



DIFC Wills & Probate Registry

Wills for non-Muslims

Introduction

With effect from early May 2015, non-Muslims satisfying various criteria will be able to register their wills at the DIFC Wills & Probate Registry "The Registry".

The intention of this Registry is to facilitate testamentary freedom for non-Muslims and to provide certainty and simplicity for non-Muslims owning assets in Dubai.

The precedent for treating non-Muslims differently is well established in jurisdictions such as Malaysia, Hong Kong, China and Singapore. In 2015 - a year of innovation - Dubai will be the first Middle Eastern jurisdiction to establish laws allowing non-Muslims to use their own succession laws.

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This briefing note summarizes what the new DIFC Wills & Probate Registry means for you, as a non-Muslim, owning assets in the Emirate of Dubai.

Please note that this briefing note is not a substitute for legal advice.

Frequently asked questions:

Why is the DIFC Wills & Probate Registry required?

Due to the current perceived uncertainty regarding the devolution of a non-Muslim's assets (i.e. will Sharia' law be applied or will the law of the nationality of the deceased be applied) the DIFC's own research has identified capital flight of AED3 billion from the Emirate. Wishing to reverse this flow and encourage investment into the Emirate, the Wills & Probate Registry has been set up.

By registering a will with the DIFC Wills & Probate Registry, an individual is opting-in to specific treatment of his assets on death.

What is the current status?

Following a consultation period at the end of 2014, draft rules were published. Submissions have been made to the DIFC, but the final form of the rules and regulations governing the operation of the Registry have yet to be published. Any significant changes to the draft legislation will be communicated in a further update.

The Registry's website is now live, and it is possible to book appointments from May 3, 2015.

Please visit the [DIFC Wills & Probate Registry](#) website for full details.

What are the criteria for using the Wills & Probate Registry?

The testator must have reached the UAE age of legal majority (21 years). But most importantly, the testator (the person writing the will) must not be Muslim. A declaration to this effect is made in the will, but this status will also be tested on death, e.g. to ascertain whether the deceased converted to Islam after making the will.

The testator must own assets in the Emirate of Dubai, but there is no residency requirement - even non-Dubai residents can register a DIFC will.

The assets dealt with under a DIFC will can be 'onshore' or free zone assets. However, those assets held in any other Emirate, or outside the UAE cannot be dealt with under a DIFC will.

A guardianship clause can however only be included if the testator has minor children living with him in Dubai. Any guardian appointed by a DIFC will must not be contrary to public order or give rise to a criminal offence – e.g. it will not be possible to appoint a male, non-blood relative as the guardian of a minor female, even where they are part of a couple.

What is the process to register a will at the Wills & Probate Registry?

It is important to ensure that the will is drawn up in line with the Registry's legal requirements. Local legal advice should be sought to avoid the risk of the will being rejected by the Registry.

An appointment is booked online; the testator, the intended witness(es) and the guardian(s) if any, must all attend the appointment together. The Registry will check the unsigned will to ensure it meets the legal requirements, that the witness is not a beneficiary and that guardianship appointments are appropriate under civil law etc. Signing of the will takes place in the presence of a member of the Registry team. The wills will be stored digitally and can only be accessed by the testator during his lifetime (unless express authority is provided to someone with power of attorney) but will be available to the beneficiaries on death.

Do I have complete testamentary freedom?

From a Dubai perspective, there are no restrictions on who may inherit your estate. You should however seek local advice from a lawyer in the jurisdiction of your nationality. This is particularly relevant if you are a national of a country in which there is an element of forced heirship. A DIFC will may not be used to defeat succession rules elsewhere.

Even in the absence of local taxation in Dubai, you should also seek tax advice when drawing up your DIFC will if you are subject to inheritance tax or death duties on a worldwide basis (e.g. if you are UK domiciled or an American citizen) as there may be ways in which your estate can be gifted in a more tax efficient manner.

What happens if there is a change in my circumstances?

All wills should be regularly reviewed and updated where appropriate if your financial, or family circumstances change. Should you wish to amend a DIFC will, or add a new gift or bequest, you must submit an entirely new will. In an effort to avoid confusions, 'codicils' (supplements to wills) may not be registered. The fee structure will reflect the fact that the DIFC wishes to encourage testators to update their wills as circumstances change. If the beneficiaries wish to vary the will after the date of death, e.g. if they wish to redirect, or redistribute the bequests, this can be achieved through the DIFC courts. In some jurisdictions, e.g. the UK, this can be more effective for some tax purposes.

What happens when a testator dies?

The fact that the deceased had a registered will at the Registry will be publicly available. The draft rules also anticipate publication of the names and addresses of the deceased, the executors and guardians (if any). As for the content of the will, only the beneficiaries and executors will have a right to see the contents of the will. Only a legal representative can file for Probate on behalf of the estate. The grant of probate will be issued by the DIFC courts which will provide distribution orders for the various financial institutions or local agencies.

What if I do not have a DIFC will?

If you do not have any will in place (i.e. you die "intestate"), then your Dubai assets will devolve according to the UAE Personal Status Law, which means that Sharia' law could be applied. Alternatively the Dubai courts may look to see what intestacy rules apply in the jurisdiction of your nationality. If you do have a will, but it is not a DIFC registered will, then you have not opted into the specific legal treatment afforded by the DIFC rules. This means that the UAE Personal Status Law will be applied as described above.

What are the costs of a DIFC Will?

In addition to the legal fees of actually drafting the will (which will vary from law firm to law firm), the Registry will also charge you to register your will with them. The fees are front-loaded, i.e. so the testator pays the bulk of the fees at the outset. The registration of one will is AED10,000. If a couple are registering two mirror wills, the fees are AED7,500 per will. After death, when the executor wishes to obtain the Grant of Probate (to enable him to start distributing the assets) the fees for the estate will be AED5,475.

Contacts

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