

Commercial real estate in the United Arab Emirates: overview

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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

The real estate market in Dubai has continued to slow in the last 12 months. Real estate prices in certain sectors have decreased up to 10%, however rental prices have stabilised and in some areas have increased. Many industry experts are expecting this decrease to continue in 2016 and bottom out in the second half of 2016 when a number of projects currently under construction are delivered.

The Abu Dhabi and surrounding real estate markets have also seen a decrease in prices. Disputes continued in 2015, focusing on litigation between contractors and developers related to construction defects, defaults and payments.

Additionally, the Dubai Land Department is continuing its programme of seeking to cancel real estate projects it believes will not be completed. However, legislation introduced by the Dubai government aiming to consolidate the process for investors to seek compensation from developers that have cancelled real estate projects has not had the anticipated impact. As a result, a number of cancelled real estate projects remain tied up in the court system.

Transactional activity in the Dubai market has continued to slow in 2015. In late 2013, the Dubai Land Department introduced measures which increased the property transfer fees from 2% to 4% of property value. Additionally, the UAE Central Bank introduced mortgage caps in an effort to stem market growth. These measures, coupled with the return of increased volatility in European financial markets, have led to a systematic slowing of transactional activity and growth.

The Dubai real estate market as a whole continues to attempt to comply with the Directions that were introduced in 2010 under Dubai's Jointly Owned Property Law No. 27 of 2007. The Directions introduce a framework to form owners' associations to manage common property within each development. Some developers have failed to comply with the timetable in the Directions and many owners' associations are experiencing problems trying to recover service charge arrears (see *Question 43*). There has been wide discussion regarding changes to the framework that will better protect owners and ensure greater recovery of service charges for owners' associations. There have been no implemented changes to date.

Abu Dhabi issued Abu Dhabi Law No.3 of 2015 Concerning the Regulation of the Real Estate Sector in the Emirate of Abu Dhabi. The legislation creates a legal framework to control all real estate development projects in the Emirate of Abu Dhabi, including a code of conduct for licensed developers, escrow protections for

purchasers within these projects and the introduction of an interim real estate register.

Major transactions

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

- The first commercial development on the World Islands (a series of sand islands off the coast of Dubai) opened for business.
- Construction on the tram system to operate along the seafront next to the Dubai Marina was completed in the fourth quarter of 2014.
- Mall of the World, a massive indoor temperature controlled project, was announced. Construction is due to commence in 2016.
- Meydan One, a mixed use development including a 711 metre high tower, huge new mall, the world's largest indoor ski slope and a 25,000 square metre indoor sports facility was announced.
- Dubai Metro extension was announced extending the existing route to Dubai World Central, the site of Dubai Expo 2020.

REAL ESTATE INVESTMENT

2. What structures do investors typically use for real estate investment in your jurisdiction and what are the main advantages and disadvantages of each (for example, flexibility and tax transparency)?

Common structures

Generally, every developed plot uses its own separate special purpose limited liability vehicle. These vehicles are primarily used because they ring-fence liability to the specific special purpose vehicle.

Although Dubai is mainly a tax-free Emirate, there are governmental restrictions on:

- Foreign investment (see *Question 4*).
- 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 also 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

Real estate investment trusts (REITs) are available and can purchase property in the Dubai International Financial Centre (DIFC) (www.difc.ae). However, REITs are not available elsewhere in Dubai. Therefore, REITs are not commonly used.

3. What are the main sources of finance and types of investors for real estate investment in your jurisdiction? Does your government encourage overseas investment into real estate in your jurisdiction, for example through real estate investment legislation?

The main source of finance continues to be cash buyers. The introduction of the mortgage caps by the UAE Central bank has led to a suppression of bank finance, particularly on residential purchase transactions.

Restrictions on foreign ownership or occupation

4. Are there restrictions on foreign ownership or occupation of real estate (including foreign ownership of shares in companies holding real estate)? Are there restrictions on foreign guarantees or security for ownership or occupation and on lending for the purchase of real estate?

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. Only UAE nationals, 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 or GCC but has a foreign shareholder, it is not considered a UAE or 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, see *Question 9*) in the designated areas in Dubai, which are listed in Regulation No. 3 of 2006 (as amended by Regulation No. 1 of 2010) (see *below*). This also applies to foreign companies, subject to the Dubai Land Department's policy on title to real estate that came into force on 1 January 2011 (see *below*). Some examples of the designated areas in Dubai are:

- Burj Khalifa.
- Business Bay.
- Palm Jumeirah.
- Emirates Hills.
- Jumeirah Islands.
- Jumeirah Lake Towers.
- Dubai Marina.

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

Under Land Department policy, title to real estate in the designated areas (see *above*) is not issued to companies other than those registered onshore in Dubai or offshore in the Jebel Ali Free Zone and certain other free zones. One purpose of this policy may be to reduce avoidance of the Dubai Land Department's 4% registration fee on the sale of real estate. Therefore, it is anticipated that the Dubai Land Department will charge a fee for registration in the Jebel Ali Free Zone of a transfer of shares in these companies.

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

TITLE TO REAL ESTATE

5. 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, the public register of title managed by the Dubai Land Department. 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 a *Musataha* right (see *Question 9*) owns all buildings on land for the specified duration. The land is held separately by the land owner as freehold. The Property Register contains details of all *Musataha* right holders. However, the right holder is not entitled to a separate title.

The Dubai Land Department (www.dubailand.gov.ae) 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.

Established in 2007 and part of the Dubai Land Department, the Real Estate Regulatory Agency (RERA) (www.rpdubai.com) formulates, regulates, manages and licenses various activities concerning real estate located in Dubai, including real estate brokerage and real estate development.

The Dubai International Financial Centre (DIFC) (www.difc.ae) is a 110 acre free zone area in Dubai that services and accommodates financial institutions. The DIFC is governed by its own laws and has its own regulatory and registration systems separate to that of the Dubai Land Department and RERA.

6. How is title to real estate evidenced? What is the name of the public register of title and the authorities responsible for managing it? Is electronic access and electronic conveyancing available?

Title to real estate must be registered in the Property Register and a title certificate evidences title (see *Question 7*). Information in the Property Register is absolute evidence of title.

As the Property Register for areas open to ownership by foreign persons has only been maintained for the past few years, some land and units are yet to be registered. In these 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 the condition that title is transferred on the completion of the construction, then title is 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.

7. What are the main information and documents registered in the public register of title? Can confidential information or documents be protected from disclosure in the public register of title?

The Property Register provides information on the (Law No. 7 of 2006):

- Property description.
- Property 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" (that is, a site plan that illustrates the property boundaries). Directions issued under Law No. 27 of 2007 require title certificates to include information on the owner's share of the common property (see *Question 1, Main trends*).

In the future, further changes may be made, so that title certificates include all other information contained in the Property Register.

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.

State guarantee of title

8. Is there a state guarantee of title? Is the authority that manages the public register liable to pay compensation for any errors it makes in relation to title registration? Is title insurance available and 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 either 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 elapsed 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 and other main ownership rights exist over land)?

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, or as permitted under Decree No. 4 of 2010.

SALE OF REAL ESTATE Preliminary agreements

10. What types of preliminary agreements are typically used in the sale of real estate? Are they legally binding?

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 by a written agreement. There is no cap on the broker's commission, but it normally ranges from 2% to 5% of the purchase price.

Marketing off-plan projects is subject to approval from the Dubai Land Department and compliance with the Guarantee Accounts of Real Estate Developments Law No. 8 of 2007.

Parties can negotiate until the execution of a binding agreement. If a memorandum of understanding or a reservation form is signed pending the signing of 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.

The Directions introduced in 2010 under Law No. 27 of 2007 (see *Question 1, Main trends*) impose various obligations on the seller of real estate to make disclosures about the real estate, including in relation to service charges.

Aside from this, 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.

Sale contract

11. Briefly outline the typical main provisions of a corporate real estate sale contract and main real estate provisions of a typical share purchase agreement.

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 signing of a sale contract. Alternatively, the parties can decide to sign the sale contract outright.

Subject to the provisions below, the sale contract does not have to take any special form and verbal agreements are also binding. However, in practice the sale contract is 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.

An agreement becomes legally binding when all of 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; and
 - 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.

In May 2014, the Dubai Land Department introduced Unified Real Estate Contracts which must be used in all real estate transactions. However in many transactions, additional terms and conditions are required. For these transactions a bespoke contract negotiated between the parties supplements the mandatory Unified Real Estate Contract.

Due diligence

12. What real estate due diligence is typically carried out before an acquisition and what key areas does it cover? Which documents are typically reviewed? Which specialist advisers are usually involved and which reports do they typically produce?

The Property Register is not open to the public. The owner's consent is required to investigate the Property Register. While it is prudent for a buyer to insist on the Property 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 prudent 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 usually dealt in the following ways:

- Representations and warranties in the contract.
- Property inspection.

Sellers' warranties

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? What are the main limitations on warranties, for example are they typically qualified by disclosure?

The seller typically contractually warrants that, among other things:

- There is good unencumbered and mortgage-free title.
- It has full authority to sell.
- There are no outstanding debts and the service charge is fully paid up.
- Property and development obligations have been complied with.
- There are no third party interests affecting the property.

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

- To repair and remedy any structural defects for ten years from the date of the completion certificate.
- To 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 seller of a real estate unit warrants the information in the disclosures that the seller is required to make under the Directions. This warranty covers the two-year period from the date of the original transfer of the unit by the developer.

The developer's contractual warranties can also cover the workforce. However, environmental warranties are uncommon.

Liability

14. Does a seller have any statutory or other liability to the buyer in a disposal of real estate?

The Directions introduced in 2010 under Law No. 27 of 2007 impose various obligations on the seller of real estate to make disclosures about the real estate, including in relation to service charges.

Aside from this, there is currently no statutory (or other) duty of disclosure. However any misrepresentation can result in both civil and criminal liability.

15. Briefly outline the environmental legislation and potential liability for a buyer in a purchase of real estate. Is it common to carry out environmental surveys and searches and to obtain environmental insurance? How is environmental liability typically dealt with in the sale contract?

Environmental liability is not usually a consideration in the majority of real estate transactions.

16. Can an owner or occupier inherit liability for other matters relating to the real estate even if they occurred before it bought or occupied it? Can a seller or occupier retain any liability relating to the real estate after it has disposed of it?

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 agreement. The 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.

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 dispute resolution procedure provided for in the contract (which is likely to be litigation or arbitration). For environmental liability, see *Question 15*.

Completion arrangements

17. What are the typical arrangements and main documents required for completion of the sale? When does title transfer and what are the formal legal requirements to execute the sale documents, transfer the real estate and register the change of title? Is notarisation required?

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 (which is also maintained by the Dubai Land Department). The buyer normally registers the disposition as this registration triggers the issue of the title certificate in the buyer's name.

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

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.

When title transfers

The contract normally states that risk and possession of the property passes to the buyer on payment of the full price. There is no requirement for the sale contract to be notarised. After the buyer and seller have signed the sale contract, and completed any necessary interim steps to the transfer of title (for example paying any outstanding service charges and obtaining a no objection certificate from the developer of the property), the buyer and seller attend the Dubai Land Department. At that meeting, several steps are completed, including:

- The buyer and seller sign the Dubai Land Department forms for the transfer of title.
- The buyer pays the purchase price to the seller.
- The necessary payments are made to the Dubai Land Department (see *Questions 16 and 18*).
- The Dubai Land Department issues the buyer with a title deed for the property.

REAL ESTATE TAX

18. Is stamp duty/transfer tax (or equivalent) payable on the purchase of real estate? Who pays, what are the rates and are there any exemptions? Does it apply to the transfer of shares in a company holding real estate and at what rate?

There is no stamp duty payable on the sale or purchase of real estate. The cost of registration with the Dubai Land Department is 4% of the purchase price for completed property and 8% of the purchase price for off-plan property. The buyer and seller pay half of such amount each, unless the contract provides otherwise. Payment must be made to the Dubai Land Department before the Dubai Land Department will issue a title deed in the name of the buyer. In addition, the Dubai Land Department charges an administration fee, currently set at AED540. The administration fee is generally paid by the buyer. Payment must be made before the issue of the title deed to the buyer. In addition to the above fees, fees of AED4,000 are payable to the Transfer Trustees who undertake the transfer process on behalf of the Dubai Land Department.

A fee or commission will be paid to the broker who has been involved in the transfer, under the terms of 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 responsibility for the payment of the broker's fee will depend on various factors including who originally instructed the broker. The mortgage registration fee, which is set at 0.25% of the loan amount, is typically payable by the buyer under the mortgage agreement. The fee is paid to the Dubai Land Department.

19. Are any methods commonly used to mitigate real estate tax liability on acquisitions of large real estate portfolios? What is the general approach of the tax authorities in your jurisdiction to such schemes?

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

20. 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. There have been detailed discussions throughout 2015 regarding the proposed introduction of VAT to the UAE. No definitive decision has been made yet.

21. Are municipal taxes paid on the occupation of business premises? 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 5% of the annual rent. The exempt properties are:

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

Real estate used for hospitality purposes (for example, hotels and serviced apartments) is subject to a 10% municipality tax collected by the Dubai Department of Tourism and Commerce Marketing.

Municipal charges levied by the Dubai Municipality do not apply in free zones such as Jumeriah Lake Towers, TECOM (in which many knowledge industry companies are based) and Silicon Oasis where freehold title is sold. However, Free Zone Authorities have imposed similar charges relating to company trade licences and hospitality fees applicable in the rest of Dubai.

CLIMATE CHANGE ISSUES

22. Are there targets or incentives to reduce greenhouse gas emissions from buildings in your jurisdiction? Is there legislation requiring buildings to meet certain minimum energy efficiency criteria?

Article 7 of Dubai Municipality's Decree No. 66 of 2003 relates to the selection of glazing for facades and is aimed at minimising solar thermal heat gains. The legislation does not provide for penalties in the event of non-compliance.

Dubai introduced a Mandatory Progression programme in 2008. This programme aims to ensure that new buildings meet "green" standards, including the reduction of greenhouse gas emissions.

23. Are provisions relating to the energy efficiency of buildings commonly included in contracts for the sale of real estate or in leases (for example, green leases)?

Provisions relating to the energy efficiency of buildings are not currently practical issues that affect the parties to sale and lease transactions.

REAL ESTATE FINANCE

Secured lending involving real estate

24. Briefly outline the typical security package required by lenders in relation to real estate lending. How are the most common forms of security interest relating to real estate created and perfected (that is, made valid and enforceable)?

As real estate can only be mortgaged to banks that are licensed and operating in the UAE, financing is generally limited to a mortgage from a licensed bank. Financing can still be obtained from sources other than licensed banks, such as real estate investment companies. However, this type of financing is normally based on a good business relationship and trust between the parties, as the lender will not have registered security over real estate owned by the borrower.

A mortgage is the only form of security granted over real estate. To be valid, a mortgage must be all of the following:

- Registered with the Dubai Land Department (*Law No. 14 of 2008*).
- Over property, which exists actually or virtually on the plan when it is granted.
- Granted against a fixed or promised debt.

The mortgage contract must follow the Dubai Land Department's standard template. Mortgages can be created over an interest in off-plan property, provided the interest has been registered in the Interim Register (see *Question 17, Registration*).

25. What other real estate related measures do lenders typically take to protect themselves against default by the borrower?

Additional measures that lenders take to protect themselves include:

- Recourse against guarantors.
- Share pledge.
- Accounts pledge.
- Commercial mortgage over moveables.
- Pledge by delivery.

26. Can lenders incur environmental liability? What measures do lenders typically take to manage potential environmental liability?

Environmental liability rests with the owner until such time as the bank perfects its security interest. Where there are potential environmental considerations, lenders can instruct environmental audit reports to be carried out as a prerequisite to funding.

27. Briefly outline the main remedies for lenders in relation to the secured real estate if the borrower defaults on the loan. What is the effect of the borrower's insolvency on the lender's remedies?

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 intends for liens against property interests to be registered, although the Dubai Land Department's current internal system for this registration is not yet operational.

28. Briefly outline key additional issues for lenders in relation to construction and development projects

The key issues for lenders in relation to construction and development projects are the number of competing interests and the risk of delay and default. In the event of delay and default, the project can become involved in lengthy and costly litigation.

Other real estate financing techniques

29. Are other real estate finance techniques commonly used in your jurisdiction? For example, real estate securitisation and sale and leasebacks.

Real estate securitisation is not common. There have been few instances to date, the most notable of which was the 2005 US\$350 million asset-backed securitisation of mortgages acquired for the purchase of properties on the Palm Jumeirah.

REAL ESTATE LEASES

Negotiation and execution of leases

30. Are contractual lease provisions regulated or freely negotiable? Which legislation applies?

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

There is a standard template of lease terms that is often used for residential leases, although additional provisions can be agreed between the parties.

31. What are the formal legal requirements to execute a lease? Does the lease have to be executed by certain parties or as a deed? How do the formalities differ for a company, partnership and for individuals?

There are no formal legal requirements to execute a lease. It is advisable that each party carry out appropriate investigations to establish whether the other party's signatory has authority to execute the lease on behalf of that other party.

Rent payments

32. How are rent levels usually reviewed and are there restrictions on this? Is stamp duty and VAT (or equivalent) payable on rent? Is a rent security deposit required and does it have to be managed in a certain way?

Generally, parties can include provisions on rent review in the lease agreement. However, Decree No. 43 of 2013 was passed to regulate rent increases in both residential and commercial leases in Dubai. Any increase in rent is determined in accordance with the following statutory limits:

- No increase in the rent value of the real estate unit should its rent be less than 10% of the average standard rent.
- 5% of the rent value of the real estate unit should its rent be less by a percentage varying between 11% and 20% of the average standard rent.
- 10% of the rent value of the real estate unit should its rent be less by a percentage varying between 21% and 30% of the average standard rent.
- 15% of the rent value of the real estate unit should its rent be less by a percentage varying between 31% and 40% of the average standard rent.
- 20% of the rent value of the real estate unit should its rent be less by a percentage varying between 41% and 50% of the average standard rent.

The government calculates the average standard rent for each neighbourhood based on rental statistics.

No VAT (or equivalent) is payable on rent.

Length of term and security of occupation

33. 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?

The parties can freely negotiate the length of the lease term. Office leases tend to last for 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 the lease provides 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 the parties fail to agree on the amendments, the matter can be referred to the Rent Dispute Settlement Centre of the Dubai Real Estate Regulatory Agency (see *Question 37*).

Disposal

34. What restrictions typically apply to the disposal of the lease by the tenant? Can the tenant assign or sublet the lease with the landlord's consent? Can tenants share their premises with companies in the same group? What is the effect of a legal reorganisation or transfer/sale of the tenant on the lease and on a guarantee of the lease?

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. Tenants cannot normally share business premises with companies in the same corporate group without the landlord's consent. However, it is not unusual for a lease to contain provisions relating to this.

35. Does a landlord or tenant retain any liability under the lease after the lease is assigned?

If the consent of the Landlord is obtained to such assignment then the assignor has no liability. If such consent is not obtained then the Landlord would be free to pursue the assignor and/or the assignee for performance of the lease obligations (Article 1116 of the Civil Code).

Repair and insurance

36. Who is usually responsible for keeping the leased premises in good repair and for insuring the leased premises? Are there provisions for the ownership of lease improvements?

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 maintenance responsibility to the tenant, particularly in commercial leases (*Article 16, Law No. 26 of 2007*).

On the 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*).

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

- The tenant has been negligent.
- It has been agreed otherwise.

A landlord is therefore advised to insure against the risk. However, a commercial lease normally enables the landlord to recover the cost of insurance from the tenant.

Landlord's remedies and termination

37. What remedies are available to a landlord for a breach of the lease by the tenant? On what grounds can the landlord usually terminate the lease and what restrictions and procedures apply? What is the effect of the tenant's insolvency under general contract terms and insolvency legislation?

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

- Evict a tenant before the expiry date of the lease, if (among other things) 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; or
 - the landlord intends to sell the property.

Proceedings to terminate the lease and to evict the tenant must take place before the Rent Dispute Settlement Centre of the Dubai Real Estate Regulatory Agency.

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 as it is not one of the eviction grounds expressly set out under Law No. 33 of 2008 (*see above*).

A 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.

In addition to potential eviction, insolvency can result in criminal liability for an individual in the UAE.

38. Can the tenant withhold rent payments in certain circumstances, for example for serious damage to the leased premises? Can the tenant terminate the lease in certain circumstances?

There are no statutory provisions in the United Arab Emirates permitting the tenant to terminate the lease.

PLANNING AND DEVELOPMENT CONTROLS

39. 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 it is necessary for the public interest (for example, the construction of highways). In practice, the purchase price is equal to market value.

40. What authorities regulate planning control and which legislation applies? Is there specific protection for special categories of buildings such as historic buildings?

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.
- Bye-laws and rules of Owners' Associations.

The master developer's standard sale contract will also contain provisions relating to planning control (*see Question 11, Sale contract*).

For projects being completed by (Dubai World Group) DWG entities, an organisation called Trakhees (which forms part of the Ports, Customs and Free Zone Corporation) is responsible for all planning, health and safety, and commercial licensing activities.

41. What planning consents are required for building works and the use of a building?

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 have a "no objection letter" from the master developer. The master developer can include conditions precedent in the letter and normally wants to 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, Trakhees or any other relevant planning authorities (collectively, the "Planning Authorities").

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

42. What are the main authorisation and consultation procedures in relation to planning consents?

Initial consents

The Planning and Survey Administration of the Planning Authorities 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.

Neither legislation nor planning regulations set out the length of time in which the municipality must issue its initial decision.

Third party rights and appeals

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

The Planning Authorities' officials have full discretion to investigate when they deem appropriate (*Article 11, Local Order No. 2 of 1999*).

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

REFORM

43. Are there proposals to reform real estate law and are they likely to come into force and, if so, when?

Following the issue of the Directions under Law No. 27 of 2007, it is anticipated that additional regulation will develop in relation to the operation of owners' associations. Perhaps most importantly, it has been mooted that rules will be introduced detailing the extent of the powers of owners associations to recover service charge arrears.

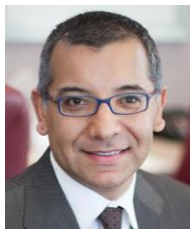
Dubai is keen to safeguard its burgeoning timeshare industry and discussions have been held about the regulation of timeshare brokers and the introduction of mandatory timeshare contract provisions to help protect purchasers. A draft real estate investor protection law was circulated in June 2012 for review and comment by the market. This draft could see investors entitled to a full refund in the event that their property is not completed within a specific time period set down by law.

ONLINE RESOURCES

W www.dubailand.gov.ae/English/Tashjee/RulesandRegulations.aspx

Description. This section of the Dubai Land Department website contains the official Arabic text of certain real estate legislation, together with English translations. The official Arabic text will take precedence over the English translation. For that reason care should be taken when using the English text from this website.

Practical Law Contributor profiles



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Non-professional qualifications. Bachelor of Engineering, University of British Columbia, Canada; 1992

Recent transactions

- Advice on structuring and drafting the documentation for a locally registered real estate fund with over AED1.5 billion in assets under management.
- Advised on escrow processes, construction contracts and initial development issues for an AED500 million tower in Dubai Marina.
- Advised a major developer on the AED5 billion Umm Al Quwain waterfront project consisting of hotels, villas and apartments.
- Advised an investor on a long term lease of a property in Makkah, Saudi Arabia. Advised on the lease documents and handled negotiations with the lessor, in accordance with applicable Saudi real estate and Shari'a laws.

Languages. English and Farsi.

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Areas of practice. Real estate.

Recent transactions

- Advised on the jointly owned property structure for an AED2.6 billion development consisting of 1,047 villas. Met with consultants and executives, and drafted the jointly owned property documentation.
- Advised on a ground + 40 residential tower in Jumeirah Lake Towers, one of the free zones in Dubai. Drafted construction agreements, advised on strategy and liabilities regarding the contractor, master developer and Dubai's Road Transport Authority.
- Represented the seller in the sale of a partially constructed retail mall, originally built as a car showroom mall, which is to be converted into a bespoke retail shopping destination in Motor City, Dubai. The transaction also included an option to purchase and develop additional land. Drafted and negotiated the sale, purchase, development and option agreements.

Languages. English.

Professional associations/memberships. The Law Society of Scotland.