

Inheritance Issues in the UAE: Sharia Law

May 2016

Serious complications can occur when infant children are left behind and no guardianship arrangement recognised in this country has been put in place. In default, Sharia Inheritance rules would apply to property and it would be at the discretion of a local judge to choose the child's guardian.

What happens if an expatriate dies without a will in UAE?

If an expatriate dies without a Will, Federal Law No. 5 of 1985, concerning the issuance of Civil Transactions Law of the UAE (the "Civil Code"), and Federal Law No. 28 of 2005 regarding the UAE Personal Status Law (the "Personal Status Law") guide the local Courts on the distribution of assets, only where it is not contrary to public policy. In some cases, it is possible that the Courts will apply principles of Shariah law to the estate of a non-Muslim and therefore mandatory rules of division between certain members of the deceased's family will apply.

As a practical matter, access to the assets of the deceased individual is restricted. Assets cannot be transferred or be dealt with in any manner without direction from the local Court. In some circumstances, this can give rise to delays and financial complications at a critical time.

Many expatriates fail to put measures in place to protect their families and their assets. Even where investments are offshore in foreign jurisdictions, individuals fail to consider what would happen to infant children, UAE bank accounts, their freehold properties or shares in this country?

Can a surviving spouse access the joint bank account?

A surviving spouse will not have immediate access to money in bank accounts in the UAE, or even bank accounts held jointly in the names of both spouses. In the absence of a registered Will, these accounts will remain frozen until instructions are received from a UAE Court and all the deceased's debts in the UAE (even including parking fines) are paid. The assets will in due course, be distributed by the Courts in accordance with Sharia Law and this could potentially take weeks, or even months. Under Sharia rules the bulk of assets belonging to the husband may pass to certain family members, with the wife only taking a portion of the estate.

Who will have interim and eventual guardianship of infant children?

Article 142 of the Personal Status Law defines custody as the upkeep and taking care of the child, (which is usually granted to the mother of the child) without interfering with the right of the guardian of the child. Guardianship is predominantly awarded to the father of the child since he is responsible for providing for the child financially, morally and physically.

Under Article 156 of the Personal Status Law a women's custody of the children terminates upon a male

child reaching the age of eleven and a female child turning thirteen, unless the Court decides to extend this period in the best interests of the child.

If a father of an infant resident in the UAE dies, under Sharia law the closest male relative on the father's side of the family is usually appointed as guardian of any infant children. The mother of the children would retain custody, subject to conditions such as her not remarrying. If a wife was to die in the UAE, then the husband would remain the guardian and custodian of any minor children. This would be subject to him having a suitable woman living within his home to care for the child (such as a female relative).

In the absence of a registered Will or specific instructions appointing interim guardians for minor children, the UAE local authorities would have to intervene and take care of the minors, until such time as the Court's approval of a suitable guardian.

Will Sharia inheritance rules apply to all or part of the UAE assets?

Inheritance issues for Muslims are dealt with in accordance with Sharia, whereas for non-Muslims, the law of the deceased's nationality can be applied if a Will is made formally. 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". However where a Will refers to the disposal of real estate in the UAE, then Article 17 (5) states that UAE law "shall apply to wills made by aliens disposing of their real property located in the state". This is subject to an arguable exception in the case of freehold property; at present, the Dubai Courts, at least, are treating freehold property as an exception so the property can be bequeathed by a non-Muslim expatriate, under their Will.

Furthermore, 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 their home country, to govern succession to his or her UAE estate instead of Sharia-based rules. However, the Will must be proved in the formal legal fashion before the Inheritance Court, a process greatly expedited if the expatriate has previously had the Will translated into Arabic and notarised here in the UAE.

Even though the Personal Status Law provides [non-Muslim expatriates](#) with the right to request the UAE Court for the application of their home country law, the Personal Status Law does not however expressly amend the UAE Civil Code. This leads to potential uncertainty as to whether or not a non-Muslim's Will would be subject to Sharia law and not according to their personal wishes, as per their home country law.

How can assets and family be protected?

In May 2015, the [DIFC Wills and Probate Registry](#) introduced a new set avenue for succession and inheritance matters for non-Muslims holding assets in Dubai, backed by protocols concluded with other public authorities in Dubai.

The new rules, broadly follow UK law and practice, create legal certainty for the inheritance of an individual's assets after death and the appointment of guardians for their children. This not only allows individuals to have testamentary freedom to dispose of their assets as they wish, it also provides peace of mind that an individual's estate will be distributed according to their wishes. The Registry provides a simple and efficient mechanism for non-Muslims to pass on their estates, subject to a formal Will registration process which functions as an opt-in mechanism. All probate grants are issued by judges of the DIFC Court.

Learn how our Wills services team offer assistance for matters relating to [consultation and registration of](#)

[wills in the UAE.](#)