

## Wills & Probate 2023

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## 1. What are the main steps in drafting a will in this jurisdiction?

The two main jurisdictions for Wills in the UAE so far are the Emirate of Abu Dhabi's jurisdiction through the Abu Dhabi Judicial Department (the ADJD) and the jurisdiction of the Dubai International Financial Centre (the DIFC) and thus are the most commonly used. The DIFC Wills Registry is part of a jurisdiction based on common law and is exclusive for non-Muslims, where the option to draft and register a Will falls within the jurisdiction of the DIFC Wills Registry and the probate court is the DIFC Court. Following the introduction of Federal Decree-Law No. 29/2020, the latest amendment to the UAE's Sharia principled Federal Decree-Law No. 28/2005 on Personal Status, it is provided that each Emirate may create a separate registry for non-Muslims, and Article (2) thereof further states, that each respective Emirate shall issue a resolution determining the format, data, procedures, and registration controls of such registry. The only local court which has already set up its own Wills Registry is the Abu Dhabi Judicial Department, which is based in Abu Dhabi and is not exclusive to non-Muslims, since the ADJD Wills registry is allowing foreigners, including Muslims with passports from non-religious law countries, to draft and register Wills.

### DIFC Court

Dubai Law No. 15 of 2017 affirms the DIFC Resolution Authority's DIFC Wills and Probate Registry Rules (the DIFC WPR Rules), based on Order No. 1/2015 regarding DIFC Wills and Probate Registry Rules, in which the most recent version was issued on 30 June 2019 under the DIFC Courts Order No. 3/2019 in respect of the DIFC Court's Wills and Probate Registry Rules. The DIFC Wills and Probate Registry (the Registry) is an ancillary body of the DIFC's Dispute Resolution Authority and its purpose is to register Wills for non-Muslims regarding their worldwide assets. Article 9(1) of Part 3 of the DIFC Wills and Probate Registry Rules regarding its application is as follows:

(1) These Rules shall apply only to Wills:

- (a) of non-Muslim individuals over the Age of Majority; (i) that are in a form as set out in Schedule 1, in the English language, in writing; (ii) witnessed by at least two witnesses of the age of majority, such persons being either physically or virtually present in front of the Registrar or an Authorised Officer at the time of witnessing;
- (b) signed (in person) by the Testator;
- (c) that appoint Executors over the Age of Majority;
- (d) that appoint a Guardian, if at all, for a Minor who is habitually a resident with the Testator, in the Emirate of Dubai or the Emirate of Ras Al Khaimah;
- (e) that are deposited and (at the time of death remain) registered with the Registry; and
- (f) that state that the Testator intends Administration and succession to the Property dealt with by the Will to be governed by these Rules and the laws of the DIFC.

### ADJD

Abu Dhabi Muslims are subject to the UAE Federal Decree-Law No. 28/2005 on personal status as amended by Federal Decree-Law No. 29/2020 (the Muslim Personal Status Law) and operates under similar provisions to those of a common law jurisdiction. ADJD Wills, for non-Muslim foreigners and Muslim foreigners from non-religious law countries, can cover assets located in any of the seven Emirates and is also based on Abu Dhabi Law No. 14/2021 as amended by Abu Dhabi Law No. 15/2021 (the Abu Dhabi Civil Personal Status Law) and is accompanied by Abu Dhabi Regulation No. 8/2022 (the Abu Dhabi Civil Personal Status Regulation). Based on this law, UAE real estate and other assets can be allocated in an ADJD Will drafted by a foreigner regarding assets or real property located in Abu Dhabi as the Abu Dhabi Civil Personal Status Law's enforcement is not subject to the UAE Civil Procedures Law. The law which regulates ADJD Wills is the Abu Dhabi Civil Personal Status Law along with the Abu Dhabi Civil Personal Status Regulation, it allows real estate in Abu Dhabi to be allocated in a foreign Will by a foreigner under Article 11(3). Foreign Wills are valid and will be enforced in the UAE. Other real estate located in other Emirates of the UAE will be subject to Federal Decree-Law No. 41/2022 (the Non-Muslim Personal Status Law), unless the testator of the foreign Will stipulates that he would like for his real estate located in other Emirates of the UAE to be subject to the Abu Dhabi Civil Personal Status Law. The ADJD Wills Registry, also referred to as the ADJD office of Non-Muslims Wills, is where a testator may register his or her Will. They can use the form of Will provided by the office to simplify the drafting process.

The requirements and abilities of a testator are as follows:

- A testator registering an ADJD Will has the ability to leave any of his or her assets or properties to whomever they choose including those located outside of the UAE. Guardianship provisions of minor children may also be included by a testator in his or her ADJD Will, which may consist of both permanent and interim guardianship appointments to look after the children in the event the testator passes away along with the other parent.
- A testator must be a non-Muslim or a Muslim with a foreign passport from a non-religious law country. If the testator is neither, the Will shall be deemed invalid.
- The testator must hold a valid passport or if the testator is a UAE resident, they must also hold a valid residency permit.
- Each Testator is required to attend the registration appointments in person or by virtual means.
- The Testator, Executors and Trustees must be at the age of 21 or older.
- A sworn translator must interpret Wills not originally written in Arabic before they may be recorded at the ADJD Wills Registry in Arabic or bilingual form.

To register an ADJD Will:

- The Will draft may be submitted through an application on the website.

- Once the application is submitted, an employee at the ADJD Wills Registry shall check the application and the party that has submitted the application is notified through SMS if the application was approved or whether it needed to be modified.
- The party that submitted the application may then proceed to make the payment for the fees of the registration of the Will and schedule a virtual appointment for the notarisation of the Will.

## 2. How does sharia law impact gifts which can be made in a will?

Sharia law is intended to apply to Muslims and may apply to non-Muslims if they choose to opt into it and have been granted permission to do this by the UAE Courts. Should a non-Muslim sign a Will to be applied before the UAE Court, it must be in accordance with the Non-Muslim Personal Status Law. The wishes of the testator must be followed as long as they do not contradict this law or violate public policy as per Article 27 of UAE Federal Decree-Law No. 5/1985 on UAE Civil Transactions as amended by Federal Decree-Law No. 1/1987 and Federal Decree-Law No. 30/2020 (the Civil Transactions Law). The Muslim Personal Status Law is the relevant piece of legislation regarding Wills for Muslims under Sharia Law. Based on this, Muslims are only allowed to draft a Will for up to one third of the testator's estate only to individuals who are not considered heirs as per Sharia law.

Conditions on the validity and enforceability of a Will under the Muslim Personal Status Law are stipulated throughout Articles 240- 264. Otherwise, Muslims are subject to the Sharia forced heirship provisions of the Muslim Personal Status Law in Articles 321-345.

Many people wish to use a Will as a mean to gift, and a Will can be used to gift a non-heir under Sharia, as also included in the UAE Law above mentioned. The Will used for a gift may be better placed under a Muslim foreign Will as it is subject to Article 1 (3) of the Muslim Personal Status Law which is also subject to Article 17 of the Civil Transactions Law regarding the enforceability of foreign Wills in the UAE. The testator's provisions regarding all assets in the UAE shall be enforced as per the law of the foreign Will's country except for real estate located in the UAE which shall be subject to the forced heirship provisions of the Muslim Personal Status Law and may include heirs as beneficiaries therein.

## 3. What rights do family members have if a will has not been made?

For Muslims, Sharia law under the Muslim Personal Status Law will automatically apply to a deceased's estate in the absence of a Will.

For non-Muslims, the family of the deceased may:

- 1) Opt into Sharia Law and request the relevant court applies such law regarding the division of assets.
- 2) Otherwise, Article 11(2) of the Non-Muslim Personal Status Law takes effect by automatically splitting the deceased assets in half where in the absence of a Will for a non-Muslim, their spouse receives half of their estate, and the other half is to be divided equally among children.

In the past, under Article 1 of the Muslim Personal Status Law, the family of a non-Muslim foreigner may request that the law of the deceased's home country be applied regarding the distribution of the estate and if they do not petition for the application of their home country's laws, then the UAE courts would automatically apply Sharia law. However, after the release of the Non-Muslim Personal Status Law, as a Federal Decree Law and the Abu Dhabi Civil Personal Status Law as an Abu Dhabi Law, in the absence of a Will and if the family does not petition the court to apply their home country's law, the distribution of the assets will be divided half, in which one half of the estate is given to the spouse and the other half is equally distributed among the children. Prior to the introduction of the Non-Muslim Personal Status Law, some forms of assets may be subject to the laws of the deceased's home country with the exception of real property, which must be subject to UAE law as real estate assets in the UAE require a UAE Will. However, UAE Courts may enforce real estate allocated under foreign Wills if a foreign court order is provided. It is important to note that it is within a judge's discretion to discard the law of the deceased's country, partially or fully, if it falls out of the scope of application of Article 17(1) of the Civil Transactions law as amended by Federal Decree-Law No. 30/2020.

## 4. Are there any rules governing the minimum/maximum entitlements of specific family members?

For Muslims, the main beneficiaries of a deceased's estate are the deceased's immediate, nuclear family. A husband would receive half of his wife's estate if they did not have children. If they do, the husband receives a quarter of the estate. A wife of the deceased is entitled to a quarter of her husband's estate if they do not have children. Wives receive an eighth of their husband's estate if they have children together. Sons of the deceased are entitled to double their sister's share. Daughters of a deceased male are eligible to receive two-thirds of the estate if they do not have male siblings.

Beyond this, the minimum and maximum entitlements of specific family members are not explicitly covered by the Muslim Personal Status Law, however Articles 321-345 explain different family members' entitlements based on Sharia principles. These entitlements depend on the gender of the deceased and which family members have survived. There are certain family members that may not be considered as heirs under Sharia Law, which will affect inheritance and how entitlements will be divided. Articles 321-345 of the Muslim Personal Status Law do not dictate the exact maximum or minimum entitlement of specific family members; however, these articles cover forced inheritance, which is a fixed share per heir of an estate. The fixed shares are one half, one quarter, one eighth, two thirds, one third, one sixth, and one third of the remaining balance. The forced heirs include both of the deceased's parents, their spouse, paternal grandfather or his agnate ascendants, the grandmother who is not related to the deceased by an heir, daughters, the daughters of the deceased's son or of his descendants, sisters in the absolute, and the cognate brother. These types of heirs or family members are subject to different fixed shares as outlined under Articles 322-328 of the Muslim Personal Status Law. The entitlement of forced heirs differs from

the entitlement of male agnates. There are three types of male agnates including agnates per se, agnates by others, and agnates with others. The male agnates are entitled to an undermined share in the estate depending on whether there are any surviving forced heirs and if after the estate is distributed among these forced heirs there is a remaining balance.

Family members that are considered heirs must receive a minimum of two thirds of the deceased's estate based on the fact that Sharia Law only allows Muslims to gift or bequeath one third of their estate to non[1]heirs.

For non-Muslims, the Non-Muslim Personal Status Law allows a legator to leave a Will with their assets to anyone of their choice. The procedure and controls regarding this will be set out in the Implementing Regulations of this Decree-Law, which are yet to be released upon the publication of this article.

The Abu Dhabi Civil Personal Status Law also allows foreign testators to leave any of their UAE-based assets to whomever they choose. This law as well as Article 13 of the Non-Muslim Personal Status Law also provide the option for foreign non-Muslims and foreign Muslims from non-religious law countries to register their Will by filling out a form at the time of signing their marriage contract.

## **5. What is the general process if the deceased is non-muslim without a will owning property in the jurisdiction?**

### **UAE Federal Court**

Sharia Law will apply when the deceased is Muslim under the Muslim Personal Status Law.

Prior to the introduction of the Federal Non-Muslim Personal Status Law, families of non-Muslims who have passed could either opt-into Sharia Law with the approval of the UAE court to determine the division of assets in the absence of a Will. Otherwise, they could request that the law of the deceased's home country apply to the distribution of assets as per Article 1 of the Federal Muslim Personal Status Law in which the specific law would have to be legalised in the home country and in the UAE as well as translated into Arabic by a translator approved by the UAE Ministry of Justice.

Currently, in accordance with the Federal Non-Muslim Personal Status Law, under Article 11(2), in the absence of a Will of a deceased who is not Muslim, the estate will be divided in half, where one half is given to the spouse of the deceased and the other half is divided equally among the children regardless of gender. Where the deceased had no children, half of the estate to be divided among the children shall instead be divided equally among the deceased's parents, where each parent would therefore receive a quarter of the entire estate. If one of the parents is deceased, the remaining parent shall obtain a quarter of the estate and the remaining quarter shall be equally divided among the deceased's siblings. If the deceased had no spouse, children, or siblings, and only one living parent, the entire estate shall be allocated to that parent. If the deceased has no spouse, children, or living parents, then the estate shall be distributed equally among the deceased's siblings without the differentiation of gender.

Article 11(2) of Federal Law No. 41/2022 states: In the absence of any Will, the half of the estate shall go to the other spouse and the rest half shall be distributed among children on equal basis, without difference between males and females. If the deceased has no children, then half the estate shall be vested in his/her surviving parents on an equal basis. In case of absence of one parent, they shall obtain a quarter of the estate and the rest shall be vested in his/her siblings on an equal basis. The estate shall be vested in one of the parents in the absence of the other and the absence of legator's spouse, children, or siblings. In case of the absence of both parents, the estate shall be vested in his/her siblings in equal shares, without difference between males and females.

### **DIFC Court**

The DIFC Court may only probate Wills if they are signed and registered with the Registry. In the absence of a Will and the individual has died in the UAE, there is no recourse present before the DIFC Court regarding the division of assets of the deceased.

### **ADJD**

The Abu Dhabi Civil Personal Status Law also regulates probate of Wills signed and registered in ADJD and covers the allocation of assets in the absence of a Will under Article 11, which sets out the same conditions as the Federal Non-Muslim Personal Status Law regarding the conditions in which assets are distributed.

Article 11(2) of Abu Dhabi Law No. 14/2021 and its amendments states that: 8 In case of absence of a Will, then half of the inheritance shall be entitled to the husband or wife and the other half shall be equally distributed among the children with no difference between males and females. In case the deceased has no children then the inheritance shall equally belong to the parents thereof, or half of such inheritance shall be transferred to one the parents in case the other one is not present, and the other half shall be granted to the siblings. In case of absence of the parents, then the inheritance shall be equally distributed between the siblings without distinction between males and females.

## **6. What is the general process if the deceased is a non-muslim with a will owning property in the jurisdiction?**

### **UAE Federal Court**

Based on the Non-Muslim Personal Status Law, under Article 11(1), non-Muslims are given the right to leave a Will that explains to the authorities how to divide their assets in the jurisdiction to the beneficiaries of their choice. This will be subject to the controls set out in the yet to be released Implementing Regulations attached to this law.

It is important to note that the Non-Muslim Personal Status Law does not include the allocation of real estate and real property in a non-Muslim Will.

Article 11(1) of Federal Law No. 41/2022 is as follows: A legator may leave a Will with all his assets in the State to anyone of his/her choice according to the controls set out by the Implementing Regulations of this Decree-Law.

#### **DIFC Court**

To probate a Will before the DIFC Court, a family member or executor must make a grant of probate request to the court. Upon the approval of the grant and the Will deemed as valid, the DIFC Court will review the Will and render a decision with regards to its applicability and enforcement. DIFC Wills allow non-Muslims to allocate their real property in the jurisdiction to the beneficiaries of their choice.

#### **ADJD**

As per the Abu Dhabi Civil Personal Status Law, under Article 11(1), the foreign testator may leave a Will to whomever deemed adequate regarding the assets belonging to the deceased in the state. These assets may include real property and real estate in the UAE.

### **7. Are there any differences between how property owned by the deceased inside and outside the jurisdiction would be treated?**

The UAE Courts, DIFC Court, and ADJD all have jurisdiction over assets and real property in the UAE with regard to Wills. However, the DIFC jurisdiction is limited to DIFC Wills, while the UAE Courts and ADJD have jurisdiction regarding properties owned throughout all seven Emirates. The courts in the UAE would not have jurisdiction over property owned by the deceased abroad.

For non-Muslims, all assets fall under the scope of the Non-Muslim Personal Status Law, except for real estate as per Article 1 (1). The UAE has its own provisions for foreign Wills. If a non-Muslim includes UAE assets in a foreign Will, the UAE's provisions honour and recognize Wills that are drafted abroad because it applies the law of the deceased in their own native homes, therefore the foreign Will shall be enforceable in the UAE except in regard to UAE real property or real estate as per Article 17 of the Civil Transactions Law amended by Federal Decree-Law No. 30/2020. However, the UAE courts may enforce foreign judgements regarding UAE real property in foreign Wills. UAE assets that are not real estate or real property allocated to beneficiaries in foreign Wills shall be enforced by the UAE Courts. However, UAE real property or real estate will be distributed under UAE law unless a foreign court order is provided regarding a foreign Will including UAE property or the testator drafted a UAE Will in relation to his or her UAE real estate or property. Non-Muslims or Muslims from foreign non-religious law countries may resort to drafting ADJD Wills for any property in the UAE or a DIFC Will. Non-Muslim foreigners not residing in Abu Dhabi can also have a Will drafted in the UAE under the Abu Dhabi Civil Personal Status Law regarding any assets they own in the UAE including real estate property. Muslims with foreign passports from secular countries or countries that are not subject to Sharia law can also draft an ADJD Will under the Abu Dhabi Civil Personal Status Law.

All Muslims in the UAE are subject to the Muslim Personal Status Law, whether they have a Will or not. Therefore, Muslim Wills follow the succession rules under the Muslim Personal Status Law and the lack of a Muslim Will shall result in the same succession procedure. The Muslim Personal Status Law is also subject to Article 17 of the Civil Transactions Law. Therefore, UAE real estate and real property of a deceased Muslim will be distributed in accordance with the succession rules under the Muslim Personal Status Law and will not be enforced if mentioned in a foreign Will.

Article 1(1) of Federal Law No. 41/2022 regarding the application of other laws is as follows: The provisions of the present Decree-Law shall apply to non-Muslim citizens of the United Arab Emirates, and to non-Muslim foreigners who reside in the State unless one of them invokes the application of their respective law, in relation to matters of marriage, divorce, estate, Will and proof of affiliation, without prejudice to Articles (12), (13), (15), (16) and (17) of the referenced Federal Law No. 5 /1985.

### **8. What specific rules govern the choice of executor and their duties?**

#### **UAE Federal Court**

The Muslim Personal Status Law addresses the role of an executor under Article 227, however both Muslims and non-Muslims (if they have opted for the application of this law) may appoint an executor of their choice in their Will. In certain cases, UAE Courts may appoint an executor if the judge believes it is necessary to do so. The Muslim Personal Status Law states under Article 277 that if the deceased has not appointed an administrator or executor of their Will, the judge may appoint one based on the heirs' unanimous choice or in the case of disagreement, the judge may appoint an executor upon hearing the statements of the heirs. Article 277 of Federal Law No. 28/2005 states that:

The procedures for liquidation of the estate are the following:

- 1) In case the decedent did not appoint an administrator for his estate, any of the concerned persons may ask the judge to appoint an administrator unanimously chosen by the heirs from among them or from others and in case they fail to reach such an agreement, the judge shall choose one after hearing the heirs' statements.
- 2) Special provisions shall be complied with if there is among the heirs an unborn fetus, a fully incapacitated or an heir lacking capacity or an absentee.

#### **DIFC Court**

The choice of executor as well as their duties is covered in Part 20 of the DIFC WPR Rules. Article 84 of the Rules sets out the duties of an executor as follows:

- (a) Collect and obtain control of the estate and administer it per the Will, the Rules and the laws of the DIFC;
- (b) Preserve, protect and manage the estate;

- (c) Act with care and complete good faith;
- (d) Administer the estate for the benefit of those interested in it;
- (e) When required to do so by the DIFC Court, provide an inventory and an account of the estate;
- (f) When required to do so by the DIFC Court, value the estate;
- (g) Ascertain the debts and liabilities of the deceased;
- (h) Pay all expenses, debts and other liabilities as are properly payable;
- (i) Distribute the remainder of the estate to the beneficiaries;
- (j) Keep accurate accounts and records of the administration of the estate;
- (k) Keep the estate separate from their personal property and any other property held in a different capacity;
- (l) Not directly or indirectly profit from their office, unless authorised to do so by the Will, the DIFC Court or the beneficiaries;
- m) Not to enter any transaction affected by (or otherwise place themselves in a position where there is) a conflict between his /her duty to the beneficiaries and creditors and his/her personal or other interests, unless authorised to do so by the Will, the DIFC Court or the beneficiaries;
- (n) Inappropriate cases, seek the DIFC Court's directions regarding matters arising in the administration;
- (o) When required to do so by the DIFC Court, deliver the grant of probate to the DIFC Court; and
- (p) Take reasonable steps to notify any beneficiaries of their interests.

### **ADJD**

The Abu Dhabi Civil Personal Status Law does not mention the appointment of an executor; however, Article 13 mentions the Guidance Manual Regarding the Registration and Execution of the Wills of Foreigners that was released by the Chairman of the Department of the Register. Muslims are subject to the Muslim Personal Status Law of the UAE that allows the deceased to appoint an executor or administrator and sets out the process in the case where an executor has not been appointed.

## **9. What are the minimum features required of a good will?**

There is a separation between the UAE Courts' jurisdiction, the DIFC Courts' jurisdiction, and the jurisdiction of the ADJD. The UAE is a federal country comprised of seven Emirates; therefore, judgements of the UAE Courts are applicable to Muslims and non-Muslims in all seven Emirates and 11 applies to individuals with assets throughout the UAE. The DIFC Courts' jurisdiction currently only applies to non-Muslims with assets throughout the UAE and worldwide. The ADJD, although based in Abu Dhabi, holds jurisdiction over assets throughout the UAE regarding non-Muslims or Muslims with a foreign passport from a nation that does not apply Sharia Law.

### **UAE Federal Court**

The Muslim Personal Status Law covers the main features of a good Will based on four basic elements. These elements under Article 245 of the law include the wording of the Will, the testator, the legatee, and the bequeathed property. For Muslims and Non-Muslims, a Will can be drafted in English if translated to Arabic by a UAE Ministry of Justice certified translator.

### **DIFC Court**

Based on Order No. 1/2015 regarding the DIFC Wills and Probate Registry Rules, the DIFC Resolution Authority adopted the DIFC WPR Rules, which was reaffirmed by the Dubai Law No. 15 of 2017. This authority and the Registry serve as the ancillary body of the DIFC's Dispute Resolution Authority and were created to register Wills for non-Muslims with respect to their worldwide assets. The most recent version of the DIFC WPR Rules came into effect in June of 2019 under the DIFC Courts Order No. 3 of 2019 in respect of the DIFC Court's Wills and Probate Registry Rules. Article 9 of the DIFC WPR Rules states that in order to fall under the purview of the Registry, a Will must:

- (a) Be signed by a non-Muslim individual over the age of 21;
- (b) Be in writing, in the English language and executed in front of and witnessed by competent members of the Registry as well as by one other witness over the age of 21;
- (c) Be signed in person before the Registry by the testator;
- (d) Be deposited and registered with the Registry; and
- (e) State that the testator intends the DIFC WPR Rules and the laws of the DIFC to apply to the testator's estate located in the UAE or anywhere in the world.

### **ADJD**

For foreigners who have assets in the UAE, Chapter 4 of the Abu Dhabi Civil Personal Status Law covers the distribution of inheritance and the procedures for opening a file of inheritance and its distribution. Articles 12 and 13 of this chapter refer to the Chairman's issuance of a Guidance Manual Concerning the Procedures of Inheritance for Non-Muslims and Muslim foreigners from non-religious law countries. It is important to note that the features of a good ADJD Will should include, as per article 11, the recipient or recipients of all assets belonging to the deceased. The deceased must be non-Muslim or a Muslim foreigner from a non-religious law country, the testator, executors, and trustees must be above the age of 21, the testator must hold a valid UAE Resident Identity Card, and if the Will is not originally drafted in Arabic, it must be translated into Arabic by a sworn translator and registered at the ADJD Wills Registry in Arabic or in bilingual form.

## 10. What immediate steps must be taken following death?

In the event of death, the family members of the deceased must obtain a death certificate immediately in order for any probate proceedings to take place. This applies to the UAE Court, DIFC Court, and ADJD alike. When a death has occurred in the UAE:

- 1) It is important to notify the police in the Emirate where the death took place as they will fill out an initial death report and move the deceased to the government morgue. a. If death took place in a hospital, the authorities would fill out the initial death report and move the deceased to the morgue.
- 2) The authorities at the morgue will issue a death certificate.
- 3) Following the issuance of the death certificate, the death must be registered with the UAE's Ministry of Health and Prevention, Ministry of Foreign Affairs and International Cooperation and the Department of Naturalisation and Residency of the Emirate of residence.
- 4) After the death certificate has been issued and the death has been registered, locate the deceased's Will (if they have one) and contact the deceased's lawyer or executor, if known.
- 5) Apply for a probate order with the same authority under which the Will was registered. a. This depends on the type of Will and where it was registered (DIFC, ADJD, Dubai Courts, etc).
- 6) It is important to ensure that all debts and taxes have been paid prior to applying for a probate order with the relevant court.
- 7) If the deceased does not have a Will: a. For Muslims, the relevant Court in any Emirate will apply the Muslim Personal Status Law regarding the division of their assets. b. For non-Muslims, the relevant Court will apply the Federal Non-Muslim Personal Status Law except in Abu Dhabi, where the Court would apply the Abu Dhabi Civil Personal Status Law regarding the division of assets. c. If the deceased is non-Muslim, their family or beneficiaries have the option to request the application of the laws of the deceased's native country.
- 8) A probate order or grant of probate applications are made with the relevant authority in accordance with the registration of the deceased's Will. These applications must be accompanied with the death certificate and will commence the process of probating the deceased's Will.
- 9) Once this order is granted, it will validate the Will and authorize the executor to distribute the assets as per the contents of the Will. a. Circumstances may occur in which the executor or beneficiaries must attend Court, in which the Court will schedule hearings or request additional information. b. It is important to note that contacting a lawyer or expert to aid in the process following death can aid regarding legal representation before the Court, if necessary, as well as preparing the relevant documents to obtain a probate order. c. Certain documents such as the original Will, the death certificate, the deceased's passport, and ID will likely need to be submitted to the Court or accompany the probate order application.
- 10) There are applicable fees charged by the relevant Court authority in different Emirates regarding the application of a probate order. a. Additional fees may include legal fees, executor service fees, and other expenses related to document preparation, translation, and any required attestations or certifications.
- 11) Once a probate order has been issued or the required additional Court proceedings have concluded as well as any other legal proceedings regarding the payment of debts, the executor or legal representative will oversee the distribution of the deceased's assets as per the terms set out in the Will. a. The Court may order the distribution of assets in accordance with the applicable law in the absence of a Will and may appoint an executor to oversee this process.

## 11. Are there any tax requirements governing wills in this jurisdiction?

At the date of this publication, Wills and probate are not subject to tax as there is no inheritance or gift tax in the UAE. In relation to immovable property located in the UAE that is inherited through a Will, the recipient of said property will be required to pay a government transfer fee when the property is transferred and registered at the relevant Land Department. The fee is equivalent to 4 percent of the value of the property, unless the transfer is from a first kinship to the other, among first degree relatives, then it is reduced to 0.125 percent.

## 12. Are there any specific considerations around the inheritance of intellectual property rights to consider?

Intellectual property rights that are registered with a government authority will be treated in the same way as any other type of asset. IP rights that are not registered will not be subject to inheritance proceedings.

## 13. What are the main processes for contesting a will?

### UAE Federal Court

To contest a Will before the UAE Court, an official request must be submitted with concrete evidence as per Article 247 of the Muslim Personal Status Law. The presiding judge will review the claim or claims and investigate before passing judgement. The decision may be appealed by either party should they choose to. This applies to Muslims and non-Muslims alike.

### DIFC Court

Prior to the probate of a Will or during the probate procedure, an individual can contest a DIFC Will. In order to do so, a special request must be put forth before the DIFC Courts who will hear the claim or claims made against the Will.

### ADJD

Non-Muslims and Muslims with foreign passports from non-religious law countries in Abu Dhabi may contest a Will with the Abu Dhabi Civil Family Court if it is an ADJD registered Will.

## **14. Are there any specific considerations where the proposed beneficiary is either adopted or illegitimate?**

### **UAE Federal Court**

For Muslims, adopted or illegitimate children are not recognised as legal heirs under the Muslim Personal Law. Adoption is not permitted under Islam and on shore in the UAE. Therefore, adopted or illegitimate children would not be viewed as the heirs of the deceased in the eyes of the law. However, a Muslim may name any adopted or illegitimate children in their Will, who may only receive up to a third of the estate. Based on the Non-Muslim Personal Status Law, Article 11 allows the deceased to name anyone they choose as the recipient or recipients of their assets, which may include illegitimate or adopted children. This will be subject to the controls set out by the yet to be released Implementing Regulations of this law.

### **DIFC Court**

A testator may name any individual, including adopted or illegitimate children, in their Will.

### **ADJD**

For foreign non-Muslims and Muslims with foreign passports from non-religious law countries, under Article 11 of the Abu Dhabi Civil Personal Status Law, a testator may leave their assets in the state to whomever deemed adequate. Therefore, this includes illegitimate and adopted children.

## **15. Are there any specific state requirements to consider on top of religious requirements?**

It is important to note that no inheritance can take place among people of different religions. The Federal Muslim Personal Status Law states under Article 318 that there is no inheritance between persons of different religions. There are no specific state requirements to consider. However, in the absence of a Will, the religious requirement under Sharia Law is that the assets are to be distributed among the heirs of the deceased in which female heirs are entitled to half the entitlement of male heirs. According to the Non-Muslim Personal Status Law, which is compatible with the corresponding Abu Dhabi Civil Personal Status Law, in the absence of a Will, the estate is divided in half where one half is given to the spouse and the other half is distributed equally among the children of the deceased regardless of gender.

## **16. What are the qualifications and key duties of those administering an estate?**

### **UAE Federal Court**

The Non-Muslim Personal Status Law does not address the appointment of an administrator or executor; however, it does reference the current laws in force regarding matters that are not covered by the new law under Article 15. Therefore, it can be inferred that the original personal status law, which is the Muslim Personal Status Law, will be used to fill in the gaps of the new law.

The Muslim Personal Status Law allows for the deceased to appoint an administrator for their estate, under Article 278. The administrator must spend the estate funds, as per Article 283, on the burial and reasonable alimony to the needy heir until liquidation is complete and an order is obtained from a judge.

Throughout Articles 281 to 300 of the Muslim Personal Status Law, the key duties and responsibilities of the administrator are set out. These duties include taking delivery of the estate's assets and liquidating them under a judge's supervision, taking all measures to preserve the estate's assets and perform the necessary administrative acts, represent the estate in lawsuits, and recover the debts in its favour. The administrator also shall invite the estate's creditors and debtors to submit a statement of their rights and of the debts owed. Additionally, in assessing and taking inventory of the estate's assets, the administrator may seek expert assistance and must take record of all relevant information revealed by the deceased's documents.

The administrator also takes on the administrative duties relating to settling the estate's debts in the case where there are any. In reference to the administrator's qualifications to assume such a role, this is not set out under the word of law. The heirs of an estate do however have the right to request the dismissal of an appointed administrator. It is also within the judge's discretion to dismiss an administrator and appoint another in the case where that decision is justified as per Article 280 of the Muslim Personal Status Law. It can be assumed that these duties apply to the administrators of non-Muslim Wills under the Non-Muslim Personal Status Law as it does not directly address the duties of administrators.

### **DIFC Court**

Under the DIFC WPR Rules issued under Order No. 3/2019, an administrator holds the same duties as an executor of an estate as mentioned under Article 185 of the Muslim Personal Status Law.

### **ADJD**

The Abu Dhabi Civil Personal Status Law does not mention the duties of an administrator; however, it can be assumed that the roles listed out under the Muslim Personal Status Law are applicable to administrators of ADJD Wills as per Article 18 of the Abu Dhabi Civil Personal Status Law. Muslims in Abu Dhabi are already subject to the Muslim Personal Status Law of the UAE unless they hold a passport from a non-Sharia country and choose to be subject to the Abu Dhabi Civil Personal Status Law by for example getting married under this law.

## **17. Are there any time limits to be aware of when administering an estate?**

### **UAE Federal Court**

Any administrator appointed by the Court must follow a specific schedule according to the presiding judge regarding their duties. Article 288 of the Muslim Personal Status Law states an important time limit in which an administrator must provide the court that appointed them with an inventory statement of all the rights and dues of the estate as well as an assessment of the estate's value within three months of the date of their appointment. Additionally, the administrator must also notify the

concerned persons of such deposit through registered mail with acknowledgement of receipt. The administrator may ask the court to extend the period of three months should they have a reasonable justification for the request.

**DIFC Court**

An appointed administrator by the DIFC Court must follow the instructions of said court in regard to any time limits relating to the requests made by the court.

**ADJD**

The Abu Dhabi Civil Personal Status Law does not mention the roles or time constraints of administrators. However, it is assumed that the time limitations set out in the Muslim Personal Status Law are applicable as per Article 18 of the Abu Dhabi Civil Personal Status Law.

**18. Are there any specific points to consider if the deceased dies abroad?**

If the deceased dies abroad and has a UAE, DIFC, or ADJD Will, a death certificate must be issued in the country of death and must be legalised by the UAE Embassy and the Ministry of Foreign Affairs in said country. The death certificate must be translated into Arabic and also legalised by the Ministry of Justice in the UAE. The heirs will not be able to commence any inheritance procedures in the UAE until the death certificate has been verified and legalised following the procedure above.

**19. Are there any specific points to consider if the deceased is insolvent?**

If the deceased is insolvent, the administrator of the estate or the judge will not distribute any assets until any and all pending litigation regarding the deceased’s debts is settled with a final judgement as per Article 293 of the Muslim Personal Status Law. Article 293 of Federal Law No. 28/2005 states: In case the estate is declared bankrupt or likely to be declared so, the administrator shall stop settling any debt, even if undisputed, until all the litigations concerning the debts of the estate are finally settled. Once all litigation concerning the debts of the estate have been settled, the administrator may begin paying the debts from the estate’s revenue. If required, the administrator may sell any assets owned by the estate to settle any remaining and outstanding debts. Once all debts have been settled, any remaining assets in the estate will be divided among the heirs or beneficiaries in accordance with the Will, the applicable legislation, or as per the relevant court’s decision.

**20. What evidence is required to show the individual had mental capacity when the will was created and did not face undue influence?**

**UAE Federal Court**

If a claim is made regarding a Will’s unlawfulness due to the mental incapacity of the testator when drafting or registering their Will, written evidence must be provided to the UAE Court. Article 174 of the Muslim Personal Status Law lists three capacity impediments. These are insanity or imbecility, prodigality, and illness leading to death. Article 174 of Federal Law No. 28/2005 regarding capacity is as follows: Capacity impediments are:

- 1) Insanity: The insane is a person who has lost his mental faculties continuously or at intermittent intervals. Imbecility is treated the same way as insanity.
- 2) Prodigality: The prodigal is a spendthrift person.
- 3) Illness leading to death: It is the illness which impairs the human being from continuing his usual activities and death is most likely to occur within one year. Should he remain in the same condition for one year or more, without deterioration, his acts are similar to those of a sound person.
- 4) Shall be considered as an illness leading to death circumstances where the person is surrounded by danger of death and where perishing is prevalent in such circumstances even though he is not ill.

**DIFC Court**

To register a DIFC Will with the Registry, there are specific provisions to be followed and an individual contesting the capacity of the deceased when they created, signed, or registered their Will must provide prima facie evidence to the DIFC Court to deem that the Will was signed unlawfully.

**ADJD**

Any claim against the capacity of the deceased when drafting, registering, or signing their Will must be proven through written evidence to the Abu Dhabi Civil Family Court for Non-Muslims.

**Firm**

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**We are a team of legal experts who bring together international expertise with deeply-rooted knowledge of Middle East markets. Our firm is 15-year-young, dynamic, and always ahead of industry and tech trends. We go beyond delivering an end outcome to focusing on the quality of the journey. We pride ourselves in the consistency of our deliverables and our services, offered at competitive and flexible rates and fee structures. We are a uniquely structured firm with a robust infrastructure, which creates a culture in which exceptional client service and quality legal work are internally valued and rewarded.**

## Authors



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### *Areas of expertise*

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### *Education*

- LL.M, Commercial Law, Kings College - Aberdeen University, Aberdeen, UK
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### *Memberships*

- Lawyer & Legal Consultant licensed by the Ministry of Justice and the Dubai Legal Affairs Department
- Fellow of the International Bar Association (IBA)
- Member of the international Academy of Family Lawyers (IAFL)
- Member of the Society of Trust and Estate Practitioners (STEP)
- Party nominated arbitrator with the Dubai International Arbitration Centre (DIAC)
- Member of the Arbitration Council before local and international courts
- Registered DIFC Courts and Abu Dhabi Judicial Department practitioner
- Registered Practitioner with the DIFC Part 1 and 2
- Member of the Mediation and Conciliation Network (MCN)

### *Biography*

Diana Hamade is the founder of Diana Hamade Attorneys at Law in Dubai, her boutique law firm, and a UAE -licensed lawyer with right of audience before all UAE Courts. She is licensed by the Ministry of Justice, the Dubai Legal Affairs Department, the Abu Dhabi Judicial Department, and is a registered practitioner of DIFC Courts. She is also a registered Wills draftsman with the DIFC Wills Service Center.

Diana's expertise in dispute resolution covers litigation before UAE Civil, Commercial and Rental courts and arbitration as counsel and arbitrator.

Diana is an expert in civil and sharia law, specializing in family law matters with emphasis on succession planning and private client. She also provides expert witness evidence on family law matters including divorce, child custody, child relocation/abduction, surrogacy, prenuptial/postnuptial agreements, inheritance matters, and the enforcement of foreign court judgements. She has acted as expert witness before legal forums in foreign jurisdictions including England, France, Australia, Switzerland, and the U.S. She is also a known practitioner in succession planning, advising on Foundations, Trusts and Waqf, and providing practical guidance on structures for estate and succession planning under Sharia, Dubai, DIFC, ADGM & UAE Laws.

Diana is a Fellow of the International Academy of Family Lawyers (IAFL), a member of the International Bar Association (IBA), currently serving as Vice Chair for the IBA Arab Regional Forum, and a member of the Society of Trust and Estate Practitioners (STEP) serving on the board of SIGS. Diana is also a member of the Emirates Lawyers Association and chair of the International Relations Committee.

Diana is a contributor to several publications, including the UAE chapter on The Family Law book, Jurisdictional Comparisons, published by Thomson Reuters; the Middle East & North Africa Overview chapter of The International Comparative Legal Guide to International Arbitration, Litigation & Dispute Resolution; among others. Diana was the Legal Affairs columnist in The National from 2009 to 2012, she wrote a column for The Brief (Thomson Reuter) in 2008 and has a regular article published in Villa88 magazine titled the Legally Stylish Column since 2016. Diana is also a contributor to Lexi Nexis Gulf Legal Guide and the MENA Business Law Review and is regularly sought after for speaking opportunities in legal conferences, workshops, and events worldwide.

Diana was awarded the “Most Influential Female Lawyer in the UAE” by Thomson Reuters, “Best Legal Affairs Author” by the National and the “Arab Woman of the Legal chapter 2018” by ITP. She has an LL.M. from The University of Aberdeen (Scotland), and an LL.B. from the UAE University in Sharia & Law.

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Mia Abu-Ltaif is an associate at the firm. She has recently joined Diana Hamade Attorneys at Law after graduating with her master’s degree in December of 2022. She is currently completing her qualifying work experience and preparing for the UK Solicitor’s Qualifying Exam.

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Khulud Jarrar is an associate at the firm. In April 2022, she joined Diana Hamade Attorneys at Law as part of the firm’s Private Client practice. She graduated from Middlesex University London with an LL.B. law degree and is presently preparing for the New York Bar.