

Legal update: DIFC Wills & Probate Registry

On 4 May 2015 the DIFC Launched the DIFC Wills and Probate Registry (Registry), and the Registry opened its doors for registration of wills and inheritance matters.

The Registry was borne out of previous uncertainty of foreign non-Muslims over succession and inheritance matters, and a concern that this may lead to an increased expatriation of resources by the expatriate population.

In this article, the position prior to the establishment of the Registry is examined and the features of the Registry are then set out. Wills and probate matters in relation to expatriates typically involve a number of jurisdictions, and appropriate legal advice should be sought in relation to such interactions.

Existing UAE legislation regarding wills

The legal framework of the UAE sets out that Shari'a law is a principal source of law, particularly in respect to personal status matters such as inheritance. The rules of Shari'a inheritance are complex and generally provide for distribution of a deceased's estate in set proportions by nature of their relationship with the deceased. Where this may be an issue is when a non-Muslim wishes to apportion an estate in different proportions.

In general, UAE laws set out that inheritance is governed by the law of the deceased, but that the law of the UAE shall apply to wills of foreigners disposing of real property. A new Personal Status Law was enacted in the UAE in 2006 which would appear to allow a foreigner to choose the law of domicile for personal status matters such as inheritance, although is unclear as to the extent of its applicability to inheritance of foreigners.

Intestacy

Where an individual dies without a will (intestate), the Government of Dubai's official website states that UAE courts will adhere to Shari'a principles in disposing of the estate.

Registering a will outside the DIFC in Dubai

The Dubai Courts have provided guidance for foreign non-Muslims as to how to prepare a properly authenticated will. Even where all procedural steps and correct formalization of the underlying will has been carried out, this does not ensure that a decision will be concluded by a competent court.

We understand that an appeal against a will, including that of a foreign non-Muslim, may be made at the courts of Dubai: appeals may be brought by relatives (including non-Muslim relatives) on the basis that the individual would be entitled under Shari'a inheritance rules. The position of the Dubai courts is that the law of the deceased will be applied despite such an appeal if any beneficiary of the will subsequently directs so.

However, there have been recent court cases whereby lower courts have entertained appeals against the

apportionment of wills of non-Muslim foreigners. This uncertainty has led in instances to prolonged periods of frozen bank accounts and inability to deal with assets in the UAE, and lengthy court processes to deal with the inheritance.

Features of the DIFC Registry

This uncertainty in the existing legislation and approach in practice to dealing with foreign inheritance issues has led to the DIFC setting up the Registry. There are a number of requirements for registering a valid will at the Registry, including that the Rules only apply to:

- non-Muslim individuals over the age of 21;
- assets situated in the Emirate of Dubai;
- any minors are habitually resident with the testator in the Emirate of Dubai; and
- wills that are in the form specified by the Registry.

The fees for registering a will at the Registry are AED 10,000 per will, or AED 15,000 for two mirror wills (as may be typically used by spouses).

The DIFC is a common law jurisdiction and the Rules stipulate that they shall be construed in accordance with the laws of England and Wales (as opposed to Shari'a law). The Registry rules are intended to be complimentary with those of Dubai.

Enforcement of a will registered at the Registry

The major benefit of the Registry is to provide certainty in establishing the validity of the will: judgements of the DIFC courts are enforceable in the courts of Dubai, subject to certain minor formalities. As a result, a valid will registered at the Registry should be enforceable on assets within Dubai.

The enforceability of DIFC court decisions in the courts of Dubai is codified in the laws of the Emirate of Dubai and is now an established process. To date such judgements have typically been commercial ones, we wait to see the execution of the first probate order in the Dubai courts of a matter which is traditionally and culturally associated with Shari'a law. We understand to this end the Registry is working to ensure the efficient enforcement of their complimentary service for non-Muslims.

In conclusion, the initiatives of the Registry are a welcome development in the field of non-Muslim probate in Dubai, providing clarity in an area that was subject to a number of uncertainties.



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