Commercial real estate in the United Arab Emirates: overview

by Shahram Safai, Anna White and Elizabeth Brachaniec, *Afridi & Angell*

Country Q&A | Law stated as at 01-Jul-2020 | United Arab Emirates

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

The Q&A gives a high level overview of the corporate real estate market; real estate investment structures, including REITs; title; tenure; sale of real estate; liability; due diligence; warranties; real estate tax, including VAT and stamp duty/transfer tax; climate change targets; restrictions on foreign ownership; real estate finance; commercial leases; and planning law.

To compare answers across multiple jurisdictions, visit the *Corporate Real Estate Country Q&A tool*.

This Q&A is part of the global guide to corporate real estate law. For a full list of jurisdictional Q&As visit *www.practicallaw.com/realestate-guide*.

The corporate real estate market

1. What have been the main trends in the real estate market in your jurisdiction over the last 12 months? What have been the most significant deals?

Main trends

The 2019 novel coronavirus disease (COVID-19) pandemic has impacted the real estate market across the globe. The commercial real estate market in the UAE is no exception. It is predicted that the COVID-19 pandemic will affect the demand for real estate in the UAE. Office space and retail space demand is expected to decrease. The demand for residential real estate will similarly drop as expatriates leave the UAE on repatriation flights.

However, governments in the UAE are assisting with rental assistance programs. In Dubai, a policy to halt judicial evictions and complaints, and actions regarding cheque dishonour has been put in place. The Dubai International Financial Centre (DIFC) (*www.difc.ae*) and other free zones have announced rental assistance programs, such as deferred lease payments for the months of April, May and June 2020. These types of rental policies may be put into place to further attract foreign direct investment, as well as migration into the UAE.

Additionally, the introduction of Law 6 of 2019 on the Ownership of Common Property in the Emirate of Dubai is expected to have a positive impact on the real estate market in Dubai as increasingly disputes under the previous law (Law No. 27 of 2007) (including those between unit owners and association managers) were effecting property values.

In January 2020, a new leasing law and the associated regulations were introduced in the Dubai International Financial Centre (DIFC Leasing Law No. 1 of 2020). It is expected that the new law will have a positive impact on the real estate market as it is more comprehensive than the previous law (DIFC Law No. 10 of 2018), and aligns the DIFC with the detailed onshore Dubai leasing law, set out in Law 26 of 2007 (as amended). As Dubai is expecting an increase in rental unit demand as a result of its new long-term visa initiatives (*see below*) and decreasing rents, the new DIFC leasing law is a welcome development which may stimulate the property market by attracting more businesses and individuals to rent in the DIFC.

Despite the current COVID-19 pandemic, the market has experienced an increase in developers selling property on a deferred sales contract basis. Under such an arrangement, the purchaser can occupy the property while paying off the purchase price to the developer in instalments under an agreed payment plan.

In Dubai, such deferred sales contracts must be registered with the Dubai Land Department. 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.

Although a gradual recovery in the UAE real estate market is expected in the run up to, and as we move beyond, the Dubai World Expo 2020, the onset of COVID-19 and the postponement of Expo 2020 has slowed its growth

In addition, the announcement of the UAE federal government (under Cabinet Decision 56 of 2018) to offer long term residency permits to the following categories of persons is expected to assist in the recovery of the real estate market:

- Investors in real estate.
- Investors in public investments.
- Entrepreneurs.
- Individuals with specialised talents, and researchers in various fields of science and knowledge.
- Honour students with promising scientific potential.

In particular, investors in real estate can apply for a five-year residency visa in the UAE if they meet the following conditions:

- The investor must have invested in one or more properties in the UAE with a total value of at least AED5 million.
- The amount invested must not be derived from the proceeds of a loan. Therefore, there cannot be a mortgage over the property if this visa will be applied for.
- The property must be owned by the investor for at least three years from the date the residency visa is issued.
- The investor must not be financially liable for any claims or civil judgments which reduce his/her financial solvency below AED10 million.
- The investor must have a comprehensive health insurance policy covering himself and his/her family members.

An investor is defined in Article 1 of the Decision as an “alien who spends his/her capital for financial gain or returns, in accordance with the controls referred to in this Decision” (*Article 1, Cabinet Decision 56 of 2018*).

The real estate market continues to experience an increase in disputes between purchasers and developers. Most of these disputes centre around delays and cancellations of projects and construction defects. Further instances of construction delays with respect to some off-plan projects are likely to occur as developers face increasing cash flow issues amid a sluggish real estate market and global economy. However, the continuing initiatives of the Dubai Land Department to promote a transparent and professional real estate market with measurable standards will undoubtedly help ward off such disputes.

Real estate investment

2. What structures do investors typically use for real estate investment in your jurisdiction and what are the main advantages and disadvantages of each (for example, flexibility and tax transparency)?

Common structures

Generally, every developed plot uses its own separate special purpose limited liability vehicle. These vehicles are primarily used because they ring-fence liability to the specific special purpose vehicle.

There are governmental restrictions on:

- Foreign investment (see *Question 4*).
- Areas where investment is permitted.
- Corporate structures that can be used for investment.
- Licences required before investment can be made.

One entity can own the plot and also hold the development licence. The licence is deemed to include leasing rights. Alternatively, one entity can be the owner of the plot while another entity holds the licence. Various licences are available and each has advantages and disadvantages. The decisive criteria are:

- The plot's intended use.
- The applicant's nationality.

REITs

Real estate investment trusts (REITs) are available. However, in Dubai, REITs can only purchase property in the Dubai International Financial Centre (DIFC) (*www.difc.ae*), and are not permitted elsewhere. Therefore, REITs are not commonly used.

3. What are the main sources of finance and types of investors for real estate investment in your jurisdiction? Does your government encourage overseas investment into real estate in your jurisdiction, for example through real estate investment legislation?

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

The introduction of the mortgage caps by the UAE Central Bank has led to a suppression of bank finance, particularly for residential purchase transactions. However, the UAE Central Bank has enacted policies to assist debtors with postponing debt repayments in light of the COVID-19 pandemic.

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.

The main type of investor continues to be the cash buyer.

Restrictions on foreign ownership or occupation

4. 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 guarantees or security for ownership or occupation and on lending for the purchase of real estate?

There is no express prohibition in the Civil Code of the United Arab Emirates (*Federal Law No. 5 of 1985, Civil Code*) against 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 these can own property anywhere in the Emirate of Dubai (*Article 4, Law No. 7 of 2006*). If a company is incorporated in the UAE or GCC but has a foreign shareholder, it is not considered a UAE or GCC national for the purposes of owning property in Dubai. A non-UAE/GCC national can only own freehold, leasehold (up to 99 years) or usufruct (up to 99 years, see *Question 9)* in the designated areas in Dubai, which are listed in Regulation No. 3 of 2006 (as amended) (*see below*). This also applies to foreign companies, subject to the Dubai Land Department's policy on title to real estate that came into force on 1 January 2011 (*see below*). Some examples of the designated areas in Dubai are:

- Burj Khalifa.
- Business Bay.
- Palm Jumeirah.
- Emirates Hills.
- Jumeirah Islands.
- Jumeirah Lake Towers.
- Dubai Marina.

In addition, a foreign person can acquire a lease in the area outside these designated areas (*Law No. 7 of 2006*). Foreign ownership is also allowed in the free zones, for example the DIFC.

Under the current Dubai Land Department policy, title to real estate in the designated areas (*see above*) is not issued to companies other than those registered onshore in Dubai or offshore in the Jebel Ali Free Zone and certain other free zones. Companies that own property in Dubai must notify the Dubai Land Department (DLD) if there is a change in shareholding at any level in the company up to the ultimate beneficial owner (as this is a deemed "real property disposition" under Executive Council Resolution 30 of 2013 and attracts a transfer fee, payable to the DLD). If a company fails to notify the DLD of the change in shareholding and pay the transfer fees, the DLD will not permit the company to sell the property in the 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.

Real estate cannot be mortgaged to any person or entity other than a bank licensed and operating in the UAE.

Title to real estate

5. What constitutes real estate in your jurisdiction? Is land and any buildings on it (owned by the same entity) registered together in the same title, or do they have separate titles set out in different registers?

Real estate constitutes land and permanent structures on it that cannot be moved without suffering damage or alteration.

Land and buildings on it are generally registered together in the Property Register, the public register of title managed by the Dubai Land Department. If a piece of land or a building is divided into parts (for example, apartments) but has associated common areas, the owner of each part has a separate title for his part together with a proportional undivided share of the common areas.

A holder of a *Musataha* right owns all buildings on land for the specified duration. The land is held separately by the land owner as freehold. The Property Register contains details of all Musataha right holders. However, the right holder is not entitled to a separate title.

The Dubai Land Department (*www.dubailand.gov.ae*) is the registry for real estate in Dubai (with the exception of real estate in the DIFC). It is responsible for registering real estate transactions, whether completed or off-plan, including transfers of ownership and mortgages. The Dubai Land Department is also the official valuer, auctioneer, regulator and property watchdog.

Established in 2007 and part of the Dubai Land Department, the Real Estate Regulatory Agency (RERA) (*www.rpdubai.com*) formulates, regulates, manages and licenses various activities concerning real estate located in Dubai, including real estate brokerage and real estate development. However, the Dubai Land Department has replaced RERA in the practice of all competencies related to the registration of rental contracts and the regulation of landlord-tenant relationship, and other matters relating to rental contracts in Dubai (Law No. 4 of 2019).

The Dubai International Financial Centre (DIFC) (*www.difc.ae*) is a 110-acre free zone area in Dubai that services and accommodates financial institutions. The DIFC is governed by its own laws and has its own regulatory and registration systems separate to that of the Dubai Land Department and RERA.

6.How is title to real estate evidenced? What is the name of the public register of title and the authorities responsible for managing it? Is electronic access and electronic conveyancing available?

Title to real estate must be registered in the Property Register and a title certificate evidences title. Information in the Property Register is absolute evidence of title.

As the Property Register for areas open to ownership by foreign persons has only been maintained for the past few years, some land and units are yet to be registered. In these cases, title is evidenced in accordance with practices that existed before the Property Register. If the master developer sells land to the sub-developer on the condition that title is transferred on the completion of the construction, then title is evidenced by both:

- Recording the ownership with the relevant master developer.
- Interim registration of a conditional sale contract against title at the Dubai Land Department.

Further, the Dubai Land Department will implement a new common property register, which will include the following:

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

(*Law. No. 6 of 2019.*)

7. What are the main information and documents registered in the public register of title? Can confidential information or documents be protected from disclosure in the public register of title?

The Property Register provides information on the:

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

(*Law No. 7 of 2006.*)

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

- Property location and area.
- Owner.

- Date of issue of the certificate.

Title certificates for properties with a proportional undivided share in the common property contain the:

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

(*Law No. 6 of 2019.*)

The developer, upon completing the jointly owned property and obtaining a completion certificate, must prepare and file the bye-laws and the bye-laws of the complex with the Dubai Land Department within 60 days from the date of issuance of the completion certificate. The building management system is not filed by the developer, but filed by RERA.

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

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

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

The Property Register is not open to the general public. However, the following parties can inspect the Property Register and obtain a certified copy of the documents:

- Interested parties (generally the owner of the land).
- Judicial authorities and experts appointed by them.
- Competent authorities.

The Dubai Land Department records purchase prices and the last purchase price for a property is noted on the title deed for that property.

State guarantee of title

8. Is there a state guarantee of title? Is the authority that manages the public register liable to pay compensation for any errors it makes in relation to title registration? Is title insurance available and is it commonly used?

There is no state guarantee of title. Title insurance, although available, is not commonly used.

It is possible to challenge the validity of information in the Property Register on the grounds of fraud or forgery (*Article 7, Dubai Law No. 7 of 2006*). The Dubai Land Department can correct errors in the Property Register either at the request of a third party or on its own initiative (*Article 13, Dubai Law No. 7 of 2006*).

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

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

The Civil Code provides for various types of tenure, including:

- Freehold. This is the right to use, enjoy and occupy land or property in perpetuity.
- *Musataha*. This is the right to build on land for a specified duration not exceeding 50 years. The holder of a *Musataha* right is deemed to own all buildings on the land during the specified term.
- Usufruct. This involves the right to use, enjoy and occupy land or property belonging to another person for a fixed term not exceeding 99 years. (Usufruct is similar to the concept of leasehold under English law.)

Land granted by the government of Dubai to UAE nationals cannot be disposed of without special permission from the Ruler of Dubai, or as permitted under Decree No. 4 of 2010.

Sale of real estate

Preliminary agreements

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

Only a broker that meets the licensing requirements (contained in By-law No. 85 of 2006) can market real estate. The bye-law also sets out the professional and ethical standards for brokers. A seller or a property developer must appoint a broker by a written agreement. There is no cap on the broker’s commission, but it normally ranges from 2% to 5% of the purchase price.

Marketing off-plan projects is subject to approval from the Dubai Land Department and compliance with the Guarantee

Accounts of Real Estate Developments Law No. 8 of 2007.

Parties can negotiate until the execution of a binding agreement. If a memorandum of understanding or a reservation form is signed pending the signing of a sale contract, parties can still negotiate the sale contract terms. Parties can use solicitors (but this is not compulsory). Negotiation usually takes several weeks before completion.

The Directions introduced in 2010 under Dubai Law No. 27 of 2007 (*see Question 1, Main trends*) impose various obligations on the seller of real estate to make disclosures about the real estate, including in relation to service charges.

Aside from this, there are currently no mandatory pre-contractual arrangements and it is strongly advisable to carry out extensive due diligence before entering into a binding agreement.

Sale contract

11.Briefly outline the typical main provisions of a corporate real estate sale contract and main real estate provisions of a typical share purchase agreement.

After the fundamental aspects of the deal are agreed, the parties often sign a brief memorandum of understanding or a reservation form confirming the agreed details. Generally, a memorandum of understanding or a reservation form is binding on the parties pending the signing of a sale contract. Alternatively, the parties can decide to sign the sale contract outright.

In May 2014, the Dubai Land Department introduced Unified Real Estate Contracts which must be used in all real estate transactions. However, in many transactions, additional terms and conditions are required. For these transactions a bespoke contract negotiated between the parties supplements the mandatory Unified Real Estate Contract and is annexed to it.

For off-plan sales, a developer must have its standard sale contract approved by the master developer and the DLD. Amendments can only be made if they are approved by the master developer.

The following documents can be executed in counterpart copies if expressly provided for in the contract:

- Memorandum of understanding.
- Reservation form.
- Sale contract.

The documents can be exchanged by fax or e-mail, with the originals to follow by post. Therefore, it is unnecessary for all parties to have signed the same copy simultaneously.

An agreement becomes legally binding when all of 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.

(*Civil Code.*)

The contract is based solely on the offer and acceptance, and subject to the provisions agreed.

Due diligence

12. What real estate due diligence is typically carried out before an acquisition and what key areas does it cover? Which documents are typically reviewed? Which specialist advisers are usually involved and which reports do they typically produce?

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

- Require the seller to provide a copy of the title certificate which has been attested by the Land Department. The buyer can then use the copy of the title certificate to carry out an "Ownership Certification Validation" search on the Dubai Land Department website to get confirmation whether there is a mortgage over the real estate, and whether the seller remains the owner of the real estate.
- Carry out a property inspection.
- 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 not common.

Sellers' warranties

13. What real estate warranties are typically given by a seller to a buyer in the sale of corporate real estate and what areas do they cover? What are the main limitations on warranties, for example are they typically qualified by disclosure?

The seller typically contractually warrants that, among other things:

- There is good unencumbered and mortgage-free title.

- It has full authority to sell.
- There are no outstanding debts and the service charge is fully paid up.
- Property and development obligations have been complied with.
- There are no third-party interests affecting the property.

An off-plan property developer must give the following additional warranties to the buyer:

- To repair and remedy any structural defects for ten years from the date of the completion certificate.
- To repair or replace defective installations including mechanical and electrical works, and sanitary and plumbing installations for one year from the date of handing over the unit to the owner. If the owner refrains from taking over the unit, this period will be calculated with effect from the date of obtaining the completion certificate.

(*Law No. 6 of 2019.*)

The seller of a real estate unit warrants the information in the disclosures that the seller is required to make under the Directions. This warranty covers the two-year period from the date of the original transfer of the unit by the developer.

The developer's contractual warranties can also cover the workforce. However, environmental warranties are uncommon.

Liability

14. Does a seller have any statutory or other liability to the buyer in a disposal of real estate?

In both Dubai and Abu Dhabi, off-plan property developers must make specific disclosures to the buyer about the real estate, including in relation to service charges (*Article 4, Direction for General Regulation Concerning Jointly Owned Properties (2010) and Article 15, Abu Dhabi Law No. 3 of 2015*).

Aside from this, there is currently no statutory (or other) duty of disclosure. However, any misrepresentation can result in both civil and criminal liability.

15. Briefly outline the environmental legislation and potential liability for a buyer in a purchase of real estate. Is it common to carry out environmental surveys and searches and to obtain environmental insurance? How is environmental liability typically dealt with in the sale contract?

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 damages 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, any misrepresentation regarding the environmental condition of a property can result in both civil and criminal liability.

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

16. Can an owner or occupier inherit liability for other matters relating to the real estate even if they occurred before it bought or occupied it? Can a seller or occupier retain any liability relating to the real estate after it has disposed of it?

Unless otherwise stipulated in the sale agreement, the buyer generally inherits liability for all matters relating to the real estate, even if they occurred before the date of purchase. This can include:

- Unpaid charges levied by the master developer or developer for maintaining communal parts of the development. The community rules typically provide that the seller and the buyer remain jointly and severally liable for these charges.
- Obligations under a lease agreement. The title transfer does not affect a tenant's rights under the lease.
- Any other interests in the land, for example easements.
- Environmental liability. For example, environmental laws can impose liability on the generator of hazardous waste and it can be difficult to prove the source.

The seller remains liable for breaches of representations and warranties, both contractual and statutory (*see Question 13*). If the matter cannot be resolved amicably the buyer must follow the dispute resolution procedure provided for in the contract (which is likely to be litigation or arbitration). For environmental liability, see *Question 15*.

Completion arrangements

17. What are the typical arrangements and main documents required for completion of the sale? When does title transfer and what are the formal legal requirements to execute the sale documents, transfer the real estate and register the change of title? Is notarisation required?

Registration

The developer must register any disposition of an off-plan property in the Interim Register, which is maintained by the Dubai Land Department (*Article 3, Dubai Law No. 13 of 2008*, as amended by *Dubai Law No. 9 of 2009* and clarified by *Decree No. 6 of 2010*).

A disposition of a completed property must be registered in the Real Property Register (which is also maintained by the Dubai Land Department). The buyer normally registers the disposition as this registration triggers the issue of the title certificate in the buyer's name.

A disposition that is not registered in the Interim Register or the Real Property Register is invalid (*Article 3(1), Dubai Law No. 13 of 2008*). Therefore, a contract of sale is legally binding only if the sale is registered.

Completed properties. A sale contract often provides that parties must attend the Dubai Land Department to arrange for the title certificate to be issued in the buyer's name on payment of the full price.

Off-plan sales. Registration of title transfer is usually not required until completion. A sale contract often provides that the developer must transfer the title as soon as possible after the buyer has made the payment in full and acquired possession of the property.

When title transfers

The contract normally states that risk and possession of the property passes to the buyer on payment of the full price. There is no requirement for the sale contract to be notarised. After the buyer and seller have signed the sale contract, and completed any necessary interim steps to the transfer of title (for example paying any outstanding service charges and obtaining a no objection certificate from the developer of the property), the buyer and seller attend the Dubai Land Department or a Real Estate Registration Trustee. 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 (*see Question 16 and Question 18*).
- The Dubai Land Department issues the buyer with a title deed for the property.

With respect to deferred sales contracts, in Dubai, such deferred sales contracts must be registered with the Dubai Land Department. 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.

Real estate tax

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

There is no stamp duty payable on the sale or purchase of real estate. The cost of registration with the Dubai Land Department is 4% of the purchase price for completed property and 4% of the purchase price for off-plan property. The buyer and seller pay half of such amount each, unless the contract provides otherwise. Payment must be made to the Dubai Land Department before the Dubai Land Department will issue a title deed in the name of the buyer. In addition, the Dubai Land Department charges an administration fee, currently set at AED540 for apartments or villas and AED430 for land. 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 to the above fees, the following fees are payable to the Transfer Trustees (who undertake the transfer process on behalf of the Dubai Land Department):

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

A fee or commission will be paid to the broker who has been involved in the transfer, under the terms of the brokerage agreement. The master developer can also charge administration fees for the ownership transfer, currently capped at AED5,000. Responsibility for these fees can be allocated by agreement. The responsibility for the payment of the broker's fee will depend on various factors including who originally instructed the broker. The mortgage registration fee, which is set at 0.25% of the loan amount, is typically payable by the buyer under the mortgage agreement. The fee is paid to the Dubai Land Department.

19. Are any methods commonly used to mitigate real estate tax liability on acquisitions of large real estate portfolios? What is the general approach of the tax authorities in your jurisdiction to such schemes?

There are currently no methods used to mitigate real estate tax liability.

20. Is value added tax (VAT) (or equivalent) payable on the sale or purchase of real estate? Who pays? What are the rates? Are there any exemptions?

The imposition of VAT on the supply of goods and services commenced in the UAE on 1 January 2018 at a standard rate of 5%. Real estate is considered a "good" under the law, and a supply of real estate in the UAE includes selling or leasing such real estate.

The VAT treatment of a supply of real estate depends on whether it is a commercial property, residential property, bare land or a building specifically designed to be used by a charity.

Supplies (including sales or leases) of commercial properties are taxable at the standard VAT rate of 5%. VAT must be paid by the beneficiary of the property.

Supplies of residential buildings in the UAE result in no imposition of VAT on the transaction (on the basis that the supply is either zero-rated or an exempt supply). That is:

- The supply of new residential buildings (in whole or part) that are supplied for the first time within three years of their completion are treated as zero-rated.
- The supply of a building (or any part of a building) which has been converted into a residential building are treated as zero-rated if the supply takes place within three years of completion of the conversion, and the original building (or any part of it) was not used as a residential building and did not comprise part of a residential building within five years

before the conversion work commenced.

- The supply of all other residential buildings (that is, except those which are zero-rated) are considered an exempt supply.

21. Are municipal taxes paid on the occupation of business premises? Are there any exemptions?

Tenants of business premises must pay an annual trade licence renewal fee to the Dubai Department of Economic Development. The rate is 5% of the annual rent. The exempt properties are:

- Those owned by the government or occupied by the government departments.
- Mosques and other places of religion.
- Any other property considered exempt by the Dubai Municipality Council.

Real estate used for hospitality purposes (for example, hotels and serviced apartments) is subject to a 10% municipality tax collected by the Dubai Department of Tourism and Commerce Marketing.

Municipal charges levied by the Dubai Municipality do not apply in free zones such as Jumeriah Lake Towers, TECOM (in which many knowledge industry companies are based) and Silicon Oasis where freehold title is sold. However, Free Zone Authorities have imposed similar charges relating to company trade licences and hospitality fees applicable in the rest of Dubai.

Climate change issues

22. Are there targets or incentives to reduce greenhouse gas emissions from buildings in your jurisdiction? Is there legislation requiring buildings to meet certain minimum energy efficiency criteria?

All new buildings in Dubai must comply with the Green Building Regulations and Specifications which have been designed to increase energy efficiency and reduce buildings' carbon footprints. In addition, Article 7 of Dubai Municipality's *Decree No. 66 of 2003* regulates the glazing for building facades and is aimed at minimising solar thermal heat gains. However, the legislation does not provide for penalties in the event of non-compliance.

In Abu Dhabi, buildings must comply with the Abu Dhabi Building Codes which cover a wide range of aspects from energy conservation, to light, ventilation, sanitation, structural strength, stability and maintenance to safety from hazards like fire.

A unified building code for all Gulf Co-operation States (the Gulf Building Code) has been proposed which will deal with (among others) green buildings and renewable energy, however it is unclear when it will come into effect.

Under *UAE Cabinet Decision No. 26/2014*, all importers, exporters and re-exporters of any materials, equipment or products containing ozone depleting substances must register with the relevant authorities and obtain permission to import, export or re-export any of the materials listed in the Decision.

23. Are provisions relating to the energy efficiency of buildings commonly included in contracts for the sale of real estate or in leases (for example, green leases)?

Provisions relating to the energy efficiency of buildings are not currently practical issues that affect the parties to sale and lease transactions in the UAE.

Real estate finance

Secured lending involving real estate

24. Briefly outline the typical security package required by lenders in relation to real estate lending. How are the most common forms of security interest relating to real estate created and perfected (that is, made valid and enforceable)?

As real estate can only be mortgaged to banks that are licensed and operating in the UAE, financing is generally limited to a mortgage from a licensed bank. Financing can still be obtained from sources other than licensed banks, such as real estate investment companies. However, this type of financing is normally based on a good business relationship and trust between the parties, as the lender will not have registered security over real estate owned by the borrower.

A mortgage is the only form of security granted over real estate. To be valid, a mortgage must be all of the following:

- Registered with the Dubai Land Department (*Dubai Law No. 14 of 2008*).
- Over property, which exists actually or virtually on the plan when it is granted.
- Granted against a fixed or promised debt.

The mortgage contract must follow the Dubai Land Department's standard template. Mortgages can be created over an interest in off-plan property, provided the interest has been registered in the Interim Register (*see Question 17, Registration*).

25. What other real estate related measures do lenders typically take to protect themselves against default by the borrower?

Additional measures that lenders take to protect themselves include:

- Recourse against guarantors.
- Share pledge.
- Accounts pledge.
- Commercial mortgage over movables registered on the UAE movable register.
- Pledge by delivery.

26.Can lenders incur environmental liability? What measures do lenders typically take to manage potential environmental liability?

Environmental liability rests with the owner until such time as the bank perfects its security interest. Where there are potential environmental considerations, lenders can instruct environmental audit reports to be carried out as a prerequisite to funding.

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

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 and Article 53, Abu Dhabi Law No. 3 of 2015)*. The creditor cannot sell mortgaged real estate by any other means.

The registration serial number allocated by the relevant land registry in the UAE 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*).

The Dubai Land Department intends for liens against property interests to be registered, although the Dubai Land

Department's current internal system for this registration is not yet operational.

28. Briefly outline key additional issues for lenders in relation to construction and development projects

The key issues for lenders in relation to construction and development projects are the number of competing interests and the risk of delay and default. In the event of delay and default, the project can become involved in lengthy and costly litigation.

Other real estate financing techniques

29. Are other real estate finance techniques commonly used in your jurisdiction? For example, real estate securitisation and sale and leasebacks.

Real estate securitisation is not common. There have been few instances to date, the most notable of which was the 2005 USD350 million asset-backed securitisation of mortgages acquired for the purchase of properties on the Palm Jumeirah.

Real estate leases

Negotiation and execution of leases

30. Are contractual lease provisions regulated or freely negotiable? Which legislation applies?

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

In March 2017, the Dubai Land Department introduced mandatory Unified Ejari Tenancy Contracts (*www.ejari.ae*) which are template leases that must be used in all leasing transactions and can be supplemented by additional terms and conditions that can be attached to the standard form.

31. What are the formal legal requirements to execute a lease? Does the lease have to be executed by certain parties or as a deed? How do the formalities differ for a company, partnership and for individuals?

There are no formal legal requirements to execute a lease. It is advisable that each party carry out appropriate investigations to establish whether the other party's signatory has authority to execute the lease on behalf of that other party.

Rent payments

32.How are rent levels usually reviewed and are there restrictions on this? Is stamp duty and VAT (or equivalent) payable on rent? Is a rent security deposit required and does it have to be managed in a certain way?

Generally, parties can include provisions on rent review in the lease agreement. However, Decree No. 43 of 2013 was passed to regulate rent increases in both residential and commercial leases in Dubai. Any increase in rent is determined in accordance with the following statutory limits:

- No increase in the rent value of the real estate unit should its rent be less than 10% of the average standard rent.
- 5% of the rent value of the real estate unit should its rent be less by a percentage varying between 11% and 20% of the average standard rent.
- 10% of the rent value of the real estate unit should its rent be less by a percentage varying between 21% and 30% of the average standard rent.
- 15% of the rent value of the real estate unit should its rent be less by a percentage varying between 31% and 40% of the average standard rent.
- 20% of the rent value of the real estate unit should its rent be less by a percentage varying between 41% and 50% of the average standard rent.

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

There is no stamp duty payable in the UAE.

From 1 January 2018, VAT at the rate of 5% is payable on rent of commercial premises. There will be no VAT on the rent of residential premises in that this would fall either under the zero rated or exempt category.

The new DIFC leasing law applies to all residential, retail and commercial leases in the DIFC. This is except the following:

- A lease of premises which are used primarily for serviced apartments or hotel inventory leased as part of a hotel.
- A lease which is entered into by the parties to a mortgage of the leased premises in accordance with the terms of the mortgage.

The new leasing law gives tenants of residential premises greater rights by introducing:

- A new security deposit scheme. If a landlord of residential premises chooses to charge the tenant a security deposit, the security deposit must not exceed 10% of the rent.
- Rules governing rent increases. For residential leases, a landlord must give a tenant written notice of a proposed rent increase at least 90 days before the expiry of the residential lease. If the landlord fails to give this notice, then the rent increase will be invalid.

(*DIFC Leasing Law No. 1 of 2020.*)

Length of term and security of occupation

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

The parties can freely negotiate the length of the lease term. Office leases tend to last for three or five years, and the right to extend can be negotiated. The maximum lease term is generally 99 years.

The tenant can vacate the leased premises without giving formal notice at the end of the term, unless the lease provides otherwise.

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*). However, if either party wishes to amend any provision in the extended lease, including the rent, it must provide 90 days' written notice to the other party specifying amendments, unless otherwise agreed. If the parties fail to agree on the amendments, the matter can be referred to the Rental Disputes Settlement in the Emirate of Dubai (*see Question 37*). Disputes regarding leases in the DIFC can be referred to the DIFC court or any specific tribunal created for dealing with disputes under the new leasing law (*see DIFC Leasing Law No. 1 of 2020*).

Disposal

34. What restrictions typically apply to the disposal of the lease by the tenant? Can the tenant assign or sublet the lease with the landlord's consent? Can tenants share their premises with companies in the same group? What is the effect of a legal reorganisation or transfer/sale of the

tenant on the lease and on a guarantee 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 and Dubai Law No. 33 of 2008*). A tenant is otherwise free to assign its interest or sublet the property as he sees fit, unless there are express restrictions in the lease. Tenants cannot normally share business premises with companies in the same corporate group without the landlord's consent. However, it is not unusual for a lease to contain provisions relating to this.

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

If the consent of the Landlord is obtained to such assignment then the assignor has no liability. If such consent is not obtained then the Landlord would be free to pursue the assignor and/or the assignee for performance of the lease obligations (*Article 1116, Civil Code*).

Repair and insurance

36. Who is usually responsible for keeping the leased premises in good repair and for insuring the leased premises? Are there provisions for the ownership of lease improvements?

In Dubai, unless the parties have agreed otherwise, the landlord is responsible for the:

- General maintenance of the property.
- Rectification of any defects or faults that affect the tenant's enjoyment of the property.

If the landlord breaches its obligations, the tenant can file a complaint with the RERA Rent Disputes Settlement Centre (*Article 16, Law No. 26 of 2007*). However, under Dubai Law No. 4 of 2019 on the Real Estate Regulatory Agency, RERA's jurisdiction to regulate matters related to lease contracts (including the registration of lease contracts) has been transferred from RERA to the Dubai Land Department.

It is not uncommon for the landlord to shift the maintenance responsibility to the tenant, particularly in commercial leases (*Article 16, Law No. 26 of 2007*).

On the expiry of the lease, the tenant must return the property to the landlord in the condition that the property was in at the beginning of the tenancy, subject to natural wear and tear (*Article 21, Law No. 26 of 2007*).

There are no statutory provisions governing insurance of leased premises. A landlord bears the risk, unless either:

- The tenant has been negligent.
- It has been agreed otherwise.

A landlord is therefore advised to insure against the risk. However, a commercial lease normally enables the landlord to recover the cost of insurance from the tenant.

Landlord's remedies and termination

37. 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 and what restrictions and procedures apply? What is the effect of the tenant's insolvency under general contract terms and insolvency legislation?

Each Emirate has its own rules governing termination of the lease and the tenant's eviction. In Dubai, the landlord can:

- Evict a tenant before the expiry date of the lease, if (among other things) the tenant has been in arrears of rent for more than 30 days after due demand.
- Evict a tenant on the expiry of the lease if any of the following apply:
    - the landlord personally intends to use the premises;
    - the eviction is required to carry out major repair works;
    - the landlord intends to demolish or significantly renovate the property; or
    - the landlord intends to sell the property.

(*Law No. 33 of 2008.*)

Proceedings to terminate the lease and to evict the tenant must take place before the Rent Dispute Settlement Centre of the Dubai Real Estate Regulatory Agency.

The legislation regulating the relationship between landlords and tenants is silent about the tenant's insolvency. However, outstanding rent is a ground for eviction (*Law No. 33 of 2008*). A typical lease enables the landlord to terminate the lease in the event of the tenant's insolvency. However, this term may be invalid as it is not one of the eviction grounds expressly set out under Law No. 33 of 2008 (*see above*).

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 new DIFC lease law (*see above*).

38. Can the tenant withhold rent payments in certain circumstances, for example for serious damage to the leased premises? Can the tenant terminate the lease in certain circumstances?

If the whole of the enjoyment of the leased property is lost, the tenant is not obliged to pay the rent from the time the enjoyment ceases. If the loss of the enjoyment is partial, the tenant has the right to cancel the lease and the obligation to pay the rent lapses from the date of the cancellation (*Article 781, Civil Code*).

Further, in Dubai, if it becomes impossible for the tenant to make use of the leased property (even if by a reason attributed to the tenant), the tenant will be released from its obligation to pay the rent from the date it ceased to benefit from the leased property (*Dubai Courts Rule No 155, in issue No 4 of 1993, Civil at page 326*; *incorporated in the Dubai Court of Cassation judgment dated 14/03/1993, Petition No 2/1993, Civil*).

Planning and development controls

39. In what circumstances can local or state authorities purchase business premises compulsorily? Is the purchase price market value?

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

In assessing compensation, regard is made not only to the value of the thing expropriated, but also 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. For example, in Dubai, the Lands Valuation Committee (with the approval of the Director General of Dubai Municipality) determines applications for compensation for persons affected by expropriation (*Resolution No. 2 of 2003)*.

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

- Cash if the Lands Valuation Committee determines that the value of the compensation is AED 200,000 or less.
- Additional land if the Lands Valuation Committee determines that the value of the compensation should be more than AED200,000.

(*Dubai Local Order No. 1 of 2014.*)

40. What authorities regulate planning control and which legislation applies? Is there specific protection for special categories of buildings such as historic buildings?

The Dubai Municipality is the principal authority regulating planning controls in Dubai (*Local Orders No. 2 of 1999, No. 33 of 1988 and No. 8 of 2003*).

Additional controls can be imposed by RERA, the relevant free zone authority and the master developer. This is regulated by:

- Law No. 13 of 2008 (as amended).
- Law No. 8 of 2007.
- Law No. 6 of 2019.
- 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 will also contain provisions relating to planning control (*see Sale contract*).

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

41. What planning consents are required for building works and the use of a building?

Only licensed developers can develop new projects in Dubai (*see Question 2*). RERA is the licensing authority and all developers require RERA's approval before starting a project.

To obtain RERA's approval the developer must have a "no objection letter" from the master developer. The master developer can include conditions precedent in the letter and normally wants to be satisfied with the project concept before issuing the letter. The master developer must also approve a detailed design plan at a later stage.

If the property is located in Dubai, a developer must secure planning and building approval from the Dubai Municipality, Trakhees or any other relevant planning authorities (collectively, the "Planning Authorities").

RERA also regulates and supervises the operation, management and maintenance of jointly owned property and common areas and utilities. (*See Law No. 4 of 2019.*)

Free zone authorities can impose additional planning controls in relation to real estate in their area.

42. What are the main authorisation and consultation procedures in relation to planning consents?

Initial consents

The Planning and Survey Administration of the Planning Authorities grants initial planning consents, subject to the Regulations of the classification and use of lands in Dubai (Planning Regulations). However, master developers and free zone authorities can have additional planning procedures.

Neither legislation nor planning regulations set out the length of time in which the 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*).

Reform

43. Are there proposals to reform real estate law and are they likely to come into force and, if so, when?

As discussed above, a new law on the ownership of common property in Dubai was introduced on 4 September 2019. At the same time, a new law regarding RERA was put in place. Both of these laws are aimed at increasing investor confidence in the Dubai real estate market.

Under the previous common ownership law (*Law No. 27 of 2007*), all owners of units automatically became members of the owners' association of their building when they purchased their unit. The owners' association, through its board, was then entrusted with the management, operation, maintenance and repair of the common areas of the building, and they could delegate these responsibilities to an association manager to perform. Under the new regime, either the developer or a management company selected and engaged by RERA, depending on the type of real estate, is responsible for the management of the common areas.

If RERA finds that the management company is incompetent, inefficient or unable to manage the common property, RERA will appoint an alternative management company to manage the common property

In the instances where it is the developer's responsibility, the master developer must manage and maintain the common facilities in the master project through a written agreement with a management company that has been approved by RERA. If the master developer is found to be incompetent or unable to manage the common property in a manner that ensures their sustainability and serviceability, the Executive Director of RERA may appoint a specialised management company to manage and operate the common property.

The new law on common ownership contemplates directions being issued to supplement the new law to provide further guidance on various matters. At the time of writing, RERA was yet to issue the directions but we understand that the directions are in the process of being finalised. Until the directions are issued, the new law confirms that the directions, rules and regulations issued under the previous law will continue to apply, except to the extent that they are inconsistent with the new law.

The new common ownership law is an important development for Dubai as most real estate is held by way of property owned in common. That is, a real estate development that has been subdivided into apartments, offices, retail units and/or common areas.

Lastly, policies may continue to be introduced to assist real estate developers, investors and tenants to cope in light of the ongoing COVID-19 pandemic.

Contributor profiles

Shahram Safai, Partner

Afridi & Angell
T +971 4 330 3900
F +971 4 330 3800
E *ssafai@afridi-angell.com*
W *www.afridi-angell.com*
Professional qualifications. Juris Doctor, University of British Columbia, Canada, 1998; Master of Business Administration, 2002

Areas of practice. Real estate; construction; venture capital.

Non-professional qualifications. Bachelor of Engineering, University of British Columbia, Canada, 1992

Languages. English, Farsi

Professional associations/memberships. State Bar of California; Law Society of England and Wales; Association of Professional Engineers of British Columbia.

Anna White, Associate

Afridi & Angell
T +971 4 330 3900
F +971 4 330 3800
E *awhite@afridi-angell.com*

W *www.afridi-angell.com*
Professional qualifications. LLB (Hons) and BCom, University of Otago, New Zealand

Areas of practice. Real estate.

Languages. English

Professional associations/memberships. Admitted as a Barrister and Solicitor of the High Court of New Zealand; as a legal practitioner of the Supreme Court of Western Australia; and as a lawyer of the Federal Court of Australia.

Elizabeth Brachaniec, Associate

Afridi & Angell
T +971 4 330 3900
F +971 4 330 3800
E *ebrachaniec@afridi-angell.com*
W *www.afridi-angell.com*
Professional qualifications. Juris Doctor, Schulich School of Law, Canada

Areas of practice. Real estate and corporate and commercial.

Languages. English

Professional associations/memberships. Admitted as a Barrister and Solicitor in Nova Scotia and Ontario, Canada.

END OF DOCUMENT

