

inBrief



The New DIFC Leasing Law

By Shahram Safai and Anna White | 2 February 2020

On 11 January 2020 a new leasing law was introduced in the Dubai International Financial Centre, Law 1 of 2020 (the **New Law**); and on 14 January 2020 the associated regulations were issued (the **Regulations**).

The New Law and Regulations are an important development for the DIFC. We expect that they will have a positive impact on the real estate market. The New Law is more comprehensive than the previous law (Law 10 of 2018) and brings the DIFC into alignment with the detailed onshore Dubai leasing law set out in Law 26 of 2007 (as amended by Law 33 of 2008); Decree 43 of 2013; and Decree 26 of 2013.

In this InBrief we look at the major changes that will impact landlords and tenants in the DIFC under the New Law.

Application of the New Law

The Regulations have now clarified that the New Law applies to all leases in the DIFC which were entered into prior to the date of commencement of the New Law, except where provisions in the New Law requires compliance with time and notice periods which are incapable of being applied to such leases (Regulation 4.1). In addition, it is important to note that the New Law does not apply to the following two types of leases:

1. A lease of premises which are used primarily for serviced apartments or hotel inventory leased as part of a hotel; or
2. A lease which is entered into by the parties to a Mortgage of the Leased Premises in accordance with the terms of the Mortgage.

A Lease has been defined in the New Law as “*a lease under which a person lets premises, which includes a sublease and any form of agreement (howsoever described) that gives a legal right of exclusive possession of premises to the occupant for a specific or ascertainable term in exchange for another consideration.*”

As such, the New Law applies to all residential, retail and commercial leases in the DIFC.

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Tenant's rights

The New Law gives tenants of residential premises greater rights by introducing:

- a new security deposit scheme;
- a requirement for entry condition reports; and
- rules governing rent increases.

The new security deposit scheme

The key elements of the new security deposit scheme, which is only applicable to residential leases, are as follows:

1. If a landlord of residential premises chooses to charge the tenant a security deposit, then the security deposit must not exceed 10% of the rent.
2. A security deposit may only be used to compensate the landlord after a residential lease has ended for the following purposes:
 - a. non-payment of rent;
 - b. damage to the residential premises, excluding fair wear and tear; or
 - c. damages for breach of contract, inclusive of direct, indirect and consequential losses.
3. A landlord who receives a security deposit must pay it to the DIFC Registrar of Real Property within 30 days.
4. The Registrar must hold all security deposits in an escrow account.
5. On the expiry or earlier termination of a residential lease:
 - a. if the landlord and the tenant agree on the amount of the security deposit to be refunded to the tenant, then they must sign and lodge a release form with the Registrar;
 - b. but, if the landlord and the tenant disagree on the amount of the security deposit to be refunded, then either party may notify the Registrar of the existence of the dispute, and the dispute will be resolved by the Court.
6. The Registrar will only pay out an amount of the security deposit in accordance with:
 - a. a release form signed by the landlord and the tenant agreeing on the amount of the security deposit to be refunded; or
 - b. a order of the Court.

The New Law defines a "Court" as the DIFC court or any specific tribunal created for dealing with disputes under the New Law. Under the previous law, the DIFC Small Claims Tribunal had exclusive jurisdiction over tenancy disputes in the DIFC where the claim amount did not exceed AED 500,000. We assume that this tribunal will continue this role under the New Law, including resolving disputes arising under the new security deposit scheme. However, we expect that a further regulation will be made by the Board of Directors of the DIFCA under the New Law to clarify this issue.

Rent Increases

For residential leases, a landlord is now required to give a tenant written notice of a proposed rent increase at least 90 days prior to the expiry of the residential lease. If the landlord fails to give this notice, then the rent increase will be invalid.

Conclusion

Given that Dubai is expecting an increase in rental unit demand as a result of its new long term visa initiatives, dropping rents and Expo 2020, the New Law is a welcome development which may stimulate the property market by attracting more businesses and individuals to rent in the DIFC.

If you require more detailed information, please do not hesitate to contact Afridi & Angell. ■

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