



Legal Bulletin

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New Will Registry for Expats in Dubai

A new system for the administration of wills in Dubai is set to begin operation in DIFC early 2015. If launched, the system would dramatically alter the landscape of the wills regime in Dubai. The English language Wills and Probate Registry (“WPR”) would be a system for non-Muslims with assets anywhere in Dubai (not limited to DIFC).

Currently, federal laws such as the Personal Status Law and Civil Transactions Code govern the distribution of a deceased’s assets in the UAE. While these laws contain provisions that the law of the nationality of a non-Muslim should determine the distribution of assets, in practice, the Dubai Courts have generally (with exceptions) interpreted the law in such a way as to apply Sharia law to the distribution. This system has certainly caused a great deal of frustration among non-Muslims living in Dubai, and has also contributed to the existence of sophisticated (and costly) offshore holding structures that keep the assets out of the Dubai courts’ reach.

According to the WPR draft rules published for public consultation on the DIFC Courts website on November 16th, (<http://difccourts.ae/public-consultation-wpr-rules/>), non-Muslims with assets in Dubai will be able to execute and register wills that will be subject to DIFC Courts’ jurisdiction. According to the WPR draft rules, the wills can be prepared by residents and non residents, and can include

moveable and non-moveable assets. According to the Registry Fees, the fee for registration will be USD 2,800, and for probate will be USD 1,500.

If launched, the WPR will mark a significant step towards developing a system of wills and probate in Dubai, by providing certainty to non-Muslim asset holders, and allowing for a cost-efficient way to structure assets for inheritance. ■

New Property Transfer Fee Regime

The Dubai Land Department recently changed the applicable fees for property transfers. The changes include:

- In the event that a property is being sold pursuant to a Power of Attorney granted by the seller, an 8% transfer fee applies, instead of the previous 4%.
- In the event that the owner of an property which is not yet complete seeks to transfer the property, an 8% transfer fee applies, instead of the previous 4%.

It is not clear whether these fees have been codified in any decree or other type of official document; but this is the stated Land Department policy at the moment. ■

Competition Law

Federal Law No. 4 of 2012 on the Regulation of Competition (the “Competition Law”) was introduced in 2012 to regulate competition in the UAE by restricting activities that negatively affect the level of competition in the market. To that end, the Competition Law applies to all entities undertaking commercial activities in the UAE and to entities

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operating outside the UAE but whose activities affect competition within the UAE. Exempted entities include federal and local government entities; industries including telecommunications, pharmaceuticals, financial services, oil and gas, transportation and railway, and small and medium sized businesses.

The Competition Law requires that entities seek merger clearance from the UAE Ministry of Economy if they are contemplating a transaction or entering into agreements or arrangements (“agreements” and “arrangements” are terms that should be construed very broadly) that in some way affect the level of competition in the market, as defined by the Competition Law and regulations. In the event of violation, penalties can potentially include fines of between AED 500,000 and AED 5 million for entering into restrictive agreements or abusing market dominance as well as fines of between 2% to 5% of the infringing entity’s annual revenue derived from the sale of the relevant goods and services. An entity violating the provisions of the Competition Law also exposes itself to possible criminal sanctions.

However, the Competition Law left most key issues unclear, such as what constitutes a practice of dominance in the market, exemption procedures, jurisdictional thresholds, and other definitions that would make the scope and application of the law clearer.

The regulations which have recently been issued were aimed at clarifying these positions, however they stop short of defining the key parameters which are required to interpret the law. These undefined issues include not providing thresholds for what constitutes an abuse of a dominant position, or when a transaction needs to be notified to the regulatory authority, not providing a clear definition for “market” and not defining “small and medium sized businesses” (which are exempted from the Competition Law).

Nonetheless, despite the lack of clarity, compliance with the Competition Law is (ostensibly) mandatory as it is a current, valid UAE law.■

Credit Reporting

Individuals can now obtain credit reports in Dubai for themselves (or authorize another individual to obtain them on their behalf), through the Al Etihad Credit Bureau (“AECB”), a government mandated credit agency.

The credit reports include general information regarding the individual’s credit history (such as loans, credit cards, and late payments), salary, and any judgments against the individual. AECBS says that further operational phases of the system will provide information on companies in the UAE, and credit “scores”. The bureau was established by virtue of Federal Law No. 6 of 2010, replacing the private sector credit bureau, Emirates Credit Information Bureau.

While the ability to now obtain credit information for individuals (with their consent) is helpful from a lending perspective, the further planned phases of the AECB which are expected to cover companies would mark a dramatic step in the way business is conducted in the UAE, particularly from a due diligence perspective.■

RERA Launches Service Charge and Maintenance Index

A **Service Charge and Maintenance Index** - intended to make the system of service charges more transparent - is now in place for freehold properties, accessible via the Dubai Land Department Website. The register has come into effect likely in reaction to the controversial nature of the issue, as developers have in some cases been taking extreme measures to enforce payment of these fees, while some owners have raised concerns that the fees are arbitrary and excessively high. The service lists the required service and maintenance charges for service areas and common spaces for 300 buildings and 22 major developments, including apartments, offices, shops, and villas, and is meant to be regularly updated. According to RERA, the data is audited by RERA and then verified by owners’ associations and real estate developers. While past charges will not be available on the site (making a historical comparison of increases unachievable), there will now be a basis upon which to compare service charges across developments, and to track fluctuations.■

Afridi & Angell

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