

THE REAL ESTATE  
LAW REVIEW

EIGHTH EDITION

Editor  
John Nevin

THE LAWREVIEWS

# THE REAL ESTATE LAW REVIEW

EIGHTH EDITION

Reproduced with permission from Law Business Research Ltd

This article was first published in March 2019

For further information please contact [Nick.Barette@thelawreviews.co.uk](mailto:Nick.Barette@thelawreviews.co.uk)

**Editor**

John Nevin

THE LAWREVIEWS

PUBLISHER

Tom Barnes

SENIOR BUSINESS DEVELOPMENT MANAGER

Nick Barette

BUSINESS DEVELOPMENT MANAGER

Joel Woods

SENIOR ACCOUNT MANAGERS

Pere Aspinall, Jack Bagnall

ACCOUNT MANAGERS

Sophie Emberson, Katie Hodgetts

PRODUCT MARKETING EXECUTIVE

Rebecca Mogridge

RESEARCH LEAD

Kieran Hansen

EDITORIAL COORDINATORS

Gavin Jordan, Tommy Lawson

HEAD OF PRODUCTION

Adam Myers

PRODUCTION EDITOR

Louise Robb

SUBEDITOR

Anna Andreoli

CHIEF EXECUTIVE OFFICER

Paul Howarth

Published in the United Kingdom

by Law Business Research Ltd, London

87 Lancaster Road, London, W11 1QQ, UK

© 2019 Law Business Research Ltd

[www.TheLawReviews.co.uk](http://www.TheLawReviews.co.uk)

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as at February 2019, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above.

Enquiries concerning editorial content should be directed  
to the Publisher – [tom.barnes@lbresearch.com](mailto:tom.barnes@lbresearch.com)

ISBN 978-1-83862-009-7

Printed in Great Britain by

Encompass Print Solutions, Derbyshire

Tel: 0844 2480 112

# ACKNOWLEDGEMENTS

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

ALI BUDIARDJO, NUGROHO, REKSODIPUTRO

ALLEN & OVERY SCS

AL TAMIMI & COMPANY

AUMENTO LAW FIRM

BELLWETHER GREEN

BINDER GRÖSSWANG RECHTSANWÄLTE GMBH

BIRD & BIRD

CHIOMENTI

CORDATO PARTNERS LAWYERS

DENTONS

DE PARDIEU BROCAS MAFFEI

DLA PIPER

ESTUDIO BECCAR VARELA

GUZMÁN ARIZA

HENGELER MUELLER

HERBERT SMITH FREEHILLS CIS LLP

LIEDEKERKE WOLTERS WAELEBROECK KIRKPATRICK

MAPLES GROUP

N.DOWUONA & COMPANY

NIEDERER KRAFT FREY

NISHIMURA & ASAHI

NORTON ROSE FULBRIGHT SOUTH AFRICA INC.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

PINHEIRO NETO ADVOGADOS

POPOVICI NIȚU STOICA & ASOCIAȚII

SLAUGHTER AND MAY

SOŁTYSIŃSKI KAWECKI & SZŁĘZAK

TSMP LAW CORPORATION

URÍA MENÉNDEZ

WOLF THEISS

# CONTENTS

PREFACE.....	vii
<i>John Nevin</i>	
Chapter 1      BREXIT AND REAL ESTATE.....	1
<i>John Nevin</i>	
Chapter 2      ARGENTINA.....	5
<i>Pedro Nicholson and Delfina Calabró</i>	
Chapter 3      AUSTRALIA.....	15
<i>Anthony J Cordato</i>	
Chapter 4      AUSTRIA.....	26
<i>Tibor Fabian and Markus Uitz</i>	
Chapter 5      BELGIUM .....	35
<i>Yves Delacroix and Alexandre Emond</i>	
Chapter 6      BRAZIL.....	46
<i>Franco Grotti and Guilherme de Toledo Piza</i>	
Chapter 7      CAYMAN ISLANDS.....	55
<i>George Loutas</i>	
Chapter 8      DENMARK.....	64
<i>Torben Mauritzen</i>	
Chapter 9      DOMINICAN REPUBLIC.....	76
<i>Fabio J Guzmán Ariza, Christoph Sieger and Alfredo Guzmán Saladín</i>	
Chapter 10     ENGLAND AND WALES.....	82
<i>John Nevin</i>	

Chapter 11	FRANCE.....	96
	<i>Pierre Gebarowski and Guillaume Rossignol</i>	
Chapter 12	GERMANY.....	113
	<i>Jan Bonhage and Thomas Lang</i>	
Chapter 13	GHANA .....	126
	<i>NanaAma Botchway</i>	
Chapter 14	HONG KONG .....	136
	<i>Dennis Li</i>	
Chapter 15	INDONESIA.....	146
	<i>Ayik Candrawulan Gunadi and Tania Faramutia</i>	
Chapter 16	ITALY .....	157
	<i>Umberto Borzi</i>	
Chapter 17	JAPAN .....	166
	<i>Norio Maeda, Takuya Shimizu, Keisuke Yonamine and Yujin Gen</i>	
Chapter 18	LUXEMBOURG.....	183
	<i>Serge Hoffmann and Philippe Eicher</i>	
Chapter 19	NETHERLANDS.....	193
	<i>Max van Drunen and Leen van der Marel</i>	
Chapter 20	POLAND .....	204
	<i>Janusz Siekański and Radosław Waszkiewicz</i>	
Chapter 21	QATAR.....	214
	<i>Nicola de Sylva</i>	
Chapter 22	ROMANIA .....	225
	<i>Valentin Creața</i>	
Chapter 23	RUSSIA .....	238
	<i>Sergey Kolobov</i>	
Chapter 24	SCOTLAND .....	249
	<i>John Bingham</i>	

Chapter 25	SINGAPORE.....	261
	<i>Jennifer Chia, Yvonne Lian and Zan Wong</i>	
Chapter 26	SLOVENIA.....	277
	<i>Markus Bruckmüller and Petra Jermol</i>	
Chapter 27	SOUTH AFRICA .....	287
	<i>Pieter Hugo Niehaus</i>	
Chapter 28	SPAIN.....	295
	<i>Diego Armero and Rodrigo Peruyero</i>	
Chapter 29	SWEDEN.....	305
	<i>Jan Berg and Carl-Magnus Uggla</i>	
Chapter 30	SWITZERLAND .....	314
	<i>Andreas F Vögeli and Oliver Zbinden</i>	
Chapter 31	UNITED ARAB EMIRATES .....	323
	<i>Iain Black and Joe Carroll</i>	
Chapter 32	UNITED STATES .....	337
	<i>Meredith J Kane</i>	
Appendix 1	ABOUT THE AUTHORS.....	353
Appendix 2	CONTRIBUTORS' CONTACT DETAILS.....	369



# PREFACE

I am delighted to introduce the eighth edition of *The Real Estate Law Review*. The continued success of the *Review* confirms its relevance to real estate practitioners and their clients. Real estate is increasingly viewed on a global basis and readers can only benefit from a general understanding of how individual jurisdictions operate within the global real estate market.

This edition extends to 31 jurisdictions, and we are delighted to welcome new contributions from distinguished practitioners from around the world. I am very grateful to all contributors for their hard work and essential role in compiling this eighth edition. 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 their own domestic market. Overseas investors are increasingly prepared to look beyond traditional markets and sectors 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-generated uncertainty remains as negotiations for leaving the EU are still ongoing as we approach the 29 March 2019 deadline. 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 investment levels in London and the wider UK market remain buoyant.

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

**John Nevin**  
Slaughter and May  
London  
February 2019

# UNITED ARAB EMIRATES

*Iain Black and Joe Carroll<sup>1</sup>*

## 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)<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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 (ADGM) 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);<sup>5</sup>
- 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.<sup>6</sup> 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 Urban Planning and Municipalities (Abu Dhabi Municipality) on its real estate register. The owner will receive a title certificate as proof of ownership.<sup>7</sup> 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).<sup>8</sup>

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

---

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

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

<sup>7</sup> To date, limited registration has taken place other than for UAE nationals.

<sup>8</sup> 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 Real Estate Regulatory Authority (RERA) on its register of tenancy contracts (Ejari).<sup>9</sup>

### iii Choice of law

Under the Civil Code, possession, ownership and other rights over real property<sup>10</sup> and contracts dealing with them<sup>11</sup> 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.<sup>12</sup>

## 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 a similar 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 fluctuations in oil prices and global currency markets and wider geopolitical challenges, have contributed to suppressed market activity and investment and decreases in property prices and rents.

Despite the continuing presence of these factors, the UAE real estate market continues to demonstrate its ability to evolve and adapt. A number of new laws and initiatives (in real estate and other sectors) have been announced by local government (see Section VIII, below). The private sector is also taking advantage of opportunities to find new markets within the UAE. For example, by augmenting the existing luxury hotel and housing projects with mid-market offerings and the establishment of real estate investment trusts (REITs).

---

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.<sup>13</sup> The restrictions attach to both natural and legal persons. Because 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.<sup>14</sup>

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.<sup>15</sup>

### 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 recent change in practice has also permitted free zone companies incorporated in the ADGM to acquire property within Dubai's freehold areas.<sup>16</sup>

A Dubai free zone company can hold rights over property within that free zone and Dubai's freehold areas. Additional restrictions may apply in cases where the Dubai free zone company has foreign nationals or entities as shareholders. For example, only recently have

---

<sup>15</sup> Article 26 of Dubai Law No. 7 of 2006.

<sup>16</sup> <https://www.adgm.com/mediacentre/press-releases/dubai-land-department-signs-mou-with-adgm-registration-authority-to-bolster-dubais-real-estate-sector/>

free zone companies incorporated in the DIFC been permitted to acquire property within Dubai's freehold areas (outside the DIFC) without requiring the approval of the Dubai Land Department.<sup>17</sup>

#### **iv Free zone companies – offshore**

A Dubai free zone company (offshore) can hold rights over property incorporated within that free zone and Dubai's freehold areas. Additional restrictions may apply in cases where the Dubai free zone company (offshore) has foreign nationals or entities as shareholders. In such cases, only those types of Dubai free zone company (offshore) permitted by the Dubai Land Department will be able to hold rights over property. For example, the Dubai Land Department currently permits offshore companies incorporated in the Jebel Ali Free Zone to 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) a locally incorporated entity permitted by the Dubai Land Department to hold title – for example, a free zone company (offshore) incorporated in the Jebel Ali Free Zone.<sup>18</sup>

#### **vi Unregistered leases**

Historically, where a foreign national or 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.

---

17 <https://www.difc.ae/newsroom/news/difc-drives-institutional-real-estate-investment-through-memorandum-understanding-dubai-land-department/>

18 See Section III.ii, above.

## **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.

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. 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.<sup>19</sup> They must also undertake an environmental impact assessment for their project.<sup>20</sup>

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**

The value added tax law (the VAT law), which introduced VAT to the UAE, came into effect from 1 January 2018.<sup>21</sup> 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 (1) exempt, where no VAT is chargeable; (2) zero rated, where VAT is chargeable at a zero rate; or (3) standard rated, where VAT is chargeable at 5 per cent;
- c* categories of supply: the VAT law differentiates the main taxable supplies (in general terms) as follows:
  - sale of bare land: exempt from VAT;<sup>22</sup>

---

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

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

21 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).

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



- sale of residential property: the first-time supply (such as new apartments by developers) within three years of completion will be zero rated.<sup>23</sup> Subsequent supplies (such as onward sales) will be exempt from VAT;<sup>24</sup>
  - lease of residential property: the first-time supply within three years of completion will be zero rated.<sup>25</sup> Subsequent supplies will be exempt from VAT;<sup>26</sup>
  - sale of commercial property: standard rated;<sup>27</sup>
  - lease of commercial property: standard rated;<sup>28</sup> and
  - associated supplies (such as service and utility charges): standard rated;<sup>29</sup>
- d residential property: does not include hotel or bed and breakfast establishments.<sup>30</sup>

It has also previously been announced that the UAE may introduce corporate tax; however, 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 (7 per cent of turnover) and per night per room fee (ranging from seven to 20 dirhams, depending on hotel category). In Abu Dhabi, a fee is levied on non-UAE residents and business occupiers (5 per cent of annual rent for all premises other than residential villas and 7.5 per cent of annual rent for residential villas, subject to a minimum annual fee of 450 dirhams). Hospitality businesses such as hotels must pay a tourism fee (3.5 per cent of turnover) and municipality tax (2 per cent of turnover) and per night per room fee (10 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.

In Abu Dhabi, a local law and implementing regulations specifically relating to mortgages was introduced in 2016.<sup>31</sup> 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

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

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

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

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

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

28 *ibid.*

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

30 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).

31 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.

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 in 2008.<sup>32</sup> 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).<sup>33</sup>

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).

---

32 Dubai Law No. 14 of 2008.

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

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 – implementation of VAT law**

Since the introduction of VAT on 1 January 2018, significant progress has been made in implementing the new regime. The Federal Tax Authority (FTA) is responsible for the

administration and enforcement of VAT.<sup>34</sup> The FTA has released a real estate VAT guide, which helps to clarify a number of areas relating to real property.<sup>35</sup> The topics include (among others) mixed use developments, supply of accommodation in labour camps, leasing land for development, partially completed buildings, development of commercial infrastructure and the treatment of owners' associations and the services they purchase and provide.

## ii Abu Dhabi – new schedule of fees for real estate

A new schedule of fees has been issued for real property in Abu Dhabi.<sup>36</sup> The key features are:

- a* registration fees: the Executive Committee is empowered to change the rates of registration fees applicable to certain real property transactions.<sup>37</sup> For example, it may change the rate of the registration fee for transfers of ownership, provided that the new rate is not less than 1 per cent and is not more than 4 per cent of the property's value;<sup>38</sup>
- b* fees on vacant lands: the Executive Committee is empowered to introduce fees on undeveloped urban lands (excluding residential lands) that have surrounding infrastructure services (also known as a 'white land tax'). These fees will be applicable upon issuance by the Executive Committee of a further resolution.<sup>39</sup> The permissible fee rate is not less than 1 per cent and not more than 4 per cent of the land's value;<sup>40</sup>
- c* municipality fees: the Executive Committee is empowered to change the rates used to calculate the municipality fees payable by tenants of premises in Abu Dhabi (also known as the housing fee), provided that the new rates are not less than 2.5 per cent and not more than 10 per cent of the annual rent payable.<sup>41</sup> The rates were changed during the course of 2018;<sup>42</sup> and

---

34 The FTA was formed pursuant to UAE Federal Law No. 13 of 2016 on the Establishment of the FTA.

35 Real Estate VAT Guide (VATGRE1) issued by the FTA and available at <https://www.tax.gov.ae/pdf/real-estate-guide-vargre1.pdf>.

36 Abu Dhabi Resolution No. 49 of 2018 of the Chairman of the Executive Council on Municipal Services Fees in the Emirate of Abu Dhabi.

37 Article 9 of Abu Dhabi Resolution No. 49 of 2018 of the Chairman of the Executive Council on Municipal Services Fees in the Emirate of Abu Dhabi. The Executive Committee is comprised of chair people from various local government departments and was established pursuant to Abu Dhabi Executive Council Chairman Resolution No. 53 of 2006.

38 Item 1 of Part 1 (Property Registration Fees) of the fee schedule annexed to Abu Dhabi Resolution No. 49 of 2018 of the Chairman of the Executive Council on Municipal Services Fees in the Emirate of Abu Dhabi. At the time of writing, this power had not been used and the fee rate remained at 2 per cent of the property's value.

39 At the time of writing, such a resolution had not been issued.

40 Article 8 of Abu Dhabi Resolution No. 49 of 2018 of the Chairman of the Executive Council on Municipal Services Fees in the Emirate of Abu Dhabi.

41 Article 4 of Abu Dhabi Resolution No. 49 of 2018 of the Chairman of the Executive Council on Municipal Services Fees in the Emirate of Abu Dhabi. The municipality fees are imposed on tenants of premises in Abu Dhabi (with the exception of UAE nationals) and are calculated by reference to the annual rent payable under their lease.

42 At the time of writing, the housing fee was 5 per cent for all premises other than residential villas and 7.5 per cent for residential villas (calculated, in each case, by reference to the annual rent) with a minimum amount to pay of 450 dirhams (<https://www.addc.ae/en-US/residential/Pages/Municipality-Fee.aspx>).

- d* infrastructure fee: a one-time infrastructure fee will be payable on certain commercial and investment lands. The fees range from 80 dirhams to 100 dirhams per metre<sup>2</sup> of the land, depending on where it is located.<sup>43</sup>

### **iii Abu Dhabi – creation of Department of Urban Planning and Municipalities**

The Department of Municipal Affairs and Transport and the Abu Dhabi Urban Planning Council have been merged to create a new authority named the Department of Urban Planning and Municipalities.<sup>44</sup>

### **iv Abu Dhabi – new procedures to expedite tenancy disputes**

The chairman of the Abu Dhabi Judicial Department has issued a resolution setting out a number of new procedures designed to expedite the progress of disputes relating to tenancy contracts. The key features include the ability for an expert to provide its opinion verbally during a hearing, for disputes to be considered in the absence of a party that does not attend and enhanced procedures for landlords to inspect occupied premises and recover possession in the event of default by the tenant.<sup>45</sup>

### **v Abu Dhabi – standard form broker contract and caps on fees of developers and brokers**

The chairman of the Abu Dhabi Municipality has issued a resolution to regulate the fees charged by real estate developers and brokers. The key features are:

- a* broker commission fees: fees for sales are set at 2 per cent of the purchase price, up to a maximum of 500,000 dirhams, and for leases (unless otherwise agreed by the parties) at 5 per cent of the total rent under the lease;<sup>46</sup>
- b* standard form broker contracts: standard form brokerage and sub-brokerage contracts have been issued;<sup>47</sup> and
- c* developer administration fees: fees for administrative processes relating to property disposals (for example, the issuance of no objection certificates) are not to exceed 5,000 dirhams.<sup>48</sup>

### **vi Dubai – acquisition of property by ADGM companies**

A memorandum of understanding has been entered into between the Dubai Land Department and ADGM Authority permitting free zone companies incorporated in the ADGM to acquire property within Dubai's freehold areas (outside the ADGM).<sup>49</sup>

---

<sup>43</sup> Article 7 of Abu Dhabi Resolution No. 49 of 2018 of the Chairman of the Executive Council on Municipal Services Fees in the Emirate of Abu Dhabi.

<sup>44</sup> Article 2 of Abu Dhabi Law No. 5 of 2018 establishing the Department of Urban Planning and Municipalities.

<sup>45</sup> Articles 3(2), 8, 16 and 17 of Resolution No. 25 of 2018 of the Chairman of the Abu Dhabi Judicial Department Concerning Lease Dispute Resolution Committees and the Procedures Followed Before Them.

<sup>46</sup> Article 1 of Resolution of No. 183 of 2017 of the Chairman of Abu Dhabi Municipality.

<sup>47</sup> Article 1 and Appendix of Resolution of No. 183 of 2017 of the Chairman of Abu Dhabi Municipality.

<sup>48</sup> Article 2 of Resolution of No. 183 of 2017 of the Chairman of Abu Dhabi Municipality.

<sup>49</sup> <https://www.adgm.com/mediacentre/press-releases/dubai-land-department-signs-mou-with-adgm-registration-authority-to-bolster-dubais-real-estate-sector/>

**vii Dubai – redevelopment of Al Jadaf locality**

As part of the continued development of the Dubai Creek area, a decree has been issued providing for the redevelopment of the Al Jadaf locality and the payment of compensation to affected parties.<sup>50</sup>

**viii Dubai – Urban Plan 2040**

A resolution has been issued providing for the establishment of the Supreme Committee and Executive Body that will advise on preparation of the Dubai Urban Plan 2040.<sup>51</sup> This will follow the existing urban master plan applicable until 2020.

**VIII OUTLOOK AND CONCLUSIONS**

The past year has witnessed significant progress in the implementation of the new VAT regime for the UAE. The introduction of VAT was, without doubt, a major challenge for businesses and authorities alike. This will continue to be an area of considerable focus in the immediate future, as both the processes of the new regime and understanding of its requirements in complex scenarios become increasingly developed and established.

In Abu Dhabi, a number of new laws and regulations have been introduced in recent years to regulate the property sector. An important milestone in the development of the regulatory regime was the introduction of Abu Dhabi No. 3 of 2015 (on the Regulation of Real Estate Sector in the Emirate of Abu Dhabi) and its implementing regulations (the Regulation Law). Since this time, further laws and regulations have been issued to address specific issues provided for in the Regulation Law and to procure compliance with the new regime. Forthcoming years are expected to see a continuing focus on such implementation and compliance measures.

In Dubai, the past year was quieter in terms of the issuance of new laws and regulations than some previous years. Areas for improvement do, however, remain under review, with the local government ready to propose new laws to address any issues identified. For example, it has been reported in the press that Dubai's tenancy laws are currently under review. A new regime in this area would be a significant development. At present, Dubai's tenancy laws are largely the same for residential and commercial leases. There is significant potential to develop a regime that is more targeted to the specific needs of stakeholders in each of these areas. This is an area that will be keenly watched by tenants and landlords in the forthcoming year.

While the prevailing economic conditions continue to pose questions of the real estate sector in the UAE, businesses are continuing to identify areas for exploitation and growth while the federal and local governments are continuing to pursue their mandate of carefully developing and fostering the regulatory regime. For example, real estate investment trusts (REITs) are becoming increasingly popular with real estate companies and investors alike. These schemes provide an attractive source of funding for real estate companies (and at a time when other sources of funding may be more difficult to obtain) and an opportunity

---

50 Dubai Decree No. 1 of 2018 on the Termination of Lease Contracts in Al Jadaf and the Eviction of Occupiers for Public Benefit.

51 Dubai Executive Council Resolution No. 31 of 2018 Concerning Dubai Urban Plan 2040.

for large and small investors to partake in a diversified portfolio. It is clear that Abu Dhabi and Dubai are continuing to make significant progress in creating a dynamic and sustainable environment for growth in the property sector.

## ABOUT THE AUTHORS

### **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.

### **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.

### **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](mailto:iain.black@dentons.com)  
[joe.carroll@dentons.com](mailto:joe.carroll@dentons.com)  
[www.dentons.com](http://www.dentons.com)





ISBN 978-1-83862-009-7