

Planning for the next 50: estate and succession planning in the UAE

Ruksana Ellahi - Senior Associate - Private Client Services / Family Business / Tax
- Dubai International Financial Centre

H.H. Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai, launched the United Arab Emirates ('UAE') Centennial 2071 project to establish the UAE as the greatest country in the world by 2071. This vision was endorsed by H.H. Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai to allow for further development of the Emirates in the five decades following 2020. One of the main objectives of the project is to build a stronger and more attractive environment for generations to come, with respect to the UAE economy and other areas in the jurisdiction. A vision such as this clearly points out the far-reaching and forward-thinking approach to be implemented ahead of its time in order to deal with the rapid changes taking place in the world currently and in the coming years. Taking into account the recent announcements in relation to estate and succession planning, one can see the objective of achieving a more efficient and straightforward regime for expatriates residing in UAE, to plan their estate in the forthcoming years.

Currently, there are a number of laws and regulations allowing non-Muslims to effectively distribute their estate to their loved ones. These options allow for non-Muslims to register wills with full testamentary capacity and not be subject to the Sharia principles of inheritance. The Wills can also include guardianship clauses to allow non-Muslim expatriates to determine matters such as custody and guardianship of minor children. If there is no registered Will, then the UAE Personal Status Law will come into effect and thus inheritance principles based on Sharia will be applied to the estate. This means that certain (prescribed by law) legal heirs will inherit a distinct share from the individual's estate. The will can be executed and registered within a time period of approximately 2-3 weeks.

Will registration options

There are different authorities and options to register a Will in the UAE. Wills are registered either at Dubai International Financial Centre ('DIFC'), Abu Dhabi Judicial Department ('ADJD') or at Dubai Court.

DIFC

The DIFC Wills Service Centre released new rules to allow non-Muslims to include all of their worldwide assets in a DIFC Will. The DIFC Wills Service Centre allows eligible non-Muslim individuals to formally register their English language Wills according to the principles of testamentary freedom, enabling them to choose to dispose of their UAE or worldwide based assets upon death as they see fit. The fees for registering a single Will in DIFC amounts to AED 10,000 (approximately US\$2,700) + VAT.

Abu Dhabi

The Abu Dhabi Judicial Department ('ADJD') has rules relating to succession and inheritance matters for non-Muslims holding assets in the UAE. The new Office allows non-Muslims with assets in Abu Dhabi and other Emirates to have the option to deal with their estates as they so choose. It also offers flexible legal options, where previously there was inflexibility, to assist non-Muslim families in the event of death. The fees for registering a single Will in ADJD amounts to AED 950 (approximately US\$259) plus legal stamping fees, since the Will in ADJD needs to be in bilingual format.

Dubai

The Dubai Local Courts allow non-Muslims to notarise a bilingual Will before a Notary Public. The fees for executing and notarising a Will before the Dubai Courts amounts to approximately AED 2,000 (approximately US\$545).

Recent developments

With hundreds of different nationalities residing and working in the UAE, the UAE Government's latest endeavour in providing a better living environment has resulted in the introduction of a number of crucial amendments to several laws: most notably, amendments to Federal laws specifically relating to issues of divorce, separation and inheritance.

The Personal Status Law has undergone revisions, by way of Federal Decree number 29 of 2020 ('Amended PSL'), and the Civil Code has been revised, by way of Federal Decree number 30 of 2020 ('Amended Civil Code').

The amendments allow for expatriates to apply the laws of their home country in relation to inheritance of their UAE estate, so that the distribution of an individual's estate will take place according to the laws of the country of which the individual is a citizen, instead of the application of UAE law (which codifies Islamic Sharia principles on inheritance). However, an exception remains with respect to UAE real estate, which shall continue to be subject to UAE laws, unless a will has been registered in the UAE.

These amendments have been introduced as a positive step in the UAE Government's continued drive to enhance the UAE as a location for expatriates to live and work.

The future

In order to further enhance the existing laws in relation to estate and succession planning in UAE, we highlight certain recommendations and steps that can be taken to ensure a more desirable approach to a sensitive subject.

Costs

Registration of a will with the DIFC Wills Service Centre can be seen to be relatively expensive amounting to AED 10,000 (approximately US\$2,700) plus VAT for a single Will and AED 15,000 (approximately US\$4,000) plus VAT for mirror Wills. This amount is comparatively expensive when compared to common law jurisdictions where there is no such obligation to register a will. There are over and above costs besides the fee for the registration of the will, which include the fees for drafting a Will by a legally qualified lawyer and other charges of translation, stamping and enforcement. It would be ideal to lower the registration fee in the DIFC to facilitate an even more appealing standard for non-Muslims in Dubai.

Additional Wills Registry

It would also be ideal to have a second Wills Registry outside of the DIFC, in Dubai. Currently, a two-stage process is required for retrieving an enforcement order by the DIFC courts in cases where the assets are located outside DIFC. A second Wills Registry in onshore jurisdiction of Dubai would eliminate the requirement for a two stage process of obtaining a DIFC Courts' order and then further a Dubai Courts' order for enforcement of assets outside DIFC. This would be a perfect step for removing the prerequisite for double enforcement through both the Dubai Courts and DIFC Courts in situations where the assets are located outside of DIFC. It would also significantly reduce the costs for registration of Wills. An equivalent of the DIFC Wills Service Centre, when created, in an onshore jurisdiction would be a significant factor in making the registration of wills more accessible to the overall public in UAE.

Real Estate

The recent amendments aimed at simplifying the distribution of an individual's estate by allowing the application of the laws of the country of which the individual is a citizen, instead of the application of UAE law. However, under the new proposed amendments the same does not extend to UAE real estate property. This means that individuals would still have to register a will for their UAE real estate, if they do not wish for it to be subjected to UAE law. In cases where an individual fails to register a will, then his or her assets, in respect of real estate property, will be distributed in accordance with Sharia inheritance principles. It is recommended that further amendments be introduced to Federal laws so as to apply to immovable property, as well as movable property.

In following with our Ruler's vision, it is vital that a structured approach be followed for developing a more cost effective service for registration of wills in the UAE. It is also important that more offices be located in various locations to permit easier access for registration of wills. Such steps would allow the UAE to remain an attractive destination for expatriates and their families and would provide peace of mind that individuals' assets would be dealt with in a manner in which they would wish.

For further information, please contact [Ruksana Ellahi \(r.ellahi@tamimi.com\)](mailto:r.ellahi@tamimi.com).