The Real Estate Law Review

Fourth Edition

Editor
David Waterfield

Law Business Research

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EDITOR'S PREFACE

The fourth edition of *The Real Estate Law Review* is testament to the book's success and the significance of real estate as a global asset class. A great deal has happened since the first edition appeared in 2012, and this fourth edition coincides with renewed confidence in the real estate market. The real estate market is often described as cyclical, and there is no doubt that we are now seeing positive investor sentiment in a market enjoying upward momentum.

The fourth edition of *The Real Estate Law Review* features 35 jurisdictions, and we are delighted to welcome a number of new notable practitioners who have helped bolster the strength and depth of this invaluable publication. Each chapter of *The Real Estate Law Review* has been updated to focus on key developments in that jurisdiction and their impact on the relevant domestic and wider global real estate market. *The Real Estate Law Review* offers real estate practitioners and their clients an immediate and accessible summary of the position in the many countries covered, as well as the global real estate market as a whole. The globalisation of the real estate market continues apace, and it is fundamentally important to develop an understanding of the legal and commercial opportunities and challenges pertinent to each country, and how each local market forms an integral part of the global picture.

This fourth edition seeks to provide an overview of the state of the global real estate investment market. Although there is without question significantly more good news around, the financial and economic turmoil of recent years serves as a reminder of how fragile markets can be, and a number of obstacles remain on what may prove to be a bumpy road to global recovery. Sustainable growth across the eurozone remains illusory, Japan continues to flirt with recession, the fear of a hard landing in China and other developing economies remains, there is continuing instability in Ukraine and the Middle East, and the Ebola outbreak in West Africa is a global concern.

Once again, I wish to express my deep and sincere thanks to all my distinguished colleagues who have contributed to this edition and the success of *The Real Estate Law Review*. I would also like to thank Gideon Roberton and his publishing team for their tireless work in coordinating the contributions and compiling this fourth edition.

David Waterfield
Slaughter and May
London
February 2015

Chapter 34

UNITED ARAB EMIRATES

Ibrahim Elsadig and Joe Carroll[1]

I INTRODUCTION TO THE LEGAL FRAMEWORK

The United Arab Emirates is a federation of seven emirates (Abu Dhabi, Dubai, Sharjah, Ras Al Khaimah, Umm Al Quwain, Ajman and Fujairah) with a civil law legal system.

The Supreme Council is the main federal authority (the federal government). It has the power to pass laws on the matters assigned to it by the UAE Constitution (federal laws). The federal laws set out a number of principles regarding real property and the rights that relate to it. The Law of Civil Transactions of the UAE (Civil Code)[2] is the primary source. Part 1 deals with the application of laws in the UAE and the types of rights that are recognised. Part 4 deals specifically with property rights, setting out how they can be acquired and the rights that derive from ownership. Part 5 deals with the creation of security over all types of property (including real property).

Each emirate is governed by a ruler (local government). The local government has the power to pass laws for its emirate (local laws) on matters not exclusively assigned to the federal government. Many local laws have been passed on matters where the federal government has the power to legislate, but has not done so, and the local government has considered regulation necessary.[3] Each local government has introduced local laws

1 Ibrahim Elsadig is a partner and Joe Carroll is a senior associate at Dentons.

2 Federal Law No. 5 of 1985, as amended.

3 This is compatible with Articles 123, 125 and 149 of the UAE Constitution, which provide that the local governments may promulgate local legislation necessary for the regulation of matters within the exclusive legislative jurisdiction of the federal government, provided they comply with the Constitution and other federal legislation.

regarding real property and rights relating to it, producing distinct legal and regulatory frameworks at the emirate level.[4]

Under federal law, local governments can pass local laws establishing free economic zones (free zones) within their emirate. Each free zone has its own rules and regulations that apply within its borders (free zone regulations). To understand the legal and regulatory framework applicable within a free zone, it is necessary to consult the free zone regulations and local laws that specifically relate to it. The Dubai International Financial Centre (DIFC), for example, has its own property laws, register of property rights and forum for hearing disputes.

As a consequence, the laws of the UAE consist of a patchwork of federal laws, local laws and, within the free zones, free zone regulations. This chapter focuses on the real estate laws applicable in the emirates of Abu Dhabi and Dubai, the largest and most populous of the emirates.

i Ownership of real estate

In the UAE, interests in real property and rights relating to it (property interests) may be characterised as either property rights (such as freehold) or contractual rights (such as short leasehold). The most common property interests are as follows:

a freehold: the most complete form of ownership, with the owner having full rights to the property unlimited in time (a property right);[5]

b usufruct: a right to use property for a limited period (a property right);

c *musataha*: a right to use land for a limited period and to construct buildings thereon (a property right); and

d leasehold: a right to use property for a limited period (which may be a property right or a contractual right, depending on the presence of factors denoting a property right, such as the length of the term).

In Abu Dhabi and Dubai, local laws and practices limit the acquisition of property rights according to the nationality of the investor.[6] Nationals of the UAE are not subject to any restrictions. Nationals of a Member State of the Gulf Cooperation Council (GCC) other than the UAE may be subject to some restrictions. Persons falling outside both categories (foreign nationals) will find that they are subject to the greatest restrictions. The local government has the power to disapply these restrictions. This power has been used to create investment zones (Abu Dhabi) and freehold areas (Dubai) in specific areas, making them the least restrictive areas for property ownership.

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4 Federal laws are superior to local laws and should be accorded primacy in the event of conflict. If a matter is not dealt with by either body of laws, shariah principles will be applied.

5 While the term freehold is commonly used, there is no federal law defining the meaning of this term.

6 For legal persons, nationality is determined by reference to the country of incorporation and the nationality of its shareholders.

ii Registration of property interests

The requirements and procedures for registration are set out in the local laws, which differ between the emirates. Without registration, the creation of a property right in the name of the purported owner will not be perfected. None of the emirates provides a state guarantee of title.

In Abu Dhabi, property rights should be registered with the Department of Municipal Affairs (Abu Dhabi Municipality) on its land register. The owner of a property then receives a title certificate as proof of ownership.[7] Short leases (i.e., contractual rights) should be registered with Abu Dhabi Municipality on its register of tenancy contracts (Tawtheeq).[8]

In Dubai, property rights should be registered with the Dubai Land Department on its land register. The owner of a property then receives a title certificate as proof of ownership. Contracts for properties purchased off-plan should be registered with the Dubai Land Department on its register of off-plan properties. Short leases (i.e., contractual rights)[9] should be registered with the Real Estate Regulatory Authority (RERA) on its register of tenancy contracts (Ejari).

iii Choice of law

Under the Civil Code, possession, ownership and other rights over real property[10] and contracts dealing with them[11] are governed by the laws of the emirate in which the property is situated (i.e., the *lex situs*). Local laws will also determine whether the matter in question relates to rights over real property.[12]

II OVERVIEW OF REAL ESTATE ACTIVITY

The governments of Abu Dhabi and Dubai have taken significant steps towards the liberalisation and diversification of their economies. Historically, Abu Dhabi (holding the greatest proportion of hydrocarbon reserves) was the focus of the UAE's industrial activities. Lacking the hydrocarbon wealth of Abu Dhabi, Dubai embarked on a massive programme of real estate development to accelerate the diversification of its economy. Abu Dhabi has also followed this path to supplement its traditional activities.

As a result of these initiatives, real estate projects (including infrastructure, residential, hotel, leisure, retail, office and industrial sectors) have grown rapidly. The investment zones (Abu Dhabi), freehold areas (Dubai) and free zones (with their advantageous corporate and tax regimes) were integral to this development.

7 Very little registration has taken place other than for UAE nationals.
8 There are certain exceptions from the registration requirement, depending on the use to which the property is put.
9 Ibid.
10 Article 18 of Federal Law No. 5 of 1985.
11 Article 19(2) of Federal Law No. 5 of 1985.
12 Article 18(2) of Federal Law No. 5 of 1985.

Despite the transformation that is underway in the UAE, the number of foreign institutional investors has remained relatively low. It is fair to say that the pace of growth has been rapid, and the legal and regulatory systems have required time to develop and mature. As a consequence, the majority of participants in the market have been government-related entities and private investors (with significant numbers from Canada, India, Iran, Pakistan, Russia and the United Kingdom).

During the global economic slowdown, purchase prices and rents for some properties fell by as much as half (and sometimes more). As new projects reached completion, so oversupply exerted additional downward pressure on prices. Now, after several years of suppressed activity, there has been a noticeable return of confidence to the market. The Arab Spring highlighted the relative stability of the UAE (in contrast to nearby states) and, with the local economy now experiencing continuing and sustained recovery, demand has grown, with prices and rents increasing.

In fact, high rates of increase in Dubai following its successful Expo 2020 bid led to concerns of a new bubble in the market. An initial period of over-heating was followed by a prompt correction and return to more moderate rates of increase. Overall, residential property prices in some areas of Dubai rose by 20 to 35 per cent year-on-year, while in Abu Dhabi the rate of increase in some areas was around 20 to 25 per cent year-on-year. The recovery is expected to continue due to strong market fundamentals and future events, including Expo 2020 and the 2022 FIFA World Cup (Qatar).

III FOREIGN INVESTMENT

There are restrictions on foreign investment in UAE property that vary according to the nationality of the investor and location of the property.[13] The restrictions attach to both natural and legal persons. Since the restrictions are not laid down in federal law, it is necessary to consult the local laws and practices of each emirate.

i Foreign ownership in Abu Dhabi

Local law provides that foreign nationals, and companies owned in whole or in part by them, can own certain property rights in designated investment zones of Abu Dhabi. The available property rights include ownership of apartments and floors in buildings (with no right to the underlying land) and rights of usufruct, *musataha* and long leasehold. The investment zones include Al Raha Beach, Reem Island, Saadiyat Island and various other projects. By way of exemption, the local government can authorise ownership outside the designated investment zones on a case-by-case basis.

GCC nationals (other than UAE nationals) can own the same property interests as foreign nationals and, in addition, freehold within the investment zones. UAE nationals, and companies wholly owned by them, can own any of the recognised property interests throughout all of Abu Dhabi.

13 See Article 298 of Law No. 11 of 1992 (Federal Civil Procedures Law).

ii Foreign ownership in Dubai

Local law provides that foreign nationals, and companies owned in whole or in part by them, can own property rights in the designated freehold areas of Dubai. The freehold areas include the Palm Jumeirah, Jumeirah Lakes Towers, Dubai Marina, Downtown Burj Khalifa, Arabian Ranches, the Lakes, the Springs, the Meadows and various other projects. Again, the local government can authorise ownership outside the designated freehold areas on a case-by-case basis.

UAE and GCC nationals, and companies wholly owned by them, can own any of the recognised property interests throughout Dubai.

The above must be read in light of the Dubai Land Department's circulars on registration of property rights by offshore companies (see Section VII.vi, *infra*).

IV STRUCTURING THE INVESTMENT

Property assets will often be acquired by a special purpose vehicle (SPV) to ring-fence liability and protect the asset from the risks associated with the operation of the business. The choice of investment structure may also be guided by considerations such as:

a optimum legal ownership;
b the ability to co-invest with funders;
c the ability to include joint venture partners;
d the ability to benefit from foreign insolvency or trust regimes;
e mitigation of tax or transfer fees;
f compliance with the principles of shariah law; and
g avoidance of inheritance issues.

The chosen structure (e.g., *ijara* finance) should be formulated in light of the restrictions on foreign ownership and the requirement to register property rights (in order that they may be effectively created). In Dubai, for example, local laws provide that any attempt to circumvent the foreign ownership restrictions will be null and void. Any interested party, including the Dubai Land Department and Dubai's Public Prosecutor, can request the setting aside of an avoidance structure.[14]

i Free zone companies

Foreign nationals, and companies owned in whole or in part by them, may choose to incorporate a UAE free zone company to hold rights over property within that zone. In Dubai, for example, leases of land and pre-built premises can be acquired in the Jebel Ali Free Zone by free zone companies incorporated in that zone.

ii Unregistered leases

Where a foreign national, or company owned in whole or in part by them, wished to acquire premises for a long term in a location where it could not acquire a property

14 Article 26 of Dubai Law No. 7 of 2006.

right (such as freehold), it was common for a long lease to be acquired. These interests have been interpreted as personal rights whose legal effect will be limited to contractual obligations between the parties. The suitability of such arrangements has become increasingly uncertain given the initiative to register all leases, withdraw the assistance of adjudicating authorities where registration has not been completed and require that company registrations and applications for utilities connections be accompanied by a registered lease.

iii Offshore SPVs

In Abu Dhabi, an offshore SPV can hold and invest in property assets located in the investment zones. In Dubai, the Dubai Land Department has issued guidance that prevents the registration of property rights by offshore and foreign entities other than those incorporated in the Jebel Ali Free Zone (see Section VII.vi, *infra*).

iv UAE (Abu Dhabi or Dubai) companies

A UAE company can hold a property asset outside a freehold area where its shareholders are purely UAE nationals (for property located in Abu Dhabi), or UAE or GCC nationals (for property located in Dubai). A UAE company can also be used by foreign nationals to hold property assets in the freehold areas of Dubai, although they will be subject to any limits on foreign ownership of shares.

v Trusted owners

Should a foreign person wish to exercise effective control over a property situated in an area where it does not qualify for ownership, it may consider the trusted owner structure. A UAE national or company will hold legal title to the property on behalf of the beneficial owner. As well as the attendant risks involved in holding beneficial (not full legal) ownership, it is arguable that this method of ownership breaches UAE law and as such may be unenforceable.

V REAL ESTATE OWNERSHIP

i Planning

Abu Dhabi Municipality and Dubai Municipality oversee development, building regulations and planning controls (including change of use) in their respective emirates. Buildings within an investment area, freehold area or free zone may also be subject to the regulations and controls of the master developer or regulatory authority for that area. Local licensing requirements should also be observed. For example, a developer wishing to establish a new project in Dubai must first register itself with RERA.

ii Environment

Environmental law comprises laws at the federal and local levels. A number of international conventions and protocols are recognised. Federal law controls all forms of pollution and applies the polluter-pays principle. There are substantial penalties for polluting the environment.

Developers must identify areas of environmental importance or sensitivity and which of their activities may cause harm.[15] They must also undertake an environmental impact assessment for their project.[16]

Because environmental liabilities may pass with ownership of land, a prospective purchaser of land should include appropriate warranties from the seller in the purchase agreement (against which the seller should disclose any issues) and consider whether physical inspection and testing of the land should be conducted.

In Abu Dhabi, the competent authority is the Environment Agency – Abu Dhabi. In Dubai, the competent authority is the Environment Department of Dubai Municipality. Activities within an investment area, freehold area or free zone may be subject to the regulations and controls of the master developer or regulatory authority for that area.

iii Tax

No VAT (or equivalent) or stamp duty is payable on the sale or purchase of real estate. Fees are payable in respect of registration of property interests. There may be other costs associated with ownership or occupation. In Dubai, for example, business occupiers must pay a trade licence renewal fee (5 per cent of the annual rent), and hospitality businesses such as hotels must pay a municipality tax (10 per cent of turnover). Free zones may apply their own charges in respect of such matters.

iv Finance and security

A common form of security over UAE real estate is a mortgage. Federal law outlines the basic principles regarding the creation of security over real property. If the mortgage is validly created, the mortgagee will acquire a property right and will take precedence over ordinary creditors and creditors subsequent in rank to its in satisfaction of the debt from the proceeds of sale.

In Abu Dhabi, there is no specific law dealing with mortgages of real property. Local laws on registration do, however, recognise the right for mortgages to be created and require that the registrar record these on the land register maintained by Abu Dhabi Municipality.[17] Actual registration of mortgages reflects the overall registration of property interests in Abu Dhabi (mostly completed by UAE nationals outside the investment zones). Consequently, many lenders have chosen to utilise an unregistered mortgage combined with a conditional assignment of the borrower's rights to the property. Should the borrower default, the lender will exercise its step-in rights and take control of the property.

15 Article 3 of Federal Law No. 24 of 1999 for the Protection and Development of the Environment.

16 Article 4 of Federal Law No. 24 of 1999 for the Protection and Development of the Environment.

17 Abu Dhabi Resolution No. 64 of 2010.

In Dubai, a law dealing specifically with mortgages has been introduced.[18] This requires that all mortgages be registered with the Dubai Land Department; that the mortgagee be a bank, company or financial institution licensed and registered by the UAE Central Bank; and that the mortgagor be the owner of the property interest and able to dispose of it. Priority is determined according to the time that the mortgage was registered.

VI LEASES OF BUSINESS PREMISES

Common features of the leasing process include documents and terms of occupation that are relatively short, clauses that are landlord-friendly and an unwillingness (often refusal) on the part of landlords to accept tenant amendments.

In the past, with good space at a premium, tenants often had little choice but to accept the terms offered. Once in occupation, and with rents continuing to rise, renewal could be uncertain. With no security of tenure or limit on rent increases, landlords held the upper hand.

Abu Dhabi and Dubai responded with legislation and institutions (at the local level) to regulate the landlord and tenant relationship applicable to both the residential and commercial sectors. The global economic slowdown saw landlords increasingly likely to offer inducements and agree amendments to their standard terms.

i Lease negotiations

It is common to encounter leases of just a few pages in length that set out only basic terms. A standard template of lease terms is frequently used for residential and small or basic commercial units (e.g., warehouses). As the market has matured, the use of legal representation and more sophisticated leases has increased.

Provided the general law and any specific landlord and tenant laws are observed, the terms of leases can be freely negotiated. The new lease registration systems of Abu Dhabi and Dubai aim to standardise leases with the introduction of a standard lease template and special conditions.

ii Term of occupation

The maximum permissible term of occupation is 99 years. Terms are generally much shorter (under 10 years) and supplemented by an option or presumption of renewal.[19] Leases often require that advance notice must be served to terminate the lease at the expiry of the contractual term.

In Abu Dhabi, local law imposes a presumption of renewal but no security of tenure. The landlord can freely terminate the lease at the end of the term provided it serves the period of notice required by law (which differs for residential and commercial property). If the landlord fails to serve notice, and the tenant remains in occupation, then the lease will renew for a similar term.

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18 Dubai Law No. 14 of 2008.

19 Rights of *musataha* (cf leasehold) should not exceed 50 years but are renewable.

In Dubai, local law imposes both a presumption of renewal and security of tenure protection. If the landlord does not establish a permitted ground for non-renewal, then the lease will automatically renew on the same terms and for the same period or one year (whichever is shorter). A party wishing to vary a term of the lease must serve notice on the other not less than 90 days before expiry of the lease. If a variation cannot be agreed, the matter can be referred to Dubai's Rent Dispute Settlement Centre for determination.

iii Rent and review

Leases commonly provide for an annual rent review.

In Abu Dhabi, the rent cap (of 5 per cent per year) was recently removed. Rent review became a matter for agreement between the parties to the lease.

In Dubai, local laws limit the maximum increase that a landlord can apply (known as the rent cap). Unless a lease specifies the actual rent payable for each year of the term (i.e., a stepped rent), then annual increases (during the term or on renewal) will be subject to the rent cap. The maximum increase that can be applied under the rent cap is between 5 and 20 per cent of the annual rent, depending on how low the rent is compared with the average for similar properties.

iv Repair

In Abu Dhabi, the law obliges the tenant to carry out those simple repairs that, by convention, fall to be carried by the tenant. In Dubai, the law obliges the tenant to return the premises to the landlord in the condition they were in at the beginning of the term, subject to normal wear and tear. In both instances, the landlord must carry out any repairs necessary to maintain the structure and ensure the premises are fit for use.

v Subletting and assigning the lease

Many leases focus on the prohibition of unauthorised subleases. In both Abu Dhabi and Dubai, the law provides that the landlord's prior written consent must be obtained before a lease can be assigned or a subtenancy granted.

vi Termination

Until recently, local law in Abu Dhabi imposed a presumption of lease renewal (up to a certain maximum number of years). These tenant protections have now been removed, and lease renewal has become a matter for agreement between the parties to the lease.

In Dubai, there are separate sets of grounds depending on whether the landlord wishes to terminate the lease during or at the end of the contractual term. The former grounds include non-payment of rent by the tenant, and the latter grounds include the landlord's right to redevelop the property.

In both Abu Dhabi and Dubai, the tenant does not have the right to terminate prior to expiry of the term unless the lease contains a break right or the landlord agrees to early termination.

VII DEVELOPMENTS IN PRACTICE

i Abu Dhabi and Dubai – mortgage caps

The UAE Central Bank has issued rules on the permissible loan-to-value ratio of mortgages. The rules came into effect in 2014. Home loans for expatriates are now subject to a cap of 75 per cent of the property's value (for a first investment under 5 million dirhams). For UAE nationals, the cap is set at 80 per cent. Additional restrictions apply for more expensive properties and for second and subsequent investments. Mortgages for off-plan properties have been capped at 50 per cent.

ii Abu Dhabi – security of tenure

Local law in Abu Dhabi previously included security of tenure provisions (up to a maximum number of lease years). In 2010, a law was passed entitling landlords to refuse renewal (at will) at the end of the lease term. The law included a grace period before this change would take effect. This period expired on 9 November 2013. Provided the landlord serves the notice period required by law, it can terminate the lease at the end of the term.

iii Abu Dhabi – rent cap

The rent cap in Abu Dhabi, which was previously renewed on an annual basis, has been allowed to expire. Rent reviews have become a matter for agreement between the parties to the lease. It is expected that a new rental property index will be launched to help establish fair rents and resolve disputes.

iv Abu Dhabi – government worker housing policy

A decree issued in 2012 required that all public sector employees reside within the emirate of their employment, with employees failing to do so being at risk of losing their housing allowance. A grace period of one year was granted. This period expired in September 2013.

v Abu Dhabi – freehold for foreign nationals and entities

Recent press reports have announced that foreign investors in some projects have been granted freehold title to their properties. At the time of writing, we are not aware of any changes to the law making this a possibility. These reports may concern the successful registration of other property rights, such as *musataha*, rather than actual freehold title with a right in the underlying land.

vi Dubai – property registration by offshore companies

The Dubai Land Department has issued guidance that prohibits the registration of property rights by offshore and foreign companies, other than those incorporated in the Jebel Ali Free Zone. Any offshore or foreign company wishing to acquire property rights in Dubai will need to establish such a company to register and hold the property right. It will be necessary to disclose the shareholders of this company, including any parent entities, and any beneficiaries if the ownership structure includes a trust.

The new regime is intended to prevent the transfer of property rights without the Dubai Land Department being able to identify the new owners and receive a fee for the property transfer. Previously, property transfer fees could be avoided by simply selling the company shares or changing the beneficiary. The processes implemented by the Dubai Land Department and Jebel Ali Free Zone Authority mean that property transfer fees are now payable on share and trust transactions considered to constitute a property transfer.

vii Dubai – change in land registration fees

A new fee schedule was introduced in 2013. This increased the transfer fee for freehold properties from 2 to 4 per cent of the property value. It also changed the way that transfer fees are to be calculated for land on which warehouse properties are situated. Instead of the previous transfer fee of 2 per cent of the property value, the fee will now be calculated at 10 dirhams per square metre (subject to a minimum fee of 10,000 dirhams). The new fee schedule was accompanied by powers for the Dubai Land Department to impose fines on those it has identified as evading fees.

viii Dubai – judicial committee for cancelled projects

A judicial committee has been established to liquidate cancelled real estate projects. Purchasers and creditors can no longer bring individual cases against failed developers (class actions are generally not available). Instead, a global solution for each project will be delivered, with associated time and cost savings. However, since developers were originally liable for any shortfall in funds, it does appear that investors may be required to forego full reparation in exchange for the release of the remaining project funds. The committee has issued a list of cancelled projects and begun to hear the first cases.

ix Dubai – draft investor protection law

Tanweer – the draft investor protection law – was issued in 2012, with implementation scheduled to take place by the end of 2012 or early in 2013. However, the draft has still to become law. The Dubai Land Department has repeated that implementation is to be expected soon.

The draft law specifies a number of additional protections for investors, including:

a the seller's liability to disclose rights and restrictions affecting the property;

b the seller's liability for representations made during the sales process;

c the investor's right to review the sale and purchase agreement and recover its deposit if the agreement is not acceptable;

d the investor's right to compensation or cancellation and a refund in instances of late handover or variation of property specification (depending on the severity of the delay or variation); and

e the investor's right to a refund or replacement of its property with another if its property has a substantial defect.

The draft law also permits developers to retain control of building management on the condition that this is specified in the sale and purchase agreement. This will be welcomed by operators of branded residences. It remains to be seen whether the current requirement to establish not-for-profit owners associations will be protected or could become optional. The final wording of this and other provisions will be closely scrutinised on the issuance of the final law.

x Dubai – rent cap

A new rent cap has been issued. This allows for rents to be increased where they are 11 per cent (or more) below the average market rate. This is more favourable to landlords than was previously the case. The rent cap confirms that it will apply to all free zones, including the DIFC.

xi Dubai – standardised property contracts

Standard forms of property sales contracts have been issued by the authorities for use in Dubai. While these contracts will assist in the efficient registration of property interests, they can be overly simplistic for certain transactions. As a consequence, many parties choose to supplement the standard form with their own contract containing more detailed terms (to document the entire agreement between them).

xii Dubai – short and long leases

A resolution has been issued confirming that leases having a term of not more than 10 years may be treated as a contractual right (registrable on the Ejari register). Leases having a term of 10 years or more (but not exceeding 99 years) will constitute a property right (registrable with the Dubai Land Department on its land register). This is an important development, as the status of leases with a term of between five and 10 years was previously uncertain, posing an obstacle to registration.

VIII OUTLOOK AND CONCLUSIONS

In Abu Dhabi, the local government is continuing its longstanding review of its property laws. Despite the various protections afforded under those laws, investors do not benefit from the breadth of property rights or protection measures (such as registration of off-plan properties, escrow law protecting payments for off-plan properties and easy registration of title and mortgages) afforded under Dubai law.

In Dubai, the local government has proposed a number of solutions and taken a number of steps to refine its regulatory system, in order to protect investors and ensure the sustainable recovery of the property market. These include the draft investor protection law (feted to become law in 2015) and a number of other measures (already introduced) that have established a stricter regulatory framework.

These advances are to be welcomed as the next steps in the development of a mature regulatory framework in the region. It is hoped that Abu Dhabi, with the advantage of being able to assess the strengths and failings of the measures introduced in Dubai, will soon release solutions tailored to its own market. In Dubai, it is hoped that new and existing measures, designed to protect investors and secure sustainable growth, will continue to be successful in 2015 and beyond.

Appendix 1

ABOUT THE AUTHORS

IBRAHIM ELSADIG

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Ibrahim Elsadig is a senior partner in the Dubai office of Dentons. He joined the firm in March 1996 as a corporate and commercial lawyer. He worked as an in-house counsel in Africa, India and the Middle East between August 2005 and December 2006, after which he rejoined the firm. He has extensive experience in the UAE and Middle East, and has participated in major transactions in the UAE and across the Gulf region, North Africa and India. Mr Elsadig's experience includes joint ventures, mergers and acquisitions, liquidations, bankruptcy and restructuring. He has reviewed major agreements for compliance and legal due diligence, and has also advised on major projects in the water, waste water, electricity and oil and gas sectors, and has an excellent banking background. He has worked on power generation, EPC contracts for power plants, long-term service agreements, and operation and maintenance agreements. He also advises on corporate governance and compliance issues. He now supervises a broad range of corporate and commercial matters, including real property.

JOE CARROLL

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Joe Carroll is a specialist real estate lawyer based in the Dubai office of Dentons. He joined the firm in 2011, having previously worked for an international property development company headquartered in Dubai. Prior to relocating to the UAE in 2008, he trained in London at an international law firm and qualified into their real estate team. With several years' experience on the ground, working in house and in private practice, Mr Carroll has an in-depth understanding of real estate law and practice in the UAE. He has advised on a wide range of real estate transactions, including sales and acquisitions, real estate finance, industrial, commercial, residential, mixed-use and hotel and leisure developments, and landlord and tenant matters.

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