

Leasing in the Jebel Ali Free Zone

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The Jebel Ali Free Zone ("JAFZ") was established under Decree No. (1) of 1985 and is an economic zone located in the Jebel Ali area of Dubai, United Arab Emirates administered by the JAFZ Authority.

Laws applicable to JAFZ Leases

Anyone working or operating in JAFZ, whether an entity permitted to operate within JAFZ or a contractor working for such entity, is governed by the Jebel Ali Free Zone laws, rules and circulars published from time to time. With regards the question of whether Dubai tenancy laws and any other Dubai laws and regulations apply to property leased in JAFZ, the Jebel Ali Free Zone Rules, fourth edition 2005 (the "JAFZ Rules"), Rule 1.6 provides that "UAE Local Decrees, Regulations and Practices are applicable within the Free Zone unless otherwise prescribed in these rules."

Therefore Law No. (26) of 2007 (Regulating the Relationship between Landlords and Tenants in the Emirate of Dubai) as amended by Law No. (33) of 2008 applies to all property leased within JAFZ, unless the JAFZ Rules prescribe otherwise.

Tenancy Disputes

With regards adjudication of tenancy disputes, Law No. (15) of 2009 (Regulating the Hearing of Rental Disputes Arising in the Free Zones) at Article 2 provides the following:

"The Rent Committee shall determine rental disputes arising between landlords and tenants of immovable property in the free zones of the Emirate of Dubai, except:

- i. where the rent dispute to which any free zone authority in the Emirate of Dubai is a party;
- ii. rent disputes arising within the free zones which are under the jurisdiction of special judicial committees or courts."

The JAFZ Authority has not established a special judicial committee or court for the adjudication of tenancy disputes, therefore where the JAFZ Authority is a party to a lease the Dubai Courts will have jurisdiction unless the lease contains an arbitration clause. Where the JAFZ Authority is not a party to the lease the Special Judicial Committee in Dubai established pursuant to Decree No. (2) of 1993 (also known as the 'Rent Committee') shall have jurisdiction to adjudicate the tenancy dispute unless the lease contains an arbitration clause.

JAFZ Rules

We discuss hereunder some of the JAFZ Rules applying to property leased within JAFZ.

Commencement of Business Operations

Tenants are required to commence business operations from their premises within a prescribed period of time as follows:

- Tenants of office buildings are required to ensure that their offices are physically functional and attended during normal office hours by no later than 60 days from the commencement date of the lease.
- Tenants of light industrial units are required to ensure that their units are physically functional and attended during normal office hours by no later than 90 days from the commencement date of the lease.

- Land tenants are required to ensure that their premises are physically functional and attended during normal office hours by no later than 18 months from the commencement date of the lease.

Sub-Leases

Sub-leases may be approved by the JAFZ Authority provided that:

- The sub-lessor is in possession of a valid land lease and has a building which is already completed;
- The sub-lessee is a subsidiary or a sister concern of the sub-lessor with the majority shareholders being common in both companies;
- The activities of the sub-lessee conform with JAFZ Rules regarding health, safety, environment and the Zoning Plan;
- The sub-lessor has sufficient space for the activities of the sub-lessee without jeopardizing the space required for its own activities;
- The sub-lessor undertakes to be fully responsible for the activities of the sub-lessee as far as the terms and conditions of the lease and the Personnel Secondment Agreement are concerned.

There are no limitations on the number of sub-leases, subject to the approval of the JAFZ Authority.

An exception to the above are certain categories of companies that are not allowed to operate as sub-lessees and that are not allowed to sublet part of their premises.

With respect to sub-leases the JAFZ Authority levies a sub-leasing fee of AED 20,000/ per year.

Insurance

Tenants are required to have their premises insured against fire and other perils, in accordance with the terms of their leases.

Where the tenant has erected the premises, the tenant is responsible for arranging the insurance, which shall be in the joint names of the tenant company and the JAFZ Authority. The policy shall be sufficient to cover the replacement costs of the structure, fixtures and fittings.

Where premises have been erected by the JAFZ Authority, the insurance will be arranged by the JAFZ Authority on behalf of the tenant. The insurance shall be in the name of the JAFZ Authority. The tenant shall be required to pay a contribution of the insurance premium in the form of an annual standard charge in line with the JAFZ Authority's tariff.

Where damage is incurred to pre-built premises, the JAFZ Authority requires the tenant to bear the first AED 1,000/ for offices and AED 3,000/ for industrial units and banks. This is to cover the deductible amount which will not be paid by the insurance company.

Insurance of the 'contents' of any premises are at the discretion of tenants. The JAFZ Rules provide that the JAFZ Authority will not be liable for any loss or damage to tenants' contents due to any reason, including theft or natural calamities.

Termination of Lease

On termination of the lease, the tenant is required to settle all outstanding dues, vacate the premises, remove all furnishings and equipment from the premises and restore the premises to its original condition. Any waste material/contaminated soil should be disposed of in accordance with the JAFZ Rules and Dubai Municipality regulations.

If a tenant abandons goods on the premises, the JAFZ Authority shall issue a notice to the tenant's officially recognized address of the intention to treat such goods as 'abandoned'. A specified date for clearance of the premises will be given in the notification, which shall take into consideration the nature of the goods (e.g. refrigerated, perishable) and hence urgency of removal. If the abandoned goods have not been removed by the due date, the JAFZ Authority will act to remove them without further reference to the

tenant. Any costs incurred by the JAFZ Authority in doing so will constitute a claim against the tenant. The JAFZ Authority shall, at its discretion, auction the abandoned goods to expedite clearance of the facility and/or to recover any outstanding dues.

Mortgage of Properties Constructed in JAFZ

Tenants who have leased land in JAFZ and constructed purpose built facilities can, pursuant to Law No. (1) of 2002 on the Mortgage of Immovable Property in JAFZ, mortgage the premises (excluding the land) as security for a loan.

A register is maintained by the JAFZ Authority to record all mortgages of immovable properties in JAFZ (the "Mortgage Register").

The Contract of Mortgage between the owner ("Mortgagor") and the creditor ("Mortgagee") is recorded in the Mortgage

Register together with the following details:

- All the information relating to the immovable property;
- The approximate value of the immovable property and its contents;
- The value of the debt; and
- The identity of the Mortgagee.

The Mortgagee has to be a Central Bank licensed finance company or bank or (after obtaining specific approval from the JAFZ Authority) a branch of category 1 bank located in Dubai International Financial Centreduly licensed by the Dubai International Financial Authority.

The contracting parties should sign the Contract of Mortgage before the Registrar who shall then enter the records of the mortgage in the Mortgage Register.

More than one mortgage may be secured on one immovable property and the records in the Mortgage Register are made according to the dates of registration of the respective mortgages. The priority of the acquired title by virtue of the mortgage is determined according to the order of records in the Mortgage Register.

The mortgage expires, and the records in the Mortgage Register cancelled, in the following instances:

- At the end of the lease of the land on which the immovable property is erected; or
- Before the end of the lease by agreement of the contracting parties; or
- By final judgment of a competent court.

The following charges are payable by the Mortgagor:

- Mortgage registration fee - 0.12% of the value of debt;
- Amendment of the conditions of mortgage - 0.12% of the value of debt;
- Mortgage cancellation fee - AED 500/.

Conclusion

There are various types of premises available for lease in JAFZ and a company has the option of leasing an existing property or constructing its own purpose built facility.

Where a company leases land and constructs its own purpose built facility, the company will be able to mortgage the building pursuant to Law No. (1) of 2002.

Whenever a company is considering leasing premises within JAFZ, the company should take cognizance that there are a number of rules and regulations which govern and supplement the terms of the lease and affect the rights and obligations of the tenant.