

Dubai/DIFC: New Inheritance Law for Non-Muslims Expats

The Law no. 15 of 2017 regulating the inheritance, wills and probate for non-Muslims (“Law”) aims to establish a clear legal framework for the registration and the enforcement of wills of non-Muslims living and working in Dubai, including the DIFC. It allows them to draft wills in accordance with their national inheritance laws and regulates enforcement of such instruments in Dubai. Prior to the law’s promulgation, there was no specific mechanism for registering wills for non-Muslims in the emirate. The only option was to request the application of the Law of their home country in line with the Federal Law no. 28 of 2005 on Personal Status. Otherwise, assets would be disbursed according to sharia law based on a fixed share allocation system. Pursuant to the new legislation, the Dubai Courts and the DIFC Courts shall establish a register of non-Muslims. Their presidents are authorised to define form of the register, to determine the required data as well as registration procedures. The Law also subjects the registration to a number of conditions. The testator must be a non-Muslim of at least 21 years of age, and capable of discernment. Furthermore, he or she may not be deprived from disposing his/her assets nor in a state of bankruptcy. The will must be signed by the testator in the presence of two witnesses. In addition, the will shall mention an executor at the time of registration. The Law further stipulates certain conditions of validity. In particular, the assets mentioned in the will need to be defined or able to be defined, existent, and owned by the testator. Moreover, it must be possible to convey the assets to the beneficiaries at the time of death. In case the will contains a condition that is contrary to public order or morals, such condition shall be considered null and void without however affecting the remaining conditions of the will. In case of multiple wills, the registered will shall prevail. If several wills are registered, the one most recently recorded with the Registry shall be deemed the final will of the deceased. If however none of the wills are registered, all of them shall be taken into consideration; in cases of conflict, the competent court shall adjudicate the matter. All rights and liabilities of the testator shall be transferred to the beneficiaries alongside the disposed assets. If any of beneficiaries refuses to pay off any debt owed to a third party, he/she will be deprived from all rights under the will. Pursuant to the Law, the appointment of an executor occurs either in the will itself or through a separate document. The executor must be of 21 years of age, capable of discernment, have no interest in the estate of the deceased. In addition, he/she may not have been convicted for a moral crime, nor be in state of bankruptcy. Under the supervision of the competent court, the executor will collect the assets of the estate, pay outstanding debts and distribute the assets. If required, he/she will collaborate with governmental and non-governmental authorities in the execution of the will. He/she shall represent the beneficiaries in all legal cases filed against them in relation to the estate or the will. The executor shall carry on his/her duties in good faith, maintain proper records of the estate, not to use the money of the estate for his/her benefit or facilitate the use of the money by third parties, and not to disclose any information or data concerning the will or the estate. The executor may use the services of a lawyer or an expert to assist him in the execution and administration of the estate. All unpaid debts and death expenses shall be paid first before conveying the assets to the beneficiaries. Upon the request of the executor or any of the beneficiaries, the Court may, for valid reasons, order the dismissal of the executor. In the event of his/her dismissal, the executor must submit to the Court, within 60 days from the date of his/her notification of the dismissal order, a detailed report of all the works he performed during his/her appointment. While the Law is a positive development, some uncertainty in terms of its practical application remains. To date, the Register has not been established with the Dubai Courts. Julien Dif