

Introduction of Mortgage Law addresses limitations in Foreclosure system in Dubai

The decision of the Dubai Courts earlier this year ordering the foreclosure of property in favour of Barclays prompted lenders, borrowers and commentators alike to consider the implications of foreclosure in a jurisdiction where foreclosure is far from common-place.

Until recently, there was no formal, established method for dealing with defaults on mortgages. Prior to the introduction of Dubai Law No.14 of 2008 (the "Mortgage Law") a mortgagee wishing to express its right of foreclosure had to follow the traditional legal path provided in the UAE Federal Law of Civil Transactions. The mortgagee had to raise and address the merits of the claim and then prove the privilege or priority enjoyed by the registered mortgage (secured mortgage).

If the mortgagee was successful and obtained a favourable judgment then it would be necessary to make an application to the court to enforce such judgment and mortgage (resulting in a sale of the mortgaged property by auction). This burdensome process would take several months before reaching a final conclusion.

Lenders have generally tended to avoid the courts, discouraged by the ambiguity and hurdles of such legal procedure. Preference has therefore been given to attempting to resolve troubled loans, by extending payment terms and restructuring loans. This approach however has no effect where individuals who could not meet their mortgage repayments have simply

abandoned their properties and fled the country.

The introduction of the Mortgage Law in 2008 however, sought to address the limitations of the existing system by imposing a structured process which is intended to be less time consuming. Pursuant to the Mortgage Law where a default of a loan occurs lenders are required to give homeowners thirty days' notice of their intent to pursue foreclosure. Once proceedings are commenced the courts then review the case and may issue a debt judgment which requires the property to be turned over to the Dubai Land Department for auction. During this period, creditors have the right to administer the mortgaged property and collect its yields and revenue until it is sold at public auction.

Under the Mortgage Law, the mortgagee may commence procedures to sell the mortgaged property if the debt is not settled on the due date provided that the debtor or the possessor of the mortgaged property is served a notice within a period not exceeding thirty days (Article 25).

In the event that the mortgagor fails to discharge the debt within the time period stipulated under the Mortgage Law, the execution judge shall at the request of the mortgagee issue a decision to attach the mortgaged property in preparation for selling it by public auction pursuant to Land Department procedures (Article 26). Article 27 provides that without prejudice to Article 26, in the event that the debtor petitions the execution judge to delay the public auction, the execution judge may delay the sale by not more than sixty days for

only one time, if the judge is convinced that; the debtor can discharge its debt if given such time and the sale of the mortgage property may cause serious damage to the debtor.

Pursuant to Article 28 of the Mortgage Law, if the debt is not settled within the stipulated time, the mortgage property shall be sold by public auction in accordance with the procedures applicable at the Land Department not later than thirty days from the date of expiry of the term. The mortgagor may still discharge the debt secured by the mortgage before such due date (Article 29).

Finally, Article 30 of the Mortgage Law confirms that if the proceeds from the public auction are insufficient to satisfy the debt, the debtor shall be personally responsible for the remainder of the mortgage debt.

In a landmark verdict in January of 2010, Barclays Bank won a rare foreclosure order allowing it to foreclose on several properties, but note that as the UAE operates a civil law system each foreclosure case will be heard by the courts on its own facts.

Business leaders have suggested that despite this significant ruling, certain banks may be unlikely to foreclose on properties because of a concern that a large number of repossessions may drive real estate prices down.

Also, the judicial sale process is relatively untested and the attributes of valuation, achieving best or reasonable valuations, comparable valuations, setting reserve prices, and the duty of care involved in properly auctioning the property and remitting the proceeds to the mortgagee with any excess paid back to the borrower remain at large. The outcome of foreclosure is therefore yet to materialise in full and as such lenders are likely to want further clarity on such foreclosure legislation before taking matters to court.

Barclay's foreclosure order is generally seen however as a sign that Dubai's property market is maturing and developing. Lenders in Dubai may now have a recent, established course of action in recovering assets thereby providing increased confidence in lending and mortgage activities.



	
<p>Shahram Safai- Partner Afridi & Angell +971 4 330 3900 ssafai@afridi-angell.com www.afridi-angell.com</p>	<p>Emma Tooley- Associate Afridi & Angell +971 4 330 3900 etooley@afridi-angell.com www.afridi-angell.com</p>

Financial Due Diligence - Grant Thornton UAE



Hisham Farouk - International Practice Partner
+ 971 4 2688070
Hisham.farouk@gtuae.net
www.gtuae.net



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Hisham Farouk explained that with considerable experience in many fields, the firm has clients in construction contracting, trading, hotels/leisure industry, insurance, banking, transportation, manufacturing industries and other areas.

"We are located in Dubai which is an ideal option for the establishment of a new business, relocation of regional head quarters or simply becoming a part of the new dynamic clusters that are driving Dubai to the most open and liberal economic policies. We provide our services throughout the seven emirates in the UAE," he added. "The firm is well positioned to provide advice that is free from conflicts of interest. Partners lead and demonstrate the organisation's commitment to quality and distinctive customer service."

According to Mr Farouk, over the years, the firm has delivered a full range of accounting audit and consulting services to the country's key industries. He said: "We are registered with the Dubai International Financial Centre (DIFC) as Auditors and Ancillary Service Providers and can provide various services to our clients wanting to register with the DIFC and to entities regulated by the Dubai Financial Services Authority (DFSA)."

Indeed, the firm provides a full range of assurance services in accordance with International Standards on Auditing. "We are also committed to giving our clients value for money; providing them, wherever possible, with commercially

mindful assistance and advice, in addition to meeting our obligations to our clients and to the outside world as an independent auditor. Our registration with the Public Companies Accounting Oversight Board (PCAOB) enables us to provide assurance services for subsidiaries of US public companies operating in the UAE. We have expertise in IFRS and UK & US GAAP," Mr Farouk said.

Mr Farouk went on to point out that entrepreneurs the worlds over are looking for a favourable business climate to establish or expand their business ventures. Mr Farouk said: "If you happen to be one of the prospectors, then UAE may be the one place where you are sure to find an open economy with world class infrastructure to meet your requirements. The Middle East, and in specific the UAE is a flourishing and global strategic market for foreign companies. It provides a richly diversified economy, which has proven a haven for the investors the world over. It not only includes one of fastest growing economies in the world, but easy access to three billion consumers situated in the greater MENA-SEA region."

There are many options for international companies seeking to establish business in the UAE. For many companies there are distinct advantages in having a physical presence. Establishing a business in the UAE makes it easier to understand and be closer to your prospective market, develop the necessary local contacts and have greater access to regional markets.

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Gregory Mayew - Partner
+971 2 627 5134
abudhabi@afridi-angell.com
www.afridi-angell.com

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Afridi & Angell is a full-service regional law firm and one of the oldest firms in the UAE with a history dating to 1975, only four years after the UAE was founded. Partners of Afridi & Angell are among the most experienced attorneys in the UAE. The firm's lawyers combine strong legal and analytical skills with detailed knowledge of UAE law.

According to Gregory Mayew, the firm has a strong record of advising foreign companies on doing business in the UAE. Clients include Fortune 500 companies and leading international banks but also small and medium sized companies.

"We are also regularly engaged by leading international law firms from the US, UK, other European countries, the Far East and elsewhere; and we are the exclusive UAE member of Lex Mundi, the World's Leading Association of Independent law firms," he said.

Mr Mayew also pointed out that under local law and applicable regulations, companies doing business in Abu Dhabi are required to have a locally licensed presence. Mr Mayew said: "Generally, this means either forming a limited liability company or an Abu Dhabi branch of a foreign company. The appropriate legal form may vary depending a variety of factors including the nature of the company's business and the types of clients with which it will transact business. Our attorneys have experience helping clients to identify the appropriate legal form for a variety of different businesses."

Indeed, a limited liability company requires a 51% UAE owner and a branch of a foreign company requires a UAE sponsor or national agent. "Note that 51%

legal ownership requirement does not preclude the minority foreign shareholder from controlling the management of the company and profits need not be distributed proportionately to legal ownership. A variety of different contractual arrangements may be used to advance the interests of foreign shareholders. Our attorneys are experienced at negotiating and drafting contractual arrangements between foreign and local shareholders and sponsors," Mr Mayew added.

Mr Mayew said that unlike, for example, the Cayman Islands or British Virgin Islands, the UAE is not a jurisdiction for paper companies. He said: "Foreign companies should understand that a licensed presence in Abu Dhabi entails having a physical office and must factor leased office space into their budget. In addition, the licensing process is bureaucratic and often confusing to foreigners and experienced local counsel can help guide foreign companies through the labyrinth."

The UAE is a young country and its legal system is still developing. Rapid economic development has brought a movement towards international business standards generally but the corresponding legal framework is still a work in progress. Changes are expected in the coming years including possible new legislation relating to bankruptcy, commercial companies and arbitration.