THE REAL ESTATE LAW REVIEW

SEVENTH EDITION

Editor
John Nevin

THE LAWREVIEWS

THE

Real Estate Law Review

Seventh Edition

Editor
John Nevin

THE LAWREVIEWS

PUBLISHER
Tom Barnes

SENIOR BUSINESS DEVELOPMENT MANAGER
Nick Barette

BUSINESS DEVELOPMENT MANAGERS
Thomas Lee, Joel Woods

ACCOUNT MANAGERS
Pere Aspinall, Sophie Emberson,
Laura Lynas, Jack Bagnall

PRODUCT MARKETING EXECUTIVE
Rebecca Mogridge

RESEARCHER
Arthur Hunter

EDITORIAL COORDINATOR
Gavin Jordan

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITOR
Claire Ancell

SUBEDITOR
Gina Mete

CHIEF EXECUTIVE OFFICER
Paul Howarth

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.TheLawReviews.co.uk

ISBN 978-1-912228-18-8

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE MINING LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW

THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

THE CARTELS AND LENIENCY REVIEW

THE TAX DISPUTES AND LITIGATION REVIEW

THE LIFE SCIENCES LAW REVIEW

THE INSURANCE AND REINSURANCE LAW REVIEW

THE GOVERNMENT PROCUREMENT REVIEW

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

AL TAMIMI & COMPANY

ALI BUDIARDJO, NUGROHO, REKSODIPUTRO

BELLWETHER GREEN

BERNITSAS LAW

BINDER GRÖSSWANG RECHTSANWÄLTE GMBH

BIRD & BIRD

BONELLIEREDE

CMS REICH-ROHRWIG HAINZ

CORDATO PARTNERS LAWYERS, BUSINESS, PROPERTY AND TOURISM LAWYERS

DE PARDIEU BROCAS MAFFEI

DENTONS

DLA PIPER

ESTUDIO BECCAR VARELA

HERBERT SMITH FREEHILLS CIS LLP

IGLESIAS, POZAS Y PÁEZ

LEE AND LI, ATTORNEYS-AT-LAW

LIEDEKERKE WOLTERS WAELBROECK KIRKPATRICK

MAPLES AND CALDER

N. DOWUONA & COMPANY

NIEDERER KRAFT & FREY

NISHIMURA & ASAHI

ODVJETNIČKO DRUŠTVO BARDEK, LISAC, MUŠEC, SKOKO D.O.O. IN COOPERATION WITH CMS REICH-ROHRWIG HAINZ

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

PETRIKIĆ & PARTNERI AOD IN COOPERATION WITH CMS REICH-ROHRWIG HAINZ

POPOVICI NIȚU STOICA & ASOCIAȚII

SLAUGHTER AND MAY

SOŁTYSIŃSKI KAWECKI & SZLĘZAK

TSMP LAW CORPORATION

URÍA MENÉNDEZ

WOLF THEISS

CONTENTS

PREFACE

I am delighted to introduce the seventh edition of *The Real Estate Law Review*. This edition extends to 35 jurisdictions, and we are delighted to welcome new contributions from distinguished practitioners from around the world. I am very grateful to each and every contributor for their hard work and essential role in the continued success of the *Review*. Each chapter provides an invaluable insight into key legal issues and market trends in the author's jurisdiction and, together, they offer an up-to-date synopsis of the global real estate market.

The *Review* seeks to identify distinctions in practice between the different jurisdictions by highlighting particular local issues. We believe that this offers investors and occupiers and their professional advisers an invaluable guide to real estate investment outside of their own back yard. The years since the first edition, back in 2012, have confirmed that real estate is a truly global industry. Overseas investors are increasingly prepared to look beyond traditional markets and sectors in order to exploit international opportunities as and when they arise. Often, investors need to act quickly and we hope that the *Review* provides an advantageous starting point to understanding cross-border transactions in the light of the reader's own domestic forum.

International economic and political instability continues to have a significant effect on the global real estate market. In the UK, Brexit generates uncertainty as the negotiations for leaving the EU continue. However, the continued attraction of UK real estate to overseas investors confirms that each event or development in a particular country must be seen in a global context to ascertain the bigger picture. It is no longer possible to ignore globalisation and view real estate markets in isolation. Brexit notwithstanding, the UK remains a safe haven for investors from around the world and this year has seen record levels of investment in central London from overseas buyers.

In addition to all the distinguished authors, I would like to thank the *Law Review* team for their tireless work in compiling this seventh edition of *The Real Estate Law Review*.

John Nevin
Slaughter and May
London
February 2018

Chapter 35

UNITED ARAB EMIRATES

Iain Black 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 rights relating 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 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, as well as the federal and local laws that relate to it. The Abu Dhabi Global Market and Dubai International Financial Centre (DIFC), for example, each have their own property laws, register of property rights and forum for hearing disputes.

1 Iain Black 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.

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.

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 (outside the free zones).

i Ownership of real estate

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

a freehold: the most complete form of ownership with 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 property for a limited period and to construct buildings thereon (a property right); and

d leasehold: a right to use property for a limited period (a contractual right). Depending on the length of the contractual term, leases are further subdivided into short and long leases.

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) are subject to some restrictions in respect of Abu Dhabi property rights. Persons falling outside both categories (foreign nationals) are subject to the greatest restrictions. The local government can disapply these restrictions in specific areas. These powers have been used to create investment zones (Abu Dhabi) and freehold areas (Dubai), which are the least restrictive areas for property ownership.

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 and long leases should be registered with the Department of Municipal Affairs (Abu Dhabi Municipality) on its real estate register. The owner will receive a title certificate as proof of ownership.[7] Contracts for properties purchased off-plan should be registered with Abu Dhabi Municipality on its register of off-plan properties. Short leases should be registered with Abu Dhabi Municipality on its register of tenancy contracts (Tawtheeq).[8]

In Dubai, property rights and long leases should be registered with the Dubai Land Department on its real estate register. The owner will receive a title certificate as proof of ownership. Contracts for properties purchased off-plan should be registered with the Dubai

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.

7 To date, limited registration has taken place other than for UAE nationals.

8 There are certain exemptions from the registration requirement, depending on the use to which the property is put.

Land Department on its register of off-plan properties (Oqood). Short leases should be registered with the the Real Estate Regulatory Authority (RERA) on its register of tenancy contracts (Ejari).[9]

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 Abu Dhabi's hydrocarbon wealth, Dubai embarked on a massive programme of real estate development to accelerate the diversification of its economy. Abu Dhabi has also taken 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) have grown rapidly. The investment zones (Abu Dhabi), freehold areas (Dubai) and free zones (with their advantageous corporate and tax regimes) have been integral to this development.

Despite the transformation 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 legal and regulatory systems have required time to develop and mature. A significant milestone was passed in 2014 with Morgan Stanley Capital International Inc upgrading the UAE and its bourses from frontier to emerging market status.

The global economic slowdown resulted in significant decreases in property prices and rents. As new projects reached completion, so oversupply exerted additional downward pressure. Since this time a combination of factors, including lower oil prices, fluctuations in global currency markets and wider geopolitical challenges, have contributed to suppressed market activity and reductions in government spending, resulting in reduced investment, pressure on wages and redundancies in certain sectors and decreases in property prices and rents.

Further decreases in property prices and rents may continue in 2018, with a particular concern being oversupply as new projects reach completion. Some commentators on the market have expressed the belief that rates of decrease will reduce during this period as the market progresses towards the next phase of the cycle.

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.

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

Foreign nationals, and entities owned in whole or in part by them (foreign entities), can own certain property rights in the investment zones of Abu Dhabi. The available property rights include ownership of apartments and floors in buildings (with no right to the underlying land), usufruct and musataha. The investment zones include projects such as Al Raha Beach, Reem Island and Saadiyat Island.

Foreign nationals and entities can hold leases of property located in the investment zones for a contractual term of up to 99 years. They can also hold leases of property located outside the investment zones but will be limited to a contractual term of 25 years.

GCC nationals, and entities incorporated in the UAE or GCC that are wholly owned by GCC nationals or in part with UAE nationals, can own the same property rights as foreign nationals and, in addition, freehold within the investment zones.

ii Foreign ownership in Dubai

Foreign nationals and foreign entities can own property rights in the freehold areas of Dubai. The available property rights include freehold, usufruct and musataha. The freehold areas include projects such as the Palm Jumeirah, Jumeirah Lakes Towers, Dubai Marina and Downtown Burj Khalifa.

Notwithstanding the above, the Dubai Land Department has implemented a policy that prevents the direct registration of property rights by foreign entities. Instead, it will permit registration by certain locally incorporated entities that have foreign nationals or foreign entities as shareholders. By establishing one of these entities as its subsidiary, to hold title, a foreign entity will be able to acquire the relevant property.[14]

Foreign nationals and entities can hold leases of property located in the freehold areas for a contractual term of up to 99 years. They can also hold leases of property located outside the freehold areas but will be limited to a contractual term of 10 years.

In Dubai there is no distinction between UAE and GCC nationals. They can own any of the recognised property interests throughout Dubai. However, entities incorporated in the GCC will be subject to the requirement to establish a locally incorporated subsidiary to hold title.

Finally, public joint stock companies incorporated in the UAE, irrespective of any shareholders that are foreign nationals, will be treated as UAE nationals and can, therefore, own any of the recognised property interests in Dubai.

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

14 See Section IV.ii, below.

IV STRUCTURING THE INVESTMENT

Property assets will often be acquired by a special purpose vehicle 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 should be formulated in light of the restrictions on foreign ownership and the requirement to register property rights. 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.[15]

i Asset or share acquisition

If the seller is a company, the purchaser may have the option of acquiring the asset (an asset deal) or shares in the owner of the asset (a share deal). In each case, any restrictions on ownership (for the asset or shares) should be identified. The ultimate structure by which the purchaser wishes to hold the asset should be identified to achieve the most efficient transfer method. This is particularly important in cases where a transfer (including a share transfer) will attract property transfer fees.

ii Abu Dhabi and Dubai companies

Abu Dhabi and Dubai companies encompass those incorporated in Abu Dhabi and Dubai (onshore and outside the free zones) and include limited liability companies and private joint stock companies. Where such a company has foreign nationals or entities as shareholders it will be considered a foreign national and subject to the same restrictions on ownership of property rights.

iii Free zone companies

An Abu Dhabi free zone company can hold rights over property within that free zone and Abu Dhabi's investment zones. A Dubai free zone company can hold rights over property within that free zone and Dubai's freehold areas. A recent change in practice has permitted free zone companies incorporated in the DIFC to acquire property within Dubai's freehold areas (outside the DIFC) without requiring the approval of the Dubai Land Department.

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

iv Free zone companies – offshore

A Dubai free zone company (offshore) incorporated in the Jebel Ali Free Zone can hold rights over property within that free zone and Dubai's freehold areas. Other offshore companies cannot register property rights over property located in Dubai's freehold areas.

v Foreign entities

Foreign entities encompass those incorporated outside the UAE, whether onshore in a jurisdiction such as England or offshore in a jurisdiction such as the British Virgin Islands.

A foreign entity can hold any of the recognised property rights over property located in Abu Dhabi's investment zones.

A foreign entity can no longer register property rights over property located in Dubai's freehold areas. The foreign entity will need to establish as its subsidiary one of the locally incorporated entities referred to above to hold title – for example, a free zone company (offshore) incorporated in the Jebel Ali Free Zone.[16]

vi Unregistered leases

Historically, where a foreign national or foreign entity wished to acquire premises for a long term in a location where it was not permitted to acquire a property right, it would enter into a long lease. The suitability of such arrangements has become increasingly uncertain, given the requirement to register all leases and the fact that the foreign national or foreign entity may be precluded from doing so owing to the nationality restrictions. There are also practical consequences of having an unregistered lease (e.g., the local authorities may refuse to issue or renew a company's business licence and utility companies may refuse to connect utilities).

vii Trusted owners

Should a foreign national or entity wish to exercise effective control over a property situated in an area where it is not permitted to acquire a property right, it may consider the trusted owner structure. A UAE national or entity 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 are the authorities primarily responsible for overseeing development, building regulations and planning controls (including change of use) in their respective emirates. Planning permission from the Abu Dhabi Urban Planning Council is required for all strategic developments in Abu Dhabi.

Buildings within an investment zone, freehold area or free zone may also be subject to the regulations and controls of the master developer or regulatory authority for that area.

16 See Section III.ii, above.

Local licensing requirements should also be observed. For example, a developer wishing to establish a new project in Abu Dhabi or Dubai must first register itself and its project with Abu Dhabi Municipality or RERA (as applicable).

ii Environment

Environmental law comprises laws at the federal and local levels and, within the free zones, free zone regulations. 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.[17] They must also undertake an environmental impact assessment for their project.[18]

Because environmental liabilities may pass with ownership of property, a prospective purchaser should consider what diligence and protections are appropriate, such as physical inspection and testing of the land and warranties from the seller in the purchase agreement (against which the seller should disclose any known issues).

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 zone, 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

Historically, no VAT (or equivalent) or stamp duty has been payable on the sale or purchase of real estate in the UAE. It has been announced that the UAE will introduce VAT in 2018 and may introduce corporate tax. See Section VIII, below, for an overview of the new VAT regime. The timeline and contents of the corporate tax regime have yet to be confirmed. Fees are also payable in respect of the registration of property interests.

There may be other costs associated with ownership or occupation. In Dubai, a fee is levied on non UAE residents and business occupiers (5 per cent of annual rent). Hospitality businesses such as hotels must pay a municipality tax (10 per cent of turnover) and per night per room fee (ranging from 7–20 dirhams, depending on hotel category). In Abu Dhabi, a fee is levied on non UAE residents (3 per cent of annual rent, subject to a minimum annual fee of 450 dirhams). Hospitality businesses such as hotels must pay a city tax (6 per cent of turnover) and municipality tax (4 per cent of turnover) and per night per room fee (15 dirhams).

iv Finance and security

Federal law outlines the basic principles regarding the creation of security, including mortgages, over real property. Provided a mortgage is validly created, the mortgagee will acquire a property right and will take precedence over ordinary creditors and creditors subsequent in rank in satisfaction of the debt from the proceeds of sale.

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

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

In Abu Dhabi, a local law and implementing regulations specifically relating to mortgages was introduced in 2016.[19] Historically, actual registration of mortgages reflected the overall registration of property interests in Abu Dhabi (mostly completed by UAE nationals outside the investment zones). Consequently, many funders chose to utilise an unregistered mortgage combined with a conditional assignment of the mortgagor's rights to the property. Should the borrower default, the funder would exercise its step-in rights and take control of the property. This scenario is changing following the introduction of processes for wider registration of property interests in Abu Dhabi.

In Dubai, a local law specifically relating to mortgages was introduced a decade ago.[20] 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 with the UAE Central Bank, and that the mortgagor be the owner of the property or property right and able to dispose of it. Actual registration of mortgages is readily available and completed.

VI LEASES OF BUSINESS PREMISES

A common feature of business leases is landlord-friendly terms coupled with resistance on the part of landlords to accept tenant amendments. In the past, with no limits on rent increases or security of tenure, landlords held the upper hand.

Abu Dhabi and Dubai have responded with legislation and institutions (at the local level) to regulate the landlord-tenant relationship in respect of short leases (commonly known as tenancy agreements). The global economic slowdown and challenges currently facing the market have seen landlords increasingly likely to offer inducements and agree amendments to their standard terms.

The following outlines the position in respect of short leases.

i Lease negotiations

The lease registration systems of Abu Dhabi and Dubai have a standard lease template (standard lease). The standard lease can be supplemented with more detailed terms, though these must not contradict any mandatory requirements of the law or the standard lease.

It is common to encounter forms of lease comprising just the standard lease with perhaps one or two additional pages of more detailed terms. Such leases generally address basic terms in a simple manner with negotiations accordingly limited. Leases in prime developments and those requiring more complex terms, such as units in large office buildings and shopping malls, will generally be longer, resulting in greater potential for negotiation of more detailed matters.

ii Term of occupation

Terms of occupation are generally short (commonly between one and five years).[21]

19 Abu Dhabi Law No. 3 of 2015 Regulating the Real Estate Sector in the Emirate of Abu Dhabi and Abu Dhabi Municipality Decision No. 249 of 2015 issuing the Executive Regulations on Mortgages in accordance with Law No. 3 of 2015 Regulating Real Estate Sector in the Emirate of Abu Dhabi.

20 Dubai Law No. 14 of 2008.

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

In Abu Dhabi, local law imposes a presumption of renewal but no security of tenure. The landlord is free to terminate the lease at the end of its contractual term, provided it serves the required period of notice. If the landlord fails to serve notice, and the tenant remains in occupation, the lease will renew for a similar term.

In Dubai, local law imposes a presumption of renewal and security of tenure protection for tenants. If the landlord does not establish a permitted ground for opposing renewal, then the lease will automatically renew 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

In both Abu Dhabi and Dubai, local law limits the maximum increase a landlord can apply (known as the rent cap). In Abu Dhabi, the maximum annual rent increase permitted under the rent cap is 5 per cent of the annual rent. In Dubai, the maximum annual rent increase permitted under the rent cap is between 5 per cent 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, local law requires that the tenant carry out those simple repairs that, by convention, fall to be carried out by the tenant (unless otherwise agreed by the parties).

In Dubai, local law requires that the tenant return the premises to the landlord in the condition they were in at the beginning of the term, subject to normal wear and tear (unless otherwise agreed by the parties).

In both Abu Dhabi and Dubai, the landlord must carry out those repairs necessary to maintain the structure and ensure the premises are fit for use (unless otherwise agreed by the parties).

v Subletting and assigning the lease

In both Abu Dhabi and Dubai, local laws require the landlord's prior consent before a short lease can be assigned or a subtenancy granted (unless otherwise agreed by the parties).

vi Termination

In Abu Dhabi, local law sets out the grounds on which a landlord can terminate a lease prior to the expiry of its contractual term. At the end of the contractual term the landlord is free to serve notice that the lease will not renew.

In Dubai, local law sets out the grounds on which a landlord can terminate a lease prior to the expiry of its contractual term (such as non-payment of rent by the tenant). Tenants in Dubai enjoy security of tenure at the end of the contractual term, with the law setting out separate grounds on which the landlord may terminate the lease (such as the landlord's right to redevelop).

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 – new VAT law

The new VAT law (the VAT law), which introduces VAT to the UAE, will come into effect from 1 January 2018.[22] The key features for the property sector include:

a taxable supplies: the provision of real estate for lease and sale will be a taxable supply;

b rating of supplies: supplies will be rated as:
- exempt, where no VAT is chargeable;
- zero rated, where VAT is chargeable at a zero rate; or
- standard rated, where VAT is chargeable at 5 per cent;

c categories of supply: the VAT law differentiates the main taxable supplies as follows:
- sale of bare land: exempt from VAT;[23]
- sale of residential property: the first-time supply (such as new apartments by developers) within three years of completion will be zero rated.[24] Subsequent supplies (such as onward sales) will be exempt from VAT;[25]
- lease of residential property: the first-time supply within three years of completion will be zero rated.[26] Subsequent supplies will be exempt from VAT;[27]
- sale of commercial property: standard rated;[28]
- lease of commercial property: standard rated;[29] and
- associated supplies (such as service and utility charges): standard rated;[30]

d residential property: does not include hotel or bed and breakfast establishments;[31]

e commercial property: additional considerations include:
- where the term of a commercial lease spans 1 January 2018, VAT will be chargeable from this date notwithstanding the fact that the rent has previously been paid by the tenant;[32]
- where a commercial lease does not provide for VAT, the rent will be deemed inclusive of VAT (with no additional payment required from the tenant).[33] Conversely, if the tenant and the landlord are both registered for VAT, the rent will be deemed exclusive of VAT (with VAT payable in addition by the tenant);[34]

22 Federal Law No. 8 of 2017 On Value-Added Tax (VAT) and Federal Cabinet Decision No. 52 of 2017 On the Executive Regulations of the Federal Law No. 8 of 2017 On Value-Added Tax (VAT).

23 Article 46(3) of Federal Law No. 8 of 2017 On Value-Added Tax (VAT).

24 Article 45(9) of Federal Law No. 8 of 2017 On Value-Added Tax (VAT).

25 Article 46(2) of Federal Law No. 8 of 2017 On Value-Added Tax (VAT).

26 Article 45(9) of Federal Law No. 8 of 2017 On Value-Added Tax (VAT).

27 Article 46(2) of Federal Law No. 8 of 2017 On Value-Added Tax (VAT).

28 Articles 2, 3 and 5 of Federal Law No. 8 of 2017 On Value-Added Tax (VAT).

29 Articles 2, 3 and 5 of Federal Law No. 8 of 2017 On Value-Added Tax (VAT).

30 Articles 2, 3 and 6 of Federal Law No. 8 of 2017 On Value-Added Tax (VAT).

31 Article 37(2)(b) of Federal Cabinet Decision No. 52 of 2017 On the Executive Regulations of Federal Law No. 8 of 2017 On Value-Added Tax (VAT).

32 Article 80 of Federal Law No. 8 of 2017 On Value-Added Tax (VAT).

33 Article 80(2) of Federal Law No. 8 of 2017 On Value-Added Tax (VAT).

34 Article 70(6) of Federal Cabinet Decision No. 52 of 2017 On the Executive Regulations of Federal Law No. 8 of 2017 On Value-Added Tax (VAT). In this event the overall VAT effect for the tenant should be neutral as it should be able to recover the VAT element from the government (against output VAT charged by the tenant).

- a capital assets scheme provides for input tax in respect of buildings to be split over 10 years where a threshold value and other conditions are met;[35]
- the duty to account to the government for VAT vests in the seller or landlord (who will be liable for any shortfall);[36]
- it has yet to be confirmed whether any transfer fees charged by the Dubai Land Department will be calculated on the property's value (price or rent) inclusive or exclusive of any applicable VAT; and
- record-keeping: VAT records must be maintained for a minimum period of 15 years.[37]

ii Abu Dhabi – rent cap

A rent cap (limiting annual increases to 5 per cent of the annual rent) was re-introduced in December 2016.[38] While this change was not expected, given the general softening of rental levels, the additional protection has been welcomed by tenants nonetheless.

iii Dubai – cancellation of off-plan property contracts

The process by which developers can cancel off-plan property contracts has been amended.[39] The key features of the new process are:

a the developer must complete a form notifying the Dubai Land Department of the purchaser's default and the Dubai Land Department will then notify the purchaser of the default and provide 30 days for it to be remedied;

b if the purchaser does not remedy the default within the permitted period, then the Dubai Land Department will issue an order in favour of the developer permitting it to undertake one of the following actions:

- where the project is more than 80 per cent complete, then the developer can: (1) continue with the contract and claim the outstanding amount from the purchaser; (2) ask the Dubai Land Department to sell the off-plan property by public auction to recover the outstanding amount; or (3) terminate the off-plan property contract and retain up to 40 per cent of the purchase price;
- where the project is 60–80 per cent complete, then the developer can terminate the off-plan property contract and retain up to 40 per cent of the purchase price;
- where the project is less than 60 per cent complete, then the developer can terminate the off-plan property contract and retain up to 25 per cent of the purchase price;
- where the project has not commenced construction, other than due to the developer's default, then the developer can terminate the off-plan property contract and retain up to 30 per cent of the purchase price;

35 Article 60 of Federal Law No. 8 of 2017 On Value-Added Tax (VAT) and Article 57 of Federal Cabinet Decision No. 52 of 2017 On the Executive Regulations of the Federal Law No. 8 of 2017 On Value-Added Tax (VAT).

36 Article 4(1) of Federal Law No. 8 of 2017 On Value-Added Tax (VAT).

37 Article 71(2) of Federal Law No. 8 of 2017 On Value-Added Tax (VAT).

38 Abu Dhabi Executive Council Decision No. 14 of 2016 On Lease Contracts.

39 Dubai Law No. 19 of 2017 Amending Certain Provisions of Dubai Law No. 13 of 2008 Regulating the Interim Real Estate Register in the Emirate of Dubai.

c if the developer terminates the off-plan property contract, then the developer can retain the permitted proportion of the purchase price (as above) and must repay the balance of the amounts paid by the purchaser within one year of the contract being terminated or 60 days of the unit being sold to another purchaser, whichever is earlier; and

d the amended process does not exclude a purchaser's right to refer the matter to court or arbitration (as applicable) where there is a genuine dispute.

iv Dubai – acquisition of property by DIFC companies

A memorandum of understanding has been entered into between the Dubai Land Department and DIFC Authority permitting free zone companies incorporated in the DIFC to acquire property within Dubai's freehold areas (outside the DIFC) without requiring the approval of the Dubai Land Department.

v Dubai – regulation of surveying activities

A new law has been introduced to regulate land, water and seismic surveying in Dubai.[40] Under the law, the Dubai Municipality is authorised to regulate these activities and the production of cadastral plans and planning maps. It can issue permits to persons wishing to practise the surveying profession and impose fines for practising without a permit (up to 50,000 dirhams for the first offence).

vi Dubai – committee for building permits

A new law has been introduced to establish a committee that will develop regulations and procedures to improve the process for issuing building permits.[41]

VIII OUTLOOK AND CONCLUSIONS

In Abu Dhabi, the implementation of new property laws introduced in 2016 and procedures for the registration of property interests has continued. There is now a clearer regime for the regulation of property interests and widely utilised system for their registration. This is one of the most important success stories for Abu Dhabi real estate in recent times.

In Dubai, the local government has continued to focus on the refinement (where necessary) of the regulatory regime and protections afforded to investors and funders in order to promote sustainable growth in the property market. The most recent initiatives (mentioned in Section VII, above) illustrate the increasing scope and maturity of Dubai's regulatory regime.

The focus for the coming year will undoubtedly be the impact of the VAT law on real estate and transactions across the UAE. This is another ambitious project that will require time for implementation and for practices to become established. It is set against the backdrop of a challenging time for the property sector. While the cost of many transactions will increase, the introduction of VAT will provide a new source of revenue for the government, which, in turn, should support government investment in infrastructure and real estate projects to the benefit of the sector as a whole.

40 Dubai Law No. 6 of 2017 On the Regulation of Land Survey Work in the Emirate of Dubai.

41 Dubai Resolution No. 3 of 2017 Forming the Committee for Building Permit Procedures Development in the Emirate of Dubai.

Appendix 1

ABOUT THE AUTHORS

DENTONS

Level 18, Boulevard Plaza 2
Burj Khalifa District
PO Box 1756
Dubai
United Arab Emirates
Tel: +971 4 402 0800
Fax: +971 4 325 3350
iain.black@dentons.com
joe.carroll@dentons.com
www.dentons.com

JOE CARROLL

Dentons

Joe is a 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, Joe trained with a law firm in the City of London before qualifying into its real estate team. With many years' experience on the ground, working in house and in private practice, Joe 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.

IAIN BLACK

Dentons

Iain is a partner in the corporate and commercial team based in the Dubai office of Dentons. He regularly advises on various corporate and commercial transactions including domestic and international mergers and acquisitions, private equity, joint ventures, restructurings, company establishments and equity capital markets. Iain has particular expertise in advising on corporate real estate transactions across the Middle East and Africa, including advising on the sales and acquisitions of hotel and leisure developments and advising landowners, investors and developers across a range of real estate projects.

Law
Business
Research

ISBN 978-1-912228-18-8