registered marriage;
- marriage between close relatives and adoptive/adopted persons;
- marriage between spouse or spouses recognised as incapable; and
- if one spouse has hidden from the other spouse a sexually transmitted disease (including HIV) or the presence of mental illness and drug addiction.

The marriage is recognised as invalid only by the court, after which the rules on shared ownership are applied to the property jointly acquired by these persons, considering the shares as equal. The recognition of the marriage as invalid does not affect the rights of children born from such marriage or born within 300 days after the recognition of marriage as invalid. In addition, the court may recognise the right of the other spouse (the spouse who acted in good faith) to receive alimony from the spouse if their rights have been violated due to such a marriage.

## 1.2 Choice of Jurisdiction

To commence divorce proceedings, both spouses should submit a joint application to the civil acts registration service. For a divorce through the judicial procedure, it is sufficient for one party to file a divorce claim and provide proof that the other party has refused to dissolve the marriage in the civil acts registration service.

In the filing of a divorce claim, the law considers both the parties' registered address/place of residence and their citizenship. As a general rule, the divorce claim is submitted to the court of first instance of the place of registration (location) of the respondent, and in the absence of a place of registration, to the court of first instance of the last known place of residence. However, the claim for divorce can be filed with the court of first instance of the place of registration or residence of the plaintiff if the respondent:

- has been recognised as missing;
- has been recognised as having no active legal capacity as prescribed by law;
- is in detention or has been sentenced to custodial punishment; or
- a minor child resides with the plaintiff.

The RA courts have the right to examine civil cases involving foreign persons, if the respondent foreign natural person resides in the RA territory at the time of the initiation of the claim. In addition, the RA courts have the right to examine civil cases involving foreign persons, if at least one of the spouses in the divorce case is an RA citizen.

If the claim was submitted in compliance with these conditions, the parties cannot dispute the jurisdiction of the RA court, except in cases when before filing a claim in the RA court, the competent court of a foreign country has accepted the proceedings and, is examining a case regarding the dispute between the same persons, on the same subject and on the same factual grounds, or there is already a legally effective judgment. In such cases, the claim is dismissed by the RA courts.

## 2. Financial Proceedings

### 2.1 Choice of Jurisdiction

There are no special grounds for jurisdiction for commencing financial proceedings. When divorcing, in any case, the spouses can submit an agreement to the court regarding the order of maintenance for the children and/or the incapacitated indigent spouse, the amount of the funds or the division of the common property. In the absence of an agreement, the court is obliged to decide on these issues by the request of at least one of the spouses.

The jurisdiction over financial proceedings in the RA rests with the Court of First Instance of General Jurisdiction. Cases regarding rights to immovable property located in the territory of the RA, cases regarding divorce between RA citizens and foreign citizens or stateless persons, if

both spouses live in the RA, are subject exclusively to the RA courts. A party cannot contest the jurisdiction of the court.

A party is not able to apply to stay proceedings in order to pursue financial proceedings in a foreign jurisdiction.

The RA court leaves the claim without consideration in a case if, prior the filing of the claim in the RA court, the competent foreign court accepted and examined the case regarding the dispute between the same persons, on the same subject and on the same factual grounds, or has already made a decision on the given case, which entered into legal force.

In the Armenian jurisdiction, courts are empowered to consider financial claims after a foreign divorce, specifically matters that have not been addressed by the foreign court during the divorce proceedings.

In divorce matters, various civil cases involving foreign individuals fall within the jurisdiction of the RA courts. These cases include:

- the respondent foreign national residing within the RA territory when the lawsuit is initiated;
- cases where there is mutual consent between an RA citizen and a foreign individual;
- property disputes where the respondent possesses assets in the RA;
- divorce cases where one of the spouses is an RA citizen; and
- instances where one of the involved parties is an RA citizen, and the foreign individual willingly acknowledges the jurisdiction of the RA court.

## 2.2 Service and Process

The court, in its pursuit of necessary information, is empowered to collaborate with external entities through the joint electronic information system. Furthermore, participants or their representatives in the trial receive timely notifications based on the judicial hearing schedule. These notifications, involving various delivery methods such as mail, submission, hand delivery or email, are mandated to be sent at least three days before the court session, unless exceptions are provided by the law. Additionally, the court may, upon reasoned motion from a trial participant, permit remote participation in the court session using video telecommunications, provided a suitable communication system is available within the courtroom.

Proceedings for financial claims begin with the presenting of a claim before the court with jurisdiction in Armenia; the court decides whether to accept the proceedings within a seven-day period. The claim and the decision are notified to the respondent, who will have a period of two weeks to reply to and contest them. Subsequently, an oral hearing is held, which the parties or their representatives shall attend. Evidence is put forward at this oral hearing and questioning of the parties and witnesses is carried out. After the hearing, a judgment is issued. It is noteworthy that at least three to four court hearings are scheduled for such cases, as a result of which the examination of cases in all instances can take an average of two to three years. In the case of separation of properties, an expert examination is also appointed, as a result of which the duration of examination of cases can reach up to four years.

## 2.3 Division of Assets

In the RA civil law, before marriage, the property of each spouse is considered separate.

- The division of property owned by spouses during marriage is covered by specific legal regimes. The primary regimes include common shared ownership and joint ownership.
- Common shared ownership: this mode involves determining the share of each owner in the common ownership right.
- Joint ownership: the property is owned collectively without specific divisions.

According to the RA Civil Code, property acquired during marriage is generally considered joint property unless specified otherwise by law, contract, or in the case of certain exemptions like personal use items (except for jewellery and luxury items), property received as a gift or inheritance.

The court adheres to these rules when dividing property without exercising discretionary powers. The court does not impose additional duties on spouses or third parties for property disclosure; instead, its role is to evaluate cases based on the evidence presented. When apportioning the common property and delineating individual shares, the distribution among joint property participants is presumed to be equal, ie, 50/50, unless specified otherwise by law or an agreement between the spouses. It is noteworthy that the property owned by each spouse may be acknowledged as joint property if it is revealed that, during the marriage, investments were made utilising the common property of both spouses or the personal property of one spouse, resulting in a substantial increase in the property's value (such as major repairs, reconstruction, or re-equipment). This recognition is subject to the absence of contrary stipulations in the marriage contract. In such instances, the court initiates a separate case, conducting a distinct proceeding to verify the substantial investment established in the property.

The RA Civil Code recognises the concept of trust as a contract where one party entrusts property to another for a specified period and the latter undertakes to manage the property for the benefit of the founder of the trust or the individual designated by them. However, in practice, there are relatively few court cases involving fiduciary management.

## 2.4 Spousal Maintenance

According to the RA legislation, spouses are obligated to provide financial support to each other. If such support is refused, and there is no mutual agreement on alimony, the following persons have the right to require alimony from the spouse by judicial procedure:

- a vulnerable, financially dependent spouse;
- a wife during pregnancy, as well as the spouse taking care of a common child until the child turns three years old; and
- a vulnerable spouse caring for a common child disabled from childhood or a disabled adult child of the first group of disability.

The following persons also have the right to seek alimony from the financially able ex-spouse:

- a vulnerable ex-spouse responsible for the care of a common disabled child from childhood or a disabled child of the first group of disability;
- an ex-wife during pregnancy, as well as the spouse taking care of a common child until the child turns three years old; and
- a vulnerable ex-spouse who became disabled either before the divorce or within one year after the divorce.

This right extends to cases where the requesting ex-spouse reaches retirement age within five

years of the divorce, provided the spouses were married for 15 years or more.

Following the breakdown of a marriage, a party cannot apply for interim maintenance pending the final outcome. Under the RA legislation, this right extends only to the case of forfeited alimony for the child, based on the need to protect the best interests of the child.

The determination of the quantum of maintenance is made based on various factors. The court may consider the financial means of the party responsible for providing maintenance and the specific needs of the lesser earning spouse. Additionally, the court may take into account circumstances such as the duration of the marriage and the incapacitation of the spouse in need. The court has a power to release a spouse from the duty to provide support or limit this obligation under specific conditions, such as if the spouse in need of assistance became incapable as a result of:

- their misuse of alcohol, drugs or intoxicants, or committing intentional criminal acts; or
- their immoral behaviour within the family, such as infidelity or engagement in gambling, etc.

## 2.5 Prenuptial and Postnuptial Agreements

According to the Family Code, the prenuptial and postnuptial agreements can be signed in Armenia, as before the state registration of marriage at any period of marriage. These agreements, addressing only matters of property and property rights, hold the flexibility to encompass both existing assets and those acquired in the future. By signing them, spouses can change the legal framework for joint ownership, specifying

individual or joint ownership rights for property acquired during the marriage. These agreements can also address mutual rights and responsibilities related to livelihood, income creation and family expenses.

In the legal context, the handling of marriage contracts by courts involves recognising them as transactions that have specific subjects and regulate particular aspects. The marriage contract serves both a regulatory and protective function. While regulating the legal relations of spouses, it also safeguards their property independence, especially during civil transactions and in the event of marriage dissolution.

Another crucial point is that the RA Family Code stipulates an obligation of the debtor spouse to inform its creditors of any marriage contract's conclusion, amendment or termination. The Court of Cassation in its turn emphasises the importance of such notification as a safeguard for creditors. However, the failure to comply with this requirement, is not a ground to recognise the contract as invalid, as the marriage contract is subject to rules governing transaction invalidity according to the RA Civil Code. Instead, it leads to specific legal consequences, such as allowing the creditor to demand the fulfilment of obligations from the debtor spouse, regardless of the contract's content (see the decision of the RA Court of Cassation dated 30 March 2015 in civil case No EKD/1791/02/11).

## 2.6 Cohabitation

In Armenia, there is no general regulation applicable to unmarried couples.

The cohabitants do not acquire any rights by virtue of length of cohabitation, children, etc.



## 2.7 Enforcement

Spouses can settle financial and property disputes between themselves either by a mutually concluded agreement or through judicial procedure. If there is a signed and notarised agreement between the spouses regarding their financial and property matters, then in case of non-fulfilment of any of the terms of the agreement, the other party has the right to apply to the notary to issue a writ of execution. The writ of execution issued by the notary is then sent to the compulsory enforcement service, which ensures the fulfilment of the terms of the agreement. It is noteworthy that the debtor can contest the act of issuing a writ of execution in an administrative court, as a result of which its execution may be delayed for several years.

As for the fulfilment of the requirements of the existing judicial act regarding financial and property issues of the spouses, if one of the parties refuses to voluntarily fulfil the requirements of the judicial act, the other party has the right to apply to the court to send the writ of execution to the compulsory enforcement service and to ensure the fulfilment of the requirements of the act through the service.

The international enforcement of a financial order applies in the jurisdiction of Armenia if there is a judicial act issued by a foreign court and entered into legal force, in which case the party can apply to the RA court, requesting the recognition and execution of that judicial act. After the application is granted by the court, the requirements of the foreign judicial act are enforced through the compulsory enforcement service within the framework of enforcement proceedings initiated on the basis of the writ of execution issued by the court.

## 2.8 Media Access and Transparency

The media and the press can report on financial cases, but the names of the parties should be anonymised to protect their right to privacy (this does not always happen in practice). It should be noted that, in order to safeguard the privacy of the spouses and financial cases, the court may review the case or a portion of it in a closed court session upon the request of the party involved in the case or at its own discretion.

## 2.9 Alternative Dispute Resolution (ADR)

The parties have the option to resort to either mediation or arbitration to resolve their dispute.

Under the RA Family Code, parties can opt for arbitration if the division of their common property does not impact third-party interests. The law allows spouses, as stipulated in the marriage contract, to resolve the disputes related to the division of common property through arbitration.

The RA legislation also incorporates court-appointed mediation and mandatory mediation defined by law. The court can initiate mediation sessions, lasting between two to four hours, especially when there is a likelihood of amicably settling the dispute.

In specific family law cases, such as divorce, child custody, alimony, property division and parental rights disputes, mandatory mediation is required before court proceedings. This requirement, however, does not apply in specific circumstances, such as when a decision has been rendered against one of the parties for the application of protective measures outlined in the Law on Prevention of Domestic Violence, Protection of Persons Exposed to Domestic Violence, and Restoration of Family Solidarity. Exceptions also include cases where one party:

- has been held criminally liable for intentional crimes against a child, parent, grandparent or sibling;
- has been recognised as missing or as having no active legal capacity as prescribed by law; or
- is in detention or has been sentenced to custodial punishment.

While courts can mandate parties to attend mediation, they cannot compel them to continue if they are unwilling – after the first session they may choose to discontinue the process if they so wish.

If the alternative dispute resolution process is not followed before initiating court proceedings, as a consequence the court returns the claim.

Mediation settlement agreements require court approval to become binding, ensuring legal enforceability. Arbitral tribunal decisions are binding and enforceable.

## 3. Child Law

### 3.1 Choice of Jurisdiction

In matters concerning children, jurisdictional grounds are determined based on the child's right to be heard in the resolution of issues affecting their rights and interests. The court can only make a decision regarding a child who has reached the age of ten with their consent.

The general rule is that a divorce claim is filed in the court of first instance of the respondent's place of registration or residence, but it can also be filed in the court of first instance of the place of registration or residence of the plaintiff when the minor child resides with the plaintiff.

The concepts of residence and domicile are important when determining the court with jurisdiction to hear parental responsibility proceedings; the concept of nationality has less of an impact on the grounds of jurisdiction of the court in cases involving foreign persons (see 2.1 **Choice of Jurisdiction**).

### 3.2 Living/Contact Arrangements and Child Maintenance

Parents resolve all issues related to the upbringing and education of children, as well as the place of residence, by mutual agreement. In cases where a mutual agreement cannot be reached, parents have the option to seek resolution by approaching the guardianship and trusteeship body or addressing the dispute to the court.

During and after marriage, regardless of which parent the child resides with, both parents have equal rights and responsibilities towards their children, and they share equal roles in the care, upbringing and education of the child. Courts have the power to ex officio hear any kind of court cases related to the rights of the child and are guided by the best interests of the children when making decisions.

In the determining of the allocation of parenting time, judges take into account several factors:

- the emotional bond, and the relationship between the child and each of the parents, sisters and brothers;
- the ability of the parents to ensure the upbringing and development of the child (the nature of the parents' activity (work), their property and family situation, etc);
- the moral and other personal characteristics of the parents;
- the child's age; and

- the opinion expressed by the child (the minor).

All this is assessed by the judge when deciding on the time that the child will spend with each of the parents. Frequently, this is assisted by the opinion of the technical teams of psychologists assigned to the courts. The courts have no restrictions in relation to decisions on measures to be taken regarding a child, other than that their decision is based on the child's best interests. This is the general principle that must be protected, and as such is included in the various international instruments for the protection of minors, as well as in Armenian domestic legislation. In such court cases, it is mandatory for the courts to consider the opinion of a child who has reached ten years of age, and decisions can only be made with the consent of the child who has reached ten years of age.

In the event of mutual agreement between the parents concerning child support, including the amount, terms and payment procedure of alimony, they can formalise a corresponding agreement. This agreement must be in writing and subject to notarisation.

- If there is no consensus between the parents regarding child support (alimony), the collection of alimony from the parents is carried out by court order as follows:
- one quarter of the parent's earnings and/or other income for one child;
- one third of the parent's earnings and/or other income for two children; and
- half of the parent's earnings and/or other income for three or more children.

According to Armenian legislation, a child does not have the right to apply for financial provision themselves.

In the event that the parent who is obliged to pay alimony receives irregular or variable earnings and/or other income, receives income in the form of natural products or in foreign currency, or does not receive or has no income, the courts determine a fixed amount of money to be paid each month until the child reaches 18 years of age or the child reaches full active legal capacity before reaching 18 years of age. In any case, the child maintenance fee cannot be less than AMD10,000.

### 3.3 Other Matters

In practice, the RA courts do not usually examine the issues regarding schooling, medical treatment, religion or holidays; the approach is that the parents should try to settle the differences and come to an agreement. The courts specifically address the issue of deciding the child's place of residence.

Parental alienation and its consequences are not explicitly regulated by civil law. Nevertheless, the judge will carefully evaluate the evidence presented during the judicial proceedings when determining custody arrangements in the best interests of the child. The court reaches its conclusion based on the psychologist's report.

The children can be questioned in court. Specifically, during the questioning of a witness who has not reached the age of 16, the court ensures that this is conducted in a manner that avoids confusion or unnecessary psychological pressure. The court retains the authority to eliminate any questions, pause or halt the questioning if it deems it necessary to protect the well-being of the witness. Moreover, the court actively involves the minor's legal representative in the questioning process. For minors under the age of 14, a child psychologist or pedagogue is also engaged in the process. In cases involving wit-

nesses under the age of 14, individuals participating in the case are removed from the courtroom if their presence may potentially influence the witness testimony.

The information provided by a witness, regardless of age, is not considered evidence if the witness cannot clearly state the source of their knowledge.

### **3.4 ADR**

See 2.9 Alternative Dispute Resolution (ADR).

### **3.5 Media Access and Transparency**

The media and the press can report on financial cases, but the names of the parties should be anonymised to protect their right to privacy (this does not always happen in practice).

It should be noted that in order to protect the best interests of the child, the court may examine the case or a part of it in a closed court session, at the request of the person participating in the case or on its own discretion, under which conditions access to the cases by third parties and the media is restricted.

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