

EXPATRIATION AND SUCCESSION: WHY AND HOW TO DRAFT A WILL IN DUBAI?

by Anne-Caroline Albrecht In the context of a growing internationalization of the population, cross-application of private international laws are becoming a critical issue when it comes to understanding what will happen to your family and your assets when you pass away, as your nationality, your domicile and the place of your assets can lead to the application of different regimes. Most expatriates do not realize how important it is to be first of all aware of the legal system applicable in their country of domicile and to plan today for the worst in order to avoid a costly, time consuming and legally complex procedure for your family to deal with.

The applicable regime in Dubai In Dubai, many expatriates fail to put measures in place to protect their families and their assets based on the trust that their national law will automatically apply to their succession, as Sharia laws or principles would only be applicable to Muslims. On the contrary, the Federal Law No. 5 of 1985, concerning the issuance of Civil Transactions Law of the UAE (the “Civil Code”), and the Federal Law No. 28 of 2005 regarding the UAE Personal Status Law (the “Personal Status Law”) do refer to Sharia Inheritance rules to guide the local courts on the distribution of assets, even regarding non-Muslims. This means that, as a default regime, without an existing Will and regardless of your religion, the local courts shall distribute your estate, liquidate your business and intervene in guardianship matters according to Sharia rules and principles. Meanwhile, no assets can be transferred or dealt with without direction from the court. The bank accounts are frozen (even joint accounts) and business put on hold until liabilities have been discharged. The estate can be distributed to several members of the deceased’s family according to the Sharia rules of division. As an example, a spouse with children would then be entitled to only 1/8 of the Estate, male family members would receive double of their sister’s part, and other family members such as parents or brother can receive a more significant part. More importantly, the children’s custody is left open until the court can designate, at its entire discretion, the most suitable guardian. As a consequence, expatriates are definitely advised to register a Will. How to register such Will and what is covered by it?

The UAE Will and the practical limits of its enforceability The Personal Status Laws allow expatriates who register a Will to designate their home country laws applicable to their succession on their movable estate subject to formal conditions and registration process to fulfill. An existing notarized foreign Will could also be registered at the Dubai court following the same procedure, if previously legally translated into Arabic and legalized and attested by foreign and local authorities, including both embassies and Ministries of Foreign Affairs. At the time of death, the guardians of the children would then be appointed and the movable assets distributed according to the wishes of the testator, subject to the laws of his own country. Unfortunately, within the past years, even with validly registered Wills, several families have had to face the difficult situation of a local court applying Sharia law, despite the testator’s wishes. Most of the time, these decisions were based on the limits stated by the UAE Civil Code itself, which provides that the application of the deceased’s national law shall not be permissible if some provisions are contrary to Islamic Sharia, public order or morals in the State of the United Arab Emirates. In addition, any legal interpretation to be made with regard to the Will would require the local court to provide a decision in application of a foreign law, which involves foreign expert’s advice. Finally, by way of cross-reference to the private international law of the deceased itself, Sharia could also end up being applicable. These precedents have created uncertainty in the legal profession and led to another reason for skepticism among the expat community. How to ensure that my Will is enforceable at the time of my death?

The system of the DIFC Wills and Probate Registry In May 2015, the DIFC Wills and Probate Registry (DIFC WPR) was launched as an ancillary body to the DIFC’s Dispute Resolution Authority, public entity of the Dubai Government, to address concerns of expatriates and provide certainty in inheritance and succession matters. The Registry was inspired by the model of other jurisdictions dealing with Muslim and non-Muslim successions rules integrated in the same legal system, such as Malaysia, Hong-Kong and Singapore. A set of proper succession rules (WPR Rules), based on international common law principles, now allows individuals to have testamentary freedom to dispose of their assets as they wish. All probate grants are issued by judges of the DIFC Court and are to be recognized by Dubai jurisdictions and institutions by way of protocols. No

interpretation of foreign law shall now be required to apply to the Will, which shall provide certainty in its application by the court. Consequently, the new regime reflects the spirit and principle of existing UAE inheritance laws, which provide non-Muslims with a right to choose the way in which their estates are distributed, and provide an effective solution for a practical application of the principle, with a simple and efficient opt-in mechanism. Your DIFC Will can cover the repartition and management of both movable and immovable estate situation in the Emirate of Dubai and shall designate interim and permanent guardians of your choice for children living in Dubai. The testator shall be over 21 years old, of non-Muslim faith and respect a formal Will registration process. Expatriates who are contemplating preparing a DIFC Will or those who have existing Wills may wish to seek professional legal advice from a licensed lawyer accredited by the DIFC WPR. Homemade Wills, including online templates, can lead to extensive problems. Essential details can be left out, or the Will could be invalid, ineffective or challengeable in the UAE and lead to unexpected legal procedures and costs. The Dubai office of Bonnard Lawson is pleased to be listed as official accredited Draftsman by the DIFC WPR and offer a complete and international expertise in the field of succession planning.