



PRACTICAL LAW

MULTI-JURISDICTIONAL GUIDE 2011/12

CORPORATE REAL ESTATE

The law and leading lawyers worldwide

Essential legal questions answered
in 23 key jurisdictions

Comparative table

Rankings and recommended
lawyers in 51 jurisdictions

Analysis of critical
legal issues



United Arab Emirates

Shahram Safai, Arsalan Shaikh, Andrew Yule,
Christopher Linwood and Omar Ayad

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 take the form of master communities managed by master developers. A master community is a large area of real estate owned by the master developer. The master developer will divide the master community into plots, provide the infrastructure serving the plots and create a set of rules and regulations governing the use of the master community and the maintenance of common areas. The plots are normally sold by the 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 have been attempting to cancel sale contracts for off-plan properties due to lack of financing and developers' failure to construct the properties. Property prices have remained relatively stable following the dramatic drops in 2008 and 2009 but show few signs of genuine recovery.

The Dubai Land Department has undertaken a review of Dubai's real estate developments to identify developments that are unlikely to proceed or be completed. The aim may be to have these projects formally cancelled. It remains to be seen what practical impact the cancellation will have on the rights of master developers, developers and unit purchasers.

Lack of financing and poor credit markets have made certain developers unable to meet their obligations on time or at all. A prime example is Dubai World and its subsidiaries, including Limitless and Nakheel (DWG), a government-backed investment company conglomerate with a large real estate portfolio. With the onset of the financial crisis, DWG asked to delay repayments to creditors, raising the fear of debt default. In an attempt to rectify the DWG position, the Dubai Financial Support Fund received about US\$20 billion (as at 1 September 2011, US\$1 was about EURO.7) 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

purchasers in DWG real estate developments). The discussions concerning the DWG restructuring are ongoing.

A set of Directions were brought into force in 2010 under Dubai's Jointly Owned Property Law No. 27 of 2007. The Directions are:

- The Direction for General Regulation Concerning Jointly Owned Properties, 2010.
- The Direction for Jointly Owned Property Declarations, 2010.
- The Direction for Association Constitution, 2010.
- The Direction Concerning Preparation of Survey Plans in the Emirate of Dubai, 2010.

The Directions introduce a framework for the formation of an owners' association to manage the common property within each development. It remains to be seen what the consequences will be for developers who fail to comply with the timetable in the Directions (*see also, Question 43*).

Major transactions

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

- Certain DWG subsidiaries' re-commencement of master community developments that had stalled following the financial crisis.
- Union Properties PJSC's sale of the Ritz-Carlton hotel in the Dubai International Financial Centre (DIFC) for about US\$300 million.
- The completion and opening of additional stations, track and infrastructure along the Dubai Metro. The project value was about US\$7.6 billion.

REAL ESTATE INVESTMENT

2. How is real estate investment carried out in your jurisdiction and what structures do investors use?

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 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 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 DIFC (*see box, Real estate organisations*). By contrast, REITs are not available elsewhere in Dubai. Therefore, REITs are not commonly used.

Institutional investors

There are currently few institutional investors.

Private investors

Government and private investors comprise the majority of the Dubai real estate market participants.

REAL ESTATE LEGISLATION

3. What is 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.
- Law No. 27 of 2007 (*see Question 1, Main trends*).
- 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.
- Direction for Association Constitution issued in accordance with Law No. 27 of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai, 2010.
- Direction for General Regulation Concerning Jointly Owned Properties, 2010.

- Direction for Jointly Owned Property Declarations, 2010.
- Direction Concerning Preparation of Survey Plans in the Emirate of Dubai, 2010.

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 TO REAL ESTATE

Title and registers

4. 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 as freehold. The Property Register contains details of all *Musataha* right holders. However, the right holder is not entitled to a separate title.

Evidencing title

5. How is title to real estate evidenced?

Title to real estate must be registered in the Property Register and a title certificate evidences title (*see Question 6*). 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.

Information in the public register

6. What are the main information and documents registered 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.

Protection from disclosure

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.

State guarantee of title

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 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.

Tenure

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

SALE OF REAL ESTATE

Main stages and documents

10. What are the main stages and documents in the sale of real estate?

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 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.



Commercial negotiation

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.

Pre-contractual arrangements

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

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.

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.

When legally binding

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.

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.

When title transfers

The contract normally 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.

Seller's liability to the buyer

11. 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.

Due diligence

12. What real estate due diligence is typically carried out before an acquisition?

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 with by:

- 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?

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.
- 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 work-force. However, environmental warranties are uncommon.

Inheriting liability

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?

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.

Retention of liability after disposal

15. Does a seller or occupier retain any liabilities relating to the real estate after it has disposed of it?

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 14*.)

Seller and buyer costs

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

The cost of registration with the Dubai Land Department is 2% of the purchase price. The buyer and seller pay 1% each, unless the contract provides otherwise. In addition, the Dubai Land Department charges an administration fee, currently set at AED315 (as at 1 September 2011, 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 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 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.

REAL ESTATE TAXES AND MITIGATION

17. Is value added tax (VAT) (or equivalent) payable on the sale or purchase of real estate?

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 and who pays?

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

Climate change targets

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?

Article 7 of Dubai Municipality's Decree 66 of 2003 relates to the selection of glazing for façades and is aimed at minimising solar thermal heat gains.

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

Third party outsourcing

21. Is it common for companies to manage their real estate portfolios and their accommodation needs by using third parties through outsourcing transactions?

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

Restrictions on foreign ownership or occupation

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.

Only the UAE and the 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) 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.

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.

With effect from 1 January 2011, 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. One purpose of this policy may be to reduce avoidance of the Dubai Land Department's 2% 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.

Issues on change of control

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

Subject to restrictions on foreign ownership or occupation of real estate (*see Question 22*), change of control of a company does not affect its holdings of real estate (*see Question 22*). However, if real estate is located in the area where only UAE or GCC nationals can own property then subsequent owners must also be UAE or GCC nationals.

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

Compulsory purchases

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

Municipal taxes

25. 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 are not applicable 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.

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 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.

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)?

A mortgage is the only form of security granted over real estate (see *Question 26*). 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 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 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.

29. Is real estate securitisation common in your jurisdiction?

Real estate securitisation is not common. There have been few instances to date (most notably the US\$350 million asset-backed securitisation in 2005, 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?

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?

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 levels and reviews

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

Generally, parties can include provisions on rent review in the lease agreement. However, Decree No. 2 of 2011 was passed to regulate rent increases in both residential and commercial leases in Dubai. Rent cannot be increased in 2011 if both:

- Property was rented before 10 January 2011.
- Rent rate was not higher than the "average standard rent" and not lower than 75% of that average.

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 standard rent. The caps range from 5% to 20%, depending on how low the rent was.



In previous years, equivalent decrees were issued governing rent increases. Dubai's Real Estate Regulatory Agency (RERA) indicated that for each year in which such a decree was issued, the decree would not apply to:

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

It remains to be seen how Decree No. 2 of 2011 will be interpreted and enforced.

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 Dubai Municipality's Rent Committee (see *Question 38*).

Restrictions on disposal

34. What restrictions typically apply to the disposal of the lease by the tenant?

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.

Use of premises within a corporate group

35. Can tenants usually share their business premises with companies in the same corporate group?

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.

Repair and insurance responsibilities

36. 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 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*).

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

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.

Grounds for termination

38. On what grounds can the landlord usually terminate the lease? Can the tenant terminate the lease in certain circumstances?

Landlord

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 Dubai Municipality's Rent Committee.



Tenant

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

Tenant's insolvency

39. 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 as it is not one of the eviction grounds expressly set out under Law No. 33 of 2008.

Corporate tenants

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.

Natural persons

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

PLANNING LAW

40. 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.
- Bye-laws and rules of Owners' Associations.

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

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 governed 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

For projects being completed by 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 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 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.

Third party rights

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*).

Public inquiries

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

Initial decision

Neither legislation nor planning regulations 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.

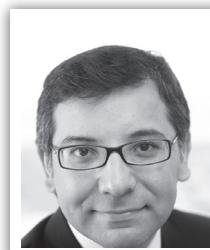
REFORM

43. Are there any proposals to reform real estate law in your jurisdiction?

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.

It is also expected that the Dubai Land Department's policy concerning the issue of title to real estate to foreign-owned companies (see *Question 22*) will develop. It is recommended that investigation is carried out at the Dubai Land Department before every real estate purchase.

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. British Columbia, Canada, 1998; California, United States, 2002

Areas of practice. Real estate; construction; corporate and commercial; venture capital; mergers and acquisitions; litigation and arbitration.

Recent transactions

- Acting for Union Properties PJSC in the AED1.1 billion sale of the Ritz-Carlton hotel in the DIFC.
- Acting for Union Properties PJSC in preparation of strata title documentation under the DIFC's Strata Title Law for the multibillion dirham iconic 80 storey multi-purpose tower development in the DIFC.
- Acting for Deyaar Development PJSC in strategic cross-border and transactional advice to one of the largest and most prominent regional developers with respect to its multibillion dollar project in Ajman, UAE.
- Acting for a regional developer in transactional structuring advice and document drafting for an AED1 billion sale of a mixed use project in the Middle East.



AFRIDI & ANGELL

Legal Consultants

With over 35 years of unrivalled experience in the United Arab Emirates Afridi & Angell is a premier, high quality law firm with a diversified regional and international practice based on conventional and Islamic banking and financial services, infrastructure and project finance, private equity, maritime and transport law, insurance, litigation support, arbitration, capital markets, real estate and construction.

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