



DIFC launches its Wills and Probate Registry

By Adriaan Struijk, MSc, TEP, Managing Director, Fremont Group and Phivos Michaelides LLB, LLM, Legal Manager, Fremont Services DMCC, Dubai

In a move to provide legal certainty to non-Muslim investors in Dubai, and in the spirit of the United Arab Emirates' (UAE) openness to people from different cultural and religious backgrounds, the Dubai International Financial City (DIFC) launched its Wills and Probate Registry (the Registry) on 4 May 2015, further contributing to the attractiveness of Dubai's investment climate. This gives non-Muslims with assets in the Emirate of Dubai the right to choose the way in which these are distributed upon their decease. It provides for testamentary freedom based on common law principles and it is the first of its kind in the MENA region. It is open to non-Muslims, residents and non-residents, as long as they have assets in Dubai and are older than 21 years of age.

When a UAE resident dies, all of his assets within the UAE will be frozen. These will only be made available to heirs upon presenting a "succession certificate". The distribution of UAE assets from an estate upon death up until now was covered by the UAE Civil Transaction Code (CTC) and the UAE Personal Status Law which state that the principles of Sharia law shall be applied in the interpretation of its provisions. However the CTC leaves ambiguity as to whether assets held in the UAE by non-Muslims, such as real estate, shares, bank accounts, are subject to Sharia law. This results in the Court of First Instance virtually always applying Sharia law, also to UAE assets held by non-Muslims. This can be contested at the Court of Appeal, but this process is costly and lengthy (from 12 months up to several years). The Court of Appeal often does reverse the ruling made at the Court of First Instance on the grounds that a non-

Muslim can choose to have the succession law of the country of his domicile applied (CTC article 17(1)). If that succession law allows for testamentary freedom, such as in the UK, then you would have it, but if not then you are bound to follow the forced heirship provisions of your country of domicile. In such cases it is important that any will is drafted and properly executed in accordance with the laws in the testator's country of domicile. So-called "UAE wills" that are being promoted are useless. So up until now there were two options for the non-Muslim with UAE assets: to choose Sharia law to be applied or the law of his/her country of domicile. That was the situation so far. Now non-Muslims with assets in the Emirate of Dubai have a third option, that is to register their will with the Registry in DIFC, providing full testamentary freedom in regards of their Dubai assets. The Wills and Probate Registry is an ancillary body of DIFC's Dispute Resolution Authority established by *Resolution No. 4 of 2014* issued by the President of DIFC. The Dispute Resolution Authority has published its rules in *Order 1 of 2015 In Respect of the DIFC Wills and Probate Registry Rules*. The rules have been largely based on the common law principles reflected in the UK's Estates Act and Probates Rules, as well as that of other common law jurisdictions such as Malaysia and Singapore.

The stated aim of the Registry is to provide a simple legal framework for the functioning of the DIFC Wills and Probate Registry and for the probate process to enable inheritance and succession issues to be resolved with a minimum of hassle and cost.

A common concern among parents residing in Dubai with minors is that guardianship issues will be resolved as



per Sharia law. Non-Muslims can now address guardianship in their DIFC will provided the testator has minor children living with him in Dubai. Note that the appointment of any guardian in a DIFC will must not be contrary to public order and in accordance with the civil law e.g. a man cannot become the guardian of a minor female; unless they are blood relatives.

How does one register a will?

- Anyone can draft his own will but help of legal professionals is recommended.
- An online appointment can be booked for signing of the will by the testator.
- The unsigned will is checked by the Registry to ensure, for instance that guardianship appointments are legal under civil law, and that non-Dubai assets are not included.
- The will is then signed in the presence of a representative of the Registry in the presence of the testator, the witness(es), and guardian (if to be appointed).
- The fee for registration of the will is AED10,000, the fees for varying the will are minor and the withdrawal of a will is free of charge.
- The will is stored electronically, and is confidential, accessible by the testator only during his lifetime.

What happens when the testator dies?

- The Registry shall publish the following information upon application for a grant: the names and addresses of the deceased, the executors and the guardians, and the date of the deceased's death, dates of grants, details of probate claims, and notifications and objections entered in the Registry. Anyone can perform a search to establish whether he/she is named as a beneficiary in the will where the testator has died.
- Executors named in the will apply for grant of probate.
- All probate grants will be issued by DIFC Court judges.
- Subject to the terms of the will shall have all the powers of an absolute owner.
- All claims, applications and objections to the probate process will be heard by the DIFC Courts.
- DIFC judgement will be executed directly throughout Dubai.
- Under Rule 111 of the DIFC Wills and Probate Registry Rules (WPR Rules) applications can be made to enforce rights held under a foreign law by submitting a court order issued in a foreign jurisdiction together with copies of the applicable law. Therefore a DIFC will can still be varied or nullified on the basis of claims made under the succession laws of other jurisdictions.

Non-Muslim UAE residents often perceive one of the main obstacles to holding assets in the UAE to be the application of the forced heirship provisions under Sharia law upon their decease or that of their loved ones. This has now been addressed in Dubai. The DIFC Wills and Probate Registry, as a first in the Middle East, introduces testamentary freedom and legal certainty in succession issues relating to assets located in Dubai. Combined with the advantages of a simple legal framework, the ability to hold all proceedings in English, and the efficiency of the DIFC Courts makes Dubai even more attractive for both investors and residents. This new legal framework can do nothing but enhance the success story that Dubai already is.



Dubai matures
February 2015, Issue 253

ARCHIVE
LINK

offshoreinvestment.com/archive



FREEMONT GROUP

CORPORATE SERVICES TAX PLANNING BUSINESS START UPS LEGAL SERVICES

Freemont Group is a comprehensive provider of corporate services in various jurisdictions. Since 2006 we have our headquarters in Dubai from where we have been providing incorporation, administration, and professional management for UAE offshore companies, UAE freezone companies, and companies incorporated elsewhere. We are licensed registered agents for RAK international companies and Ajman offshore companies and assist entrepreneurs with business incorporation and start-ups in many of the UAE's freezones. Our experienced managers can provide them with bespoke start-up consultancy services.

DUBAI - CYPRUS
CURAÇAO - PANAMA
CZECH REPUBLIC

Indigo Icon 608, P.O. BOX 309071, Jumeirah Lakes Towers,
Dubai, United Arab Emirates.

T: +971 4 4457900 | F: +971 4 4457901

E: info@freemontgroup.com

WWW.FREEMONTGROUP.COM