

Holders of assets in Dubai can now register a DIFC will

AFRIDI & ANGELL
LEGAL CONSULTANTS

By *Stuart Walker*,
Afridi & Angell



Jumeirah Emirates Towers
Office Tower, Level 35
Dubai, United Arab Emirates
Tel: +971 4 330 3900
Fax: +971 4 330 3800
Email: dubai@afриди-angell.com
www.afриди-angell.com

The Wills and Probate Registry in the Dubai International Financial Centre (DIFC) opened in late April of this year. It is now possible to register a will in Dubai, and to have a high degree of confidence that it will be enforced in accordance with its terms.

Prior to the establishment of the registry, it hadn't been possible to be so confident that foreign wills would be enforced in the United Arab Emirates. There were concerns that Shari'a law would be applied to the estates of non-Muslims, particularly with respect to real property (land and buildings). The establishment of the registry is therefore a welcome initiative, and persons who have assets in Dubai should almost certainly register a will with the registry.

Points to note

A few points to note right from the beginning: firstly, only non-Muslims may lodge their wills with the registry. At the time of registering the will the testator (the person making the will) must confirm that they are not a Muslim, nor have ever been a Muslim. If this confirmation is later proved to be inaccurate then the will becomes void. Secondly, testators must be at least 22 years old. Thirdly, the will can only relate to assets in the emirate of Dubai. Finally, the value of the Dubai assets must be balanced with the costs of using the registry. There are a number of fees payable, some reasonably significant for many people. For example, the cost of registering a will is currently 10,000 Emirati dirhams (US\$2,700).

Testators who have assets outside of Dubai will also need another will to deal with those assets. The general rule is that a new will cancels all previous wills. Care must therefore be taken

when drafting both the DIFC will and the foreign will to ensure that one does not inadvertently cancel or override the other.

Previous state of affairs

Prior to the introduction of the registry, a multitude of approaches were taken in respect to estate planning by Dubai residents. Many people, of various faiths, made no will at all. For people who are aware of the applicable inheritance and intestacy rules, this was (and continues to be) a perfectly sensible choice. If your family structure is straightforward, and you understand and are comfortable with how your assets will be distributed where there is no will, then there is no reason to make one.

Historically, a variety of solutions were offered to people who were not sure how their assets would be treated if there was no will, and who wished to create one. Some were told that it was necessary to register a Dubai will with a local notary. Others were told to make a will in their home country, have it translated into Arabic, and then registered locally. Others were told that it was sufficient to sign the will and have it witnessed by a staff member at their home country consulate in Dubai. In short, there was no consensus as to the most appropriate method of creating a will in the UAE, or of ensuring that it would be enforced in accordance with its terms.

Resolution of concerns

The DIFC Wills and Probate Registry seeks to resolve these concerns. Wills are reviewed by registry staff prior to being accepted for registration. This review is designed to prevent the registration of wills with

blatantly unacceptable terms (e.g. "... and finally, I leave the balance of my estate for the funding of international terrorism, and general crimes against the state"). More significantly, the review ensures that the will formalities are properly attended to (i.e. that the will is correctly witnessed, and so forth).

Once registered, the intention is that the terms of the will can be given effect to by the DIFC Court if necessary. Decisions of the DIFC Court must, as a matter of UAE law, be enforced by the Dubai courts. It is then anticipated that other relevant Dubai governmental entities (such as the Economic Department in respect of assets such as company shares, or the Lands Department in respect of real property) would automatically abide by orders issued by the Dubai courts (or even by the DIFC Court directly).

Note of caution

This process appears robust, but a small note of caution must be sounded. This is a new, and so far untested, system. It remains to be seen whether the relevant government departments will indeed recognize DIFC wills. We anticipate that this point will be resolved relatively soon, as there appears to be a significant number of individuals eager to make use of the registry. Furthermore, we have no reason to believe that the system will not work as it should. On that basis, we welcome this beneficial addition to the legal landscape of the emirate of Dubai.

Stuart Walker is a partner at Afridi & Angell, a UAE-based law firm with offices in Abu Dhabi, Dubai, the DIFC and Sharjah.