

Succession Planning and Real Estate in the UAE

by Aruna Mukherji - a.mukherji@tamimi.com - Dubai International Financial Centre

Ruksana Ellahi - r.ellahi@tamimi.com - Dubai International Financial Centre

May 2018

Any expatriates living in the UAE are unaware that in the absence of a formal Will recognised under the UAE legal system, the process of transferring ownership of their local real estate assets after death can prove time consuming, costly and fraught with legal complexity for their family members left behind.

Will Sharia inheritance rules apply to all or part of an Expatriate's UAE assets?

Inheritance issues for all Muslims (UAE nationals or expatriates) are dealt with in accordance with Sharia rules as those rules are codified in the Law of Personal Status (Federal Law No. 28 of 2005) which governs UAE inheritance law. However, for expatriates who are non-Muslims, the law of the deceased's nationality can be applied in most circumstances, provided the right steps are taken. The UAE Civil Code stipulates that the law of the home country of a non-Muslim can be applied to matters of inheritance as defined by Article 17 (1), which states "*inheritance shall be governed by the law of the deceased at the time of his death*".

If there is no formal Will, the division of assets is governed by the mandatory Sharia rules reflected in the Inheritance Law. Typically, the husband or wife, son, daughter, father and mother would inherit a portion of the estate after debts are satisfied. Whilst this default position applies to all Muslims irrespective of their nationality, there is an 'opt out' available to individuals who are both expatriates and non-Muslims.

To expand on this, Article 1(2) of the Law of Personal Status allows non-Muslim expatriates, with assets in the UAE to make a Will under the law of the country of their home legal nationality (i.e. the country of their passport), to govern succession to the expatriate's UAE estate instead of the Sharia-based rules. However, the Will must be proved in the formal legal fashion before the UAE Inheritance Court, a process greatly expedited if the individual making the Will previously had the Will translated into Arabic and notarised in the UAE; or arranged for the Will to be formally registered with the courts in Dubai.

The DIFC Will Option

Launched in May 2015, DIFC Resolution No. 4 of 2014 allows non-Muslims to register Wills in respect of their Dubai and Ras Al Khaimah real estate assets with the DIFC Wills Service Centre ("WSC"). The benefit of registration of a Will at the DIFC WSC allows individuals to have testamentary freedom to dispose their assets as they wish by aid of a simple probate process before the DIFC courts. The DIFC WSC currently offers any eligible individual with the options of a (a) guardianship will; (b) property will; (c) full will; or (d) free zone company will. The registration fee for a single DIFC Will is currently set at AED 10,000 plus VAT, with the other Wills carrying differing registration fees. MOU's have been concluded with the DED and with the Dubai Land Department to facilitate the smooth operation of DIFC probate process, at least so far as Dubai assets are

concerned.

Is it possible for a Non-Muslim to register a Will with Dubai Courts?

The Ruler of Dubai recently approved Law No. 15 of 2017, which relates to estate management and execution of Wills of Non-Muslims in Dubai. This new law will permit registration of Wills by Non-Muslims with the local courts. However, this law has not yet been implemented and is currently awaiting a decision of the Chairman of the Executive Council.

What about the assets of Non-Muslim in Abu Dhabi?

The Abu Dhabi Judicial Department allows for the registration of Non-Muslim Wills. Under an Abu Dhabi Will, a non-Muslim can have full testamentary capacity to leave their Abu Dhabi assets to their heirs and not be subject to Sharia inheritance rules. The process is relatively simple and straightforward and the registration cost of the Will is currently set at AED 5,500.

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This article has also been submitted for publishing in the [Property Weekly](#).