Real Estate Investment in Dubai

THE LEGAL PERSPECTIVE

DLA PIPER

Introduction

The real estate market in the United Arab Emirates ("UAE") has proved to be a success story in the Middle East, attracting large numbers of foreign investors to the region. The UAE was formed in 1971 and consists of seven emirates – Abu Dhabi, Ajman, Dubai, Fujairah, Ras al Khaimah, Sharjah and Umm Al Quwain. Each Emirate has its own laws relating to real estate (and certain other matters) and the Emirate of Dubai, in particular, has lead the way in the region by modernising its real estate laws and procedures which are designed to attract inward investment by opening up the market to foreign investors and offering certain protections to investors and end users.

Dubai benefits from being strategically located between Asia and Africa and within just a few hours' reach of Europe, making it a leading international business hub. The Government of Dubai has actively sought to diversify the economy away from reliance on oil revenues and has focused on encouraging certain strategic industries in the Emirate, including tourism, healthcare and education, each of which gives rise to particular real estate needs.

The rapid development of Dubai's commercial 'free zones', offering full foreign ownership of companies and a tax-free guarantee for such companies, has also resulted in high levels of foreign investment into the Emirate which has brought with it an attractive demand for real estate, both commercial and residential.

In addition the UAE benefits from being politically stable and offering a high standard of living in a safe environment. For this and other reasons, the UAE has been able to attract a large number of expatriate workers to bolster its relatively small local population which again has led to solid demand in its real estate market. Predictions are that the population of Dubai will rise to 3 million people by 2020.

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 Dubai 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 Dubai will be delighted to assist you.

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1. Ownership of Real Estate

1.1 Freehold ownership

Freehold, or 'absolute' ownership, is the most complete and comprehensive right over real estate available in Dubai and akin to the common law concept of freehold. Such ownership in Dubai is subject to certain limitations based on nationality.

Prior to 2006 no foreign ownership of real estate in Dubai was permitted by law. The introduction of a 'freehold' law in 2006 provided that non-Gulf Cooperation Council ("GCC") nationals and companies owned in part or wholly by them, may acquire a freehold interest in real estate in areas of Dubai designated by the Ruler of Dubai (His Highness Sheikh Mohammed bin Rashid Al Maktoum) as available for foreign ownership ("Designated Areas"). The GCC countries are, in addition to the UAE, Bahrain, Kuwait, Saudi Arabia, Oman and Qatar.

Freehold ownership of land throughout Dubai is permitted for UAE nationals, other GCC nationals, companies wholly owned by GCC nationals and public joint stock companies (as designated under UAE law).

All real rights must be registered at the Dubai Land Department ("DLD") in order to be valid. Upon registration the DLD issues a title certificate which is absolute evidence of ownership.

Co-ownership of a freehold interest is permitted and the title certificate issued by the DLD will state the share held by each party.

1.2 Usufructs and musataha ("bot agreements") 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. A usufruct right is a right to exploit the property of another. Registration of usufructs must be completed at the DLD and a certificate evidencing such ownership is then issued.

A usufruct right of up to 99 years can be held by non-GCC nationals within Designated Areas. A musataha (which is a type of usufruct and similar to a build, operate and transfer agreement) may be granted for the development of land for a term of up to 50 years. For GCC nationals, usufruct rights can be acquired throughout the Emirate.

1.3 Leasehold

Leasehold interests can be acquired throughout Dubai by GCC nationals.

Non-GCC nationals may acquire short-term leases throughout Dubai but 'long' leases can only be acquired in Designated Areas. The law treats any lease of ten years or greater as being a 'long' lease ("Long Lease").

Registration of all leases is mandatory. For leases of less than ten years, registration at the Real Estate Regulatory Agency in Dubai ("RERA") is required and evidence of such registration is necessary in order for a tenant to be entitled to connect to utility and telecommunication supplies. For Long Leases, registration at the DLD is required and a title certificate is issued.

1.4 Granted land

Granted land is a type of ownership whereby the Ruler of Dubai 'gifts' a plot of land in the Emirate to a UAE national at no cost. The purpose of the gift may either be commercial (i.e. with the purpose of developing a commercial asset) or residential (i.e. for the purpose of building a home for the individual). Although the ownership is considered unlimited in time, the gift can be revoked at any time upon the direction of the Ruler.

Granted land is also subject to various restrictions. The individual to whom the land has been gifted cannot dispose of the land (e.g. by way of sale) or grant an interest in it (e.g. leasehold) that exceeds three years without special permission from the Ruler. In our experience, those who are gifted land are reluctant to seek such permission. Any transaction in contravention of this restriction will be deemed null and void. Therefore an investment involving granted land needs to be structured carefully to avoid falling foul of the law.

Commercial (including industrial) land can be 'converted' from granted title to 'private' title (i.e. freehold title) by an application to the DLD and payment of a fee of 30% of the then-current market value of the land. If a transfer has already been made by the grantee to a third party, upon the third party applying for title, a payment of 50% of the then-current market value of the land will be required by the DLD.

1.5 Jointly owned property

A jointly owned property law exists in Dubai to deal with the common areas in a condominium or mixed use property development (as commonly exist in Dubai, in particular in the Designated Areas, which tend to be master planned communities). The jointly owned property law provides that each owner of a unit within a development owns a share of the common parts proportionate to the size of its unit and pays a service or community charge in such proportion for the upkeep of the common parts. Each owner then participates in a homeowners' association which is responsible for managing the upkeep of the development.

The jointly owned property law has not yet been implemented and, in most cases, the original developer of such schemes retains ownership of the common parts and requires payment of a service charge from the unit owners.

2. Acquisition of Ownership

2.1 Formal requirements

All transfers of ownership of real estate in Dubai must be registered at the DLD. All parties involved (e.g. buyer, seller, mortgagee, real estate broker etc.) must attend in person either at the DLD or a 'trustee' office 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 Dubai or executed overseas and authenticated and legalised for use in the UAE.

The parties must sign the relevant DLD forms, including Form F which sets out details relating to the transfer of real estate such as the details relating to the parties, the land and the real estate broker(s) acting on the transaction. Manager's cheques are commonly used to pay the purchase price and are required to pay the fees arising from a transfer of ownership.

Additional documents will be required by the DLD depending on the nature of the transaction. For transfer of real estate within a master community, a 'no-objection certificate' will be required from the master developer and this will only be issued if all service or community charges have been paid up to date by the seller and if there are no outstanding issues such as a breach of community rules and regulations. If the real estate being transferred is a plot of land to be developed then no-objection certificates are also likely to be required from the Roads and Transport Authority, Dubai Electricity and Water Authority and the relevant telecommunications authority.

Following attendance at the DLD or a trustee office, the application to transfer is processed. This may be completed on the same day or within a few days. Upon completion the DLD will issue a new title certificate in the name of the purchaser. If the purchaser has granted a mortgage over the property then the DLD will issue the original title deed to the mortgagee.

2.2 Registration fees

The DLD require fees to be paid in the case of transfers of ownership and the grant of Long Leases. In each case, the law provides for such fees to be equally split between the seller and purchaser (or landlord and tenant) unless otherwise agreed. It is commonly agreed in the market that the purchaser will pay the entire amount of fees.

The fees for registration of a sale and purchase transaction are 4% of the value of the property. If the DLD do not think the sale and purchase agreement accurately reflects the market value of the property being transferred, it is entitled to determine the value itself and charge transfer fees calculated against the market value it determines instead.

Registration of the grant of a Long Lease or the grant of a musataha attracts a fee of 4% of the total lease value (calculated as the total rent to be paid over the duration of the tenancy).

If a mortgage is being granted against the property, the DLD will charge a fee for registering the mortgage of 0.25% of the loan amount together with a nominal 'knowledge fee'. This is paid by the borrower.

2.3 Asset deals

In the case of an asset deal, the above formalities must be observed and the applicable fees set out above must be paid upon completion at the DLD or at a trustee office.

Apart from high value property, it is common for lawyers not to be instructed by a seller or a purchaser; real estate brokers tend to take a greater lead in the sale and purchase process. A brokerage company must be registered at RERA and each individual broker is further registered at RERA. If a company and individual are not registered at RERA, they are not authorised to carry on business as a broker in the UAE and, in the case of any complaints, the authorities will be limited in their actions against an unauthorised broker.

The DLD's register of real estate ownership is not available for inspection by 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. It will also reveal whether a mortgage has been registered and therefore needs to be released upon completion. Public utilities searches cannot be performed by the public and therefore, again, a purchaser is reliant on obtaining due diligence materials by request to the seller.

A valuation will be conducted by a bank if the purchaser is seeking to grant a mortgage over the property – a new law has been issued regarding the credentials required in order to be entitled to act as a valuer, but at the time of writing, this has not been published in the Official Gazette. A survey is not commonly done in the case of residential property unless it is of particularly high value. It is common to undertake a survey in the case of commercial property.

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 being a memorandum of understanding or a letter 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 deal, 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.

Once the sale and purchase agreement has been entered into, a binding contract has been made. However, it is not possible for a purchaser to lodge a priority notice at the DLD 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 DLD (or a trustee office), the risks associated with this are mitigated to a certain extent.

2.4 Share deals (purchase of property owning company)

It is permitted for real estate in Dubai to be held by a company. Outside of the Designated Areas, where real estate may only be owned by GCC nationals, it can be held by individuals or by companies (such as a limited liability company) wholly-owned by such individuals. Within Designated Areas, the law permits foreigners and companies wholly owned by them to hold real estate. However, in practice, the DLD permit company ownership only if that company is either a limited liability company registered in the UAE ("LLC") or a Jebel Ali Free Zone Authority ("JAFZA") Offshore Company ("JAFZA Offshore Company"). This is done in an attempt to prevent circumvention of payment of the transfer fee by undertaking a share acquisition rather than an asset acquisition.

Unless a JAFZA Offshore Company is used, the relevant company laws require a UAE national or 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-designated area as any 'foreign' shareholding will cause an LLC to no longer be entitled to hold such an ownership interest.

A JAFZA Offshore Company can be wholly-owned by a foreign national. JAFZA is a free trade zone in Dubai whereby companies can be registered with 100% foreign shareholding and with a tax-free guarantee and therefore the JAFZA Offshore Company is a popular vehicle for holding real estate assets in Dubai. If a JAFZA Offshore Company is acquiring real estate in Dubai, an undertaking is required by the DLD at the time of acquisition that the shareholders will notify the DLD upon a change in the shareholding. In theory this means that a transfer in the shares will trigger a transfer fee at the DLD but, in practice, there is not much anecdotal evidence available as to whether such notifications are made.

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 license and memorandum of association (and its amendments) should be requested and in the case of a JAFZA Offshore Company, a certificate of incorporation and certificate of incumbency should be requested along with the memorandum of association and articles of association (and their amendments). As there is no public share register, for both LLC's and JAFZA Offshore Companies, 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). If the transferee is an individual then the authority will undertake background and immigration checks which can be time consuming in certain cases. 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 Dubai 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 of association and articles of association and the certificate of incorporation) should then be filed with the licensing authority in order for the license for the LLC to be amended.

After the issuance of the initial approval, the licensing authority will place an advertisement in the local newspaper for one day 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 AED 6,000 and that payable to the notary public will be in the region of AED 4,000. The issuance of the LLC's amended license will take around 3-4 weeks from the date of filing of the documents and paying the applicable fees (provided that no regulatory approvals are required from other government departments).

In order to effect a share transfer in a JAFZA Offshore Company, it will be necessary to submit to JAFZA a letter from the registered agent of the JAFZA company, together with the relevant duly notarised (and legalised, if prepared overseas) resolutions of the transferors and the transferees.Also, three copies of the amendment to the memorandum of association and articles of association of the JAFZA Offshore Company should be signed by authorised representatives of the transferees before a JAFZA official (the resolutions of the transferees should include the relevant authorities in favour of its representatives in this regard) and the legal documents of the transferees (memorandum of association, articles of association and the certificate of incorporation) should be submitted to JAFZA. At the time of signing the amendment to the memorandum of association and articles of association, two originals of the existing memorandum of association and articles of association should be returned to JAFZA. The fees payable to JAFZA will be in the region of AED 1,000.

2.5 Public auctions

Real estate is sold by public auction in the event that a lender enforces its mortgage over such property. The mortgage law provides that upon a default by the borrower, a lender must give the borrower 30 days' notice through a notary of its intention to commence execution proceedings. If the default in payment is not cured within such 30 day period, the lender will apply to an execution judge to order an attachment against the mortgaged real estate, which enables it to be sold at a public auction in accordance with the DLD's auction rules. It is possible for the execution judge to postpone the sale by auction for up to 60 days to allow the borrower more time in which to cure the payment default.

This is the only method of mortgage enforcement available in Dubai 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.

Upon a sale by public auction, the proceeds from the sale are first applied to the DLD public auction fees and can then be used to settle the outstanding amount due to the lender. If any amount remains, this is returned to the borrower.

3. Other Rights to Property

3.1 Mortgages and charges

As set out above, mortgages can be created over real estate in Dubai in favour of UAE licensed banks and financial institutions only, and must be registered at DLD. 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 borrower.

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 by an individual being 65 years old for non-UAE nationals and 70 years old 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 over real estate 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 DLD. For the period starting with the mortgage agreement being entered into until the registration at DLD takes effect, the off-plan purchase and the intention to create a mortgage should be registered on an interim register called 'oqood'.

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.

Easements are not a registrable right in Dubai and therefore any such arrangement will 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 DLD. Therefore, any parties wishing to enter such arrangements relating to real estate in Dubai 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

Dubai Municipality is the main authority regarding zoning and planning permissions. However, a number of the free zones also operate as planning authorities e.g. Dubai World Central (the location of Dubai's second international airport). 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 Dubai Municipality 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 Dubai Electricity and Water Authority, Dubai 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 Dubai 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 to Dubai Municipality are the subject of many circulars issued by Dubai Municipality 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 Dubai 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 Dubai 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 laws of the UAE and Dubai relate to the protection, exploitation and conservation of the environment in Dubai, and Dubai Municipality takes the lead in enforcing them. However, desktop environmental reports that are common in various other jurisdictions are not yet common in Dubai and detailed environmental due diligence is not yet commonplace, although such awareness is increasing. Liability for environmental laws not being complied with falls to a purchaser, even if it did not cause the breach. Therefore, to avoid fines and the costs of remedying a site, a well-advised purchaser will carry out an environmental survey prior to acquiring land in Dubai.

In 2011 the Government of Dubai issued the 'Green Building Regulations and Specifications' which apply to all properties in Dubai (including residential, commercial and public buildings) that are either newly constructed or being extensively refurbished or altered to effect a change of use, excluding large scale (shopping malls) or specialist projects (e.g. hospitals). Compliance now applies throughout the Emirate. When a building permit is applied for, a 'Green Building Declaration' must be attached to it which contains an unconditional commitment to meet the requirements of the regulations. Evidence of compliance with the regulations must be demonstrated to Dubai Municipality in due course.

The regulations aim to improve the performance of buildings in the Emirate by reducing the consumption of energy, water and materials, improve public health and safety and enhance the planning, design, construction and operation of buildings.

Certification or a ratings system does not feature in the regulations and therefore developers in Dubai who want such certification tend to obtain a rating from LEED (Leadership and Energy and Environmental Design) or BREEAM (the British Building Research Establishment Environment Assessment Methodology).

6. Leases

The Emirate of Dubai issued a landlord and tenant law in 2007. The law does not distinguish between leases of residential property and commercial leases and registration of all leases is required – either at RERA if the term of the lease is below 10 years or at the DLD for Long Leases. The difference in registration fee is material – a nominal fee (currently approximately US$ 100) is required in the case of lease registration at RERA and a fee equivalent to 4% of the total rent value is required to register a Long Lease with the DLD.

6.1 Duration

Typically a lease of commercial property is for a term of between 1 and 5 years. Certain industries require leases for a longer period due to the nature of their business, for example, schools and hospitals.

In residential leases, it is common to have a duration of 1 year.

There is no maximum duration for a lease set out in the applicable law. However, within Designated Areas, a non-GCC national may only be granted a lease of a maximum of 99 years and outside of the Designated Areas, it is not common to see Long Leases being granted as absolute ownership is preferred in the region.

6.2 Rent

Rent is commonly calculated on a 'per square foot' or 'per square metre' basis. 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 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 time of writing, there are no taxes that apply to rental payments, however, please see Section 7.2 of this guide in relation to the anticipated introduction of value added tax. Leases of residential property do give rise to a 'housing fee' charged by Dubai Municipality which is collected through bills issued to tenants for electricity and water by Dubai Electricity and Water Authority.

6.3 Rent review

In the majority of leases, it is common for the rent to be increased in accordance with the RERA rental index and the law states that rent can only be increased based on the extent of the difference between the current rent payable and the market rent as determined by the RERA index.

The RERA rental index is an index of the average rent applicable to properties throughout the Emirate of Dubai. It is easily accessed online and searched by entering the relevant neighbourhood/suburb of Dubai, selecting the type of property (residential, commercial, industrial or staff accommodation), entering the size of the property (number of bedrooms in the case of residential property, square footage in the case of commercial and industrial property and number of rooms in the case of staff accommodation) and entering the current annual rent. When this data is entered, a calculation is made and information will be given on whether an increase in the rent is permitted. The index used to be updated 3 times per year but under a recently announced change it will now only be updated annually starting from 1 January 2015.

In commercial leases, it is becoming more common for the parties to agree a different basis for rental increases and for retail leases to include turnover rent. The RERA rental index does not cover these more complex arrangements and it is generally thought that commercial parties are able to agree to alternative methods of increasing the rent payable under such leases.

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 Dubai are 'master communities' where property owners are obliged to pay a community service charge for the maintenance of the community. Again, it is up to the parties to a lease as to how this is dealt with. For example, a landlord may include its liability for community 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 charge as many 'master developers' in Dubai take strong action when dealing with non-payment which may include 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

If a 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.

Although it is common for a landlord to take a security deposit from a tenant, the law does not provide 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 same condition it was handed to the tenant, except for fair wear and tear or issues beyond the tenant's control. The parties may agree different arrangements in the lease, especially where a tenant has carried out fit-out works.

6.6 Assignments

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).

6.7 Subleases

As with assignments, 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 will expire upon the head-lease expiring.

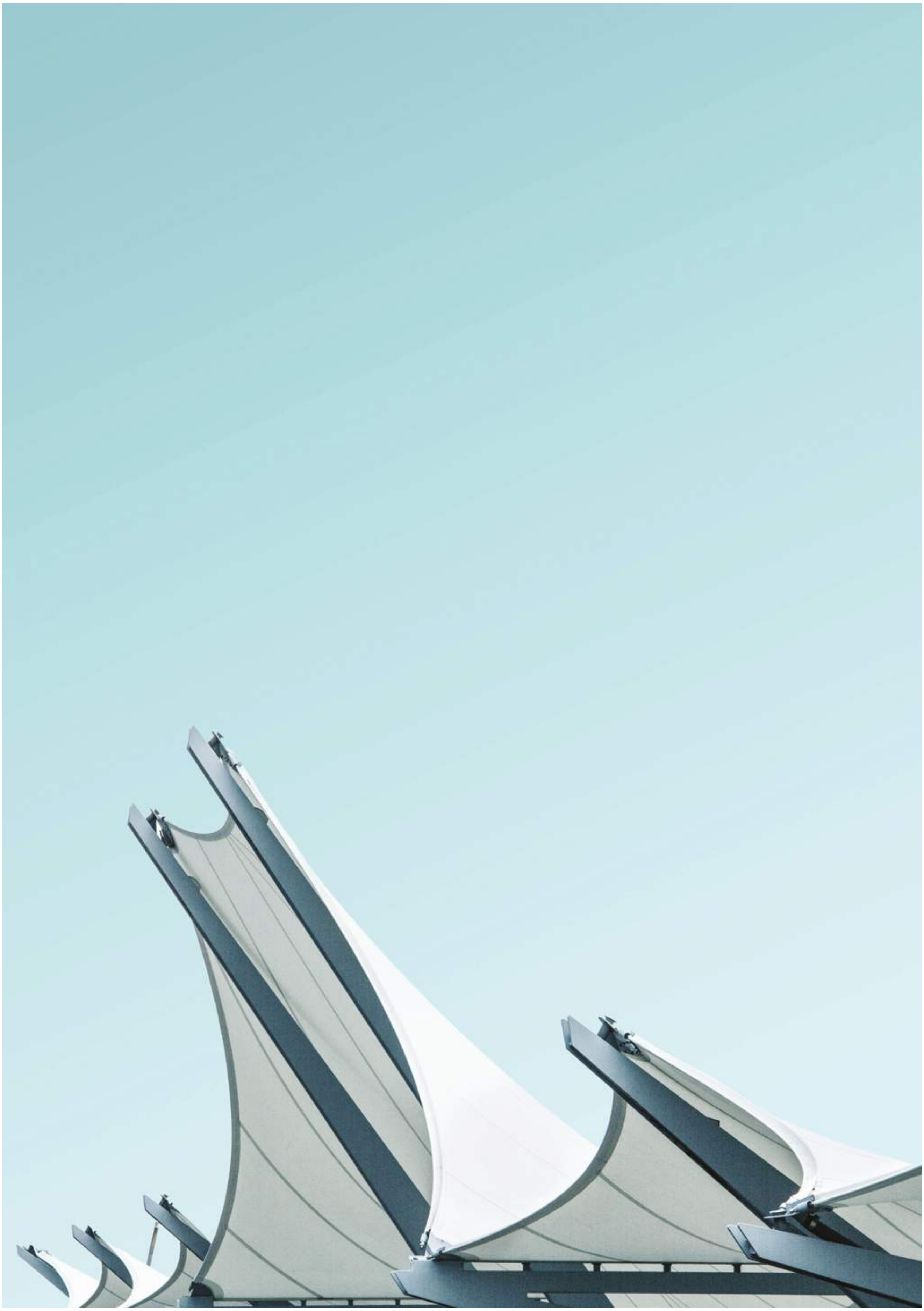
6.8 Termination

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 for the lesser of the equivalent to the original term and 1 year.

If a party wishes to renew a lease, notice of at least 90 days must be served through a notary including details of any proposed changes to the term. The parties ought to agree the terms of a renewal and failure to do so allows either party to refer the dispute to the special judicial committee for the settlement of disputes between landlord and tenants. This is a committee made up from local business people who hear disputes between landlords and tenants and determine them. The parties tend to appear in person before the committee and will not generally be represented by lawyers. As a result of this, it is common for commercial parties to agree in the terms of their leases to refer disputes to arbitration.

6.9 Sale of leased property

The law provides that the sale of a property which is subject to leases, does not affect the leases other than the purchaser of the property becomes the landlord under those 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 Dubai which we set out below.

7.1 Transfer taxes

As previously discussed, the DLD do charge fees to register the transfer of real interests. In the case of a sale and purchase transaction, the associated fee is a flat rate equivalent to 4% of the purchase price and in the case of a Long Lease, a flat fee equal to 4% of the total rental value is payable.

In order to register a mortgage, the DLD charge 0.25% of the mortgage value (up to a maximum fee of AED 1,500,000) plus a nominal 'knowledge' fee.

The DLD fees should be taken into account as part of the acquisition cost of real estate in Dubai along with brokers fees' and the fees of other professionals.

7.2 Value added tax ("vat")

On 1 January 2018, the UAE introduced a VAT regime and from this date, the sale of real estate by businesses which are registered for VAT will be subject to the following VAT rates:

- The sale of commercial property (whether new or existing) – 5% (standard rate)
- The first sale of residential property (within 3 years of completion) – 0% (zero rated)
- The subsequent sale of existing residential property – exempt (no VAT)
- The sale of bare land – exempt (not VAT)

In the case of investment properties, the transaction may be treated as "the transfer of a going concern" which does not attract VAT. The conditions for obtaining this treatment are complex.

Whether VAT can be recovered by the Buyer will generally depend upon the use of the property. If the Buyer is using the property to generate taxable supplies (e.g. charging VAT on rents) then generally the VAT can be recovered. However, the Buyer should take advice as change of use of the property could give rise to adjustments. If the VAT paid exceeds the VAT for which the Buyer has to account for, there may be a delay before it can recover the VAT.

7.3 Other charges arising from the occupation of real estate

LLC's with a trade licence issued by the Department for Economic Development ("DED") in Dubai are required to pay to the DED a renewal fee of 10% of its annual rent. For residential properties, tenants are charged a municipality fee (paid to Dubai Municipality) of 5% of the annual rent, payable each month, as part of their utility bill and all tenants are required to register their lease (where the term is less than 10 years) on RERA's 'ejari' system at a minimal cost.

7.4 Real estate investment trusts

Despite the taxation position being very favourable in Dubai, the concept of a real estate investment trust ("REIT") exists in the Dubai International Financial Centre ("DIFC") free zone (i.e. a commercial zone where 100% of the shares in a company can be owned by non-GCC nationals). As the DIFC REIT does not offer a tax advantage to investors, the main attractions are that it allows investors to acquire a passive interest in a diverse range of income producing, professionally managed property. Under the DIFC 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 70% of the net asset value of the fund.

DIFC REITs are considered 'foreign' entities and therefore can only invest within Designated Areas in Dubai, unless granted an exemption. In 2013, the first DIFC REIT (Emirates REIT) was authorised by the Ruler of Dubai to own real estate throughout the Emirate of Dubai and therefore that REIT is no longer limited to owning real estate within the Designated Areas only.

8. Real Estate Finance

It is common for large real estate acquisitions and/or developments in Dubai 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 no 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 Dubai.

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.

Registration of the mortgage at the DLD 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 DLD 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 Dubai, 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. 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.

A real estate mortgage may also be accompanied by a commercial mortgage, which is registered at the DED – the law provides for certain assets of the borrower to be secured without the bank being required to demonstrate possession (which is generally a fundamental requirement of perfecting security in the UAE). The registration at the DED lasts for 5 years and the commercial mortgage would need to be re-registered at that time if it were to continue beyond the 5 year period.

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 Dubai. However, there are fees arising from real estate security including the DLD 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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As real estate develops into a truly global industry, the ability to quickly and efficiently provide legal services in territories new to our clients and the ability to structure cross border investments and transactions is paramount. DLA Piper clients value the team's global resources, regional strength and local delivery and include the world's leading public and private companies, institutional investors and government entities.

In the UAE DLA Piper has a real estate practice across both Dubai and Abu Dhabi which serves the UAE and the wider region through our the offices in the Middle East and our DLA Piper Africa network of the leading commercial law firms in Africa. They are experienced in both real estate practice in the Middle East and in other jurisdictions and are able to bring international best practice to Middle East based real estate transactions. They advise on issues affecting all stages of the real estate investment and development cycle and work with a large number of both Middle Eastern and international clients.

In short, we are one team, no borders, providing a real advantage to our clients.