DOJ ISSUANCES

This DOJ Opinion involves the validity in the Philippines of marriages conducted 1) via zoom and 2) via submission of documents which are valid abroad. It is included in this compilation because it involves a discussion of Private International Law as a branch of law and the concept of *lex loci celebrationis*.
**Footnotes from the Issuances have been omitted*

DOJ Opinion No. 23, s. 2021

Secretary Acosta of the Commission on Filipinos Overseas (CFO) states that a CFO Guidance and Counseling Certificate is a "mandatory pre-departure document for Filipino spouses of foreign nationals, which "will allow a Filipino to leave the Philippines on the basis of a marriage contracted abroad.

The CFO has been receiving applications for the issuance of CFO Guidance and Counseling Certificate by Filipino spouses, in relation to the following marriages:

- Marriage performed online, in accordance with the law of the State of Utah, United States of America (USA);
- Marriage contracted via mere submission of documentary requirements to the foreign State, where the Filipino spouse "has not appeared personally or virtually in such marriage," in accordance with the law of South Korea.

The CFO is suspicious of such marriages as they could be tools used in human trafficking. Thus, the Secretary requests an opinion on the following issues:

- Whether or not online or Zoom marriages held abroad, wherein at least one of the contracting parties is a Filipino, is considered valid in the Philippines
- Whether or not "non-appearance" marriages {i.e., no physical or virtual appearance), contracted by mere submission of documents, pursuant to foreign law, between a Filipino and a foreign national, is considered valid in the Philippines.

DISCUSSION:

Based on the facts, we note that the situation the CFO is confronted with involves a foreign element, that is, a marriage between a Filipino and a foreign national that has been celebrated or entered into outside the Philippines in accordance with the law of a foreign State. This situation is considered a "conflict of-laws problem" and is governed by the rules of Conflict of Laws or Private International Law.

Conflict of Laws or Private International Law is defined as "that part of the municipal law of a State which directs its courts and administrative agencies, when confronted with a legal problem involving a foreign element, whether or not they should apply a foreign law or foreign laws," or "that part of law of each state or nation which determines whether, in dealing with a legal situation, the law of some other state or nation will be recognized, given effect or applied.

Lex loci celebrationis

The rule of Conflict of Laws pertinent to the situation at hand is provided in the first paragraph of Article 26 of the Family Code, which reads as follows:

> All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35(1), (4), (5) and (6), 36, 37 and 38. {underscoring supplied)

Hence, so long as the marriage held outside the Philippines is in accordance with the law of the country where such marriage is solemnized, such marriage may be recognized as valid in the Philippines by the courts and concerned government agencies, subject to certain exceptions. This rule of Conflict of Laws is called *lex loci celebrationis* (Latin phrase which means the law of the place of celebration).

The exceptions to this rule are specified in the same Article 26, namely; Article 35(1) referring to marriages between minors; Article 35(4) referring to bigamous and polygamous marriages; Article 35(5) referring to marriages with mistaken identity of the other party; Article 35(6) referring to subsequent

marriages where the judgment of annulment or absolute nullity of the first marriage, the partition and distribution of the property of the spouses, and delivery of the children's presumptive legitimes were not recorded in the appropriate civil registry and registries of property; Article 36 referring to marriages where the other party is psychologically incapacitated; Article 37 referring to incestuous marriages; and Article 38 referring to marriages against public policy.

First, we note that online marriages between a Filipino and foreign national do not fall under any of the exceptions to the *lex loci celebrationis* rule. Hence, such rule applies to these marriages. Accordingly, so long as these marriages have been solemnized in accordance with the law of the State where the marriage took place and considered valid there as such, the same may be considered valid here in the Philippines. For example, if the law of a foreign State allows the parties, their witnesses and the solemnizing officer to meet online to celebrate the marriage, the marriage may be considered valid here in the Philippines.

Non-appearance marriages are not allowed

With respect to non-appearance marriages, however, where the parties merely submit documents to enter into the marriage, although we note that they do not fall under any of the exceptions to the *lex loci celebrationis* rule, we also note that the exact wording of Article 26 uses the word "solemnized," not "contracted." It is our understanding that these words have fine differences in meaning and that the use of the word "solemnized" by the Legislature is deliberate.

In this connection, one family law author and expert has traced the legislative history of Article 26, first paragraph of the Family Code, starting with Section 5 of General Order No. 68 issued in 1899, to Section 19 of Act No. 3613 (the Philippine Marriage Law of 1929), then to Section 71 of the Civil Code of 1950, and finally to Article 26, first paragraph of the Family Code and concluded that the change in wording from "contracted" to "performed" to "solemnized" is significant because "it appears to signify the intent of the framers to limit the scope of the provision so as not to include common-law marriages" or marriages "performed by way of mere agreement of the parties, such as in cases of common-law marriage.

The matrix below shows the pertinent provisions of the aforementioned laws side by side, for easy reference:

Sec. 5, GO No. 68	Sec. 5, Act. no. 3613	Sec. 71 Civil Code	Art. 26, Family Code
All marriages contracted without these islands which would be valid by the law of the country in which the same were contracted, are valid in these island (underscoring supplied)	All marriages performed outside of the Philippine islands in accordance with the laws in force in the country where they were performed and valid there as such, shall also be valid in the islands (underscoring supplied)	All marriages performed outside of the Philippines in accordance with the laws in force in the country where they were performed and valid there as such, shall also be valid in this country, except bigamous, polygamous, or incestuous marriages as determined by Philippine law (underscoring supplied)	All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they are solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35(1) (4), (5) and (6), 36, 37 and 38 (underscoring supplied)

Our own examination of the above-quoted laws lead us to agree that the change from "contracted" to "solemnized" is indeed significant and that the use of the term "solemnized" by Article 26 can have the effect of limiting the marriages covered by the *lex loci celebrationis* rule to marriages that have been solemnized and not merely contracted by mere agreement of the parties. This is because the term can be considered a technical term, especially when used in relation to marriage, to mean the holding of a ceremony, wherein the parties declare that they take each other as husband and wife in the presence of a judicial officer, priest, minister or other persons so authorized under the law.

In statutory construction, the language used in a statute, which has a settled legal meaning or a meaning sanctioned by judicial decision is presumed to be used in that sense by the legislative body.

In *Sharon v. Sharon*, the Supreme Court of California had the occasion to explain what "solemnized" means, thus:

> By section 78 of the Civil Code, the solemnization of a marriage is mentioned as a thing distinct from the license to marry, from the authentication of the marriage, and from the record of the marriage certificate
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> A marriage is solemnized when, in the presence of a judicial officer, priest, or minister, the parties declare that they take each other as husband and wife (Civ. Code, sees. 70. 71), and the officer or minister who witnesses this ceremony is said to "solemnize" the marriage ...

In *Re Veta's Estate*, the Supreme Court of Utah also had the occasion to interpret the term "solemnized" as used in a provision similar to Article 26 of the Philippine Family Code. According to the Court, the term excludes common law marriages or marriages by mere agreement of the parties without solemnization, thus:

> In light of the foregoing, we return to a consideration of Sec. 40-1-2(3) U.C.A. 1943, declaring a marriage void when not solemnized by an authorized person. We consider it in connection with Sec. 40-1-14, U.C.A. 1943. ... Sec. 40-1-4 declares: "marriages solemnized in any other country, state or territory, if valid where solemnized, are valid here."
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> ... ...
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> Insofar as neighboring states are concerned, the wording of this section is peculiar to Utah. Thus, the California Code provides; "all marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted are valid in this State."
> ... Identical provisions are found in Idaho xxx and Montana xxx, while Colorado has an identical enactment with a proviso relative to bigamy and polygamy xxx. By contrast with neighboring examples, the section of our code specifies that "marriages

> solemnized in any other country, state or territory, if valid where solemnized are valid here." (Emphasis added) We think that the use of the italicized word was made advisedly and that this section, construed with paragraph (3) of Sec. 40-1-2. supra, evidences a legislative pronouncement that as to domiciliaries of Utah a common-law marriage contracted in another jurisdiction would not be here recognized. To be valid as between domiciliaries of this state a marriage must be "solemnized" either in accordance with the laws of this state or those of another jurisdiction. Webster's New International Dictionary. Second Edition, defines "solemnize" thus: "To perform with pomp and ceremony or according to legal form: specific.: to unite a couple in marriage with religious ceremony: * * *." That the word was used in this sense was abundantly clear from its employment in the two provisions under examination, as well as elsewhere in the chapter of which they are part. Taking into consideration the purposes of the statute requiring solemnization within the state, the meaning of the words employed, the departure from neighboring examples in the employment of the word "solemnized" in Sec. 40-1-4, supra, the holding is compelled that persons domiciled in Utah may not go into another state, there contract a common-law marriage, and returning here, have such marriage recognized as valid, (*underscoring supplied; italics in the original*)

Considering all the foregoing, since the *lex loci celebrationis* rule in Article 26, first paragraph of the Family Code can be said to apply only to marriages solemnized abroad or in accordance with the law of the State where such marriages have been solemnized, the validity of marriages entered into by a Filipino with a foreign national by mere submission of documents, without solemnization in the presence of an authorized officer, is to be determined by Philippine law, not by the applicable foreign law.

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Summary and Final Points

In sum, it is the view of this Department that based on the Conflict-of-Laws rule of *lex loci celebrationis* in Article 26, first paragraph of the Family Code,

marriages solemnized online in accordance with the law of the State where the marriage is held and considered valid there as such, may be considered as valid here in the Philippines. However, with respect to marriages entered into by a Filipino with a foreign national by mere submission of documents, without appearance before an authorized officer for the solemnization of the marriage, though alleged to have been validly entered into in accordance with the applicable foreign law, cannot be considered as valid here in the Philippines.

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