

Foreigners' Wills & Inheritance under the UAE Law

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(Contributions by Mojahed Al-Sebae)

Since the declaration of Dubai Law No.7 of 2006, concerning Real Property registration in the Emirate of Dubai many investors and purchasers were attracted and encouraged by one way or another to purchase a property in Dubai. This Law authorizes all foreigners to own freehold titles in the city within the specific areas determined by the Ruler of the Emirate. However, most property purchasers and investors have serious concerns about the applicable law to their wills and inheritance in the UAE.

In general, inheritance and wills in the UAE are regulated by the UAE Civil Code, Federal Law No.2 of 1987 (the "Code") and the Personal Affairs Law No.28 of 2005 (the "Law"). Whilst it is not entirely clear, it would seem that the law of a foreigner (the law of his own country) will be the applicable law on his inheritance and will, in case he passed away. This can be observed from Article 17/1 of the Code which provides that "Inheritance shall be governed by the law of the deceased at the time of his death".

In addition, the Code stresses that the form of wills and the substantive provisions governing testamentary disposition and other dispositions taking affect after death shall be governed by the law of:

- 1- The state of which the person making such dispositions is a national at the time of his death;
- 2- The state of which the person making such disposition is a national at the time the disposition is made, or
- 3- The state in which the disposition is made (Article 17/3 and 17/4 of the Code).

However, the UAE lawmaker has made remarkable exceptions and restrictions to the above. These exceptions demand the full attention and consideration of all foreign property purchasers.

Firstly, property rights located in the UAE which belong to a foreigner having no heir shall become vested in the UAE.

Secondly, the Laws of the UAE are the applicable laws to wills made by foreigners disposing their real property located in the UAE (Article 17/5).

Thirdly, matters relating to personal status such as marriage, inheritance, and lineage, and matters relating to sovereignty, freedom of trade, the circulation of wealth, rules of private ownership and the other rules and foundations upon which society is based, in such manner as not to conflict with the definitive provisions and fundamental principles of the Islamic *Shari'ah* are all deemed to be Rules of the Public order (Article 3 of the Code). Therefore, in spite of what have been said above, it is not permissible in the UAE to apply the provisions of a law specified by article 17 of the Code (the Law of the deceased), if such provisions are contrary to rules of public order or morals of the UAE (Article 27 of the Code).

In other words, no matter what the religion or nationality of the deceased and whether he has a will or not, his inheritance and will, will only be distributed and enforced in accordance with the laws of the country of which the deceased is a national at the time of his death to an extent that it does not contradict with the UAE public order.

This gray area was partially clarified by Dubai cassation Court in 1998 when it ruled that the differences of the fixed shares of the heirs between the local laws and the laws of the state of which the deceased is a national shall not be considered as Public order.

These issues are very critical, unfortunately most international investors and property purchasers are not aware of them. Therefore, consulting a lawyer about the risks associated with such investments can save a great deal of time, money and unnecessary inconvenience.

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