

Recognition of foreign divorce under the UNJSPF Regulations

Background

1. Article 34 of the Regulations of the United Nations Joint Staff Pension Fund states that a widow's benefit is payable to the female spouse of a participant who was "married" to him at the date of his death, or who died in service and was married to him on the date of death or if he was separated prior to death, was married to him at time of separation and remained married to him until his death. Article 35 extends this right to a surviving male spouse of a participant. In 2014, the Pension Board decided to extend the interpretation of marriage to unions and partnerships lawfully entered into in the of place nationality of the participant.

2. In 2016, following changes in the policy of the Fund's member organizations concerning the basis for recognizing personal status, the Pension Board decided to recognize marriage, unions and registered partnerships lawfully entered into and legally recognized by the competent authority of the location where the status was established as long as the union conferred similar legal effects as marriage, specifically including pension rights. Revised *Guidelines to determine eligibility for spousal benefits under articles 34 and 35 of the UNJSPF Regulations (Rev.1)* were issued in September 2016 to reflect the change. The *Guidelines* are still in effect and set out the reporting obligations of the participant and the member organization, and acceptable documentation for verification of status. The *Guidelines* also contain an Annex with a list of unions recognized by the Fund as being equivalent to marriage, which is updated from time to time based on changes occurring in local laws.¹

3. This document complements the *Guidelines* and addresses how the Fund determines the validity of a divorce and any subsequent re-marriage under the Regulations in light of the Fund's policy to recognize personal status based on the location under which it was established. This document does not modify the Fund's existing practices, but rather summarizes the applicable principles and jurisprudence as they have been consistently applied by the Fund.

Principles for recognizing divorce

4. The basic rule that the Fund applies is that, *in order to be effective, a divorce must be legally recognized in the jurisdiction where the marriage or equivalent union was celebrated*. This rule applies independently of the nationality of the parties to the marriage, and reflects the principle that, by marrying in a particular jurisdiction, the parties have voluntarily subjected themselves to

¹ The Annex is not exhaustive and consists of information available to the Fund or cases the Fund has encountered at any given time.

the laws of that jurisdiction concerning their marriage and, therefore, dissolution of the marriage must be legally valid under the laws of that same jurisdiction.

5. In cases where the divorce parties cannot obtain a divorce that is legally valid in the place of marriage, the Fund takes into account the following non-exhaustive list of factors in determining whether it will recognize the foreign divorce:

- a. Whether the parties retain any connection to the jurisdiction in which the marriage was entered into.
- b. The nature of the parties' connection to the jurisdiction where the divorce was issued.
- c. Whether both parties participated, or had a reasonable opportunity to participate, in the divorce proceedings.
- d. Whether both parties agreed to the divorce being considered in the foreign jurisdiction.
- e. Whether the jurisdiction of the previous marriage recognizes divorce, and whether the form of divorce in the foreign jurisdiction is compatible with or equivalent to the form of divorce required to end the marriage in the jurisdiction in which the marriage was entered into.
- f. Whether there have been multiple divorce proceedings in different jurisdictions and, if so, the reasons for the multiple proceedings and the outcomes thereof.

Principles for recognizing re-marriage

6. In order to determine whether it may recognize a participant's re-marriage, and provided that the re-marriage has been duly reported to the Fund in accordance with Section B of the Fund's Administrative Rules, the Fund applies the following principles:

- a. If the laws of the jurisdiction(s) of both marriages permit polygamy, then the Fund can recognize both marriages.²

² Article 34(g) of the Fund's Regulations envisages the possibility of multiple surviving spouses: "*The [survivor's] benefit shall, where there is more than one surviving spouse, be divided equally between the spouses, and upon the death of each such spouse shall be equally divided among the remainder*".

Similarly, Article 35bis(c) of the Fund's Regulations envisages the possibility of multiple surviving divorced and married spouses, and provides in relevant part that: in relevant part that: "*if the participant is survived by both one or more such former spouses and/or by a spouse entitled to a benefit under article 34 or 35, the benefit payable under article 34 or 35 shall be divided between the spouse and former spouse(s) in proportion to the duration of their marriages to the participant*".

- b. Otherwise, the Fund requires evidence that the participant's previous marriage was validly dissolved in accordance with the principles set out herein, prior to the participant having entered into the subsequent marriage. The point of reference is the law of the jurisdiction where the previous marriage was entered into and *not* the jurisdiction where the subsequent marriage was entered into. It is important to note in this regard that the recognition of a participant's re-marriage by a national authority does *not* automatically imply recognition of that marriage by the Fund for the purpose of survivor's benefits under the Fund's Regulations. The Fund must be satisfied, in accordance with the principles summarized herein, that the laws of the jurisdiction of the previous marriage were respected with regard to the dissolution of that marriage.

Relevant jurisprudence (as at October 2019)

7. The United Nations Appeals Tribunal (UNAT) has addressed issues concerning the validity of divorce for UNJSPF purposes in the following cases: *El-Zaim v. UNJSPB*, 2010-UNAT-007; *Tebeyene*, 2010-UNAT-016; *Ansa-Emmim*, 2011-UNAT-155; and *Gonzalez-Hernandez*, 2014-UNAT-465. The Fund's Case Digest (available on the UNJSPF website) contains summaries of additional relevant cases.