Commercial Real Estate in the United Arab Emirates: Overview

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A Q&A guide to commercial real estate in the United Arab Emirates.

The Q&A gives a high-level overview of real estate investment structures; restrictions on foreign ownership; title; tenure; sale of real estate; real estate tax; real estate finance; leases; and planning law.

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Real Estate Investment

Investment Structures

1. What entity types and acquisition structures do investors typically use for real estate investment in your jurisdiction?

Common Entity Types

Most Dubai real estate is held by way of property owned in common, that is, a real estate development subdivided into apartments, offices, retail units, and common areas (Jointly Owned Property Law No. 6 of 2019) (Law 6/2019).

Each development generally uses its own separate special purpose limited liability vehicle. These are primarily used because they ringfence liability to the special purpose vehicle (SPV).

There are government restrictions on:

- Foreign investment (see *Question 2*).
- Areas where foreign investment is permitted.
- Corporate structures that can be used for foreign investment (limited to onshore companies incorporated in Dubai, free zone companies incorporated in Dubai, and offshore companies incorporated in the Jebel Ali Free Zone).

A real estate project funded by foreign investment will require certain licences (such as a licence from the relevant authority permitting a newly incorporated entity to carry on specific business activities).

Only licensed developers can develop new projects in Dubai. The Real Estate Regulatory Agency (RERA) is the licensing authority and all developers require RERA's approval before starting a project.

One entity can own the land plot and hold the development licence. The licence is deemed to include leasing rights. Alternatively, one entity can own 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 and the applicant's nationality.

Real Estate Investment Trusts (REITs)

REITs are available. However, in Dubai, REITs can only purchase property in the *Dubai International Financial Centre (DIFC)*, and are not permitted elsewhere. Therefore, REITs are not commonly used.

Common Acquisition Methods

The most common acquisition method used to acquire real estate in Dubai is an outright asset purchase. However, share purchases of a company are common where, for example, the specific real estate asset is central to the operation of that particular company.

There are advantages and disadvantages to both methods. A prospective buyer should weigh up their own specific requirements before proceeding.

In a share purchase, the newly acquired company remains in the same position as it was before the sale, which means that any licences or contracts held by the company do not need to be transferred. However, all the company's liabilities also pass to the new owner unless specifically carved out in the share purchase agreement.

Potential buyers should be aware that a change in ownership of a company will trigger a transfer fee of 4% for any real estate assets owned by the company.

Acquiring real estate by auction is becoming more prevalent in Dubai. However, this usually involves purchasing a distressed asset, therefore buyers assume a greater degree of risk than in a standard asset purchase. Lenders are usually more reluctant to provide financing for such acquisitions and as such auction acquisitions usually suit cash buyers.

Fractional Ownership (*see Question 6*) is also becoming more popular in Dubai, allowing smaller international investors to invest and become co-owners. However, the legal framework surrounding such co-ownership is still its infancy with limited provisions guiding such ownership and the registration at the Dubai Land Department (*DLD*).

Restrictions on Foreign Ownership and Occupation

2. 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 lending, security, and guarantees to buy or occupy real estate in your jurisdiction?

Foreign Ownership of Real Estate

There is no express prohibition in the UAE Civil Code (Federal Law No. 5 of 1985) of foreign land ownership. However, each emirate can pass its own laws to regulate property ownership.

In Dubai, only UAE nationals, *Gulf Co-operation Council* (GCC) nationals, and companies fully owned by them can own property in any part of Dubai (Article 4, Dubai Law No. 7 of 2006 (Law 7/2006)). 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 only own freehold, leasehold (up to 99 years) or usufruct (up to 99 years, see *Question 6*) in certain designated areas of Dubai. These are listed in Regulation No. 3 of 2006 (as amended) and include Burj Khalifa, Business Bay, Palm Jumeirah, Emirates Hills, Jumeirah Islands, Jumeirah Lake Towers, and Dubai Marina. This also applies to foreign companies, subject to the DLD's policy on title to real estate (*see below*).

Foreign ownership is also allowed in the Dubai free zones, for example the DIFC. Free zones are specially designated areas in the UAE established to attract foreign investment, by encouraging companies to set up businesses and locate their operations there. A list of free zones and their authorities is available on the *UAE government portal*.

In addition, a foreign person can acquire a lease in areas outside the designated areas (Law 7/2006).

Under current DLD policy, title to real estate in the designated areas is only issued to companies registered in Dubai or in the Jebel Ali Free Zone and certain other free zones.

Any company that owns property in Dubai must notify the DLD of any change in shareholding at any level in the company up to the ultimate beneficial owner. This is deemed a real property disposition under Executive Council Resolution 30 of 2013 and incurs a transfer fee payable to the DLD.

The DLD transfer fee is typically calculated at 4% of the value of the property, with a lower rate of 0.125% if the property is transferred by way of a "gift."

If a company fails to notify the DLD of the change in shareholding and or pay the transfer fee, the DLD will not permit the company to sell the property in future until all outstanding transfer fees are paid, and the DLD can retrospectively impose a fine of double the outstanding transfer fee on the company.

In 2019, Abu Dhabi passed on amendment allowing foreign ownership of real estate within Abu Dhabi Investment Areas (Law No. 19 2005 on Real Estate Property in Emirate of Abu Dhabi as amended by Law No.13 of 2019).

Foreign Lending, Security, and Guarantees

In Dubai and Abu Dhabi, real estate can only be mortgaged to a company or financial institution that has been duly licensed and registered by the UAE Central Bank.

Title to Real Estate

Title Registration

3. How is title to real estate evidenced? What is the system for public registration/recordation of title? Is electronic access and electronic conveyancing available?

How Title is Evidenced

In Dubai, title to real estate must be registered in the Property Register maintained by the DLD and a title deed certificate evidences title.

Information in the Property Register is absolute evidence of title.

For the designated areas open to foreign ownership (see *Question 2*), the Property Register has been established for over 18 years during which time the number of land transactions and property registrations has significantly increased.

If a master developer sells land to a developer on condition that title is transferred on completion of construction, title is evidenced by both:

- Recording the ownership with the master developer.
- Interim registration of a conditional sale contract against title at the DLD.

Further, in Dubai, the DLD has introduced a new common property register, which includes the following:

- Land owned by developers, where jointly owned properties are built.
- Units allocated for independent ownership at jointly owned properties sold by developers, and the names of the unit owners.
- Members of the owners' committee.
- Building management system.
- Plans.
- Management body.
- Management contracts of jointly owned properties or common parts.
- The area of the common parts and private common parts and their percentage of the area of the units in the common property.
- Areas owned by the developer in the common property.

(Law 6/2019.)

Public Registration/Recordation System

In Dubai, title is registered at the DLD. Under Dubai Law No.7 of 2019, dispositions of property are not deemed to be effective unless recorded in the real property register, maintained by the DLD.

Electronic Access and Conveyancing

Electronic access to and searching of title information is not available in Dubai. However, prospective buyers can carry out an Ownership Certification Validation search on the DLD website, to confirm whether there is a mortgage over the real estate and that the seller is still the owner of the real estate.

DLD implemented the Dubai REST application in 2018, allowing property owners/prospective buyers to use a real estate "wallet". The wallet provides owners/prospective ownerswith digital information on their/proposed property/or off plan project.

Owners can also review current property prices, rental returns, service charges. Additionally, both property owners and tenants can manage leases (registration, renewal and cancellation of lease), submit rental disported cases and follow up on them.

The DLD Unified Real Estate Contract (the standard contract which parties must sign for transferring property in Dubai) can be agreed and executed online. The approved electronic contract once digitally approved is then documented in the RERA's system and does not require physical signatures.

4. What are the main information and documents registered/recorded in the public registration/recordation system? Can confidential information or documents be protected from disclosure?

Main Information and Documents

In Dubai, the Property Register includes the following:

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

(Law 7/2006 as amended by Law No. 7 of 2019.)

Information in title certificates must match the current records in the Property Register (Law 7/2006 as amended by Law No. 7 of 2019). A title certificate is a single page document containing information about the:

- Property location and area.
- Owner.
- Date the certificate is issued.

For jointly owned property, title certificates for properties with a proportional undivided share of the common property contain the:

- Site plan.
- Bye-laws of the complex.
- Bye-laws regulating the owners committee.
- Building management system.

(Law 6/2019.)

The developer, on completing a jointly owned property and obtaining a completion certificate, must prepare and file the bye-laws of the complex with the DLD, within 60 days from the date the certificate of completion is issued. The building management system is filed by the RERA.

These documents all form part of the title certificate/deed and every occupant, owner, owners committee, and the project developer must comply with them.

The title certificate can be issued with a title plan, that is, a site plan illustrating the property boundaries. Directions issued under Dubai Law No. 27 of 2007 require title certificates to include information on the owner's share of the common property.

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

The DLD records purchase prices, and the latest purchase price for a property is noted on the title deed for the property.

Confidential Information

In Dubai, the Property Register is not open to the general public. 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 acting representative (generally legal) must obtain a Power of Attorney (POA) to make enquiries or act on behalf of any interested parties to obtain information from the DLD on behalf of an owner, purchaser or an interested party.

5. Is there a state guarantee of title? Are authorities that manage public title registration/recordation systems liable for title registration errors? Is title insurance available and is it commonly used?

State Guarantee of Title and Compensation

In Dubai, there is no state guarantee of title.

It is possible to challenge the validity of information in the Property Register on the grounds of fraud or forgery (Article 7, Law 7/2006).

The DLD can also correct errors in the Property Register at the request of a third party or on its own initiative (Article 13, Law 7/2006).

It is unclear whether the DLD or any of its staff can be held liable for any errors that are honestly made in the recording of title information. As the DLD is a government body, permission to bring a claim against it must be sought from the Dubai Ruler's Court before it can proceed.

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

Title Insurance

Title insurance is available but not commonly used.

Types of Tenure

6. How can real estate be held (that is, what types of tenure and other main ownership rights exist over land)?

Freehold Title/Absolute Ownership

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.

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.

Any other freehold title held by UAE and/or foreign national owners can be freely disposed of, provided that the required permissions are obtained from the relevant master developer and/or licensing authority (where the seller is a corporate entity).

Fractional ownership is available where real estate investors wish to partially purchase real estate in Dubai. Under the current DLD Rules, up to four investors can acquire a single property and have their relevant level of ownership reflected on the title deed.

Similarly, real estate investment crowdfunding platforms are becoming popular in Dubai. In this case, a SPV is incorporated to acquire and hold a specific property. Investors are then given shares in the SPV composite to their investment and receive returns based on this investment.

Leasehold Title

The Civil Code provides for usufruct. This involves the right to use, enjoy, and occupy land or property belonging to another person for a fixed term up to 99 years. Usufruct is similar to the concept of leasehold under English law.

Condominium Ownership/Equivalent

Law 6/2019 governs the ownership and operation of jointly owned properties in Dubai. Under this law, the common parts of such developments are managed by an owners' committee (consisting of owners selected by the Real Estate Regulatory Institute) for major projects and specialised management companies for both hotel projects and those deemed to be other projects.

Developers of projects that fall under the above law must provide buyers with a disclosure statement. This should describe the composition of the project, the operation of the common parts, and any other relevant disclosures.

Other Rights

The Civil Code provides for *Musataha*. This is the right to build on land for a specified term of up to 50 years. The holder of a *Musataha* right is deemed to own all buildings on the land during the specified term.

The Civil Code also provides for the right of use of residence over land. This is determined by the needs of the owner of such a right and those of their dependents (subject to the agreement that creates or gives rise to the right).

Article 1,362 of the Civil Code provides for rights of easement to be granted over property. Such rights can be obtained by consent, legal disposition, or by inheritance.

Sale of Real Estate

Preliminary Agreements

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

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 the sale contract.

Alternatively, the parties can proceed directly to signing the sale contract (see *Question 8*).

If a memorandum of understanding or a reservation form is signed pending the signing of a sale contract, parties may still negotiate the sale contract terms. Parties can use solicitors but this is not compulsory. Negotiation usually takes several weeks before completion. However negotiations are likely to be limited for off-plan sale contracts.

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

It is strongly advisable to carry out due diligence before entering into a binding agreement.

Only a broker that meets the licensing requirements in By-Law No. 85 of 2006 can market real estate. This By-Law also sets out the professional and ethical standards for brokers. A seller or property developer must appoint a broker by a written agreement. There is no cap on the broker's commission, but it is usually between 2% and 5% of the purchase price.

Marketing off-plan projects is subject to approval from the DLD and compliance with the Guarantee Accounts of Real Estate Developments Law No. 8 of 2007 as amended by Law No. 13 of 2008.

Exchange and Completion/Closing

8. When does the sale become legally binding? What are the main documents and formalities for exchange and completion/closing of the sale? When does title transfer? Is notarisation required?

When Legally Binding

Parties can enter into or sign preliminary agreements before the execution of a sale contract, such as a memorandum of understanding or reservation form (see *Question 7*). Depending on the drafting of these agreements, the sale does not usually become binding on the parties at this stage..

Under the Civil Code, an agreement becomes legally binding when all the following conditions have been met:

- 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.

A memorandum of understanding, reservation form, and the sale contract can be executed in counterpart copies if expressly provided for in the sale contract.

The documents can be exchanged by fax or e-mail, with the originals to follow by post. It is not necessary for all parties to sign the same copy simultaneously.

A deposit is typically paid by the buyer according to the terms agreed with the seller.

Completion/Closing Documents

In Dubai, a disposition of a completed property must be registered in the Property Register managed by the DLD (see Question 3 and Question 4). The buyer normally registers the disposition, as registration triggers the issue of a title certificate in the buyer's name. For completed properties, the sale contract often provides that parties must attend the DLD to arrange for the title certificate to be issued in the buyer's name on payment of the full price (see below, *When Title Transfers*).

A disposition of an off-plan property must be registered by the developer in the Interim Register managed by the DLD (Article 3, Dubai Law No. 13 of 2008, as amended by Dubai Law No. 9 of 2009 and clarified by Decree No. 6 of 2010 (Law 13/2008)). For off-plan sales, registration of the title transfer is not usually required until completion of the building. The 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.

A disposition that is not registered in the Property Register or the Interim Register is invalid (Article 3(1), Law 13/2008).

For a share sale, generally, the authors often see the following documents provided:

- Share purchase agreement.
- Share transfer deed.
- Updated company licence.
- Amended memorandum of association.
- Updated share certificates.

However, this depends on where a specific company has been incorporated. For the real estate aspect, the buyer should ensure that an updated title certificate is provided.

When Title Transfers

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

Under Dubai law, dispositions of real estate must be recorded in the real property register maintained by the DLD and any disposition not so recorded is not deemed effective. The process to complete a sale is outlined below.

- The buyer and the seller sign the sale contract and complete any necessary interim steps to transfer title (for example, paying any outstanding service charges and obtaining a no objection letter from the master developer of the property.
- The buyer and seller then attend the DLD or a Real Estate Registration Trustee. At that meeting, several steps are completed, including:
  - the buyer and seller sign the DLD forms for the transfer of title;
  - the buyer pays the purchase price to the seller;
  - necessary payments are made to the DLD (see *Question 10*);
  - the DLD issues the buyer with a title deed for the property.

In Dubai, deferred sale contracts must be registered with the DLD. Once the purchase price has been paid in full by the buyer (and the buyer has satisfied all other relevant contractual obligations), the parties can apply to the DLD to convert the deferred sale registration into a title deed in the buyer's name.

Notarisation

Notarisation is not required in the UAE.

Environmental Issues

9. Briefly outline the environmental legislation and potential liability in a purchase of real estate. Is it common to carry out environmental due diligence and obtain environmental insurance? How is environmental liability typically dealt with in the sale contract?

Environmental Legislation and Liability

Federal Law No. 24 of 1999 On the Protection and Development of the Environment governs environmental clean-up in the UAE. Under this law, any person who intentionally or through negligence causes damage to the environment or to others is responsible for all the costs of treatment or removal of such damage, and can be imprisoned and fined.

Unless otherwise stipulated in the sale contract, the buyer generally inherits liability for all matters relating to the property, which includes environmental liability. However, a misrepresentation by the seller about the environmental condition of a property can result in both civil and criminal liability.

Environmental liability is not usually a consideration in most real estate transactions in the UAE.

Environmental Due Diligence and Insurance

It is not common to carry out environmental surveys and searches and to obtain environmental insurance.

Environmental Issues in the Sale Contract

Outside of the sale of off-plan properties, there is no statutory duty of disclosure on a seller of real estate. A buyer can seek environmental warranties but this is not common unless there is a known environmental issue.

Real Estate Tax

Stamp Duty/Transfer Tax

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

Stamp Duty/Transfer Tax

There is no stamp duty payable on the sale or purchase of real estate in the UAE.

In Dubai, there is a fee for registration with the DLD of 4% of the purchase price for completed property and for off-plan property. The buyer and seller pay half of this amount each, unless the sale contract provides otherwise. Payment must be made to the DLD before the DLD will issue a title deed in the buyer's name.

The DLD also charges an administration fee, currently:

- AED580 for apartments and offices.
- AED430 for land.
- AED40 for off-plan.

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, a fee is payable to the Transfer Trustees (who carry out the transfer process on the DLD’s behalf) of:

- AED2,000 plus VAT, if the purchase price is less than AED500,000.
- AED4,000 plus VAT, if the purchase price is AED500,000 or more.

A fee or commission is paid to a broker involved in the transfer, under the terms of the brokerage agreement. The master developer can also charge administration fees for an ownership transfer, currently capped at AED5,000. Responsibility for these fees can be allocated by agreement. Who pays the broker’s fee depends on various factors, including who originally instructed the broker.

A mortgage registration fee, set at 0.25% of the loan amount plus an administration fee of AED 290, is typically payable by the buyer under the mortgage agreement. The fee is paid to the DLD.

Who Pays

See above, *Stamp Duty/Transfer Tax*.

Exemptions

It is common for some developers to offer to cover all, or a percentage of, the DLD transfer fee, as an inducement to enter a sale contract.

Transfer of Shares

Any company that owns property in Dubai must notify the DLD of any change in shareholding at any level in the company up to the ultimate beneficial owner. This is deemed a real property disposition under Executive Council Resolution 30 of 2013 and incurs a transfer fee payable to the DLD. The DLD transfer fee is typically calculated at 4% of the value of the property, with a lower rate of 0.125% if the property is transferred by way of a "gift."

Tax on Seller's Profits/Gain

11. Is tax imposed on a seller's profit or gain on a sale of real estate? Are there any exemptions? Does it apply to a transfer of shares in a company holding real estate?

Tax on Seller's Profits/Gain

The UAE recently issued Federal Decree-Law No.47 2022 as amended by Federal Decree-Law No.60 of 2023 (CT Laws) under which certain business activities and corporate entities are now subject to corporate tax.

Under the CT Laws, real estate investment income may be subject to corporate tax where it derives from a licensed business or business activity and/or requires a licence from licensing authority.

However certain exemptions relating to real estate apply (see *Exemptions* below).

In the UAE, no tax is payable on a seller's profit or gain from a sale of real estate.

Exemptions

Corporate tax does not apply in the following circumstances:

- Where real estate investment income is received by a natural person, connected, either directly or indirectly, to the sale, lease, sub-lease, or rental of land or real estate property in the UAE.
- Where the profit or income relates to a natural person, in their own capacity, the individual will not be subject to tax on its profit or gain from the sale of real estate.

Transfer of Shares

The CT Laws apply to the transfer of shares. However, there are exemptions available, subject to meeting certain requirements.

Value Added Tax (VAT) or Equivalent

12. Is VAT (or equivalent) payable on a sale of real estate? Who pays? Are there any exemptions?

VAT/Equivalent

In the UAE, a supply of a commercial property (including a sale or lease) is subject to VAT.

Who Pays

VAT on a supply of a commercial property is paid by the beneficiary of the property at the standard rate of 5%. This is typically paid directly to the seller who in turn accounts to the relevant authority. Buyers of commercial properties should seek professional advice as to whether they should be registered for VAT, as this may permit them to offset VAT paid elsewhere.

Exemptions

A supply of a residential building does not incur VAT.

Municipal/Local Taxes

13. Are municipal/local taxes paid on the occupation or ownership of business premises or business ownership? Are there any exemptions?

In Dubai, 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 following properties are exempt:

- Properties owned by the government or occupied by 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 (where many knowledge industry companies are based), and Silicon Oasis, where freehold title is sold to foreign persons. However, Free Zone Authorities have imposed charges on company trade licences and hospitality fees similar to those applicable in the rest of Dubai.

Real Estate Finance

Secured Lending Involving Real Estate

14. Briefly outline the typical security package required by lenders in relation to commercial real estate lending. How are the most common forms of security interest relating to real estate created and perfected? Is there a mortgage tax/registration fee?

Typical Security Package

In Dubai, a mortgage is the only form of security granted over real estate.

Additional security interests taken by lenders include:

- **Guarantees**. While there are no specific registration requirements, a guarantee should clearly identify the secured party, obligations and the secured amount (either as a specific amount or by reference to the secured obligations).
- **Share pledge**. (often over the shares of the developer SPV and/or its parent company).

  Shares of an onshore LLC must be registered with the relevant department of economic development.

  Shares of a free zone company may need to be registered with the relevant free zone authority, provided the relevant free zone permits this.

  In the case of onshore LLC and some free zones, shares can only be pledged in favour of a locally licensed bank.

  Overseas lenders may need to appoint a local licensed bank to act as a security agent.

  Share pledge registration fees and charges vary, depending on the relevant department of economic development and free zone authority. There may also be notary fees, where the share pledge agreements must be notarised before registration (this fee will depend on the secured amount, subject to a cap).
- **Accounts pledge**. The pledgor (the account holder) must send a notice of the pledge to the account bank and (ideally) receive an acknowledgement of the pledge from the account bank.

  While not a legal requirement, it is now market practice to perfect this security by registering the pledge on the Security Register operated by the Emirates Integrated Registry Company (EIRC).

  An online security registration application must be completed to register on EIRC with payment of a fee (of between AED50 and AED200).

If the account pledge is registered on the Security Register, any contract between the account bank and lender (relating to the account pledge) can also be registered.

If the lender (such as a syndicate bank, in the case of syndicate financing) is not the account bank, then in practice it will be necessary to take into account any of the account bank's internal policies regarding account pledges (for example, some banks do not issue acknowledges or recognise pledges in favour of foreign banks).

- **Assignment of concession**. If the financed real estate is being provided under a concession arrangement (for example, PPI concession to develop/operate a project on land owned by the government), it may be possible to assign the concession, generally under a direct agreement, by which the parties agree that the lender (or its nominee) will replace the original developer, following a default under the financing documents or other trigger event.

  Such assignments may need to be registered with the relevant governmental and/or relevant land department/ municipality

- **Assignment of rental income and receivables** (if the financed real estate is leased).

  The assignor (landlord) must send a notice of the assignment to the tenant(s) and (ideally) receive an acknowledgement of the assignment from the tenant(s).

  While not a legal requirement, it is now market practice to perfect this security by registering the assignment on the Security Register.

  Where the real estate is being managed by a third party (who may also be the party to the lease contracts, the manager should (ideally) be a party to the assignment.

  If the assignor is located in a free zone, it may also be necessary to register the assignment with the free zone authority.

  Overseas lenders may need to appoint a local licensed bank to act as a security agent.

- **Assignment of project guarantees and insurances relating to a property or project**. Subject to certain requirements (for example, the insurance must relate to a property that has also been mortgaged to the same lender), such assignments can be registered on the Security Register. While not a legal requirement, it is now market practice to perfect this security by registering it.

- **Asset pledge** (over movable assets relating to the property, located in the property and, in the case of a development project, assets used in connection with the project). While not a legal requirement, it is now market practice to perfect this security by registering it on the Security Register.

Common Forms of Security: Creation and Perfection

In Dubai, to be valid, a mortgage must be all of the following:

- Registered with the DLD (Dubai Law No. 14 of 2008).
- Granted over property that physically exists or virtually exists on a plan when it is granted.
- Granted against a fixed or promised debt.

A mortgage contract must follow the DLD's standard template.

A mortgage can be created over an interest in off-plan property if the interest has been registered in the Interim Register (see *Question 8*).

Mortgage Tax/Registration Fees

A mortgage registration fee is payable to the DLD at 0.25% of the loan amount. This is typically paid by the buyer under the mortgage agreement.

Lenders' Remedies

> 15. Briefly outline the main remedies for lenders in relation to secured real estate if the borrower defaults on the loan. What is the effect of the borrower's insolvency on the lender's remedies?

Lenders' Remedies

A borrower's default generally occurs when a borrower has failed to maintain their payment obligations under the mortgage agreement. At this point, the full amount due on the mortgage may become payable to the lender.

Each emirate has its own rules on enforcing mortgages.

In Dubai and Abu Dhabi, to enforce a mortgage, the creditor must obtain a court order allowing it to sell the real estate through public auction (Article 26, Dubai Law No. 14 of 2008; Article 53, Abu Dhabi Law No. 3 of 2015). The creditor cannot sell mortgaged real estate by any other means.

Effect of the Borrower's Insolvency

Under Federal Law 9 of 2016, as amended (Bankruptcy Law), the court can impose a moratorium on enforcement proceedings while the parties evaluate possible preventive composition or restructuring schemes, although it may still be possible to request the court to permit enforcement proceedings if the court agrees. The lender has priority as a secured creditor over the secured assets.

The registration serial number allocated by the relevant UAE land registry 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 (Article 1425, Civil Code; Article 17, Dubai Law No. 14 of 2008 and Article 45, Abu Dhabi Law No. 3 of 2015).

Real Estate Leases

Negotiation of Leases

16. Are commercial lease provisions regulated or freely negotiable? Which legislation applies?

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

The *DLD Unified Ejari Tenancy Contracts* are template leases that must be used in all leasing transactions. They can be supplemented by additional terms and conditions that can be attached to them.

Rent Payments

17. At what intervals is rent usually paid in a business lease? How are rent levels usually determined and reviewed?

Rent Payment Intervals

The applicable intervals for payment of rent are subject to negotiation between the landlord and tenant. However, it is common for rent to be paid in advance.

If the parties fail to agree and or provide clarity in the lease, the law states that the rent must be paid quarterly in advance

Rent Review

Parties can generally include rent review provisions in the lease subject to the provisions of Decree No. 43 of 2013 which regulates rent increases in commercial leases in Dubai.

An increase in the rent of a real estate unit is subject to the following statutory limits:

- No increase, if the rent is less than 10% of the average standard rent.
- 5%, if the rent is less than 11% to 20% of the average standard rent.
- 10%, if the rent is less than 21% to 30% of the average standard rent.
- 15%, if the rent is less than 31% to 40% of the average standard rent.

- 20%, if the rent is less than 41% to 50% of the average standard rent.

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

The DIFC Leasing Law No. 1 of 2020 applies to all commercial leases in the DIFC, except for a lease:

- Of premises used primarily for serviced apartments or hotel inventory leased as part of a hotel.
- Entered into by the parties to a mortgage of the leased premises, under the terms of the mortgage.

18. Is stamp duty and VAT (or equivalent) payable on rent?

Stamp duty is not payable in the UAE.

VAT at the rate of 5% is payable on rent of commercial premises. (see *Question 12*).

19. Is a rent security deposit or other security usually required by the landlord?

In the DIFC, a security Deposit is generally used for commercial leases as form of guarantee (DIFC Leasing Law No. 1 of 2020). There is no cap on the amount of deposit for commercial leases.

In Dubai outside the DIFC, a rent security deposit is also typically required by the landlord and there are no such limits on the amount. However, it is common for this figure to be between 5% and 10% of the annual rent.

Length of Term and Security of Occupation

20. Is there a typical length of lease term or restrictions on the duration of a lease? Do tenants of business premises have security of occupation or rights to renew the lease at the end of the contractual lease term?

Length of Lease Term

In the UAE, 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. Under Dubai Law 7/2006, the maximum lease term available for non-nationals 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.

Security of Occupation

In Dubai, 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, and on the same terms and conditions (Article 6, Law No. 26 of 2007).

If either party wishes to amend any provision in the extended lease, including the rent, it must give 90 days' written notice to the other party specifying the amendments, unless otherwise agreed. If the parties fail to agree on the amendments, the matter can be referred to the *Rental Disputes Settlement Centre (RDC)*.

Disputes about leases in the DIFC can be referred to the DIFC court or any specific tribunal created for dealing with disputes under the DIFC Leasing Law No. 1 of 2020.

Disposal

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

Assignment and Subletting of the Lease

A tenant cannot assign the use of or sublet the leased property without the landlord's prior written consent (Article 787, Civil Code; Dubai Law No. 33 of 2008). A tenant is otherwise free to assign its interest or sublet the property, unless there are express restrictions in the lease.

There is nothing contained within the current provisions of landlord and tenant law on reasonable consent. However, contractually the parties can agree to the landlord acting reasonably

Group (Affiliate) Sharing

See above, *Assignment and Subletting of the Lease*.

Legal Reorganisation or Transfer/Sale of the Tenant

Dubai law is silent on the consequences of a legal reorganisation or sale of the tenant entity. However, many landlords include specific clauses in their standard leases that require the tenant to seek the landlord's consent before such a reorganisation/sale can take place.

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

Landlord's Retained Liability

Provided that the assignment is validly made, no liability is retained by the landlord. This is subject to the agreement between the landlord and the third party to whom the lease is assigned.

Tenant's Retained Liability

If the landlord's consent is obtained to the lease assignment, the assigning tenant has no liability after the lease is assigned.

If the landlord's consent is not obtained, the landlord can pursue the assignor and/or the assignee for performance of the lease obligations (Article 1116, Civil Code).

Landlord's Remedies and Tenant's Insolvency

23. 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? What is the effect of the tenant's insolvency?

Landlord's Remedies and Grounds for Termination

Each emirate has its own rules governing termination of a lease and eviction of the tenant.

In Dubai, the landlord can evict a tenant either:

- 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.
- On 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.

(Dubai Law No. 33 of 2008.)

Proceedings to terminate the lease and evict the tenant must take place before the RDC.

Effect of the Tenant's Insolvency

Landlord and tenant legislation is silent about the effect of the tenant's insolvency. In Dubai, outstanding rent is a ground for eviction. A typical lease enables the landlord to terminate the lease in the event of the tenant's insolvency. However, this may be technically invalid because it is not one of the grounds for eviction expressly set out under Dubai Law No. 33 of 2008 (see above, *Landlord's Remedies and Grounds for Termination*).

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.

Free zones can implement their own leasing laws, such as the DIFC Leasing Law No. 1 of 2020.

Under the New Bankruptcy Law (Federal Law Decree No. 51 of 2023 concerning Financial Restructuring and Bankruptcy (which is due to take effect from 1 March 2024)), preventative composition will be replaced by preventative settlement. This allows for a more amicable approach to settling debts such as rent, under a court-supervised process.

The new law also allows for debtors such as tenants to have a moratorium period of between three and six months where the tenants initiate the preventative settlement process, allowing the tenant time and space to negotiate a repayment plan with the landlord under the court's supervision.

This new law further aligns the UAE with global provisions on bankruptcy and strengthens the UAE's position as an attractive global and investment destination.

Planning and Development Controls

24. In what circumstances can local or state authorities purchase property compulsorily (expropriation/eminent domain)? Is the purchase price or compensation based on market value?

Compulsory Purchase/Expropriation

Local and state authorities can purchase real estate compulsorily if it is necessary for the public interest (for example, the construction of highways) and just compensation must be paid (Article 1135, Civil Code).

Compensation

In assessing compensation, regard is made to the value of the property expropriated and to loss of profit and other damage that may result from the expropriation (Article 1135, Civil Code).

In addition, each emirate can pass its own laws to regulate compensation. In Dubai, the Lands Valuation Committee (with the approval of the Director General of Dubai Municipality) determines applications for compensation from persons affected by expropriation (Resolution No. 2 of 2003).

In the case of road expansion, compensation is in the form of:

- Cash, if the Lands Valuation Committee determines that the value of the compensation is AED200,000 or less.
- Additional land, if the Lands Valuation Committee determines that the value of the compensation is more than AED200,000.

(Dubai Local Order No. 1 of 2014.)

Law No. 2 of 2022 Concerning Acquisition of Real Estate Property for Public Benefit in the Emirate of Dubai, applies to all real property, including in any special development zone, and freezones including the DIFC. Under this law, private ownership is protected and not prejudiced, save that if private property is required for public benefit, the owner must receive fair compensation in return.

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

Each emirate imposes its own planning controls in relation to real estate in their area.

In Dubai, the Dubai Municipality is the principal authority regulating planning control (Local Orders No. 2 of 1999 and No. 8 of 2003, recently updated by Executive Council Resolution No. 18 of 2021 Forming the Supreme Urban Planning Committee in the Emirate of Dubai, and Law No. 16 of 2023 Converning Urban Planning in the Emirate of Dubai).

Additional controls can be imposed by RERA, the relevant free zone authority, and the master developer. Legislation includes:

- Law 13/2008.
- Law No. 8 of 2007.
- Law 6/2019 on Jointly Owned Real Property in Dubai.
- Dubai Law No. 4 of 2019.
- Rules and regulations of the relevant free zone.
- Bye-laws of the complex.

- Bye-laws and rules of the developer or the management company.

The master developer's standard sale contract also contains provisions on planning control.

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

26. 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 land in Dubai (Planning Regulations).

However, master developers and free zone authorities can impose additional planning procedures, for example for plots of land located in a free zones, such as JAFZA or TECOM, which may also be subject to additional requirements from Trakhees or TECOM in addition to the Dubai Municipality requirements.

Legislation and planning regulations do not set out a maximum time in which the Dubai Municipality must issue its initial decision.

Third Party Rights and Appeals

Each emirate imposes its own planning controls in relation to real estate in their area.

In Dubai, there are no formal procedures for third parties to object to a particular planning application. However:

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

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RESOURCE HISTORY

Law stated date updated following periodic maintenance.

This document has been reviewed by the author as part of its periodic maintenance to ensure it reflects the current law and market practice on 02 January 2024.

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