

# inBrief



## New Decree on Mortgaging Granted Lands in Dubai

By Shahram Safai and Anna White | April 2017

On 11 January 2017, Dubai Decree No. 31/2016 On Mortgaging Granted Lands in Dubai was issued (**Decree**).

The Decree permits the holder of “granted land” to mortgage such land subject to certain conditions. It is expected that the Decree will stimulate growth in Dubai by enabling developers, who hold granted land, to obtain finance for their projects by mortgaging the granted land.

The Director General of the Dubai Land Department (**DLD**), Sultan Butti Bin Merjren, has said that the Decree is a key legislative initiative that will have a positive impact on the real estate market.

### What Is “Granted Land”?

“Granted land” is land which has been gifted by the Ruler of Dubai to a UAE national, at no cost, for:

- commercial or industrial purposes; or
- residential purposes.

Granting land in this manner furthers Dubai’s leadership vision of ensuring a dignified life for its citizens by enabling commercial and industrial assets to be developed, as well as homes to be built.

Granted land is not freehold land and is subject to various restrictions. For example, granted land cannot be disposed of unless:

- the UAE national obtains special permission from the Ruler of Dubai; or
- in case of commercial and industrial land, the UAE national converts their granted title to freehold upon payment of a fee and in accordance with Decree No. 4 of 2010 on Regulating Ownership of Land Granted for Industrial and Commercial Purposes in Dubai.

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## Key Features of the New Decree

The Decree permits a holder of granted land to mortgage that land under the following conditions:

- if the granted land is residential, the monies arising from the mortgage must be invested in maintaining, expanding, constructing or replacing the building;
- if the granted land is commercial or industrial, the monies arising from the mortgage must be invested to achieve the purposes of the original grant; and
- the mortgage must be registered with the DLD.

The DLD can only register a mortgage over granted land if:

- the borrowed amount will be used to achieve the purpose for which the land was granted; and
- the mortgagor has a construction license issued by a competent authority.

If a mortgagor defaults, the Decree provides mortgagees with a legal right to sell the granted land at public auction (and under the supervision of the DLD) provided that 30 days' notice is given to the mortgagor to rectify the default.

All disputes relating to mortgages over granted land are to be heard through the Civil Court.

## What Changes Compared to the Old Rules?

The Decree follows previous Orders and Instructions in relation to mortgaging granted land as set out below.

- Instructions issued on 20 September 1994 from the Ruler of Dubai - By these instructions, all mortgages over granted land were strictly prohibited, and any mortgage made in violation of this instruction was considered absolutely null and void.
- Order issued on 14 May 1996 from the Ruler of Dubai - By this order, granted land (whether residential or commercial) could be validly mortgaged.
- Instructions issued on 5 June 1996 from the Ruler of Dubai - By these instructions, a mortgage over granted land could only be registered at the DLD if:
  - the DLD had verified that:
    - the amount of the mortgage was used for the construction of a building on the granted land; and
    - payment of the mortgage funds had been made in such a way that ensured the mortgage was used for its intended purpose;
  - the mortgagor had a building license for the commercial development; and
  - the mortgagor had obtained a no-objection letter from the Ruler of Dubai permitting the mortgage of the granted land.

It is important to note that the Decree provides that all prior regulatory measures that are inconsistent with the Decree's provisions will be repealed, including the above.

## Why Is the Decree Important?

It is expected that the Decree will stimulate growth in Dubai by:

- enabling developers, who hold granted land, to obtain finance for their projects by mortgaging the granted land; and
- encouraging banks to lend against granted land by providing them with:
  - a legal right to sell the granted land at public auction (and under the supervision of the DLD) if the mortgagor defaults; and
  - a dispute resolution process.

However, it is likely that further regulations will need to be issued to govern the implementation of the new Decree. ■

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