

United Arab Emirates

Shahram Safai, Andrew Yule, Arsalan Shaikh and Sai Pidatala
Afridi & Angell

www.practicallaw.com/8-503-0998

THE CORPORATE REAL ESTATE MARKET

1. What have been the main trends in the real estate market in your jurisdiction over the last 12 months? What have been the most significant deals?

Main trends

Real estate projects generally comprise master communities managed by master developers. Master developers provide the infrastructure and divide the land into plots. The plots are usually sold by a master developer to smaller property developers who transform the plots into residential or commercial centres, ranging from tall towers to secluded buildings and villas.

Dubai has experienced rapid growth and a resultant real estate boom, which peaked in the middle of 2008. Until then, plots and villas were generally sold off-plan and could be resold with the developer's consent. Following the global financial crisis of 2008, transactional volume decreased and the number of disputes increased. Many buyers attempted to cancel sale contracts for off-plan properties due to lack of financing. Property prices have remained relatively stable following the dramatic drops in 2008 and 2009, but they show few signs of genuine recovery.

A lack of financing and poor credit markets has made certain developers unable to meet their obligations on time or at all. A prime example is Dubai World and its subsidiaries (DWG), a government-backed investment company conglomerate with a large real estate portfolio. With the onset of the financial crisis, DWG requested to delay repayments to creditors, raising fears of default on its debt. In an attempt to rectify the DWG position, the Dubai Financial Support Fund received about US\$20 billion (as at 1 September 2010, US\$1 was about EURO0.8) from the Abu Dhabi Government and related entities to satisfy DWG's upcoming obligations. Further, the Ruler of Dubai issued Decree No. 57 of 2009 which established a special tribunal to hear all disputes involving DWG (including claims brought by buyers in DWG real estate developments).

Major transactions

The following are some of the larger transactions of the past year:

- The opening of the Burj Khalifa, the tallest building in the world, by Emaar PJSC (a public company). The project value was about US\$1 billion, and it has recently attracted considerable media attention.
- The completion of further real estate developments on the Palm Jumeirah, a large man-made island, by Nakheel PJSC, a government-owned company and part of DWG. The project value is about US\$1 billion.

- The commencement of development on some of The World islands, a real estate development shaped as the world map, by Nakheel PJSC and worth US\$3 billion.
- The opening of Dubai Metro, a driverless, fully automated metro network. The project value was approximately US\$7.6 billion.

REAL ESTATE INVESTMENT

2. Please briefly outline the opportunities for investing in real estate in your jurisdiction. In particular, consider:

- The structures commonly used (for example, property companies and partnerships).
- Are real estate investment trusts (REITs) available? If so, are they commonly used?
- Institutional investors.
- Private investors.

Structures

Generally, every developed plot uses its own separate special purpose limited liability vehicle. These vehicles are used because they offer limited liability. Although Dubai is mainly a tax-free Emirate, there are governmental restrictions on:

- Foreign investment (*see Question 22*).
- Areas where investment is permitted.
- Corporate structures that can be used for investment.
- Licences required before investment can be made.

One entity can own the plot and hold the development licence. The licence is deemed to include leasing rights. Alternatively, one entity can be the owner of the plot while another entity holds the licence. Various licences are available and each has advantages and disadvantages. The decisive criteria are:

- The plot's intended use.
- The applicant's nationality.

REITs

REITs are available and can buy property in the Dubai International Finance Centre (DIFC) (*see box, Real estate organisations*). By contrast, REITs are not available elsewhere in Dubai. Consequently, REITs are not commonly used.

Institutional and private investors

The government and private investors comprise the majority of Dubai real estate market participants. There are few institutional investors.

REAL ESTATE LEGISLATION

3. Please briefly set out the main real estate legislation that applies in your jurisdiction.

Dubai law

The main sources of real estate law are the:

- Real Property Registration Law No. 7 of 2006.
- Guarantee Accounts of Real Estate Developments Law No. 8 of 2007.
- Landlords and Tenants Relationship Law No. 26 of 2007.
- Ownership of Jointly Owned Properties Law No. 27 of 2007.
- Interim Real Estate Register Law No. 13 of 2008.
- Mortgages Law No. 14 of 2008.
- Law No. 33 of 2008, amending certain provisions of Law No. 26 of 2007.
- Law No. 9 of 2009, amending certain provisions of Law No. 13 of 2008.
- Decree No. 6 of 2010 regulating the interim real estate register.
- Regulation No. 1 of 2010 amending certain provisions of Regulation No. 3 of 2006 regarding real estate ownership areas in Dubai for non-nationals.

Federal law

More general principles of real estate and contract law are contained in the UAE's federal laws, most importantly the:

- Federal Law No. 5 of 1985 (Civil Code).
- Federal Law No. 18 of 1993 (Commercial Transactions).

DIFC law

The main sources of real estate law are the:

- DIFC Law No. 4 of 2007, known as the Real Property Law.
- DIFC Law No. 5 of 2007, known as the Strata Title Law.

TITLE

4. Please briefly state what constitutes real estate in your jurisdiction. Is land and any buildings on it (owned by the same entity) registered together in the same title, or do they have separate titles set out in different registers?

Real estate constitutes land and permanent structures on it that cannot be moved without suffering damage or alteration.

Land and buildings on it are generally registered together in the Property Register. If a piece of land or a building is divided into parts (for example, apartments) but has associated common areas, the owner of each part has a separate title for his part together with a proportional undivided share of the common areas.

A holder of *musataha* right (see Question 9) owns all buildings on land for the specified duration. The land is held as freehold. The Property Register contains details of all *musataha* right holders. The right holder, however, is not entitled to a separate title.

5. How is title to real estate evidenced, for example by registration in a public register of title? Which authorities manage the public title register?

Registration of title made in the Property Register, the public register of title managed by the Dubai Land Department. A title certificate from the Register evidences title to real estate (see Question 6). Information in the Property Register is absolute evidence of title.

However, the Property Register for areas open to ownership by foreign persons has only been maintained for the past few years. Therefore, some lands and units are yet to be registered. In those cases, title is evidenced in accordance with practices that existed before the Property Register. If the master developer sells land to the sub-developer on condition that title is transferred on the completion of the construction, title is then evidenced by both:

- Recording the ownership with the relevant master developer.
- Interim registration of a conditional sale contract against title at the Dubai Land Department.

6. Please briefly set out the information and documents registered in the public register of title, for example a description of the real estate, the owner, matters affecting the title and any relevant documents.

The Property Register provides information concerning (*Law No. 7 of 2006*):

- The property's description.
- The property's rights.
- All dispositions that can create, transfer, vary or terminate a property right.

Information in title certificates must match the current records in the Property Register (*Law No. 7 of 2006*). A title certificate is a single page document containing information about the:

- Property location and area.
- Owner.
- Date of issue of the certificate.

Title certificates for properties with a proportional undivided share in the common property contain the (*Law No. 27 of 2007*):

- Site plan.
- Master community rules and regulations.
- Rules of association.

These rules and regulations serve as restrictions on title and use of land. The title certificate can be issued with an affection plan, which shows the property boundaries. In addition, it is intended that the Jointly Owned Property Regulations will be introduced in 2010 through Law No. 27 of 2007, which will require title certificates to include information on the owner's share of the property's common areas. Further changes may be made, to include all other information in the Property Register in title certificates.

7. Can confidential information or documents be protected from disclosure in the public register of title?

The Property Register is not open to the public. Only the following parties can inspect the Property Register and obtain a certified copy of the documents:

- Interested parties (generally the owner of the land).
- Judicial authorities and experts appointed by them.
- Competent authorities.

The Dubai Land Department notes purchase prices but this information is currently not included on title certificates.

8. Is there a state guarantee of title? Is title insurance available? If so, is it commonly used?

There is no state guarantee of title. Title insurance, although available, is not commonly used.

It is possible to challenge the validity of information in the Property Register on the grounds of fraud or forgery (*Article 7, Law No. 7 of 2006*). The Dubai Land Department can correct errors in the Property Register at the request of a third party or on its own initiative (*Article 13, Law No. 7. of 2006*).

Each title certificate reflects the information recorded on the Property Register at the date of issue. If time has lapsed since a certificate was issued, it is advisable to inspect the documents maintained in the Property Register for any further amendments.

9. How can real estate be held (that is, what types of tenure exist)?

The Civil Code provides for various types of tenure, including:

- **Freehold.** This is the right to use, enjoy and occupy land or property in perpetuity.
- **Musataha.** This is the right to build on land for a specified duration, not exceeding 50 years. The holder of a *musataha* right is deemed to own all buildings on the land during the specified term.

- **Usufruct.** This involves the right to use, enjoy and occupy land or property belonging to another person for a fixed term, not exceeding 99 years. (Usufruct is similar to the concept of leasehold under English law.)

Land granted by the government of Dubai to UAE nationals cannot be disposed of without special permission from the Ruler of Dubai.

SALE AND PURCHASE OF REAL ESTATE

10. What are the main stages and documents in the sale and purchase of real estate? In particular:

- How is real estate marketed, when does commercial negotiation occur and what pre-contractual arrangements are used?
 - When is the sale contract negotiated and executed?
 - When are the parties legally bound?
 - When is the change of title registered?
 - When does title transfer and what are the formal legal requirements to transfer real estate (for example, in writing and signed by the parties)? Is notarisation required?
-

Marketing

Only a broker that meets the licensing requirements (contained in Bye-law No. 85 of 2006) can market real estate. The bye-law also sets out the professional and ethical standards for brokers. A seller or a property developer must appoint a broker through a written agreement. There is no cap on the broker's commission, but it generally ranges from 2% to 5% of the purchase price.

Marketing off-plan projects is subject to approval from the Dubai Land Department.

Commercial negotiation

Parties can negotiate until the execution of a binding agreement. Where a memorandum of understanding or a reservation form is signed before entering into a sale contract, parties can still negotiate the sale contract terms. Parties can use solicitors but it is not compulsory. Negotiation usually takes several weeks before completion.

Pre-contractual arrangements

There are currently no mandatory pre-contractual arrangements and it is strongly advisable to carry out extensive due diligence before entering into a binding agreement. However, legislation requiring sellers to disclose information about a property (for example, maintenance fees) is expected to come into force in 2010.

Sale contract

After the fundamental aspects of the deal are agreed, the parties often sign a brief memorandum of understanding or a reservation form confirming the agreed details. Generally, a memorandum of understanding or a reservation form is binding on the parties pending the execution of a sale contract. Alternatively, the parties can decide to execute the sale contract outright.

The sale contract does not have to take any special form and verbal agreements are also binding. However, the contract is generally in writing as it must be approved by the master developer (for off-plan properties) and submitted to the Dubai Land Department with an application for a title certificate.

For off-plan sales, a developer must have its standard sale contract approved by the master developer. Amendments can only be made if they are approved by the master developer.

The following documents can be executed in counterpart copies if expressly provided for in the contract:

- Memorandum of understanding.
- Reservation form.
- Sale contract.

The documents can be exchanged by fax or e-mail, with the originals to follow by post. Therefore, it is unnecessary for all parties to have signed the same copy simultaneously.

When legally binding

An agreement becomes legally binding when the following conditions have been met (*Civil Code*):

- The parties have agreed on the essential terms.
- The subject matter of the agreement:
 - exists;
 - is defined or capable of being defined;
 - is legal.
- The obligations under the contract exist for a legal purpose.

The contract is based solely on the offer and acceptance, and subject to the provisions agreed. The contract does not have to be in writing (*see above*) but it is more difficult to prove obligations under an oral contract.

Registration

The developer must register any disposition of an off-plan property in the Interim Register, which is maintained by the Dubai Land Department (*Article 3, Law No. 13 of 2008, as amended by Law No. 9 of 2009 and clarified by Decree No. 6 of 2010*).

A disposition of a completed property must be registered in the Real Property Register, also maintained by the Dubai Land Department. The seller normally registers the disposition.

A disposition that is not registered in the Interim or the Real Property Register is invalid (*Article 3(1), Law No. 13 of 2008*). Therefore, a sale contract is only legally binding if the sale is registered.

When title transfers

The contract generally states that risk and possession of the property passes to the buyer on payment of the full price.

Completed properties

A sale contract often provides that parties must attend the Dubai Land Department to arrange for the title certificate to be issued in the buyer's name on payment of the full price.

Off-plan sales

Registration of title transfer is usually not required until completion. A sale contract often provides that the developer must transfer the title as soon as possible after the buyer has made the payment in full and acquired possession of the property.

11. Does a seller have any statutory or other liability to the buyer in a disposal of real estate, for example to disclose real estate information, or in relation to title?

A disclosure statement disclosing material information must accompany a sale agreement (Jointly Owned Property Law (*Law Number 27 of 2007*) issued under a Direction of May 2010).

12. Please briefly outline the real estate due diligence that is typically carried out before an acquisition (including title investigation and searches of public authorities).

The Property Register is not open to the public. The owner's consent is required to investigate the Property Register. While it is advisable for a buyer to insist on the Register examination, this practice is not uniform.

The seller typically provides a copy of the title certificate to prove its right to sell. It is advisable to require the seller to obtain confirmation from the Dubai Land Department that the information on the certificate is still valid.

Title and property defects are generally dealt with by representations and warranties in the contract and by a property inspection.

13. What real estate warranties are typically given by a seller to a buyer in the sale of corporate real estate and what areas do they cover?

The typical contractual warranties given by a seller include:

- Good unencumbered and mortgage-free title.
- Full authority to sell.
- The non-existence of outstanding debts.
- Compliance with its property and development obligations.
- The non-existence of third party interests affecting the property.

An off-plan property developer must give the following additional warranties to the buyer that the developer retains liability to (*Law No. 27 of 2007*):

- Repair and remedy any structural defects for ten years from the date of the completion certificate.
- Repair or replace defective installations including mechanical and electrical works, and sanitary and plumbing installations for one year from the date of the completion certificate.

The developer's contractual warranties can also cover the workforce.

Environmental warranties are uncommon.

14. Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before it bought or occupied it? For example, environmental liability, or liability under a lease.

Unless otherwise stipulated in the sale agreement, the buyer generally inherits liability for all matters relating to the real estate, even if they occurred before the date of purchase. This can include:

- Unpaid charges levied by the master developer or developer for maintaining communal parts of the development. The community rules typically provide that the seller and the buyer remain jointly and severally liable for these charges.
- Obligations under a lease. Title transfer does not affect a tenant's rights under the lease.
- Any other interests in the land, for example easements.
- Environmental liability. For example, environmental laws can impose liability on the generator of hazardous waste and it can be difficult to prove the source.

15. Does a seller or occupier retain any liabilities relating to the real estate after it has disposed of it? For example, environmental liability, defects in the real estate, and contractual liability to the buyer.

The seller remains liable for breaches of representations and warranties, both contractual and statutory (see *Question 13*). If the matter cannot be resolved amicably, the buyer must follow the contractual dispute resolution procedure (which is likely to be litigation or arbitration). For environmental liability, see *Question 14*.

16. What costs are usually paid by the buyer? What costs are usually paid by the seller?

Under current legislation, the cost of registration with the Dubai Land Department is 2% of the purchase price. The buyer and seller pay 1% each, unless contractually agreed otherwise. In addition, the Dubai Land Department charges an administration fee, which is currently AED315 (as at 1 September 2010, US\$1 was about AED3.7).

A fee or commission will be paid to the broker who has been involved in the transfer, under the brokerage agreement. The master developer can also charge administration fees for the ownership transfer, currently capped at AED5,000. Responsibility for these fees can be allocated by agreement.

The mortgage registration fee, which is 0.25% of the loan amount, is typically payable by the buyer under the mortgage agreement to the Dubai Land Department.

REAL ESTATE TAX

17. Is value added tax (VAT) (or equivalent) payable on the sale or purchase of real estate? Who pays? What are the rates? Are there any exemptions?

There is no VAT or equivalent payable on the sale or purchase of real estate. However, a 2% transfer fee is payable, and is generally shared equally between the parties.

18. Is stamp duty/transfer tax (or equivalent) payable on the sale or purchase? Who pays? What are the rates? Are there any exemptions?

There is no stamp duty payable on the sale or purchase of real estate. For registration fees, see *Question 16*.

19. Are any methods commonly used to mitigate real estate tax liability on acquisitions of large real estate portfolios?

There are currently no methods used to mitigate real estate tax liability.

HOLDING BUSINESS PREMISES

20. Are there targets to reduce greenhouse gas emissions from buildings in your jurisdiction? Is there legislation requiring buildings to meet certain minimum energy efficiency criteria? If yes, please give brief details.

Dubai introduced a "Mandatory Progression" programme in 2008. This is a four-step programme to ensure that new buildings meet "green" standards, including the reduction of greenhouse gas emissions. The first step was taken in early 2009.

21. Is it common for companies to manage their real estate portfolios and their accommodation needs by using third parties, for example through outsourcing transactions? If yes, please give brief details.

It is not uncommon to appoint a property management company to handle a large real estate portfolio. The company must be licensed to carry out property management activities. The manager's powers include liaising with the tenants.

22. Are there restrictions on foreign ownership or occupation of real estate, or on foreign guarantees or security for ownership or occupation?

There is no express prohibition in the Civil Code against foreign land ownership. However, each Emirate can pass its own laws to regulate property ownership.

Dubai law makes it clear that only UAE/Gulf Co-operation Council (GCC) nationals and their companies can own property in Dubai (*Article 4, Law No. 7 of 2006*). If a company is incorporated in the UAE/GCC but has a foreign shareholder, it is not considered a UAE/GCC national for the purposes of owning property in Dubai.

A non-UAE/GCC national can own freehold, leasehold (up to 99 years) or usufruct (up to 99 years) in the designated areas, which are listed in Regulation No. 3 of 2006 (as amended by Regulation No. 1 of 2010). The same provision applies to foreign companies but the Dubai Land Department will request documentation proving the company's lawful existence in the country of incorporation before it registers the title.

Some examples of the designated areas are:

- Burj Khalifa.
- Business Bay.
- Palm Jumeirah.
- Emirates Hills.
- Jumeirah Islands

A foreign person can acquire a lease in the area outside the designated areas (*Law No. 7 of 2006, see above*). Foreign ownership is also allowed in the free zones, for example the DIFC.

Real estate cannot be mortgaged to any person or entity other than a bank licensed and operating in the UAE.

23. Does change of control of a company affect its holdings of real estate?

Change of control of a company does not affect its holdings of real estate. However, if real estate is located in the area where only UAE/GCC nationals can own property, then subsequent owners must also be UAE/GCC nationals.

If an off-plan property is involved, the sale contract is likely to require a share transfer in the buyer (whether control changes or not) to also assign ownership in the property. The developer's consent is therefore required before any share transfer can take place.

24. In what circumstances can local or state authorities purchase business premises compulsorily? Is the purchase price market value?

Local and state authorities can purchase real estate compulsorily if required for the public interest, such as for the construction of highways. (The approach is equivalent to "eminent domain" principles in other jurisdictions.) The purchase price is generally equal to the property's market value.

25. Are municipal taxes paid on the occupation of business premises, for example business rates? Are there any exemptions?

Tenants of business premises must pay an annual trade licence renewal fee to the Dubai Department of Economic Development.

The rate is 10% of the annual rent. Exempt properties are:

- Those owned by the government or occupied by the government departments.
- Mosques and other places of religion.
- Schools.
- Any other property considered exempt by the Dubai Municipality Council.

Real estate used for hospitality purposes (such as hotels and serviced apartments) is subject to 10% municipality tax.

REAL ESTATE FINANCE

26. How are acquisitions of large real estate portfolios or companies holding real estate generally financed?

As real estate can only be mortgaged to banks that are licensed and operating in the UAE, financing is generally limited to a licensed bank mortgage.

Financing can still be obtained from sources other than designated banks. However, this type of financing is generally based on good business relations and trust between the parties as the lender will not have security over the real estate owned by the borrower.

27. How is real estate commonly used to raise finance?

The use of real estate to raise finance is limited because mortgaging is severely restricted (*see Question 26*).

28. What are the most common forms of security granted over real estate to raise finance? How are they created and perfected (that is, made valid and enforceable)?

Mortgages are the only form of security granted over real estate (*see Question 26*). To be valid, a mortgage must be:

- Registered with the Dubai Land Department (*Law No. 14 of 2008*).
- Over property, which exists actually or off-plan at the time of granting.
- Granted against a fixed or promised debt.

The mortgage contract must follow the Dubai Land Department's standard form. Mortgages can be created over an interest in off-plan property, provided the interest has been registered in the Interim Register (*see Question 10, Registration*).

To enforce a mortgage, the creditor must obtain a court order allowing it to sell real estate through public auction. The creditor cannot sell mortgaged real estate by any other means.

The registration serial number allocated by the Dubai Land Department determines the rank of a mortgage for liquidation purposes. If more than one mortgage registration application is submitted simultaneously for the same real estate, all mortgages are allocated an identical registration number and the creditors rank equally.

The Dubai Land Department also intends for liens against property interests to be registered although its current internal system. This kind of registration is not yet fully operational.

29. Is real estate securitisation common in your jurisdiction? If yes, please give brief details.

Real estate securitisation is not common and there have been very few examples to date.

REAL ESTATE LEASES

30. Are contractual lease provisions regulated or freely negotiable?

Real estate legislation concerning leases contains certain implied provisions. For example, a landlord can evict a tenant during the lease term on the basis of non-payment of rent (*Law No. 26 of 2007*). Subject to these implied provisions, lease terms can be freely negotiated.

31. How are rent levels usually reviewed and are there restrictions on this? Is VAT (or equivalent) payable on rent?

Generally, parties can agree rent review provisions in the lease. However, Decree No. 62 of 2009 has been passed to regulate rent increases in residential and commercial leases in Dubai. If property was rented during 2009 and the rent rate in 2009 was not higher than the “average standard rent” and not lower than 75% of that average, the rent cannot be increased in 2010. If the rent is higher than the average standard rent, the tenant can complain to the Real Estate Regulatory Agency, though this is not covered by the decree. The government calculates the average standard rent for each neighbourhood based on rental statistics.

There are caps on permissible rent increases for properties that had a rent rate below 75% of the average, ranging from 5% to 20%, depending on the level of rent.

The Real Estate Regulatory Agency (RERA) has stated that “properties rented during 2009” only covers leases signed in 2009. Therefore, the decree does not apply to:

- Leases that were automatically renewed in 2009 without being signed.
- Leases signed before 2009.

No VAT (or its equivalent) is payable on rent.

32. Is there a typical length of lease term and are there restrictions on it? Do tenants of business premises have security of occupation or rights to renew the lease at the end of the contractual lease term? If yes, please give details.

The parties can freely negotiate the length of the lease term. Office leases tend to last three or five years and the right to extend can be negotiated. The maximum lease term is generally 99 years.

The tenant can vacate the leased premises without giving formal notice at the end of the term, unless agreed otherwise.

If a tenant remains in the property after the lease has expired and the landlord does not object, the lease is automatically renewed for the duration of the original lease or one year, whichever is shorter. However, if either party wishes to amend any provision in the extended lease, including the rent, it must provide 90 days’ written notice to the other party specifying amendments, unless otherwise agreed. If parties fail to agree the amendments, the matter can be referred to the Rent Committee. See *Question 37*.

33. What provisions or restrictions typically apply to the disposal of the lease by the tenant (for example, can the tenant assign or sublet the lease with the landlord’s consent)?

A tenant cannot sublet leased property without the landlord’s prior written consent (*Law No. 33 of 2008*). A tenant is otherwise free to assign its interest or sublet the property as he sees fit, unless there are express restrictions in the lease.

34. Can tenants usually share their business premises with companies in the same corporate group? If yes, on what terms?

Tenants cannot normally share business premises with companies in the same corporate group without the landlord’s consent. Lease terms are usually agreed to cover this.

35. Who is usually responsible for keeping the leased premises in good repair?

Unless the parties have agreed otherwise, the landlord is responsible for the:

- General maintenance of the property.
- Rectification of any defects or faults that affect the tenant’s enjoyment of the property.

It is not uncommon for the landlord to shift the responsibility of keeping the premises in good repair to the tenant, particularly in commercial leases (*Article 16, Law No. 26 of 2007*).

On expiry of the lease, the tenant must return the property to the landlord in the condition that the property was in at the beginning of the tenancy, subject to natural wear and tear (*Article 21, Law No. 26 of 2007*).

36. Who is usually responsible for insuring the leased premises?

There are no statutory provisions regulating insurance of leased premises. A landlord bears the risk, unless:

- The tenant has been negligent.
- Agreed otherwise.

A landlord is therefore advised to insure the premises. However, a commercial lease generally enables the landlord to recover insurance costs from the tenant.

37. On what grounds can the landlord usually terminate the lease? Please briefly outline any restrictions or procedure that applies. Can the tenant terminate the lease in certain circumstances?

The landlord can (*Law No. 33 of 2008*):

- Evict a tenant before the expiry date of the lease, if the tenant has been in arrears of rent for more than 30 days after due demand.
- Evict a tenant on the expiry of the lease if any of the following apply:
 - the landlord personally intends to use the premises;
 - the eviction is required to carry out major repair works;
 - the landlord intends to demolish or significantly renovate the property;
 - the landlord intends to sell the property.

There are no statutory provisions allowing the tenant to terminate the lease.

38. What is the effect of the tenant's insolvency (under general contract terms and insolvency legislation)?

General

The legislation regulating the relationship between landlords and tenants is silent about the tenant's insolvency. However, outstanding rent is a ground for eviction (*Law No. 33 of 2008*). A typical lease enables the landlord to terminate the lease in the event of the tenant's insolvency. However, this term may be invalid since it is not one of the eviction grounds under Law No. 33 of 2008.

Corporate tenants

The company ceases to exist on insolvency (*Civil Code*). However, the company retains its legal personality to the extent necessary for liquidation of its assets and the company's managers must act as liquidators. If the insolvent company continues to pay rent despite liquidation, it is arguable that the landlord cannot remove the tenant until liquidation has been finalised.

Natural persons

In addition to potential eviction (*see above, General*), insolvency can result in criminal liability for the individual in the UAE.

REAL ESTATE ORGANISATIONS

Dubai Land Department

Main activities. The Dubai Land Department is the registry for real estate in Dubai (with the exception of real estate in the DIFC). It is responsible for registering real estate transactions, whether completed or off-plan, including transfers of ownership and mortgages. The Dubai Land Department is also the official valuer, auctioneer, regulator and property watchdog.

W www.dubailand.gov.ae

Real Estate Regulatory Agency (RERA)

Main activities. Established in 2007 and part of the Dubai Land Department, RERA formulates, regulates, manages and licenses various activities concerning real estate located in Dubai, including real estate brokerage and real estate development.

W www.rpdubai.com

Dubai International Financial Centre (DIFC)

Main activities. The DIFC is a 110 acre free zone area in Dubai that services and accommodates financial institutions. The DIFC is regulated by its own laws and has its own regulatory and registration systems separate to that of the Dubai Land Department and RERA.

W www.difc.ae

PLANNING LAW/ZONING

39. What authorities regulate planning control and which legislation applies?

The Dubai Municipality is the principal authority regulating planning controls in Dubai (*Local Orders No. 2 of 1999, No. 33 of 1988 and No. 8 of 2003*).

Additional controls can be imposed by RERA, the relevant free zone authority and the master developer. This is regulated by:

- Law No. 13 of 2008 (as amended).
- Law No. 8 of 2007.
- Law No. 27 of 2007.
- Rules and regulations of the relevant free zone.

Master community declarations.

The master developer's standard sale contract will also contain provisions relating to planning control (*see Question 10, Sale contract*).

40. What planning consents (for example, planning permission or building permits) are required and for which types of development?

Only licensed developers can develop new projects in Dubai (*see Question 2*). RERA is the licensing authority and all developers require RERA's approval before starting a project.

To obtain RERA's approval the developer must obtain a "no objection letter" from the master developer. The master developer can include conditions precedent in the letter and it must generally be satisfied with the project concept before issuing the letter. The master developer must also approve a detailed design plan at a later stage.

If the property is located in Dubai, a developer must secure planning and building approval from the Dubai Municipality.

Free zone authorities can impose additional planning controls in relation to real estate in their area.

41. In relation to planning consents:

- Which body grants initial planning consents?
- Do third parties have the right to object? If yes, please give brief details.
- In what circumstances is there a public inquiry?
- How long does an initial decision take after receipt of the application?
- Is there a right of appeal against a planning decision? If yes, please give brief details.

Initial consents

The Planning and Survey Administration of the Dubai Municipality grants initial planning consents, subject to the Regulations of the classification and use of lands in Dubai (Planning Regulations). However, master developers and free zone authorities can have additional planning procedures in place.

Third party rights

There are no formal procedures for third parties to object to planning applications. However, the Municipality can review and amend the Planning Regulations, following a third-party application, if it is filed on serious and effective grounds that justify an amendment (*Article 8, Local Order No. 2 of 1999*).

Public inquiries

Municipality officials have full discretion to investigate, when they deem this appropriate (*Article 11, Local Order No. 2 of 1999*).

Initial decision

Legislation and planning regulations do not set out the length of time in which the municipality must issue its initial decision.

Appeals

The Planning Regulations outline the procedure for filing an appeal against a rejected application.

REFORM

42. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.

Directions have recently been passed under Law No. 27 of 2007 concerning the Ownership of Jointly Owned Properties in the Emirate of Dubai. The directions:

- Deal with consumer rights.
- Facilitate the subdivision of land, particularly in three dimensions.
- Regulate the common areas and the owners' association which maintains the common areas.

CONTRIBUTOR DETAILS



SHAHRAM SAFAI

Afridi & Angell

T +971 4 330 3900

F +941 4 330 3800

E ssafai@afриди-angell.com

W www.afриди-angell.com

Qualified. England and Wales, 2005; California State Bar, 2001; and British Columbia, 1999 (non-practising)

Areas of practice. Real estate; construction; and disputes.

Recent transactions

- Advising on, negotiating and drafting transactional documents concerning an AED30 billion mixed-use mega resort in Ras Al Khaimah.
- Drafting documents and dealing with transaction particulars for a European company, concerning its UAE real estate as part of its global AED7 billion bankruptcy.
- Advising on and drafting documentation for an AED3.2 billion landmark tower in the Dubai International Financial Centre.
- Advising a master developer concerning an AED1 billion mixed-use development in Dubai.

Partners in know-how
www.practicallaw.com

PRACTICAL LAW COMPANY®
■■■

AFRIDI & ANGELL

Solid Legal Foundations

Exceptional Legal Performance

Afridi & Angell is a corporate and commercial law firm with over 35 years of experience in the Gulf, Middle East and South Asia regions. From our offices in Dubai, Abu Dhabi and Sharjah in the United Arab Emirates we conduct a diversified regional and international practice, providing legal services in all aspects of conventional and Islamic banking and financial services, private equity, infrastructure and project finance, maritime and transport law, insurance, litigation support and arbitration, capital markets as well as sports, entertainment, media law, real estate and construction.

We also offer specialized expertise to our clients on anti-boycott and F.C.P.A. compliance, military procurement, as well as advice on doing business in the region.

Emirates Towers - Level 35, Sheikh Zayed Road,
P.O. Box 9371, Dubai, United Arab Emirates

TEL: +971-4-330-3900 **FAX:** +971-4-330-3800

E-MAIL: dubai@afриди-angell.com **WEBSITE:** www.afриди-angell.com

With additional offices at: Abu Dhabi and Sharjah, United Arab Emirates

MEMBER
LEX MUNDI
THE WORLD'S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS