

Inheritance & Succession matters for expatriates

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In view of the developments and progress being achieved with steadfast pace in various business sector within the UAE in general and the Emirate of Dubai in particular, and in the light of the inflow of foreign capitals and investment projects into the country, the big question that pops in the minds of all investors and expatriates working here is: **"What would happen to my property and/or moneys in the UAE after my death?"** therefore it is a must to shed light on the legal rules governing this matter and the efforts exerted by Dubai Courts to establish firm rules and eliminate any ambiguity in this regard. Needless to say that the Dubai Supreme Court is saving no effort in resolving any disparity or difference among other courts of law; as it simplified and established the basic principles of operation of law.

First: Stipulation of Law

It is stipulated under the provisions of Article 17 of the UAE Civil Transactions Code that:

- (1) Inheritance shall be governed by the Law of the deceased (dead person) at the time of his death.
- (2) Property rights located in the territory of the State (UAE) which belong to a foreigner having no heir shall revolve upon to and become vested in the State.
- (3) The substantive provisions governing testamentary dispositions (wills) and other dispositions taking effect after death shall be governed by the law of the state of which the person making such disposition is a national at the time of his death.
- (4) The form of wills and other dispositions taking effect after death shall be governed by the law of the state of which the person making such disposition is a national at the time the disposition is made, or the law of the state in which the disposition is made.
- (5) The Law of the United Arab Emirates shall apply to wills made by foreigners disposing of their real property located in the UAE.

Second: Explanatory Note

The Explanatory Note to the above stipulation is construed as under:

- This article comes to seal a chain of stipulations relating to the jurisdiction and authority of person's law, and includes the provisions governing inheritance, wills and dispositions taking effect after death in general. It is concluded with a general provision relating to the division or split of jurisdiction between the rules of procedures and substantive rules.
- The UAE legislators singled out article 17 to deal with inheritance, wills and dispositions taking effect after death and determined that, from the substantive aspect, they are governed by the Law of the testator (legator) or the person making the disposition taking effect after death; not at the time of initiating the disposition during his lifetime.
- As to formalities (procedures), the law of the testator at the time of making his will (testamentary disposition) or the Law of the country in which the will is made and also the Law of the person making disposition or the law of the country in which the after-death disposition is made shall apply to formalities. The stipulation addressed the after-death dispositions and indicated that the property of the foreigner having no heirs shall pass on to the state, i.e. the UAE, and as such the UAE Law shall govern and apply to the will of the foreigner for his property located within the UAE.
- Article 17 of the UAE law is the counterpart of article 18 of the Jordanian Law, 17 of the Egyptian, 18 of the Syrian and 22-23 of the Iraq matching laws.

Third: Interpretation

Article 17 of the UAE Civil Transactions Code addressed the rules of datum (chain of references or authorities) in respect of inheritance, wills and dispositions taking effect after death, considering them as personal matters; and for that reason they are governed by the law of the person of the testator, namely the law of his nationality at the time of his death. The time of his death is taken as a decisive factor simply for the reason that it is the time at which the estate (property) is made available to disposition.

(A) Inheritance - Applicable Law:

Inheritance means succession as a result of death; it is also that which descends to the heir on the death of the owner. In certain legislations, reference is made to the stipulation of law, while in others to the desire of the deceased who makes a disposition in the form of a will, as the case in the British Law, whereby the inheritance is set up. As to the Laws of England, the testator has the freedom to make dispositions under a will; and the policy of the Law uphold the freedom of testamentary dispositions. Such policy is evidenced in the fact that the English Law does not recognise the compulsory inheritance whereby the testator is forced to leave or bequeath a share of his property to his wife or children (see *Nathan vs Leonard and others* 2002).

In view of the above, it is permissible under the British Law for persons to leave his whole and entire estate to whomsoever he desires. Thus, inheritance, in its adaptation, shall be subject to the law of the judge, and if he arrives at conclusion, based on his adaptation of the suit fact, that it represents a case of inheritance, then he applies the rules of datum relating to inheritance to such fact, otherwise, the judge should look for another rule of datum which applies to the adaptation made by him.

Inheritance in the UAE is a succession in rights by virtue of the Law as a result of death. Such right can be related to a real property, or material or immaterial moveable property. In this context, money is defined under the law as that which is benefited by man and can be availed of exclusively by him. Money can be material such as movables; and can be also immaterial such as the intangible rights which also pass on to the heirs.

The law of the country of which the testator is a national at the time of his death applies to inheritance. Therefore, foreigners are subject to the Law of the nationality of their testator, if is not the same as theirs. The UAE nationals and other Muslim expatriates residing in the UAE are subject to and governed by the provisions of Islamic Sharia Law, as stipulated under the provisions of Article 1219 of the Civil Transactions Code.

(B) Wills - Adaptation:

Before examining the rule of datum, the judge should examine the disputed fact and should also adapt such fact to be able to identify the chain of references or authorities governing such adaptation. If the disputed fact is relating to a 'will' as the adversaries may claim, the judge before applying the rule of datum mentioned in the aforesaid article 17 of the UAE Civil Transactions Code, should adapt the fact in view of the suit circumstances and in accordance with the law. If he arrives at the conclusion that it is a will-based suit, then he can apply the relevant rule.

Law Applicable To Substantive Conditions:

Once the judge is convinced that it is a will-based case, he shall apply the provisions of datum stated under article 17 of the Civil Transactions Code, where the Law of the testator at the time of his death applies to his will. In other words, the Law of the person/nationality of the deceased at the time of his death should be applied to his will. It might be possible that a testator was bearing a different nationality at the time he had written his will, then acquired another one till the time of his death. In certain legislations dual nationality is permissible. The wordings of article 17 is crystal clear that all the substantive conditions, including title, capacity, and competence should be governed by the law of the deceased at the time of his

death; in the light of which the acceptance of the legatees and the limits and effects of the will are determined.

The bottom line is foreigners are subject, in terms of their wills, to the law of the nationality of the testator at the time of his death. There is a discretionary opinion that title is to be subjected to the Law of the nationality of the testator at the time he made the will, which opinion entails a specification of the stipulation without specifying factor.

Other after-death dispositions fall in the same line, such as mutual wills where more than one person exchange property under wills; and contracts of inheritance.

Law Applicable To Formalities:

The said article 17 reads: "(4) The form of wills and other dispositions taking effect after death shall be governed by the law of the state of which the person making such disposition is a national at the time the disposition is made, or the law of the state in which the disposition is made," and therefore any conditions related to form or formalities should be examined in guidance with this article.

Article 17 is limited to the after-death dispositions, such as wills, mutual wills, and contracts of inheritance, while the form of such dispositions among the survivors are, in terms of datum, subject to the provisions of Article 19 of the Civil Transactions Code.

In the light of the foregoing, the will issued by a foreigner for his property in the UAE is subject, in form, to the law of his nationality at the time of issuing such will, even if he acquired and maintained another nationality at the time of his death. In this case, the will, in substance, is governed by the law of the nationality of the deceased at the time of his death, while it is, in form, subject to the law of his nationality at the time of issuing such will. A foreigner can issue his will in the local form approved in the UAE.

Fourth: Basic Principles Established by Dubai Supreme Court.

In one of its rulings, the Dubai Honourable Supreme Court laid down a key principle as under: "Whereas the suit facts are summarized in that a Decree of Succession was issued in favour the Objector, a German non-Muslim lady, certifying that her husband died on 28.06.1996 and his estate (property) is inventoried and limited to her together with their two daughters, his two brothers and sister, all of them are non-Muslim German nationals, where the estate was divided among them according to the provisions of the Islamic Shariah Law: one-eighth to the wife, two-thirds for the two daughters, and the rest for the brothers and sister where the share of a male is as double as that of the female.

And whereas the applicable law, being the German Law, determines that the wife should be granted half of the deceased's estate and one-quarter for each daughter, the Objector filed the present suit before the Dubai Court of First Instance demanding the inheritance be limited to her and the two daughters, while the brothers and sister be excluded. Dubai Court dismissed the claim and the Objector challenged the judgment under appeal seeking a favourable judgment.

The Court of Appeal upheld the lower court's judgment and again the Objector challenged the ruling; under the objection pleading was filed with the Court Office of Clerks seeking that the appeal judgment be revoked.

And whereas the objection is built on two grounds in which the Objector finds fault with the challenged judgment to have violated the legislation and Law and to have misapplied the Law.

In substantiation of her claim, the Objector stated that the parties to the dispute are non-Muslim foreigners of the German nationality; and the application of the German Law to the inheritance matter is not in conflict with the provisions of Islamic Sharia Law, in which no person is forced to embrace Islam; and it is further stipulated in the UAE Constitution that

foreigners residing within the Union (seven emirates) shall enjoy the rights and freedoms as provided for in applicable international laws, treaties or agreements to which the Union is a party; and shall also bear the corresponding duties.

In this manner, the UAE Constitution has reserved foreigners their basic rights in beliefs as well as the freedoms to enjoy their basic rights governing inheritance in accordance with their respective beliefs; and whereas the challenged judgment deviated from this course, upholding the lower court's ruling, it is therefore defective and should be revoked.

And whereas the above argument is well-founded and in place, for the reason that it is established under the provisions of paragraph (1) of Article (17) of the UAE Civil Transactions Code that: "(1) Inheritance shall be governed by the Law of the deceased (dead person) at the time of his death."

Meanwhile, it is further stipulated under the provisions of Article 27 of the same Law that: "It shall not be possible to apply the provisions of a law specified by the preceding article if such provisions are contrary to the Islamic Sharia Law, public order, or morals in the State of the United Arab Emirates."

This indicates that the UAE Legislator compelled the national judge to apply the provisions of the foreign law as per the rules of datum (chain of references or authorities), regardless of the source of such law, so long as it is not in conflict with public order or morality.

Based on the above and whereas the rule of datum referred the matters of inheritance for foreigners to the Law of the deceased at the time of his death, therefore the provisions of such law should be applied. The national judge may not rule out the provisions of the foreign law unless they are in conflict with the provisions of the Islamic Sharia Law, or contrary to public order or morals in his (the judge's) country. And whereas the provisions of Islamic Sharia Law are applicable to all the Muslims, whether nationals or expatriates residing in the UAE, so long as the legator and heirs are Muslims.

Based on the foregoing, and whereas the deceased and his heirs are of the German nationality and not Muslims, then the applicable law, as per the national rules of datum, is the German Law, provided that it is not in conflict with the provisions of the Islamic Sharia Law, public order, or morality in the UAE, nor is it in non-conformity with the social values, political principles, economical standards or ethical values prevailing with respect to the fundamental interests of the UAE community; and whereas mere difference in dividing the estate and specifying the respective shares of (non-Muslim) heirs in the estate of the (non-Muslim) legator under the provisions of the German Law from those of the Islamic Sharia Law cannot be deemed contrary to the Islamic Sharia Law or public order; and whereas the challenged judgment refused to apply the provisions of the German Law deeming it in conflict with the Islamic Sharia Law, thus it has erred and misapplied the Law, and should accordingly be revoked.

Based on the above, the challenged judgment should be revoked.

And whereas the substance of claim is determinable under a court ruling, and the Objector and her legator together with the other heirs are non-Muslims of the German nationality, therefore the German Law shall govern the matters of inheritance where the wife is granted one-half of the estate, one-quarter to the daughter. And whereas the legator's wife and his two daughters survived him, therefore the challenged judgment should be cancelled and the estate be divided as above.

The Court adjudged that the challenged judgment be revoked, and as to the substance of appeal No. 82/1997 the appealed judgment be cancelled and the death of Mr (X) be substantiated on 28.08.1996 and his inheritance be limited to his wife, who shall be bequeathed one-half, and his two daughters who shall be granted one-quarter of the estate each; and also the Respondent be compelled with the payment of costs, expenses plus AED300 against attorney fees. (Objection No. 3/1998, Personal Matters, hearing of 24.05.1998)

CONCLUSION

In the light of the above, it is concluded that:

(1) The basic provisions governing inheritance as reflected in express conclusive stipulations in the Islamic Sharia Law, apply to Muslims, whether nationals or expatriates, within the United Arab Emirates, and the judge is not allowed to take preference of a foreign Law if it is in conflict with the Sharia Law.

(2) In case the deceased (dead person) and his heirs are not Muslims, then the applicable Law to inheritance, as per the rules of datum, is their foreign law, provided that it is in harmony with the Sharia laws, public order and morality within the UAE.

(3) Mere difference in dividing the estate and specifying the respective shares of heirs in the estate of their legator under the provisions a foreign law cannot be deemed a matter conflicting with the Islamic Sharia Law or public order, and accordingly the application of such law cannot be ignored.

(4) The rules of datum (chain of references or authorities) in personal matters with respect to the application of foreign law to claims filed by non-Muslim, is a matter relating to public order, and the national judge shall, of his own accord regardless of the adversaries' demands or agreements, apply such rules as stated in the national code; and also search for the applicable foreign law meant in such rules, where the legal obligation, in form and nature, is derived from them; always provided that the foreigner adversary should have a valid applicable Law at the time of giving rise to the legal status to which the law is sought to be applied.

(5) For the purpose of finding the substance and significance of the foreign law, or the custom or practice in case of absence of such law, the national judge should look for the objective truth rather than the legal one as exhibited by adversaries. The judge, for this purpose, may refer to all tools to have knowledge of the foreign law or norm, which he may see more appropriate to reveal the objective truth, even if he derives the same from a foreign precedent (judgment) if validly rendered by a competent foreign authority and duly produced to him, through which the judge may come to the core substance of such Law or norm; considering the fact that by way of adopting foreign rulings and precedents, the national judge is implicitly applying the relevant foreign law.

(6) The provisions of paragraph (1) of Article 17 of the UAE Civil Transactions Code reads: "(1) Inheritance shall be governed by the Law of the deceased (dead person) at the time of his death" indicate that the 'law of the legator' is meant to be the law of the nationality the legator was bearing; in case of multiple laws due to his religion, doctrine or sect, the provisions of the law relating to his religious belief within his country at the time of his death should be applied. (Objection no. 49 & 50 of 2000 Personal Matters, hearing of 26.11.2000).