

Law No. 15-01 on the Care (Kafala) of Abandoned Children

Reference: Dahir No. 1-02-172 of 1 Rabi II 1423 (13 June 2002) promulgating Law No. 15-01 on the care (kafala) of abandoned children

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Practice areas: Family law

Kafala is an undertaking to provide for the protection, education and maintenance of an abandoned child, as a parent would, without creating a parent-child relationship or inheritance rights. Law 15-01 sets out the declaration of abandonment, the requirements for the kafil (carer), the procedure before the guardianship judge and the monitoring of the child.

Declaration of abandonment and the kafil

- A child is declared abandoned by judgment of the Court of First Instance, on application by the Crown Prosecutor, following an inquiry.
- Kafala may be granted to Muslim married couples, to a Muslim woman, or to public institutions and bodies recognised as being of public utility (Art. 9).
- The kafil must be of age, morally and socially fit, have sufficient means and must not have been convicted of an offence against children.

Procedure and effects

- The guardianship judge orders the kafala after a social inquiry; the order is enforceable and entered in the court register.
- The kafil provides for the child's maintenance, education and protection, and may make a tanzil (bequest) in the child's favour.
- Taking the child abroad requires the authorisation of the guardianship judge; monitoring is carried out by the consular services (Art. 24).

Key articles

ART. 9

The kafala of children declared abandoned is provided by Muslim married couples, by a Muslim woman, or by public institutions responsible for child protection and by social bodies, organisations and associations recognised as being of public utility.

ART. 24

A person providing kafala who wishes to leave the national territory to reside abroad with the child must obtain the authorisation of the guardianship judge.

Points to watch

- Kafala does not create a parent-child relationship: questions of name, inheritance and nationality must be dealt with through separate instruments (tanzil, will, acquisition of nationality).
- Foreign kafils, or those living abroad, should plan ahead for the recognition of the kafala in their country of residence.
- The guardianship judge may revoke the kafala in the event of a breach; follow-up reporting requirements must be complied with.

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