

Real Estate Investment in Abu Dhabi

THE LEGAL PERSPECTIVE

Introduction

The capital of the United Arab Emirates (“**UAE**”), the Emirate of Abu Dhabi, has grown from being a modest settlement with an economy based on its fishing and pearl diving industries to a thriving, global city following the discovery of vast oil reserves in 1958. With oil reserves estimated to last for another 100 years, the Emirate of Abu Dhabi (covering 87% of the UAE’s total area) has taken a considered, sustainable approach to its real estate development.

The Abu Dhabi Urban Planning Council (“**UPC**”) developed the ‘Abu Dhabi Vision 2030’ to implement a 25 year program of urban evolution which is economically sustainable and socially cohesive. This has led to the implementation of a detailed planning process which involves all planning decisions to be filtered through environmental, social and economic development criteria. Leading the way in the Middle East, the UPC has established, in collaboration with the Environmental Agency, a detailed sustainability framework called ‘Etidama’, which is the Arabic word for sustainability. Investment into real estate has been opened up to foreigners in recent years and the Emirate has been able to attract major international educational and cultural institutions to expand into Abu Dhabi, including New York

University, the Sorbonne and the Louvre and Guggenheim galleries. It has also recently been ranked as the safest city in the Middle East and Africa by the Economist Intelligence Unit’s Safe Cities Index 2017.

The Abu Dhabi Global Market (“**ADGM**”) was established in 2015 to provide a broad-based financial services hub for local, regional and international institutions. The ADGM is located on Al Maryah Island in Abu Dhabi and is a financial free zone where registered institutions operate within a regulatory framework specific to that of the ADGM with its own judicial system and legislative structure. To the extent that the legal regime differs for property located within the ADGM to property within the rest of Abu Dhabi, we have highlighted this in this guide.

A new real estate law for Abu Dhabi (“**Law No. 3 of 2015**”) came into effect on 1 January 2016 and applies to real property within the Emirate of Abu Dhabi with the exception of the ADGM. Law No. 3 of 2015 covers a broad range of topics including the development and regulation of strata title, off-plan sales, the registration and enforcement of mortgages and the licensing of real estate agents, brokers and other entities. Law No. 3 of 2015 provides additional regulation of developments undertaken in

Abu Dhabi and aims to increase protection to purchasers in relation to the sale of off plan units, through the mandated registration of all pending sales with the Abu Dhabi Municipality.

Real estate is important to DLA Piper. DLA Piper boasts one of the largest real estate practices in the world with over 600 lawyers worldwide practising real estate. We believe that legal services relating to investment into real estate should consist of more than merely helping to acquire title. We believe sound investment in real estate requires knowledge of all available investment structures and the implications of these on registration fees, on-going management of jointly owned properties, leasing strategies and, ultimately, exit strategies.

This guide serves as a comprehensive guide to the most relevant laws to be aware of when investing in Abu Dhabi real estate. We aim to use our practical experience of the market as a valuable source of information for you when considering such an investment.

If you have any further questions relating to the information in this guide, our experienced real estate team in Abu Dhabi will be delighted to assist you.

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1. Ownership of Real Estate

1.1 Freehold ownership

1.1.1 WITHIN ABU DHABI BUT EXCLUDING THE ADGM

Freehold, or 'absolute' ownership is the most complete and comprehensive right over real estate available in Abu Dhabi and is akin to the common law concept of freehold property.

The ability to own different interests in land and property in Abu Dhabi depends on the nationality of the individual or company. The law (for property outside of ADGM) classifies individuals and companies that own property in the Emirate under three groups:

- UAE nationals and companies wholly owned by them UAE government and the governments of each Emirate and entities wholly owned by them;
- Nationals of Gulf Cooperation Council countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE) and entities owned by them ("**GCC**"); and
- Foreign individuals and companies falling outside the above two categories.

UAE nationals can hold land interests anywhere in Abu Dhabi, but may only dispose of government allotted land after holding it for at least 5 years. GCC nationals can hold any land interest within investment areas in the Emirate. Foreign (i.e. non-GCC) nationals can hold the following land interests within investment areas only:

- Ownership of floor in the building (but not the land);
- Usufructuary rights over land for up to 99 years;
- Musataha rights over land for up

to 50 years (renewable by mutual agreement); or

- Long-term leases of land for up to 25 years (renewable as per the contract terms).

Investment areas are physical zones of land designated by the Abu Dhabi Executive Council as places where GCC nationals and foreigners are entitled to hold some land interests. There are currently 18 investment areas in Abu Dhabi, including Reem Island and Saadiyat Island.

The Abu Dhabi Executive Council is permitted to designate certain individuals, companies and parties as having the same status as UAE nationals regarding land ownership in the Emirate. So far as we are aware, this has been done for two real estate development companies listed in Abu Dhabi – Aldar Properties PJSC and Sorouh Properties PJSC, the two of which have since merged to form one company (being Aldar Properties PJSC). This designation enables these companies to own land interests throughout Abu Dhabi despite them having an element of foreign ownership.

All transfers of real estate must be registered at the Land Registration Department of the Abu Dhabi Municipality ("**LRD**") in order to be valid. A failure to register means that ownership has not been transferred and the documentation between the parties is considered not to be enforceable save for the personal obligations between the parties. Upon registration, the LRD issues a title certificate which is absolute evidence of ownership.

1.1.2 WITHIN THE ADGM

Within the ADGM freehold interests in land (being an outright

ownership in an estate in land for an indeterminate duration) are recognised but (as per the rest of Abu Dhabi) there are ownership restrictions based on nationality with only UAE and GCC nationals and companies wholly owned by them being able to acquire a freehold interest in land. There are no such restrictions on foreigners purchasing other interests in freehold land, such as units and floors.

The concept of a joint estate is also recognised within the ADGM. These are interests in real property that are held by more than one person (including joint tenancy and tenancy in common).

The ADGM maintains its own land registration system ("**ADGM Land Register**") separate to that of the LRD. A defined list of conveyances (which includes the acquisition of freehold) must be registered on the ADGM Land Register. Agreements to create such conveyances must also be registered on the ADGM Land Register. The obligation is on the grantor of the conveyance to register it. An interest which is required to be registered does not convey an interest in real property until the instrument is registered, however, nothing in the ADGM regulations prevents an instrument that is (i) not eligible for registration; or (ii) lodged for registration but not yet registered from operating as a contract between the parties thereto, or from being otherwise enforceable according to its terms.

1.2 Usufructs and musataha interests

Usufruct interests (including a musataha interest) are interests in real estate which are limited in time and therefore similar to a leasehold

interest, except that they constitute real rights rather than personal rights. To differentiate between the two types of interest, a usufructuary right is a right to use and exploit the property of another whereas a musataha right is a right to build or plant on the land of another.

The real estate laws of Abu Dhabi in relation to usufructs and musatahas apply to such rights located throughout Abu Dhabi, including those located within the ADGM where such rights were created prior to 3 March 2015 (the date upon which the ADGM regulations came into force) and where no election has been made by the parties to the musataha or usufruct (as applicable) to convert the relevant agreement to a lease. Under the ADGM regulations, usufructuary and musataha rights are not recognised interests and so no further usufructuary or musataha interests will be created within the ADGM following the implementation of the regulations.

Non-UAE nationals may hold within the designated investment areas usufructuary rights of up to 99 years and musataha rights for a term of 50 years (which may be renewed once for a further term of fifty years by mutual agreement of the parties). UAE nationals may acquire usufructuary rights and musataha rights throughout Abu Dhabi.

A standard form musataha agreement has been introduced for use within Abu Dhabi for government owned property.

1.3 Leasehold

1.3.1 WITHIN ABU DHABI BUT EXCLUDING THE ADGM

In Abu Dhabi, a lease is a personal contract of hire, more akin to a

licence and not an interest in land. Most non-owner occupiers in both the residential and commercial sectors are lessees under leases. Non-UAE nationals (and companies owned in whole or part by non-UAE nationals) may only be granted long leases (being leases for a term of 25 years or more) within one of the designated investment areas.

There is an obligation to register all leases within Abu Dhabi. Failure to register a lease, or amendments thereto, will result in the lease documentation (or such amendments) between the parties being considered to be not enforceable save for the personal obligations between the parties.

There are two lease registration systems in Abu Dhabi:

- “Tawtheeq” – for leases with a term of less than 4 years; and
- “Tamleeq” – where a lease is for a term greater than 4 years.

The associated registration fees are set out in further detail in the Tax section of this guide.

1.3.2 WITHIN THE ADGM

Within the ADGM, leasehold interests (which give the tenant the right to use and occupy the property for a specified period of time) are recognised as interests in land. Such interest could also include one or more sublease interests but excludes occupational (or otherwise) licence arrangements.

The landlord is responsible for registration of the lease on the ADGM Land Register, which must be done within 28 days of the parties signing. In order to be registered, the lease should contain key details such as the parties, length of term,

the commencement date, any renewal rights and sufficient detail to identify the premises.

A memorandum (short form) lease can be registered in lieu of a full lease.

Unlike in the rest of Abu Dhabi, agreements for lease (a pre-lease contract often signed when a development is under construction/ not quite ready for occupation and use) can also be registered on the ADGM Land Register.

The recognition of agreements for lease allows the parties to sensibly split the development and operational obligations between two separate documents.

1.4 Granted land

The Government of Abu Dhabi may grant land to UAE nationals (i.e. provide it to them at no cost). Following the grant of such land the UAE national must register their interest in the property and will have the right to use, exploit and dispose of the real property provided that where the land and buildings have been established for a specific purpose, that purpose is not changed. UAE nationals may not dispose of houses granted to the public unless they obtain prior approval from the Executive Council.

Where ownership of low cost housing (being housing designated for UAE nationals without consideration) is granted, the interest in the property may be transferred and registered to other nationals provided prior approval from the Executive Council is obtained. Given this, where the property is being used as security for finance from a bank, the bank should ensure that the relevant approval has been granted prior to releasing funds.

1.5 Jointly owned property

1.5.1 WITHIN ABU DHABI BUT, EXCLUDING THE ADGM

Law No. 3 of 2015 (and associated regulations) came into effect on 1 January 2016 and aims to increase protection to purchasers in relation to the sale of off plan units, through the mandated registration of all pending sales with the Abu Dhabi Municipality and increased regulation of the ownership and management of jointly owned property.

Where a development involves jointly owned property, such property is required to be shown on a site plan or recurring floor plan to be registered with the LRD. The site plan or recurring floor plan must clearly show the subdivision of the land/building as approved by the Abu Dhabi Municipality, identify the common areas to be managed by the Owners' Association and attach a copy of the relevant management regulation (see below for further details).

In addition to registering a site plan or recurring floor plan to record the subdivision of the land/building, the master developer must also:

- **Management Regulation** – Prepare and register alongside the plan a “management regulation” which provides a detailed set of obligations to be performed by the developer and unit holders and describes the easements existing within the sub-divided site; and
- **Owners' Association** – Establish an owners' association which will be a committee made up of the unit owners who (as an association) collectively manage and operate the jointly owned property. Such association will be governed by an Articles of Association.

Each unit owner is required to contribute towards the maintenance and operation of the jointly owned property by paying a service charge which will be specified in the Main Development Plan governing the wider development.

1.5.2 WITHIN THE ADGM

The ADGM has introduced regulations which provide for a set of strata specific laws which deal with the stratification of real estate interests situated within the ADGM. The regulations are similar in many respects to the strata title system adopted by the Dubai International Financial Centre which itself draws upon the legislative strata title framework of jurisdictions such as Singapore, Australia, Canada and South Africa.

The strata regulations appear, on the whole, to apply to developments on Al Maryah Island that are structured or sold on a leasehold basis. Under the regulations it is mandatory for any developer of a leasehold structured development to apply the provisions of the regulations to its project.

It is not clear whether existing developments, which have been sold off-plan on a leasehold basis, will need to fall in line with the regulations, including any timeframe to do so.

Where the strata regulations apply to any future leasehold development, the developer will be required to satisfy various obligations. These include the establishment of an owners' association for management and control of the common areas, the establishment of a body corporate for each 'use' within a development, the opening of a project escrow account with a licenced institution within the ADGM and the deposit of a sum equivalent to between 10-25% of

off-plan purchaser deposits received as security for its development obligations for the project and the registration of a strata plan on the ADGM Land Register.

It is currently unclear as to whether the strata title registration system in the ADGM will work in isolation from, or in tandem with, the Abu Dhabi Municipality land registry.

The strata regulations introduce 'special developer rights' which may be registered contemporaneously with a strata plan. These rights include rights reserved for the developer to, amongst other things, exercise certain development rights, make improvements, reserve easements in its favour over common property and create rights for 'other matters'. There does not appear to be any restriction as to the length such rights can be created for, nor is it clear what 'other matters' refers to. In the case of mixed use developments, this may create a mechanism for the developer (and their appointed hotel operator, if relevant) to reserve certain development rights which may provide them with a desired level of flexibility and control over the shared areas and facilities of the development. This is highly desirable in the context of a mixed use development, such as one which includes an international five star hotel, and will be viewed favourably by developers and hotel operators.

The introduction of the strata regulations should be considered a step forward and a positive development for the ADGM. Its legal framework is based upon sophisticated and well developed international strata systems. Developers ought to find that they can use the regulations to structure their project with a degree of flexibility and control which will be attractive to them.

2. Acquisition of Ownership

2.1 Formal requirements

2.1.1 WITHIN ABU DHABI BUT EXCLUDING THE ADGM

All transfers of ownership of real estate in Abu Dhabi which are capable of registration (the LRD is not currently accepting applications in relation to transfers of property in all parts of Abu Dhabi) must be recorded at the LRD and the transfer process is the same regardless of the type of property involved e.g. commercial or residential. A failure to register means that ownership does not pass to a purchaser. The property ownership register maintained by the LRD is not available to the public and therefore a potential purchaser must request a copy of the seller's title deed rather than carry out a public search.

Personal attendance by all the parties involved (e.g. purchaser, seller, lender, real estate broker etc.) is required at the LRD which is authorised to accept applications for transfers of real estate.

A party not able to attend in person may appoint a representative by using a power of attorney either executed before a notary in Abu Dhabi or executed overseas and authenticated and legalised for use in the UAE.

The parties must sign the relevant standard forms at the LRD and Manager's cheques are commonly used to pay the purchase price and are required to pay the fees arising from a transfer of ownership. Written consent is likely to be required from any person with a security interest over the property being sold and from any occupiers of the property to confirm they are vacating.

Law No. 3 of 2015 imposes various obligations on developers regarding the development, registration and marketing of "off-plan" sales, including requiring developers to set up project escrow accounts to hold the purchaser monies. Any developer who wishes to sell off-plan units must open a project escrow account with the Abu Dhabi Municipality to be managed by an account trustee (who will typically be a financial institution). The developer and the account trustee will conclude an "Escrow Account Agreement" to create the account in which the monies received from purchasers will be deposited to be exclusively used for the purposes of constructing the project and settlement of financing payments.

Contracts for the sale of off-plan real estate units in Abu Dhabi are required to be registered on the "Interim Real Estate Register" maintained by the Abu Dhabi Municipality. Upon completion of the development project and satisfaction by both parties of their contractual obligations attached to the sale, the real estate unit will need to be removed from the Interim Real Estate Register and the transfer of the ownership interest to the purchaser recorded on the Real Estate Register at the LRD.

The documentation required to be submitted to the LRD to register an interest will differ depending on the nature of the transaction. Following attendance at the LRD, the application to transfer is processed. This may be completed on the same day or within a few days. Upon completion the LRD issue a new title certificate in the

name of the purchaser. If the purchaser has granted a mortgage over the property then the LRD will issue the original title deed to the lender.

2.1.2 WITHIN THE ADGM

The ADGM provides that a defined list of conveyances (including any subsequent variations) must be registered on the ADGM Land Register. Agreements to create such conveyances must also be registered on the ADGM Land Register. The obligation is on the grantor of the conveyance to register it. Conveyances should be executed in the English language and, if not, a translation into English should be provided.

An interest which is required to be registered does not convey an interest in real property until the instrument is registered. However, nothing in the ADGM regulations prevents an instrument that is (i) not eligible for registration; or (ii) lodged for registration but not yet registered from operating as a contract between the parties thereto, or from being otherwise enforceable according to its terms.

A registered owner will hold the registered interest free from all other interests except for interests that are already registered, easements or public rights of way, rights in favour of the relevant authority, implied easements or statutory charges.

The ADGM Land Register shall be publically searchable and the ADGM shall issue certificates of title to interested parties and also priority searches (which can be used by lenders when taking security). These are very useful features that

are not currently available through the Abu Dhabi land registration system.

There are no express references in the ADGM regulations to compensation being paid to purchasers who rely on incorrect information in the registered title maintained by the ADGM Land Register or fraudulently registered conveyances. By comparison, the Dubai International Financial Centre, a similar free zone, maintains a compensation fund to allow it to pay compensation to affected parties in such instances.

2.2 Registration fees

2.2.1 WITHIN ABU DHABI BUT EXCLUDING THE ADGM

Registration fees are charged on a transfer of title relating to real estate in Abu Dhabi at between 1% to 4% of the value of the property. In respect of transfers of off-plan units, the fee is capped at AED2,000,000 per transaction. A further fee of AED1,000 will be payable in order to transfer the registration from the initial real estate register to the real estate register.

Although it is intended that the seller and purchaser split the fee equally, this is subject to the parties agreeing otherwise and in practice the purchaser commonly pays the full fee.

The fee for registration of a mortgage is 0.001% of the mortgage value, capped at :

- **Mortgages (other than off-plan units)** – AED1,000,000 per transaction; and
- **Mortgages of off-plan units** – AED2,000,000 per transaction.

2.2.2 WITHIN THE ADGM

Registration fees are charged on a transfer of title relating to real estate in the ADGM at 2% of the value of the property. There is no cap on the fees that may be charged.

The fee for registration of a mortgage is 2% of a principal amount of mortgage per transaction capped at USD300,000.

2.3 Asset deals

In the case of an asset deal, the above formalities must be observed and the applicable fees paid upon completion at the LRD or ADGM Land Register (as applicable).

Apart from high value property, it is common for lawyers not to be instructed by a seller or a purchaser and real estate brokers tend to take a greater lead in the sale and purchase process.

The register of real estate ownership administered by the LRD is not available to the public and therefore due diligence is limited to the information that can be obtained from the seller (although the principle of 'buyer beware' applies). Commonly, a purchaser will request a copy of the title deed from the seller and this needs to be checked as referring to the seller and the correct plot number or unit number. If the property has not been registered, it will also reveal whether a mortgage has been registered and therefore needs to be released upon completion.

In contrast, property located within the ADGM will be registered and the register is publically searchable with certificates of title being issued to interested parties.

Searches of public utilities cannot be done by the public and therefore, again, a purchaser is reliant on obtaining due diligence materials

by request to the seller. The law does not imply any warranties into the sale and purchase of real estate so it is important for a purchaser to carry out as detailed an investigation as possible before entering into a binding agreement. A valuation will be conducted by a bank if the purchaser is seeking to grant a mortgage over the property. Generally, the purchaser and seller will not enter into a sale and purchase agreement until the due diligence is completed and is satisfactory. In the event a misrepresentation occurs, the party which did not make the misrepresentation can cancel the agreement if it can establish that it was deceived or misled by the other party into doing what it would not have otherwise agreed to do or if the other party deliberately remained silent on a fact or on a set of circumstances which caused it to be misled.

Once due diligence has been carried out, the parties will enter into a sale and purchase agreement which will either be drafted and negotiated between lawyers (if instructed) or by a broker (if lawyers are not instructed). In the case of sale and purchase agreements produced by brokers, they are also commonly referred to as memorandum of understandings or letters of intent. Regardless of the nomenclature, this will set out the basic details of the transaction (including the parties details, the property details, the purchase price and the timing for completion) and any details particular to the specific transaction. In a more complex commercial property, this may include details of leases the property is subject to, the details of any assignments of commercial contracts or warranties to be effected upon completion etc. The LRD and ADGM Land Register do not require a particular form of

contract to be completed by the seller and purchaser.

Once the sale and purchase agreement has been entered into, a binding contract has been made. For properties location within Abu Dhabi (excluding the ADGM), it is not possible for a purchaser to lodge a priority notice at the LRD to ensure that the property is not transferred to another party before the completion date agreed between the seller and purchaser. By requiring completion to take place by personal attendance at the LRD (or a trustee office), the risks associated with this are mitigated to a certain extent. In contrast to the rest of Abu Dhabi, it is possible to lodge a priority notice at the ADGM Land Register in relation to property within its jurisdiction.

2.4 Share deals

It is permitted for real estate in Abu Dhabi to be held by a company. Outside of the investment areas, where real estate may only be owned by UAE nationals, it can be held by individuals or by companies wholly owned by such individuals. Within investment areas, the law permits foreigners and companies wholly owned by them to hold real estate.

The relevant company laws require a UAE national/company wholly owned by them to hold at least 51% of the shares in an LLC. Caution must be exercised when dealing with real estate in a non-investment area as any 'foreign' shareholding will cause an LLC to no longer be entitled to own such an ownership interest.

In the event shares in a company are being acquired, there is additional due diligence that ought to be done by the purchaser. As with property ownership,

company ownership is not publicly available information. Therefore, a potential purchaser commonly requests certain information from the seller. Such information includes requesting copies of company constitutional documents – in the case of an LLC, the trade licence and memorandum of association (and its amendments) should be requested. As there is no public share register for LLCs, due diligence must be undertaken to ensure that the shareholding information provided is up to date.

In order to effect a share transfer in an LLC, it will be necessary to first obtain an initial approval from the licensing authority. This is obtained by submission of an application (in Arabic) signed by the manager of the LLC and the transferors and the transferees (or their authorised representatives). Following receipt of the initial approval, it will be necessary for the transferor and the transferees (or their authorised representatives) to execute before the notary public in Abu Dhabi the relevant share transfer agreement, an amendment to the memorandum of association and the resolutions of the shareholders of the LLC approving the share transfer.

The notarised documents, along with the duly notarised (and legalised, if prepared overseas) resolutions of the transferees and the legal documents of the transferees (memorandum and articles of association and the certificate of incorporation) should then be filed with the licensing authority in order for the licence for the LLC to be amended. The issuance of the LLC's amended licence will take around 14 days from the date of filing of the documents and making payment of the applicable fees. During this period, the licensing authority

will place an advertisement in the local newspaper to give interested parties the right to make any claims or object to the share transfer. If no objections are received within 14 days of the newspaper advertisement, the licensing authority will issue the amended licence and list of partners showing the names of the new partners. The fee payable to the licensing authority will be in the region of AED1,200 and that payable to the notary public in the region of AED1,500.

2.5 Public auctions

Real estate is sold by public auction in the event that a lender enforces its mortgage over such property, subject to a court order being obtained. A lender is required, prior to initiating foreclosure procedures and submitting a request to the magistrate of summary justice to offer the mortgaged property for sale by public action, to:

- send a written notification to the borrower and guarantor (if any) with acknowledgement of receipt to inform the borrower of its violation; and
- claim the settlement of the debt within a period of no less than 30 days from the date of notification.

If the borrower fails to settle its debt, then the magistrate of summary justice shall issue at the request of the lender a decision to sell the mortgaged property by public auction.

This is the only method of mortgage enforcement available in Abu Dhabi and it is not possible for a lender to instead acquire ownership of the real estate asset itself and deal with it thereafter, as is possible in a number of other jurisdictions.

3. Other Rights to Property

3.1 Mortgages and charges

As set out above, mortgages can be created over real estate in Abu Dhabi and must be registered at the LRD or ADGM Land Register, as applicable. In order for a mortgage to be valid, a mortgage contract must contain details of the value of the property, the value of the debt, the mortgage term and the full details of the lender, the borrower and any guarantor. Following registration of the mortgage, the borrower cannot dispose of the property without the consent of the lender.

It is also possible for the holder of a musataha (the right to develop land for a period not exceeding 50 years) to grant a mortgage over the buildings it constructs, but not the underlying land unless the grantor of the musataha so agrees.

Regulations issued by the Central Bank of the United Arab Emirates have imposed lending restrictions for mortgages which distinguish between UAE nationals and non-UAE nationals. The regulations are aimed at home purchases and provide that a mortgage loan can be for a maximum of 25 years with the maximum age at which the final repayment can be made being 65 years old for non-UAE nationals and 70 in the case of UAE nationals. UAE nationals can borrow a

maximum loan to value ratio of 70% and non-UAE nationals are able to borrow a maximum of 65%.

It is important to note that, unlike many other civil law jurisdictions, no concept of trust exists, the taking of security over future assets is not permitted and the concept of a floating charge is not recognised.

Although banks in the UAE commonly lend against property bought off-plan, a legal mortgage cannot be created until the property is completed and then the mortgage (along with the transfer of ownership) is registered at the LRD or ADGM Land Register, as applicable.

3.2 Easements

The concept of easements exists under the UAE Civil Code. An easement must be created in writing and in accordance with custom and practice.

Rights of easements can end upon the expiry of any term given to it, upon the dominant and servient lands being owned by the same person or if the relevant properties no longer exist. If the benefit of an easement is not used for a period of 15 years, it is treated as having ended.

If correctly registered at the LRD or ADGM Land Register (as applicable),

easements are binding on successors in title to the property. If an easement is not registered, it can only take effect as a personal contract. Under UAE law, the courts will generally not grant specific performance and do not grant injunctions. Therefore, a breach of a contract creating rights of easement will generally only give rise to a claim for damages.

3.3 Other unregistrable rights

Rights frequently found in other jurisdictions, such as pre-emption rights, options and overage rights, cannot be registered at LRD or ADGM Land Register (as applicable). Therefore, any parties wishing to enter such arrangements relating to real estate in Abu Dhabi have freedom of contract to do so, providing it is not deemed by the local courts to be contrary to public policy. However, as set out above, such parties should bear in mind that any such arrangement will take effect as a personal contract only. In the event a party breaches such personal contract, the local courts are most likely to award damages only rather than award an injunction (which is not a remedy that is available under the Civil Code) or order specific performance (which is available in very limited circumstances only).

4. Zoning and Planning Law Permits

Zoning, or permitted use, is noted on the form of title certificate issued by LRD or the ADGM Land Register (as applicable).

Planning permission from the UPC must be obtained for all strategic, large-scale developments in Abu Dhabi in order to ensure they are consistent with 'Vision 2030'. The review process aims to ensure that such developments are sustainable in terms of their environmental, economic, social and cultural impact and these are known as the 'Estidama' requirements. The Estidama requirements are also implemented in various initiatives such as the Abu Dhabi Development Code, the Community Facility Guidelines, the Coastal Development Guidelines and others, all issued by the UPC.

The UPC has a development review process which ensures that large-scale developments comply with the Estidama requirements. There are four stages in this process – enquiry, pre-concept state, concept planning review and detailed planning review. Once detailed planning approval has been given, the requirements of the 'Pearl Rating System' apply and achievement of the design rating is required before a developer can proceed to obtain building permits from the relevant ministries. The design rating starts from 1 pearl, which is a minimum rating of 'Pearl compliance', and goes up to a possible 5 pearl rating. All new residential villas must achieve a rating of at least 1 pearl and all government-led projects

must achieve a minimum of 2 pearls. The intention is that a high pearl rating equates to lower operating costs, healthier places to live, work, study and play, differentiation in the real estate market and recognition from the leadership of Abu Dhabi.

Planning permission for any development is required from two separate entities: (i) the UPC as the overall strategic planning and zoning authority for Abu Dhabi; and (ii) the Abu Dhabi Municipality which issues the building permit and any regulations. The process of obtaining planning and zoning approval is not set out in law or regulations and is based on custom and practice.

In general terms, the owner of a plot of land can obtain an 'affection plan' from the UPC which will state basic information such as the name of the owner, the nature of the owner's title, the size of the plot, the land use classification (e.g. commercial, industrial, residential etc.) and certain high level information regarding what type of building may be constructed. Such information typically includes how many floors are permitted, any setback requirements and whether parking must be included.

Additional approvals are commonly required, prior to commencing development, and these tend to be noted on the affection plan. Typically, one would expect further approvals to be required from the Abu Dhabi Electricity and Water Authority, Abu Dhabi Civil Defence,

the relevant telecommunications provider (currently either Eitsalat or du), the master developer (if the land is located within a master community) and environmental approval from the environmental department of Abu Dhabi Municipality.

Unlike in many other jurisdictions, the planning process does not require any public consultation and can therefore be obtained relatively quickly. It is generally not dealt with by lawyers but rather by architects, project managers and similar professionals. The detailed designs that need to be submitted are the subject of many circulars issued by the UPC and are closely inspected by officials prior to granting any approvals.

Once the affection plan and other approvals are obtained, a building permit must be obtained from Abu Dhabi Municipality. A building permit is also required prior to carrying out any extensive works to existing buildings. When the construction or works are completed, a completion certificate needs to be obtained from Abu Dhabi Municipality in order for occupation of the building to be permitted. The process of obtaining the completion certificate is conducted in tandem with getting the approval of other authorities (including the Civil Defence) and involves a comparison of the drawings submitted to obtain the building permit with the completed building.

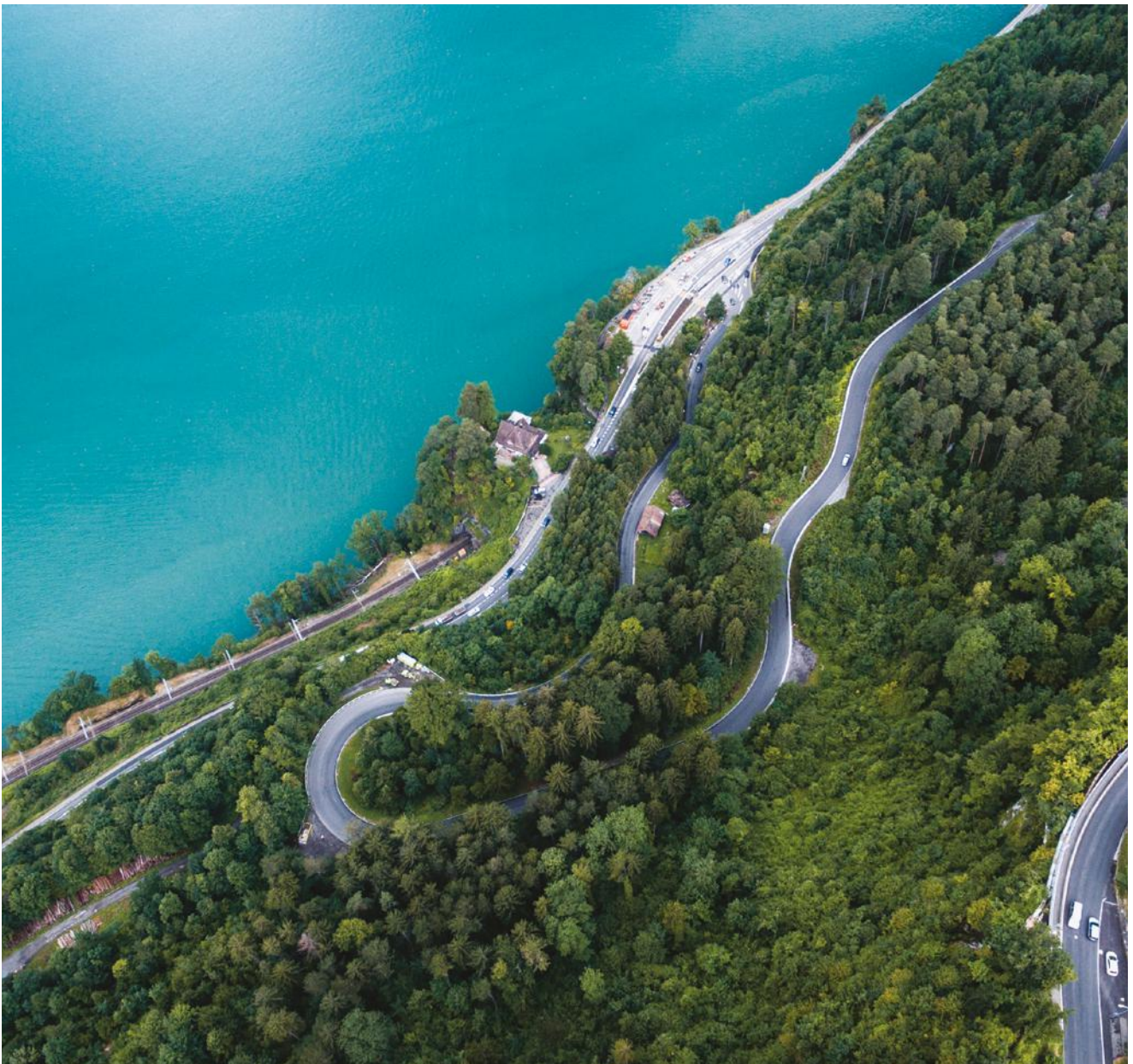
5. Environmental Liability

Various federal laws of the UAE and Abu Dhabi laws and regulations relate to the protection, exploitation and conservation of the environment in Abu Dhabi and Abu Dhabi Municipality and UPC take the lead in enforcing compliance with the laws and regulations. However, desktop environmental reports that are common in various other jurisdictions are not yet common in Abu Dhabi and detailed

environmental due diligence is not yet commonplace, although such awareness is increasing.

The UPC introduced a sustainability initiative for Abu Dhabi known as 'estidama' (Arabic for 'sustainability') as part of Abu Dhabi's Plan 2030 aimed at creating guidelines and regulations to ensure sustainable (or green) design, operating and maintenance of all types of buildings and communities within Abu Dhabi.

It is based on a 'pearl' rating system which is broadly based on the LEED (Leadership and Energy and Environmental Design) system in the US. 'Estidama pearls' are used to certify the sustainable buildings and developments.



6. Leases

In relation to leasehold property located within the Emirate of Abu Dhabi (save for property within the ADGM), a landlord and tenant law was issued in 2006. The law does not generally distinguish between leases of residential property and commercial leases and registration of all leases is required – a distinction being made between leases with a term of less than 4 years and those with a term of greater than 4 years, for registration purposes.

In relation to leasehold property within the ADGM, the ADGM Real Property Regulations 2015 apply.

6.1 Duration

Typically a lease of commercial property is for a term of between 1 and 5 years. In residential leases, it is common to have a duration of 1 year.

For leasehold property not within the ADGM, there is no maximum duration for a lease set out in the applicable law. However, it is not common to see long leases being granted as: (i) absolute ownership is preferred in the region; and (ii) non-GCC nationals and entities may only be granted leases with a term of 25 years or more within one of the investment areas.

6.2 Rent

Rent is commonly calculated on a 'per square foot' or 'per square metre' basis. In relation to retail property, it is also common to see an additional turnover rent element. Unlike in many other jurisdictions, it is fairly common to pay rent on an annual basis, although there is a slow shift in the market (and more

acceptable in leases of commercial property) to pay three or four instalments of rent each year. Even if payment of rent in instalments is accepted by a landlord, it is common for a landlord to require post-dated cheques to be provided by a tenant upon signing of a lease.

Post-dated cheques are commonly used in the UAE and the law provides that criminal liability arises from a dishonoured cheque. As a result, it is common for individuals who issue cheques which are dishonoured due to a lack of funds to be arrested and potentially be imprisoned. Therefore, it is essential for a tenant to ensure that sufficient funds are maintained in an account from which post-dated cheques have been issued to a landlord.

At the present time, there are no taxes that apply to rental payments (with the exception of value added tax). VAT will be applied to transactions concerning commercial real estate at the standard rate of 5%.

6.3 Rent review

Rents and rental increases can be mutually agreed between the parties. In the majority of leases, it is common for the parties to agree for the rent to be increased in accordance with the market at the time of the increase.

In 2006, Abu Dhabi law imposed an annual cap on rent increases to protect tenants against increases in rent. Such rent cap was, however, abolished by the Abu Dhabi Executive Council with effect from 22 November 2013.

Abu Dhabi Executive Council Resolution No. 14 of 2016 on Lease Agreements of Premises has since re-introduced the 5% annual cap on rent increases, with effect from 13 December 2016.

6.4 Operating expenses

The parties to a lease are free to agree who is responsible for the payment of utilities and telecommunications for a leased property. It is common for leased properties to be individually metered and for tenants to pay the consumption charges directly to a provider.

A landlord will typically pay for property insurance (where the property is occupied by more than one tenant) and a tenant will pay for its own contents insurance. A landlord operating a service charge will then recover the costs of the property insurance through the service charge.

Many neighbourhoods in investment areas in Abu Dhabi are 'master communities' where property owners are obliged to pay a community service charge for the maintenance of the community. Pursuant to Law No. 3 of 2015, the community service charges payable within a master community are required to be specified in the Main Development Plan or Subsidiary Development Plan to be approved by the UPC. A unit holder's community service charge will typically be proportionate to the land held by the unit holder as a percentage of the gross area in the building or gross land in the community.

It is up to the parties to a lease to determine how the community service charge is to be dealt with. For example, a landlord may include its liability to community service charges in its service charge or a landlord may charge separately for this. It is important for a tenant to have some practical recourse to a landlord in the event that the landlord fails to pay the community service charge as 'master developers' in Abu Dhabi may take strong action when dealing with non-payment such as blocking access cards or preventing access to communal facilities such as car parking or swimming pools.

6.5 Maintenance, repair and renovation at end of lease

In relation to leasehold property located within Abu Dhabi but outside the ADGM, if the lease is silent on the issue of maintenance and repair of the property, the law provides that the landlord is responsible for the maintenance and repair of any defect or malfunction which affects the use of the property. This leaves tenants responsible only for minor repairs and maintenance. If a landlord fails to carry out repairs that it is responsible for, a tenant may carry out such work and deduct such cost from the rent – although in practical terms, where the rent may be paid yearly or by post-dated cheques, such deduction can be problematic.

In contrast, there are no such provisions at law in relation to leasehold property located within the ADGM. It is therefore important that such matters are adequately dealt with in the lease. Where the ADGM strata regulations apply, unit owners are obliged to pay such

maintenance costs. Furthermore, for leasehold property within the ADGM, it is important that the lease provides for the situation where the building is fully or partially destroyed or damaged, since there is no rent cesser provided for at law.

Although it is common for a landlord to take a security deposit from a tenant, the law does not contain clear provisions on how such deposits must be held, when they can be utilised and when they must be returned. It is important, therefore, to ensure that a lease contains detailed provisions on dealing with the security deposit.

A tenant must return the property to a landlord in the condition agreed in the lease. Therefore it is very important to agree in what condition the tenant must yield up the property, in particular if a tenant has undertaken fit out works.

6.6 Assignments

In relation to leasehold property located within Abu Dhabi but outside the ADGM, the landlord and tenant law provides that a tenant cannot assign without the landlord's prior written consent. The UAE Civil Code imposes a duty on parties to act reasonably. Typically a lease will either prohibit assignments by tenants or make them subject to the landlord's written consent to be given or withheld in its sole discretion. In circumstances where a tenant wishes to assign the lease to a third party and the landlord is agreeable, such arrangement commonly takes place by way of a surrender and grant of a new lease to the third party (in which the terms may differ from the original lease).

In relation to leasehold property located within the ADGM, there are no provisions dealing with assignment in the ADGM laws and so the parties are free to contract as they wish in the lease.

6.7 Subleases

In relation to leasehold property located within Abu Dhabi but outside the ADGM, as with assignments, the law prohibits sub-letting without the landlord's prior written consent. Leases tend to either prohibit sub-letting or make them subject to the landlord's consent to be given or withheld in its sole discretion. Sub-letting is not very common in the Emirate but the law does provide that if a sub-lease exists, it cannot exist beyond the term of the head-lease.

It is also worth noting that, in practice, the Abu Dhabi Municipality will not register leases in favour of non-UAE nationals for a term of more than four years which contain subletting rights in relation to property located outside one of the designated investment areas.

In relation to leasehold property located within the ADGM, there are no provisions dealing with sub-letting in the ADGM laws and so the parties are free to contract as they wish in the lease.

6.8 Termination

In relation to leasehold property located within Abu Dhabi but outside the ADGM, if a lease expires and a tenant remains in occupation of the property without objection from a landlord, the lease is deemed to have been renewed on the same conditions, therefore at the same level of rent and for the same duration.

If a party does not wish to renew a lease or wishes to renew on different terms, it must provide the other party with written notice

at least 2 months prior to the expiry of the lease, in the case of residential property, and 3 months prior to the expiry of the lease in the case of commercial, industrial or professionally used property.

In relation to leasehold property located within the ADGM, there is no security of tenure meaning that a tenant does not have a statutory right to renew their lease at the end of the term.

6.9 Sale of leased property

The law provides that the sale of a property which is subject to occupational leases does not affect the occupational leases other than the purchaser of the property becomes the landlord under those occupational leases. In practical terms, it is common for a purchaser to issue written notices to tenants upon completion of its acquisition and any post-dated cheques given to the outgoing landlord need to be returned to the tenants and new ones issued to the purchaser.



7. Tax

The UAE is generally referred to as being 'tax-free' and, in many respects, this is true. For example, there is no taxation which arises from a capital gain upon the sale of real estate or the sale of shares in a real estate company, there is no income tax which arises from the receipt of rental income and no tax liability arises from dividends being paid to a shareholder in a real estate company.

However, there are some tax related issues which should be taken into consideration when investing in real estate in Abu Dhabi which we set out below.

7.1 Transfer taxes

As previously discussed, the LRD do charge fees to register the transfer of real interests. In the case of a sale and purchase, the associated fee is equivalent to between 1% and 4% of the purchase price and to register a mortgage, a fee of 0.001% of the mortgage amount (subject to a cap) is due. If a mortgage is being redeemed, there is a fee of AED1,000.

There are also likely to be fees due on completion of a sale and purchase to real estate brokers, surveyors and other professionals as may have been required. In the case of a lease, there is likely to be a security deposit payable.

A lease registration system called 'Tawtheeq' exists in Abu Dhabi for leases with a term of less than 4 years. Various fees are due from landlords in order to register leases, amendments to leases, renewals of leases and registration of a building into the Tawtheeq system. The fees are not significant and range from AED100 to AED1,000.

Where a lease is for a term of between 4 and 25 years, there is a different system of registration called 'Tamleeq'. Registration fees on Tamleeq are 1% of the rent payable in the first year, responsibility for which can be allocated in the lease.

Leases with a term of 25 years or more, usufructuary interests and musataha interests are each subject to registration fees equivalent to 4% of the value of the consideration. In relation to property located within the ADGM, various fees in respect of the following will be payable: registration of instruments; register search certificates; official register searches and other fees as described by the Board of Directors of the ADGM. The ADGM has published a schedule of fees which is available on the internet.

TRANSACTION	RATE OF VAT
Sale of commercial property (whether new or existing)	5% (standard rate)
Sale of new residential property (within 3 years of completion)	0% (zero rated to enable developer to recover VAT incurred on construction)
Subsequent sale of existing residential property	Exempt (no VAT)
Sale of bare land	Exempt (no VAT)
Lease of commercial property	5% (standard rate)
Lease of residential property	Exempt (no VAT)

7.2 Value added tax (“VAT”)

In accordance with the 2017 GCC VAT Framework Agreement, VAT was introduced in the UAE on 1 January 2018. From 1 January 2018, the real estate transactions set out below will be subject to VAT at the following rates:

A transfer of a let or partially let property could constitute a transfer of a business as a going concern (“TOGC”) (i.e. the transfer of the whole or part of a business to a taxable person for the purposes of continuing such business) for VAT which means no VAT is chargeable provided certain conditions are met. It will almost always be in the interests of a purchaser to argue that the TOGC rules apply as it saves the cash flow cost of paying and then reclaiming VAT.

The conditions for obtaining TOGC treatment are complex and should be assessed on a case-by-case basis. If the seller fails to charge VAT when it should have done, it will

have to account for the VAT to the Tax Authority itself and pursue any contractual rights under the sale and purchase agreement to recover this sum from the purchaser. There is therefore some risk for the seller if the position is not clear cut.

7.3 Other charges arising from the occupation of real estate

Whilst technically all companies in the UAE are required to pay tax on their earnings of up to 50%, in practice the enforcement of tax legislation has been restricted to foreign banks, hotels and oil, gas and petrochemical companies.

LLCs with a trade licence issued by the Department for Economic Development (“DED”) in Abu Dhabi are required to pay to the DED an annual renewal fee, the amount of which varies depending on the activities listed on the LLC’s licence.

7.4 Real estate investment trusts

Whilst the concept of a real estate investment trust (“REIT”) is not currently recognised under Abu Dhabi law, it does exist in the ADGM. The main attractions of an ADGM REIT are that it allows investors to acquire a passive interest in a diverse range of income producing, professionally managed property. Under the ADGM law applicable to REITs, 80% of the profits from such investments must be distributed each year, property under construction cannot exceed 30% of the net asset value of the fund and borrowing must not exceed 65% of the gross asset value of the fund.

REITs investing in UAE real estate will be subject to foreign ownership restrictions. Therefore, careful consideration is required in the structuring of a REIT.



8. Real Estate Finance

It is common for large real estate acquisitions and developments in Abu Dhabi to be financed whereby the principal debt is secured by the capital value of the property and the debt is serviced from the income generated by the occupation of the property.

The law provides that a bank seeking to take a mortgage over real estate in the UAE must be licensed by the UAE Central Bank.

As a consequence, we sometimes see non-licensed banks lend the funds but take security through a security agency agreement whereby a UAE licensed bank will take security over the land as agent for the lending bank. Although not an uncommon structure, we are not aware of this having been tested in the UAE.

Typically a bank will carry out due diligence on the property including a review of the market, the location and an analysis of the covenant strength of the tenants.

8.1 Interest rate risks

In each real estate financing, there is a risk posed by interest rate fluctuations. There are methods of protecting against the risk of rising interest rates including to either select a fixed rate loan or to enter into a hedging arrangement. These are both commonly used in commercial real estate financing in Abu Dhabi.

8.2 Assets held as security

As discussed previously, a mortgage can be granted over freehold interests, usufruct interests and, in certain circumstances, granted land interests. However, although theoretically required, depending upon the land interest, the LRD may not in practice register the security interest and banks are generally advised to make inquiries on a case by case basis.

Registration of the mortgage at the LRD/ADGM Land Register is mandatory and required in order for the mortgage to be valid.

In addition, if the land is held in a free zone, no-objection certificates may be required from that particular free zone and there may be additional registration requirements in that free zone. In practice, a bank representative will attend in person at the LRD on the day a sale and purchase is completed. If the property being sold is also subject to a mortgage, a representative from that bank will be required to attend and issue a no-objection certificate evidencing that the bank has no objection to the property being sold.

8.3 Further collateral agreements

In more complex, high value real estate financing arrangements in Abu Dhabi, it is common for banks to take additional forms of security.

For example, a bank may take an assignment over rental income – in order to perfect such an assignment, it would be necessary to serve notice on the tenant and for the tenant to acknowledge delivery of this notice. Although banks purport to take security over bank accounts into which the rental income is paid, it is generally acknowledged that it is not possible to take a perfected pledge over an account which has a fluctuating balance and the methods of trying to get around this restriction tend to be cumbersome.

In addition, it is becoming increasingly common for banks to look at taking share pledges. If the relevant borrower is registered in a free zone, then it is often possible to take a pledge over the shares in that company. In July 2015, the Companies Law was amended so as to make it possible to take share pledges over onshore limited liability companies, although the process for doing this has not yet been documented.

8.4 Taxation on the creation of security

No such taxation applies under the applicable laws in Abu Dhabi. However, there are fees arising from real estate security, including the LRD/ADGM Land Register (as applicable) fees relating to mortgage registration and notarial fees in relation to various security interests which are required to be notarised, for example real estate mortgages, commercial mortgages and share pledges.

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This guide was last updated in September 2018. Subsequent changes in law are therefore not taken into account. This guide cannot be considered as a substitute for obtaining specific legal advice in individual cases. DLA Piper does not assume any liability in connection with this guide.

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