

# Real Estate 2021

Contributing editors  
Patrick Williams and Devina Rana



**Publisher**

Tom Barnes  
tom.barnes@lbresearch.com

**Subscriptions**

Claire Bagnall  
claire.bagnall@lbresearch.com

**Senior business development manager**

Adam Sargent  
adam.sargent@gettingthedealthrough.com

**Published by**

Law Business Research Ltd  
Meridian House, 34-35 Farringdon Street  
London, EC4A 4HL, UK

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between October and November 2020. Be advised that this is a developing area.

© Law Business Research Ltd 2020  
No photocopying without a CLA licence.  
First published 2007  
Fourteenth edition  
ISBN 978-1-83862-394-4

Printed and distributed by  
Encompass Print Solutions  
Tel: 0844 2480 112



---

# Real Estate 2021

**Contributing editors****Patrick Williams and Devina Rana****Fried, Frank, Harris, Shriver & Jacobson LLP**

---

Lexology Getting The Deal Through is delighted to publish the fourteenth edition of *Real Estate*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Finland, Indonesia, Ireland, Spain, United Arab Emirates and Vietnam.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Patrick Williams and Devina Rana of Fried, Frank, Harris, Shriver & Jacobson LLP, for their continued assistance with this volume.



London  
November 2020

---

Reproduced with permission from Law Business Research Ltd  
This article was first published in December 2020  
For further information please contact [editorial@gettingthedealthrough.com](mailto:editorial@gettingthedealthrough.com)

# Contents

<b>2020, the year that changed everything</b>	<b>3</b>	<b>Mexico</b>	<b>93</b>
Patrick Williams and Devina Rana Fried, Frank, Harris, Shriver & Jacobson LLP		Moises Shehoah and Diana L Sologuren Perez M Shehoah SC	
<b>Australia</b>	<b>5</b>	<b>Monaco</b>	<b>103</b>
Alicia Albury, Angela Tao, Arlene Colquhoun, Bronwyn Badcock, Chong Ming Goh, Danielle Funston, Michael Taylor-Sands and Michael Winram Maddocks		Sophie Marquet and Alexia Delaunay CMS Pasquier Ciulla Marquet Pastor Svava & Gazo	
<b>Austria</b>	<b>14</b>	<b>Myanmar</b>	<b>111</b>
Lukas Flener and Edda Unfricht Fellner Wratzfeld & Partner Rechtsanwälte GmbH		Kana Manabe, Win Naing, Julian Barendse and Nirmalan Amirthanesan Myanmar Legal MHM Limited	
<b>England &amp; Wales</b>	<b>22</b>	<b>Netherlands</b>	<b>120</b>
Patrick Williams, Jons Lehmann and Devina Rana Fried, Frank, Harris, Shriver & Jacobson LLP		Alexander van Hövell, Seppe Stax and Soufjan El Baroudi Allen & Overy LLP	
<b>Finland</b>	<b>32</b>	<b>Spain</b>	<b>130</b>
Christoffer Waselius and Henri Kaskimo Waselius & Wist		Janis Amort and Mónica Regaño Aguirre Monereo Meyer Abogados	
<b>Germany</b>	<b>43</b>	<b>Switzerland</b>	<b>139</b>
Maximilian Clostermeyer McDermott Will & Emery		Corrado Rampini Bär & Karrer	
<b>India</b>	<b>52</b>	<b>Thailand</b>	<b>147</b>
Hardeep Sachdeva, Abhishek Awasthi and Ravi Bhasin AZB & Partners		Shunsuke Minowa, Yothin Intaraprasong, Poonyisa Sornchangwat and Chattong Sunthorn-opas Nagashima Ohno & Tsunematsu (Thailand) Co, Ltd	
<b>Indonesia</b>	<b>64</b>	<b>United Arab Emirates</b>	<b>155</b>
Denny Rahmansyah and Greita Anggraeni SSEK Indonesian Legal Consultants		Shahram Safai, Rahat Dar and Anna White Afridi & Angell	
<b>Ireland</b>	<b>75</b>	<b>Vietnam</b>	<b>166</b>
Marcus Kennedy, Deirdre Lundon, Cathy Grant, Rowena Fitzgerald, David Ormsby, Deirdre Nagle and Niamh Caffrey Mason Hayes & Curran LLP		Tran Thai Binh and Duong Thi Minh Han LNT & Partners	
<b>Japan</b>	<b>83</b>		
Shinichiro Horaguchi, Yoshinobu Koyama and Yoshihisa Watanabe Nagashima Ohno & Tsunematsu			

# United Arab Emirates

Shahram Safai, Rahat Dar and Anna White

Afridi & Angell

## GENERAL

### Legal system

1 | How would you explain your jurisdiction's legal system to an investor?

The United Arab Emirates is a civil law system. The Constitution of the United Arab Emirates sets out the main rules of the political, legal and constitutional organisation of the United Arab Emirates.

Article 1 of the Constitution provides that the United Arab Emirates is a federal, independent and sovereign state consisting of the emirates of Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al Quwain, Fujairah and Ras Al Khaimah.

The Constitution is flexible and allows the emirates to exercise authority in certain matters.

Article 116 provides that the emirates shall exercise all powers not assigned to the federation by the Constitution.

Article 122 provides that the emirates shall have jurisdiction in all matters not assigned to the exclusive jurisdiction of the federation.

The emirates of Sharjah, Ajman, Fujairah and Umm Al Quwain follow the federal judicial system.

However, at the local level, the Abu Dhabi Judicial Department in Abu Dhabi, the Dubai Courts in Dubai and the RAK Courts in Ras Al Khaimah maintain their own independent judicial departments, with jurisdiction in matters that are not assigned to the Federal Judiciary in accordance with the Constitution.

In the Emirate of Dubai, two legal systems apply with respect to real estate. The first is the regime that is applicable to land comprising 'Onshore Dubai'. This is defined as all areas in the Emirate of Dubai excluding the free zone called the Dubai International Financial Centre. The second is the regime applicable to the land comprising the Dubai International Financial Centre (DIFC).

### Land records

2 | Does your jurisdiction have a system for registration or recording of ownership, leasehold and security interests in real estate? Must interests be registered or recorded?

In Dubai, all dispositions that create, transfer, change or extinguish real property rights, and all the final rulings validating these dispositions, must be registered (article 9 of Law 7 of 2006 (as amended by Law 7 of 2019)). In particular:

- a developer must register all dispositions of off-plan property in the Interim Register (Oqood), which is maintained by the Dubai Land Department (article 3 of Law 13/2008, as amended by Law 9/2009 and clarified by Decree 6/2010);
- a disposition of a completed property must be registered in the Real Property Register, which is also maintained by the Dubai Land Department;

- a lease agreement must be registered with either the Dubai Land Department if the lease is for a term of not less than 10 years and not more than 99 years; or on the Ejari system maintained by the Dubai Land Department if the lease is for a term of less than 10 years (see Administrative Resolution 134 of 2013 and article 10 of Law 4/2019); and
- all mortgages must be registered with the Dubai Land Department (article 7 of Law 14/2008).

Under the law, the relevant disposition shall not be deemed effective unless it is registered (article 9 of Law 7/2006 (as amended by Law 7 of 2019)). See also article 3(1) of Law 13/2008, article 4 of Law 33/2008 and article 7 of Law 14/2008. Therefore, a contract of sale, mortgage or lease is legally binding only if it is registered.

There is no state guarantee of title. The validity of information in the Property Register may be challenged on the grounds of fraud or forgery (article 7 of Law 7/2006). 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 of Law 7/2006).

### Registration and recording

3 | What are the legal requirements for registration or recording conveyances, leases and real estate security interests?

The registry in each emirate has its own rules governing how title is transferred. In Dubai, to register a transfer of title, the buyer and seller must both meet at a real estate registration trustee in Dubai (such as Tamleek). At that meeting, several steps are completed, including the following:

- various original documents will be produced by the buyer and seller, including:
  - the title deed;
  - a no objection certificate from the developer;
  - the mandatory Dubai Land Department template Property Sales Contract between Buyer and Seller (Form F), which can and should be augmented (using a schedule, an attachment or incorporation by reference) by the parties entering into a separate sale and purchase contract or memorandum of understanding; and
- the passport, visa or emirates identification of the seller and buyer (if an individual) or the corporate documents of the seller and buyer (if a company);
- the buyer and seller will sign the Dubai Land Department forms for the transfer of title;
- the buyer will pay the purchase price to the seller;
- the necessary payments will be made to the Dubai Land Department and the real estate registration trustee; and
- the Dubai Land Department will issue the buyer with a title deed for the property.

Registration cannot be completed by the parties electronically.

The registry in each emirate has its own rules governing the registration of lease agreements. As such, a lease must be concluded in writing to enable it to be registered and treated as valid under the law. In addition, in March 2017 the Dubai Land Department introduced mandatory unified Ejari tenancy contracts, which are template-written leases that must be used in all leasing transactions required to be registered on the Ejari system by law and can be supplemented by additional terms and conditions, as required.

The registry in each emirate has its own rules governing the registration of mortgage agreements. In Dubai, the law requires that all mortgages be registered with the Dubai Land Department (article 7 of Law 14/2008).

### Foreign owners and tenants

- 4 | What are the requirements for non-resident entities and individuals to own or lease real estate in your jurisdiction? What other factors should a foreign investor take into account in considering an investment in your jurisdiction?

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

Under the Onshore Dubai regime, the law and the current policy of the Dubai Land Department (DLD) provides as follows.

UAE nationals, Gulf Cooperation Council (GCC) nationals and companies fully owned by these individuals and public joint stock companies can own property anywhere in Onshore Dubai (article 4 of Law 7/2006).

Non-UAE and non-GCC nationals can own only freehold, leasehold (up to 99 years) or usufruct (up to 99 years) in designated areas in Onshore Dubai (Designated Areas), which are determined by the Ruler of the Emirate of Dubai by way of decrees and regulations issued from time to time. Some of the most popular of the Designated Areas are: the Palm Jumeirah; Downtown Dubai; Old Town; Burj Khalifa; Business Bay; Dubai Marina; Emirates Hills; Jumeirah Lakes Towers; Jumeirah Beach Residence; and Arabian Ranches.

A foreign company can own only a freehold, leasehold (up to 99 years) or usufruct (up to 99 years) in the Designated Areas in Onshore Dubai via establishing one of the following company vehicles in Dubai: a Jebel Ali Free Zone Authority Offshore Company; a Dubai Multi Commodities Centre company; a company incorporated in the Abu Dhabi Global Market free zone; a RAK International Corporate Centre offshore company; a DIFC company, partnership, foundation, real estate investment trust and real estate fund, but subject to the approval of the DIFC Registrar of Companies which is assessed on a case by case basis; or an LLC whose ultimate beneficial owners are 51 per cent UAE nationals and 49 per cent non-GCC nationals.

A fund or a trust (or an entity that is held by either of these) cannot own property anywhere in Dubai.

Under the DIFC regime, all foreign nationals, foreign companies and GCC nationals have the right to acquire real estate anywhere in the DIFC without restriction on the type of legal vehicle used.

Generally, a separate special purpose limited liability vehicle (taking one of the forms described above) is used by foreign investors to purchase and develop a plot. 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 government restrictions on:

- foreign investment;
- areas where investment is permitted;
- corporate structures that can be used for investment; and
- 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 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) are permitted under the Abu Dhabi Global Market's (ADGM) REIT framework (the ADGM Fund Rules); the Dubai International Financial Centre's Investment Trust Law framework (the DIFC Investment Trust and REITS Rules Instrument); and the Emirates Securities and Commodities Authority's framework (Administrative Decision 6/R.T of 2019 Concerning Real Estate Investment Fund Controls). However, REITs are not permitted elsewhere; therefore they are not commonly used.

### Exchange control

- 5 | If a non-resident invests in a property in your jurisdiction, are there exchange control issues?

There are no exchange controls restricting payments to foreign lenders. The UAE dirham is fully convertible and there are no restrictions on the movement of funds (denominated in dirhams, US dollars or otherwise) into or out of the UAE. The dirham is pegged to the US dollar.

### Legal liability

- 6 | What types of liability does an owner or tenant of, or a lender on, real estate face? Is there a standard of strict liability and can there be liability to subsequent owners and tenants including foreclosing lenders? What about tort liability?

#### Obligations of the landlord

The landlord must repair any defect in the leased property that affects the lessee's use of the property. If the landlord fails to do so, the tenant may cancel the lease or obtain leave from the judge authorising it to repair and recover the costs from the landlord (article 767 of the Civil Code). In addition, in Dubai:

- the landlord must hand over the property to the tenant in a good condition (article 15 of Law 26/2007);
- unless the parties have agreed otherwise, the landlord is responsible for the property's maintenance works and for repairing any defect or damage that may affect the tenant's enjoyment of the property during the term of the lease (article 16 of Law 26/2007); and
- if the landlord breaches its obligations, the tenant can file a complaint with the Rental Disputes Settlement Centre, which has exclusive jurisdiction of the matter.

#### Obligations of the tenant

The leased property is regarded as being held in trust by the tenant and the tenant is liable for any diminution, damage or loss arising out of its default or wrongful act (article 776 of the Civil Code).

The tenant must exercise the care of a reasonable person in preserving the leased property (article 776 of the Civil Code).

In addition, in Dubai, on the expiry of the lease the tenant must return the property to the landlord in the condition that it was in at the beginning of the tenancy, subject to natural wear and tear (article 21 of Law 26/2007). However, the Rental Disputes Settlement Centre, the judicial arm of the Dubai Land Department, recently considered what may be deducted from a security deposit and found that: 'cleaning and painting of the interior walls completely after the tenant's departure from the leased property shall be a lessor's liability. The cost of these works cannot be deducted from the tenant's security deposit, nor should he be charged'.

There is no system of binding precedent in the UAE.

### Environmental obligations

Federal Law 24/1999 on the protection and development of the environment governs environmental clean-up. Under this law, any person who intentionally or by way of negligence causes damage to the environment or to others is responsible for all the costs for treatment or removal of the damage and may be imprisoned and fined.

### Protection against liability

7 | How can owners protect themselves from liability and what types of insurance can they obtain?

Typically, a landlord will maintain property all-risk insurance and in a commercial context the landlord will require the tenant to maintain certain types of insurance during the term of the lease. For example:

- business interruption insurance;
- comprehensive public liability insurance;
- workmen's compensation and employers' liability insurance;
- contractor's all-risk insurance; or
- product liability insurance.

### Choice of law

8 | How is the governing law of a transaction involving properties in two jurisdictions chosen? What are the conflict of laws rules in your jurisdiction? Are contractual choice of law provisions enforceable?

The laws of the United Arab Emirates prevail and govern over all matters concerning property located in the United Arab Emirates.

### Jurisdiction

9 | Which courts or other tribunals have subject-matter jurisdiction over real estate disputes? Which parties must be joined to a claim before it can proceed? What is required for out-of-jurisdiction service? Must a party be qualified to do business in your jurisdiction to enforce remedies in your jurisdiction?

Pursuant to article 6 of Decree 26 of 2013 and Law 6 of 2019, the Rental Dispute Settlement Centre has exclusive jurisdiction over the following matters in Dubai:

- to determine all rent disputes that arise between landlords and tenants of property situated in the emirate or in free zones, including counterclaims arising therefrom, as well as to determine applications for interim or urgent relief filed by any of the parties to a lease contract;
- to determine appeals from the decisions and judgments that are subject to appeal in accordance with the provisions of this decree and the regulations and resolutions issued in pursuance thereof; and
- to enforce the decisions and judgements issued by the Rental Dispute Settlement Centre; and
- to hear and determine all disputes and disagreements related to the rights and obligations stipulated in Law 6 of 2019 Concerning Ownership of Jointly Owned Real Property in the Emirate of Dubai.

### Commercial versus residential property

10 | How do the laws in your jurisdiction regarding real estate ownership, tenancy and financing, or the enforcement of those interests in real estate, differ between commercial and residential properties?

The law applies equally to residential and commercial properties located in Onshore Dubai. However, in Onshore Dubai there has been

discussion that a new rental law may be introduced that will replace the current one-size-fits-all rental regulation. The proposed new law will contain separate rules for the following property categories: residential, commercial, shopping malls, and educational and healthcare. Under the DIFC regime, there are different rules applicable for the leasing of residential and commercial property, as set out in DIFC Leasing Law 1 of 2020.

### Planning and land use

11 | How does your jurisdiction control or limit development, construction, or use of real estate or protect existing structures? Is there a planning process or zoning regime in place for real estate?

Each emirate imposes its own planning controls in relation to real estate in its area. In Dubai, the Dubai Municipality is the principal authority regulating planning controls in Dubai (Local Orders 2/1999, 33/1988 and 8/2003).

Additional controls can be imposed by the Real Estate Regulatory Agency, the relevant free zone authority and the master developer, which are regulated by:

- Law 13/2008 (as amended);
- Law 8/2007;
- Law 6/2019;
- rules and regulations of the relevant free zone;
- master community declarations; and
- building management regulations (the document prepared in accordance with Law 6 of 2019 and to be entered in the Jointly Owned Real Property Register).

The master developer's standard sale contract will also contain provisions relating to planning control.

For projects being completed by Dubai World Group 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.

In Dubai, there are no formal procedures for third parties to object to a planning application. However, the planning authorities can review and amend the regulations of the classification and use of lands in Dubai if a third-party application is filed on serious and effective grounds that justify an amendment (article 8 of Local Order 2/1999). Further, the planning authority officials have full discretion to investigate as they deem appropriate (article 11 of Local Order 2/1999).

In Dubai, a violating party may be subject to one or more of the following penalties, as set out in article 28 of Local Order 2/1999:

- a fine not exceeding 50,000 dirhams;
- disconnection of all the utilities in the building or the site;
- suspension of the issuance of new building permits or renewal of any building permit; or
- suspension of the professional or commercial licence of the engineer or the contractor on a temporary or permanent basis.

### Government appropriation of real estate

12 | Does your jurisdiction have a legal regime for compulsory purchase or condemnation of real estate? Do owners, tenants and lenders receive compensation for a compulsory appropriation?

Local and federal authorities can acquire real estate compulsorily if it is necessary for the public's benefit and just compensation is paid (article 1135 of the Civil Code). In addition, each emirate can pass its own laws to regulate compensation.

There is no formal notice period for expropriation.

Pursuant to article 1135 of the Civil Code, when assessing compensation, consideration is given not only to the value of what is expropriated, but also to loss of profit and other damage that may result from the expropriation.

In Dubai, the Lands Valuation Committee (with the approval of the director general of Dubai Municipality) decides on applications for compensation for persons affected by expropriation (Resolution 2/2003).

In the case of road expansion, compensation will be in the form of:

- cash, if the Lands Valuation Committee determines that the value of the compensation is 200,000 dirhams or less; or
- additional land, if the Lands Valuation Committee determines that the value of the compensation should be more than 200,000 dirhams (see Dubai Local Order 1/2014).

### Forfeiture

**13** | Are there any circumstances when real estate can be forfeited to or seized by the government for illegal activities or for any other legal reason without compensation?

The Civil Code governs forfeiture and seizure of real estate.

### Bankruptcy and insolvency

**14** | Briefly describe the bankruptcy and insolvency system in your jurisdiction.

No company rescue or reorganisation procedures are available in the UAE outside the insolvency regime under Federal Decree Law 9 of 2016 (the Bankruptcy Law). The insolvency regime under the Bankruptcy Law provides for preventative composition procedure (PCP), restructuring scheme (RS) and bankruptcy. The Bankruptcy Law provides for a two-step insolvency procedure of:

- a PCP, which can only be initiated by a debtor in financial distress; and
- if it becomes clear that the PCP will not be successful, the next step is bankruptcy, which can be initiated by:
  - a debtor;
  - a creditor;
  - the debtor's regulatory body;
  - the court; or
  - the public prosecutor.

Once a bankruptcy application is made, the court will determine (based on its expert's report) whether to proceed to bankruptcy or RS. If the court decides to proceed with a PCP or RS, the trustee must submit a draft PCP or RS scheme to the court (as applicable). The draft scheme should contain details regarding (among other things): the possibility of the debtor's business to generate profits; and the terms and conditions relating to any settlement of the debtor's liabilities.

Once the draft scheme is approved by the court, it must be submitted to the creditors. At least two-thirds of the unsecured creditors must approve the scheme. If approved, the scheme will then be resubmitted to the court for final approval. If the scheme is a PCP scheme, it should be implemented within three years of receiving the final approval from the court; if it is an RS scheme, it should be implemented within five years of receiving the final approval from the court.

## INVESTMENT VEHICLES

### Investment entities

**15** | What legal forms can investment entities take in your jurisdiction? Which entities are not required to pay tax for transactions that pass through them (pass-through entities) and what entities best shield ultimate owners from liability?

Generally, a separate special purpose limited liability vehicle is used to purchase and develop a plot. 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;
- areas where investment is permitted;
- corporate structures that can be used for investment; and
- 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 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) are permitted under the Abu Dhabi Global Market's (ADGM) REIT framework (the ADGM Fund Rules); the Dubai International Financial Centre's Investment Trust Law framework (the DIFC Investment Trust and REITS Rules Instrument); and the Emirates Securities and Commodities Authority's framework (ie, Administrative Decision 6/R.T of 2019 Concerning Real Estate Investment Fund Controls). However, REITs are not permitted elsewhere; therefore they are not commonly used.

### Foreign investors

**16** | What forms of entity do foreign investors customarily use in your jurisdiction?

Generally, a separate special purpose limited liability vehicle is used to purchase or develop land in the designated areas in Dubai. These vehicles are primarily used because they ring-fence liability to the specific special purpose vehicle. In Dubai, the special purpose vehicle must take the form of one of the following company vehicles: an offshore company registered in the Jebel Ali Free Zone (JAFZA Offshore Company); a Dubai Multi Commodities Centre (DMCC) company; or a company incorporated in the Abu Dhabi Global Market (ADGM) free zones; a RAK International Corporate Centre offshore company; a DIFC company, partnership, foundation, real estate investment trust and real estate fund, but subject to the approval of the DIFC Registrar of Companies which is assessed on a case by case basis; or an LLC whose ultimate beneficial owners are 51 per cent UAE nationals and 49 per cent non-GCC nationals. These forms of entity are required to be used in accordance with the current policies of the Dubai Land Department.

### Organisational formalities

**17** | What are the organisational formalities for creating and maintaining the above entities? What requirements does your jurisdiction impose on a foreign entity? Does failure to comply incur monetary or other penalties? What are the tax consequences for a foreign investor in the use of any particular type of entity, and which type is most advantageous?

The most common form of investment entity for foreigners is a Jebel Ali Free Zone Authority (JAFZA) offshore company. To incorporate a

JAFZA offshore company, the following documents are required to be submitted to JAFZA:

- an application form for registration of the offshore company;
- a covering letter requesting JAFZA to incorporate the offshore company;
- a letter from the registered agent confirming that it agrees to act as the registered agent for the offshore company;
- the offshore company's memorandum and articles of association in the form required by JAFZA;
- in the case of a corporate (non-individual) shareholder (if the corporate shareholder is outside the UAE):
  - a certificate of registration or incorporation of the corporate shareholder (notarised and attested up to the level of the UAE embassy outside the UAE);
  - a memorandum of association and articles of association of the corporate shareholder (notarised and attested up to the level of the UAE embassy outside the UAE); and
  - a board resolution calling for the establishment of the offshore company as well as the authorisation of the individuals who will represent the applicant before JAFZA and sign on behalf of purposes of the incorporation; and
- in the case of an individual shareholder:
  - a passport copy of the individual shareholder submitted to JAFZA;
  - a shareholders' resolution calling for the establishment of the offshore company as well as the authorisation of the individuals who will represent the applicant before JAFZA and sign on behalf of purposes of the incorporation;
- specimen signatures of the manager and shareholder's appointed representatives; and
- a passport copy of the manager and authorised signatories of the applicant, the secretary and the directors.

Typically, upon submission of the above-mentioned documents, the Registrar of Companies in JAFZA takes between 10 days and three weeks to register the offshore company. However, this is subject to the Criminal Investigations Department granting its approval within a reasonable time.

The time frames mentioned above are estimates only. Further, the procedures, requirements and fees are also subject to change by JAFZA. It is not unusual for JAFZA to impose additional or different requirements based on its then prevailing policies and guidelines or case by case, entirely at its discretion.

The ongoing formalities to maintain the JAFZA offshore company once registered are as follows:

- there must be a registered office at all times and it must be maintained by the offshore company in JAFZA or by the offshore company's registered agent in Dubai;
- there must be a registered agent at all times, either in JAFZA or in Dubai. The agent is subject to the approval of JAFZA and would need the approval of registration in the registry of registered agents that is handled by the Registrar of Companies in JAFZA; and
- a yearly licence renewal fee must be paid to JAFZA.

With the exception of value added tax, Dubai is a tax-free emirate.

## ACQUISITIONS AND LEASES

### Ownership and occupancy

- 18 | Describe the various categories of legal ownership, leasehold or other occupancy interests in real estate customarily used and recognised in your jurisdiction.

The Civil Code (Federal Law 5/1985) provides for various types of tenure, including:

- freehold: the right to use, enjoy and occupy land or property permanently;
- *musataha*: 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); and
- usufruct: 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).

In Dubai, land can also be gifted by the ruler of Dubai to a UAE national at no cost for commercial, industrial or residential purposes. Granted land is not freehold land and is subject to various restrictions. 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.

In both Dubai and Abu Dhabi a 'volumetric' subdivision of land and buildings into designated components is permitted (see article 8 of the Dubai Direction for General Regulation (2010) and article 61 of Abu Dhabi Law 3/2015).

In Dubai, all dispositions that create, transfer, change or extinguish real property rights and all the final rulings validating these dispositions, must be registered (article 9 of Law 7/2006 (as amended by Law 7 of 2019)).

### Pre-contract

#### 19 | What are the typical pre-contractual steps?

The buyer and seller normally sign a brief memorandum of understanding or a reservation form confirming the fundamental aspects of the deal. Generally, this memorandum of understanding or reservation form is binding on the parties pending the signing of a sale contract.

It is strongly advisable to carry out due diligence before entering into a binding sale contract. As a minimum, the buyer should:

- require the seller to provide it with a copy of the title certificate, which has been attested by the Dubai Land Department;
- carry out a property inspection; and
- insist on representations and warranties in the contract as to title and property defects.

It is also prudent for the buyer to obtain the seller's consent to its examination of the Property Register as this is not open to the general public. However, this practice is uncommon.

With regard to off-plan units, the buyer should check that:

- the real estate project is registered with the Real Estate Regulatory Agency (RERA);
- there is an escrow account for the real estate project;
- the percentage of completion of the real estate project and the expected date of completion;
- the developer is registered with RERA;
- the developer owns the land or there is a development agreement between the owner and the developer; and
- the developer has the required permits and approvals from the Dubai Land Department and RERA to sell units off-plan in that particular real estate project.

Real estate brokers must be licensed in Dubai and Abu Dhabi and comply with the relevant professional and ethical standards set out in Dubai By-law 85/2006 and Abu Dhabi Law 3/2015.

A seller or a property developer must appoint a broker by written agreement.

There is no cap on the broker's commission, but it normally ranges from 2 to 5 per cent of the purchase price.



All companies operating in Dubai and Abu Dhabi that wish to market real estate inside or outside the country must first obtain a permit from the Department of Municipal Affairs in the case of Abu Dhabi and through the Trakheesi system in the case of Dubai (see Real Estate Regulatory Agency Circular No. 11-2016 and Abu Dhabi Law 3/2015).

### Contract of sale

#### 20 | What are typical provisions in a contract of sale?

A sale contract typically covers the following:

- a description of the property;
- the purchase price;
- the settlement date;
- apportionment of costs and liabilities;
- termination;
- dispute resolution; and
- jurisdiction.

However, the mandatory Dubai Land Department template Property Sales Contract between Buyer and Seller form (F) must be used that can, and should, be supplemented by additional terms and conditions.

In both Dubai and Abu Dhabi, off-plan property developers must make specific disclosures to the buyer about the property, including in relation to service charges (see article 4 of the Direction for General Regulation Concerning Jointly Owned Properties (2010) and article 15 of Abu Dhabi Law 3/2015).

The developer in Dubai is deemed to have warranted the information in the disclosure statement. If within two years of the date of the original transfer of the unit any of that information is found to be inaccurate, the developer will be liable to the buyer for damages (article 5 of the Direction for General Regulation Concerning Jointly Owned Properties (2010)).

Aside from this, there are no statutory (or other) duties of disclosure imposed on sellers. However, any misrepresentation by the seller can result in both civil and criminal liability.

The seller typically contractually warrants that, among other things:

- the title is unencumbered and mortgage-free;
- it has full authority to sell;
- there are no outstanding debts and the service charge is fully paid up; and
- the property and development obligations have been met.

Environmental warranties are uncommon in the United Arab Emirates.

In Dubai, an off-plan property developer is deemed to have given the warranties set out in article 40 of Law 6 of 2019 to the buyer.

The Civil Code also contains certain implied provisions in land sale contracts (see Book Two – Contracts, Chapter I – Contracts Conferring Ownership).

The imposition of value added tax (VAT) began in the United Arab Emirates on 1 January 2018 at a standard rate of 5 per cent. The VAT treatment of real estate depends on whether it is a commercial or residential property. Supplies (including sales or leases) of commercial properties will be taxable at the standard VAT rate of 5 per cent. The VAT must be paid by the beneficiary of the property. Supplies of residential properties will generally be exempt from VAT. To ensure that real estate developers can recover VAT on the construction of residential properties, the first supply of residential properties within three years of their completion will be zero-rated. All other residential property supplies will be exempt from VAT.

No stamp duty is payable on the sale or purchase of real estate.

The registry in each emirate charges its own fees before issuing a title deed to a buyer.

### Environmental clean-up

- 21 | Who takes responsibility for a future environmental clean-up? Are clauses regarding long-term environmental liability and indemnity that survive the term of a contract common? What are typical general covenants? What remedies do the seller and buyer have for breach?

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 may be imprisoned and fined.

Unless otherwise stipulated in the sale agreement, the buyer generally inherits liability for all matters relating to the property which includes environmental liability.

However, environmental liability is not usually a consideration in the majority of real estate transactions in the UAE.

If a seller has given an environmental warranty in the sale contract, then the seller remains liable for breaches of it. 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).

### Lease covenants and representation

- 22 | What are typical representations made by sellers of property regarding existing leases? What are typical covenants made by sellers of property concerning leases between contract date and closing date? Do they cover brokerage agreements and do they survive after property sale is completed? Are estoppel certificates from tenants customarily required as a condition to the obligation of the buyer to close under a contract of sale?

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 includes obligations under a lease agreement.

The title transfer does not affect a tenant's rights under the lease.

If a seller has given a warranty in the sale contract as to the lease, then the seller remains liable for breaches of it. 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).

### Leases and real estate security instruments

- 23 | Is a lease generally subordinate to a security instrument pursuant to the provisions of the lease? What are the legal consequences of a lease being superior in priority to a security instrument upon foreclosure? Do lenders typically require subordination and non-disturbance agreements from tenants? Are ground (or head) leases treated differently from other commercial leases?

The registration of a mortgage does not affect a tenant's rights under the lease.

A lease is superior in priority to a mortgage upon foreclosure.

Lenders do not typically require subordination and non-disturbance agreements from tenants.

## Delivery of security deposits

24 | What steps are taken to ensure delivery of tenant security deposits to a buyer? How common are security deposits under a lease? Do leases customarily have periodic rent resets or reviews?

To ensure delivery of tenant security deposits to the buyer at completion, a sale contract will typically provide the following:

- where a tenant has provided a security deposit to the seller by way of cash or a bank transfer, then the seller shall deliver to the buyer at completion a cheque in favour of the buyer for the amount of that cash security deposit; and
- where a tenant has provided a security deposit to the seller in the form of a post-dated cheque, the seller shall at completion:
  - deliver to the purchaser the original post-dated cheque endorsed in favour of the buyer by the seller; or
  - cancel and then obtain new post-dated cheques from the tenant in favour of the buyer if they cannot be endorsed.

Security deposits are common under leases. In Dubai, a landlord may only obtain a security deposit to ensure maintenance of the property and the landlord must refund the deposit or remainder thereof to the tenant on the expiry of the lease (article 20 of Law 26/2007). The Rental Disputes Centre, the judicial arm of Dubai Land Department, recently considered what may be deducted from a security deposit and found that 'cleaning and painting of the interior walls completely after the tenant's departure from the leased property shall be a lessor's liability. The cost of these works cannot be deducted from the tenant's security deposit, nor should he be charged'. However, there is no system of binding precedent in the UAE.

## Due diligence

25 | What due diligence should be conducted before executing a contract? Is any due diligence customarily permitted or conducted after contract but before closing? What is the typical method of title searches and are they customary? How and to what extent may acquirers protect themselves against bad title? Discuss the priority among the various interests in the estate. Is it customary to obtain government confirmation, a zoning report or legal opinion regarding legal use and occupancy?

It is strongly advisable to carry out due diligence before entering into a binding sale contract. As a minimum, the buyer should:

- require the seller to provide it with a copy of the title certificate, which the buyer should then verify online by using the Dubai Land Department's Title Deed Verification Service;
- carry out a property inspection; and
- insist on representations and warranties in the contract as to title and property defects.

It is also prudent for the buyer to obtain the seller's consent to its examination of the Property Register, as this is not open to the general public. However, this practice is uncommon.

With regard to off-plan units, the buyer should check that:

- the real estate project is registered with RERA;
- there is an escrow account for the real estate project;
- the percentage of completion of the real estate project and the expected date of completion;
- the developer is registered with RERA;
- the developer owns the land or there is a development agreement between the owner and the developer; and

- the developer has the required permits and approvals from the Dubai Land Department and RERA to sell units off-plan in that particular real estate project.

## Structural and environmental reviews

26 | Is it customary to arrange an engineering or environmental review? What are the typical requirements of such reviews? Is it customary to get representations or an indemnity? Is environmental insurance available?

Environmental liability is not usually a consideration in the majority of real estate transactions in the UAE. 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 may be imprisoned and fined.

Depending on the value of the transaction an engineering review is undertaken. However, by law, an off-plan property developer must give the following warranties to the buyer (Law 6 of 2019):

- to repair and remedy any defects in the structural parts of the jointly owned real property for 10 years from the date of the completion certificate of the real property project developed by the developer; and
- to repair or replace defective installations in the jointly owned real property, including mechanical and electrical works, and sanitary and sewerage installations for one year from the date of handover of the unit to the owner.

## Review of leases

27 | Do lawyers usually review leases or are they reviewed on the business side? What are the lease issues you point out to your clients?

Typically, leases are reviewed on the business side.

## Other agreements

28 | What other agreements does a lawyer customarily review?

These documents include:

- title deed;
- affection plan;
- master community declaration and jointly owned property declaration (now replaced by the 'building management regulation' pursuant to Law 6 of 2019 on the Ownership of Jointly Owned Real Property);
- trade licence of the seller or buyer (if a company);
- articles of association of the seller or buyer (if a company);
- no objection certificate from the developer to sell;
- board resolution or power of attorney authorising the sale (if a company); and
- certificate of good standing, certificate of incorporation or certificate of incumbency (if a free-zone company).

## Closing preparations

29 | How does a lawyer customarily prepare for a closing of an acquisition, leasing or financing?

Various documents are reviewed and a 'dry run' of the transfer is often conducted at a real estate registration trustee (eg, Tamleek) if the transfer is of high value.

## Closing formalities

**30** | Is the closing of the transfer, leasing or financing done in person with all parties present? Is it necessary for any agency or representative of the government or specially licensed agent to be in attendance to approve or verify and confirm the transaction?

After the buyer and seller have signed the sale contract, and completed any necessary interim steps to the transfer of title (eg, paying any outstanding service charges and obtaining a no objection certificate from the developer of the property), the buyer and seller must go in person to a real estate registration trustee (eg, Tamleek). There is no requirement for the sale contract to be notarised. At that meeting, several steps are completed, including:

- the buyer and seller sign the Dubai Land Department forms for the transfer of title;
- the buyer pays the purchase price to the seller;
- the necessary payments are made to the Dubai Land Department and the real estate registration trustee; and
- the Dubai Land Department issues the buyer with a title deed for the property.

## Contract breach

**31** | What are the remedies for breach of a contract to sell or finance real estate?

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).

## Breach of lease terms

**32** | What remedies are available to tenants and landlords for breach of the terms of the lease? Is there a customary procedure to evict a defaulting tenant and can a tenant claim damages from a landlord? Do general contract or special real estate rules apply? Are the remedies available to landlords different for commercial and residential leases?

In Dubai, if the landlord or tenant breaches its obligations, the relevant party must file a complaint with the Rental Dispute Settlement Centre (the judicial arm of the Dubai Land Department), which has exclusive jurisdiction to determine the matter and grant a remedy.

Each emirate has its own rules governing termination of the lease and the tenant's eviction. In Dubai, the landlord may seek eviction of the tenant before the expiry of the term of the lease or on the expiry of the lease only in the specific circumstances set out in article 25 of Law 33/2008.

Proceedings to terminate a lease and evict a tenant in Dubai must take place before the Rental Dispute Settlement Centre.

## FINANCING

### Secured lending

**33** | Discuss the types of real estate security instruments available to lenders in your jurisdiction. Who are the typical providers of real estate financing in your country? Are there any restrictions on who may provide financing?

There are only three types of mortgage over real estate onshore in the UAE, namely, a mortgage over land and buildings, a leasehold interest in real property or a building constructed on leased land. It may also be possible to register a charge or mortgage over a leasehold interest in real property located in one of the free zones in the UAE, depending on

the rules and regulations of each free zone. Generally, a free zone mortgage or charge will only prevent the owner of the leasehold interest (ie, mortgagor) from transferring or further encumbering its leasehold interest and not entitle the mortgagee to request the transfer of the leasehold interest. Transferring the leasehold interest would require a court order.

A mortgage is defined in the Civil Code (Federal Law 5/1985) as a contract by which a creditor acquires the right to be satisfied from the proceeds of the sale of the mortgaged real estate in priority to unsecured creditors and other secured creditors of the debtor. To have effect, a mortgage must be registered. The time of registration of the mortgage determines priority among mortgages over the same real estate.

The mortgagor must be the owner of the mortgaged property. It is not essential that the mortgagor be the principal obligor of the debt that is secured by the mortgage; the mortgagor can be a guarantor of the debt.

As real estate can only be mortgaged to a company or a financial institution that has been duly licensed and registered by the UAE Central Bank (see article 4 of Dubai Law No. 14 of 2008 (as amended), Law 8 of 2018 and article 32 of Abu Dhabi Law No. 3 of 2015), financing is generally limited to these licensed banks and institutions.

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.

### Leasehold financing

**34** | Is financing available for ground (or head) leases in your jurisdiction? How does the financing differ from financing for land ownership transactions?

Generally, ground leases are granted in connection with infrastructure projects, where the ground lease will be in the form of a *musataha* (50 years concession arrangement), a concession agreement (akin to a ground lease of up to 99 year) or a usufruct agreement. The landowner (often a governmental entity) will not permit a mortgage over the land. A lender's ability to secure its funding will depend on which of the above concession arrangements is given and the rules and regulations of the land department in the relevant emirate. For example, in Dubai it is possible to register a mortgage over the building (which will be deemed to be separate from the land for this purpose) constructed on land granted under a *musataha*. However, some of the Northern Emirates do not recognise a building constructed on land granted under a *musataha* as being separate for the land. Therefore, it will not be possible to have a separate mortgage over such buildings.

As a leasehold can only be mortgaged to a company or a financial institution that has been duly licensed and registered by the UAE Central Bank (see article 4 of Dubai Law No. 14 of 2008 (as amended), Law 8 of 2018, and article 32 of Abu Dhabi Law No. 3 of 2015), financing is generally limited to these licensed banks and institutions.

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 the leasehold interest owned by the borrower.

### Form of security

**35** | What is the method of creating and perfecting a security interest in real estate?

A mortgage is the only form of security granted over real estate located onshore in the UAE. Mortgages over real property must be both in writing and registered with the appropriate real estate authority in each

emirate. The registered mortgage deeds are generally pre-printed documents prescribed by the relevant authorities. In the case of registering a charge or mortgage over leasehold interest over real property located in a free zone, although the specific procedure and requirements will depend on the relevant free zone's rules and regulations, generally this will require a number of approvals or no objection certificates from the landlord, the mortgagee and the free zone authority; a charge or mortgage agreement (this may be based on the relevant free zone's approved format); and payment of a registration fee.

### Valuation

**36** Are third-party real estate appraisals required by lenders for their underwriting of loans? Are there government or industry standards for appraisals? Must appraisers have specific qualifications or required government or industry certifications? Who is required to order the appraisal?

Third-party appraisals are generally required by lenders, particularly where the main security interest relates to real estate. It is also not uncommon for the lender to appoint its own experts to value the relevant property. It may also be necessary to have periodic appraisals to ensure that the borrower maintains the required financial covenants under the facility agreement (eg, LTV or loan to security ratios).

Valuation companies must be licensed by the Real Estate Regulatory Agency in Dubai. The Dubai Land Department maintains a publicly available register of approved valuation companies on its website for no charge.

### Legal requirements

**37** What would be the ramifications of a lender from another jurisdiction making a loan secured by collateral in your jurisdiction? What is the form of lien documents in your jurisdiction? What other issues would you note for your clients?

Real estate can only be mortgaged to a company or a financial institution that has been duly licensed and registered by the UAE Central Bank (see article 4 of Dubai Law No. 14 of 2008 (as amended), Law 8 of 2018 and article 32 of Abu Dhabi Law No. 3 of 2015). In practice, however, foreign lenders providing financing to UAE borrowers normally appoint a local security agent to hold the UAE-located security on their behalf. It is not common for overseas lenders to appoint local security agents to hold security interest in real property. This can also be a time consuming and expensive exercise for the foreign lender.

There are no applicable documentary taxes.

### Loan interest rates

**38** How are interest rates on commercial and high-value property loans commonly set (with reference to LIBOR, central bank rates, etc)? What rate of interest is legally impermissible in your jurisdiction and what are the consequences if a loan exceeds the legally permissible rate?

Large (usually syndicated) financings are generally based on Loan Market Association-style documentation and will generally use a benchmark rate with reference to LIBOR or EIBOR (for UAE dirham facilities).

According to article 76 of the Commercial Code, a creditor is entitled to receive interest on a commercial loan at the rate of interest stipulated in the contract. If this rate is not stated in the contract, it is calculated according to the current rate of interest in the market at the time of dealing, provided it does not exceed 12 per cent per annum.

The limitations for banks are that interest in excess of 12 per cent per annum, compound interest and interest in excess of principal are

not enforced. However, these limitations are not usually followed by the Dubai courts, unlike other emirates.

### Loan default and enforcement

**39** How are remedies against a debtor in default enforced in your jurisdiction? Is one action sufficient to realise all types of collateral? What is the time frame for foreclosure and in what circumstances can a lender bring a foreclosure proceeding? Are there restrictions on the types of legal actions that may be brought by lenders?

Each emirate has its own rules as to the enforcement of mortgages. In Dubai and Abu Dhabi, to enforce a mortgage the creditor must obtain a court order allowing it to sell the property through public auction (see article 26 of Dubai Law 14/2008 (as amended) and article 53 of Abu Dhabi Law 3/2015). The creditor cannot sell the mortgaged property by any other means.

The registration serial number allocated by the relevant registry determines the rank of a mortgage for liquidation purposes. If more than one mortgage registration application is submitted simultaneously for the same property, all mortgages will be allocated an identical registration number and the creditors rank equally (see article 1425 of the Civil Code, article 17 of Dubai Law 14/2008 (as amended) and article 45 of Abu Dhabi Law 3/2015).

### Loan deficiency claims

**40** Are lenders entitled to recover a money judgment against the borrower or guarantor for any deficiency between the outstanding loan balance and the amount recovered in the foreclosure? Are there time limits on a lender seeking a deficiency judgment? Are there any limitations on the amount or method of calculation of the deficiency?

If the sale proceeds are insufficient to discharge the debt secured by the mortgage, the mortgagor remains liable for the remaining unpaid debt.

Personal and corporate guarantees are commonly used in the UAE. Guarantees must be in writing and specify the amount secured by the guarantee.

### Protection of collateral

**41** What actions can a lender take to protect its collateral until it has possession of the property?

The UAE law does not recognise the common law concept of 'self-help' for secured parties. In Dubai and Abu Dhabi, a mortgagee must obtain a court order allowing it to sell the property through public auction (see article 26 of Dubai Law 14/2008 and article 53 of Abu Dhabi Law 3/2015). A mortgagee cannot sell or deal with the mortgaged property by any other means.

### Recourse

**42** May security documents provide for recourse to all of the assets of the borrower? Is recourse typically limited to the collateral and does that have significance in a bankruptcy or insolvency filing? Is personal recourse to guarantors limited to actions such as bankruptcy filing, sale of the mortgaged or hypothecated property or additional financing encumbering the mortgaged or hypothecated property or ownership interests in the borrower?

Recourse is typically limited to the specific collateral over which the security has been granted. In the UAE there is no general charge over all assets of a company and each type of security interest (eg, pledge

over movables, mortgage over real property, accounts pledge, assignment of receivables, etc) must comply with its own legal requirements, including any applicable registrations.

In the event of bankruptcy of the debtor, the court may (at its sole discretion) terminate any agreement to which the debtor is a party (including any security agreement), provided this is in the best interests of the creditors as a whole. Generally, where a security interest is terminated the court may replace it with an alternative security interest of similar value. There is no guidance on how the Court would determine the value of the terminated and replacement security interest.

### Cash management and reserves

**43** | Is it typical to require a cash management system and do lenders typically take reserves? For what purposes are reserves usually required?

Lock box banking is not typically required by lenders in the UAE.

### Credit enhancements

**44** | What other types of credit enhancements are common? What about forms of guarantee?

Personal and corporate guarantees are commonly used in the UAE. Guarantees must be in writing and specify the amount secured by the guarantee. In the case of guarantees for larger financings, it is not uncommon for the guarantors to maintain certain financial covenants (eg, minimum net worth).

Generally, you can call on a guarantee once the relevant conditions have been satisfied. Otherwise, a guarantee can be enforced through the court.

### Loan covenants

**45** | What covenants are commonly required by the lender in loan documents?

The borrower typically covenants to do the following:

- observe and perform all of his or her obligations under the mortgage, and not sell, lease, transfer or otherwise dispose of the mortgaged property;
- act on instructions given by the mortgagee and not remove the mortgage from registration;
- promptly provide to the mortgagee any information relating to the mortgaged property; and
- ensure that the mortgaged property is kept in good repair and condition.

### Financial covenants

**46** | What are typical financial covenants required by lenders?

Common financial covenant conditions are based on borrower or obligors' net worth, working capital, leverage, LTV ratio, interest coverage and cash flow. They can also include restrictions on issuing debt, further encumbering assets, disposal or acquisition of substantial assets, paying dividends and investing, or impose actions such as the acceleration of debt payments if the specified condition is binding.

### Secured movable (personal) property

**47** | What are the requirements for creation and perfection of a security interest in movable (personal) property? Is a 'control' agreement necessary to perfect a security interest and, if so, what is required?

To have a valid pledge over movable assets under UAE law, the pledgee must have possession (actual or constructive) over the pledged assets. However, Federal Law No. 4 of 2020 on Guaranteeing Rights Related to Movables (the Mortgage Law) has updated the framework for registering security interest over movable assets located in the UAE. The Mortgage Law provides for the registration of a security interest over a broad category of movable assets (different from a pledge, which requires a deed of possession and other existing forms of mortgages), including account pledges, assignment of receivables, etc, without the need to take possession (as required under the earlier UAE law). The Mortgage Law also enables the creation of a security interest akin to a floating charge over movable assets. The security interest can be perfected through registration in an electronic security register (the Security Register). However, the Mortgage Law leaves a number of key procedural matters (including public access rights to the register, the requirements for registering a security interest in the Security Register and additional priority terms associated with certain classes of security interests or assets) to be addressed under a decision of the Council of Ministers and new implementing regulations (the Implementing Regulations) to be issued by the Ministry of Finance, which will regulate the operations of the new Security Register. The Mortgage Law provides that the Implementing Regulations will be issued within six months of the publication date of the Mortgage Law (ie, by 2 December 2020). Until the Security Register has been established, it will be necessary to ensure that all security interests comply with all applicable UAE laws.

### Single purpose entity (SPE)

**48** | Do lenders require that each borrower be an SPE? What are the requirements to create and maintain an SPE? Is there a concept of an independent director of SPEs and, if so, what is the purpose? If the independent director is in place to prevent a bankruptcy or insolvency filing, has the concept been upheld?

Other than in the case of non-recourse project financing or aircraft or vessel financing, it is not common for a lender to require a special purpose vehicle (SPV) be set up to hold certain of the borrower's assets and to take security over the shares of that SPV. Rather, direct security over the assets is preferred.

## UPDATE AND TRENDS

### International and national regulation

**49** | Are there any emerging trends, international regulatory schemes, national government or regulatory changes, or other hot topics in real estate regulation in your jurisdiction? (eg, transition to a new alternative benchmark rate upon cessation of LIBOR as benchmark rate?)

The covid-19 pandemic has swept the globe like a tsunami and it continues to wreak havoc on countries and their people. The UAE is no exception. From a real estate perspective, the authorities in the UAE have introduced a series of initiatives to support commercial tenants in response to covid-19, including temporarily suspending all eviction judgements and cheque dishonour complaints and actions and rent postponement periods.

Developers are continuing to sell property on a 'deferred sales contract' basis. Under such an arrangement, the purchaser is permitted

to occupy the property while paying off the purchase price to the developer in instalments pursuant to an agreed payment plan.

In Dubai, such deferred sales contracts must be registered with the Dubai Land Department, and once the purchase price has been paid in full by the purchaser (and the purchaser has satisfied all other relevant contractual obligations), the parties can apply to the Dubai Land Department to convert the deferred sales registration into a title deed in the name of the purchaser.

Hopefully, a gradual recovery in the UAE real estate market will occur in the run-up to, and as we move beyond, the Dubai World Expo 2020, which has now been rescheduled to 1 October 2021–31 March 2022.

In addition, the UAE federal government continues to offer long-term residency permits to the following categories of persons which is expected to assist in the recovery of the real estate market:

- retirees;
- investors in real estate;
- investors in public investments;
- entrepreneurs;
- individuals with specialised talents and researchers in various fields of science and knowledge; and
- honour students with promising scientific potential.

## Coronavirus

**50 | What emergency legislation, relief programmes and other initiatives specific to your practice area has been implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?**

The authorities in the UAE have introduced a series of initiatives to support commercial tenants in response to covid-19.

During March and April, the government of Dubai temporarily suspended all eviction judgements and cheque dishonour complaints and actions in the emirate.

In Abu Dhabi, Administrative Resolution 92 of 2020 was passed which grants tenants in the restaurant, tourism and recreational sectors a refund of 20 per cent of the rent value collected during 1 April 2020 to 30 September 2020.

The Dubai Free Zones Council announced a major relief package at the end of March 2020 for companies operating in the free zones of the Dubai Silicon Oasis Authority, the Dubai Airport Free Zone Authority, Jebel Ali Free Zone, the Dubai World Trade Centre, the Dubai International Financial Centre, the Dubai Development Authority, Dubai South, Meydan City Corporation and the Dubai Multi Commodities Centre (DMCC). Measures included a rent postponement period of up to six months and easy instalment plans.

In the DMCC, tenants benefitted from a waiver of rent for two months for commercial tenants impacted by the Dubai Economy Directive requiring them to temporarily close; a three months' suspension of rent for Flexi Desk and DMCC Business Centre tenant renewals or a monthly or quarterly instalment plan with no discount; and a waiver of outdoor area rents for Jumeirah Lakes Towers retail tenants where DMCC is the building owner or landlord.

From April to June, retail tenants in Dubai International Financial Centre's (DIFC) Gate Avenue, Gate Village and Gate District were not required to pay basic rent. The DIFC also allowed deferred rental payments with respect to all properties owned by DIFC Investments for a period of up to six months.

Sharjah Asset Management, the investment arm of the Sharjah Government, waived commercial rents for all tenants of Haraj and Jubil markets for three months from March.

## AFRIDI & ANGELL LEGAL CONSULTANTS

### Shahram Safai

ssafai@afриди-angell.com

### Rahat Dar

rdar@afриди-angell.com

### Anna White

awhite@afриди-angell.com

Jumeirah Emirates Towers  
Office Tower, Level 35  
Sheikh Zayed Road  
PO Box 9371  
Dubai, UAE  
Tel: +971 4 330 3900  
www.afриди-angell.com

Increasing numbers of tenants have applied to terminate their leases on the basis of force majeure or impossibility under articles 249 and 794 of the UAE Civil Code. Notwithstanding the fact that there have been some high-profile cases reported in the media where tenants were permitted to terminate their lease on the basis of the above articles and covid-19, the application of these articles is still subject to the sole discretion of the judge on a case-by-case basis. There is also no system of binding precedent in the UAE, and consequently the outcome of court proceedings is difficult to predict.

## Other titles available in this series

Acquisition Finance	Distribution & Agency	Investment Treaty Arbitration	Public M&A
Advertising & Marketing	Domains & Domain Names	Islamic Finance & Markets	Public Procurement
Agribusiness	Dominance	Joint Ventures	Public-Private Partnerships
Air Transport	Drone Regulation	Labour & Employment	Rail Transport
Anti-Corruption Regulation	e-Commerce	Legal Privilege & Professional Secrecy	Real Estate
Anti-Money Laundering	Electricity Regulation	Licensing	Real Estate M&A
Appeals	Energy Disputes	Life Sciences	Renewable Energy
Arbitration	Enforcement of Foreign Judgments	Litigation Funding	Restructuring & Insolvency
Art Law	Environment & Climate Regulation	Loans & Secured Financing	Right of Publicity
Asset Recovery	Equity Derivatives	Luxury & Fashion	Risk & Compliance Management
Automotive	Executive Compensation & Employee Benefits	M&A Litigation	Securities Finance
Aviation Finance & Leasing	Financial Services Compliance	Mediation	Securities Litigation
Aviation Liability	Financial Services Litigation	Merger Control	Shareholder Activism & Engagement
Banking Regulation	Fintech	Mining	Ship Finance
Business & Human Rights	Foreign Investment Review	Oil Regulation	Shipbuilding
Cartel Regulation	Franchise	Partnerships	Shipping
Class Actions	Fund Management	Patents	Sovereign Immunity
Cloud Computing	Gaming	Pensions & Retirement Plans	Sports Law
Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security Procurement			
Dispute Resolution			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)