

Real Estate within the UAE: A summary of legislative development

Tara Marlow - Partner, Head of Real Estate, Hotels & Leisure - Real Estate / Family Business
- Dubai International Financial Centre

Since 2010, the global economy has continued to struggle, impacting the Middle East. Sanctions on Iran have increased, impacting the region's bilateral trade and investment, and we have also seen the 'Arab Spring' protests, which have directly impacted politics and economics within the region.

Al Tamimi & Co established a dedicated Property Practice in 2003, and many of the lawyers in the Property team have been practising in the UAE since then. As such, we have witnessed first hand the changes that have occurred over the last decade and have been at the forefront of developing legal initiatives and advising government departments on real estate matters.

In mature markets throughout the world, it is fairly much taken for granted that the necessary laws and regulations are in place to provide for all scenarios – boom, bust, investor protection, co-ownership, legally protected registration of title etc.

However, when HH Sheikh Mohammed Bin Rashid Al Maktoum announced in May 2002 that real estate in designated areas of Dubai would become available for ownership by foreigners on a freehold basis, there were virtually no specialized laws and regulations in place to accommodate Dubai's burgeoning real estate market.

The same can be said of Abu Dhabi upon enactment of Law No. 19 of 2005, which allowed property ownership in the Emirate for the first time. The Northern Emirates legislative framework remains inconsistent in areas but is slowly developing.

Given the interest in real estate investment within the Middle East region generally, the task has been to systematically introduce the necessary new legislation and regulations to create a robust and comprehensive structure in which to protect and legislate for all parties' rights and obligations, which will, in time, underpin and support the real estate markets.

Much of the United Arab Emirates now permits foreigners to own real estate in certain areas. Other countries beyond the UAE remain restrictive, and in our next article we shall focus on KSA and Qatar.

Dubai has been at the forefront of the legislative development, and now, at the middle of 2012, we can see the emergence of a mature real estate market and a continued flow of inward foreign investment into real estate, whether from within the GCC region or internationally, in respect of all asset types.

This article therefore continues our focus on legislative development within the real estate market in the UAE, and as mentioned above, in our next article we shall consider the Qatar and KSA markets, which continue to grow, and where we have also had the benefit of long-standing experience.

(B) DUBAI

The issue of new legislation has been relatively quiet since the end of 2010, but as mentioned above, Dubai's legislative framework in respect of real estate matters had developed considerably between 2002 and 2010.

Following the creation of Dubai's Real Estate Regulatory Authority ("RERA") in 2007, we have seen it playing an increasingly public and crucial role in developing and supervising Dubai's real estate regulatory

framework and development.

The 'Escrow Law' introduced in 2007, brought protection for purchasers' money invested into off-plan sales in developments under construction, later supplemented by creation of the Interim Real Estate Register, further providing protection of purchasers' rights through a requirement to register off-plan sale contracts on the interim register, which is maintained by the Dubai Land Department.

In 2008, a framework for registration of lenders' pre-mortgage interests on the Interim Real Estate Register, as well as mortgages on the main Real Estate Register, (with mechanisms for enforcement and sale of property by public auction) was introduced. Originally intended to provide banks and other financial institutions with the confidence they needed to lend against property in Dubai, this legislation was timely in providing an ability to deal with the new phenomenon of mortgage defaults brought about by the global financial crisis.

The Strata Law was another major piece of legislation enacted, with implementing regulations following in April, 2010. Today, developers continue to work towards implementation of compliant strata schemes, empowering property owners to jointly manage their communities and buildings, whilst protecting transparency and fairness on issues such as service charge levels, contracting with service providers, and the use of common areas and facilities.

The legislative initiatives featured above sought to bring regulation, protection and fairness between parties in a positive property market. However, the Dubai Government was soon required to introduce measures to ease tensions and conflicts that ensued between developers, investors and financiers when the flow of money ran dry in late 2008.

As a result, enactment of Law No 9 of 2009 established a process for a developer to terminate an off-plan sales contract for purchaser defaulted of its payment obligations. It became imperative to ensure that in cases where developers sought termination of a sale contract due to non-payment by a purchaser, the measure of compensation that a developer could expect would be directly related to his own progress towards completion of the project and fulfillment of the sale contract. Law No 9 therefore introduced a regime whereby the compensation that a developer could claim in the event of his termination of a sale contract was linked to the stage of construction reached on site.

These provisions were confirmed by Executive Council Resolution No 6 of 2010, which went further by also establishing grounds upon which a purchaser could seek termination of a sale contract due to the developer's breach. The Resolution also introduced the grounds upon which RERA could take action to cancel a development project and the process to be followed after such cancellation.

A final welcome legislative initiative issued in 2010 introduced a mechanism to enable holders of industrial or commercial granted lands in Dubai to convert their granted title to freehold title upon payment of a fee assessed against the market value of the land in a deemed 'unimproved' condition. The benefits of having freehold title rather than granted title include the ability to mortgage the property to raise capital and to sell the property on the open market (subject to applicable nationality restrictions).

As regards Dubai's ability to capably deal with the rising volume and specific nature of real estate disputes, we saw a number of specialized dispute resolution forums introduced, namely: the new Property Court; the so-called 'Bounced Cheque Committee'; and the two Special Judicial Committees established to resolve disputes involving Dubai World and the property finance companies Amlak Finance and Tamweel, respectively.

Since the end of 2010, legislative development has been relatively quiet. In 2011, a circular was issued by the Dubai Land Department confirming that it was prohibited for offshore companies (except for those incorporated in the Jebel Ali Free Zone) to own property in Dubai. Foreign companies and free zone companies incorporated in the UAE were not affected by this ruling, as these companies are not considered to be offshore.

More recently in May 2012, a draft law on the Protection of the Property Investor in Dubai was circulated for consideration and comment, which seeks to introduce the notion that an investor should not be held to a Reservation Form, but should be entitled to see and agree to the full Sale and Purchase Agreement, and be given some time to consider this prior to signing. In the event of non-agreement on the terms, the purchaser is entitled to a refund of its deposit.

At the time of printing, the draft law on the Protection of the Property Investor in Dubai remains in draft form and unissued.

(C) ABU DHABI

Development of the real estate market in Abu Dhabi mostly commenced in 2005, when the issue of Law No. 3 of 2005 introduced regulation in respect of registration of real property, including the establishment of a Land Registration Department at Abu Dhabi and Al Ain Municipalities. Of fundamental importance was the clear requirement for every deed creating, transferring or extinguishing real property rights, (including leases with a term exceeding 4 years), to be registered. Confirmation was also provided in the Law, that the absence of registration would render such rights ineffective.

Importantly, the law further permitted UAE nationals to sell or purchase residential, commercial, investment or agricultural land allotted to them, with the main proviso that at least 5 years must have passed since the date of such allotment.

Subsequently, Law No. 19 of 2005 (incorporating amendments to it under Law No 2 of 2007) introduced provisions relating to ownership, development, leasing and mortgaging of land and property in Abu Dhabi, and differentiated between the rights of UAE nationals, GCC nationals and non-UAE/GCC nationals.

Law No 19 introduced the creation of Investment Zones (currently 12 in number), as areas of land within Abu Dhabi in which GCC and non UAE/GCC nationals were entitled to real property rights - which as a fundamental difference to Dubai, specifically exclude ownership rights to land for foreigners.

The above laws were supplemented in 2010 by Executive Council Resolution No. 64, which reconfirmed current legislation governing the rights of ownership and registration of property and property rights within Abu Dhabi, and set out specific directions to the Registrar of the Emirate's real estate registration departments to:

- register ownership rights (and issue registration certificates/title deeds) to non-UAE nationals for property rights located within the Investment Zones. (The Resolution also clarified and confirmed the status of long-term leases granted to non-UAE nationals over land located within the Investment Zones, by directing registration of rights to long-term leases);
- register ownership of property rights in respect of property located outside the Investment Zones (as may be permitted pursuant to current legislation); and
- register mortgages over property and property rights, (whether same are located inside or outside the Investment Zones).

Issue of the Resolution was particularly welcome as it clearly requires commencement of registration of all interests as permitted under current legislation, thereby allowing parties to secure protection of their rights and interests. The Resolution reconfirmed Law No 19 of 2005 stating that a new resolution will be issued dealing with common ownership of property and the management and administration thereof.

Whilst current legislation already provides a framework relating to property registration generally, in practice, minimal registration of property and/or property rights within the Investment Zones particularly, has occurred to date.

The laws have established legal principles, but do not yet have sufficient teeth to enable full implementation. In particular, we still await issue of separate rules and regulations specifically dealing with

common ownership of property. Given that a number of multi-owned towers have now been completed and either have been, or are in the process of being handed over to owners, this would be a welcome addition to the existing legislative framework, providing timely certainty and clarity in respect of co-ownership matters.

We are aware that such regulations are currently being drafted, and that the concept of a consolidated property law has been mooted. In our view, the promulgation of specific legislation dealing with these issues, (which in the absence of same mostly remain governed by the UAE Civil Code), would greatly supplement existing legislation and support the real estate industry within Abu Dhabi, which continues to be impacted by the global recession.

(D) Northern Emirates

Sharjah

Sharjah introduced its property registration law in 1972 through Law No 10 of 1972. Pursuant to this Law and its Implementing Regulations, a real estate registration office was established in Sharjah which allowed only UAE nationals to own property in Sharjah. Exceptions were permitted only with the Ruler's approval. Law No. 5 of 2010 Concerning Real Estate Registration and Executive Council Decisions No. 32 and No. 38 of 2005 regarding the Sale of Properties in Sharjah were subsequently issued which extended the scope of Law No. 10 of 1972, permitting GCC nationals the right of ownership of property in Sharjah.

In 1980, Law No. 4 was issued which regulated ownership of multi-storied buildings and provided an early concept of jointly owned property/strata ownership. This was enhanced in 1981 by the issue of Amiri Decree No. 1 which further regulated the rights and obligations of each owner in a multi-owned building, together with the management of the building and provided for the formation of a Co-owners' Association.

Ras Al Khaimah

Over recent years, Ras Al Khaimah has seen a large amount of development of mixed-use projects where off-plan sales to investors have occurred. To support this, specific co-ownership and investor protection legislation was introduced in Ras Al Khaimah as early as 2003.

Law of 2003 Regulating Flat Ownership in Ras Al Khaimah introduced the concept of ownership of apartments and floors in multi-owned buildings, providing greater guidance on the concept of co-ownership than existed under the UAE Civil Code. The Law provides for a system of registration of condominium (strata) ownership along with the identification of flats and floors; a right of pre-emption in favour of other owners in the building if one of the owners in the building decides to sell his apartment; and a simplified procedure regarding reconstruction of a building in the case of a building being destroyed. The Law however, did not clarify who has a right of ownership, and this was subsequently clarified by Decision No. 20 of 2005.

Decision No. 20 of 2005 provided that UAE nationals can own property in all areas of Ras Al Khaimah. GCC nationals are not specifically provided for in the Decision, but in practice in Ras Al Khaimah, they have been treated in the same way as UAE nationals. It was provided that all other nationalities were able to own property in specific investment projects provided that they established a company in the Ras Al Khaimah Free Zone or Al Hamra Free Zone, and purchased the property in the name of the company, i.e. foreign nationals could not buy directly in their individual capacity. This was subsequently amended through issue of Decision No. 12 of 2007, which relaxed the previous rules, allowing non-UAE nationals and corporate bodies (regardless of where they are incorporated), to own freehold title to property in projects owned by RAKIA, Al Hamra and Rakeen, without the need to establish a company in Ras Al Khaimah.

In 2006, Amiri Decree No. 15 was issued to permit registration of mortgages by way of security over long term leases (i.e. leases with a term exceeding 20 years) of property located in investment areas in Ras Al Khaimah. More particularly, this Decree authorises the creation of a mortgage over such long term

leasehold interest. The Ras Al Khaimah Lands Department is directed to establish a “Temporary Register” for the registration of such “Temporary Mortgages”. As a condition to registration of a mortgage, the Landlord’s consent to the mortgage is required and the term of the mortgage should not exceed the term of the lease.

Amiri Decree No. 22 of 2008 established the system of Guarantee Accounts and the sale of off-plan property. It became compulsory for developers who sell off-plan properties to register their names in the Real Estate Developers Register with Ras Al Khaimah Investment Authority to obtain permission/license for the development.

Ajman

In 2008, Amiri Decree No. 7 was introduced to permit UAE and GCC nationals (and companies/entities owned wholly by them, together with public joint stock companies incorporated in the UAE and public corporations and authorities incorporated in Ajman) to own a freehold right over land in Ajman.

Additionally, foreigners are entitled to own a right of freehold or usufruct, including long leases for a term of 50 years, with the approval of the Ruler of Ajman.

Subsequently, Amiri Decree No. (8) was issued in 2008 regulating the provisions of jointly owned property and common areas within such property. It also required any developer in Ajman to register as such with the Ajman Land Department, and to open an escrow account for the development project.

Through Local Order No. 4 of 2008, all developers are required to obtain approval for the Master Plan of a project together with approval for all of the infrastructure work for same. It further restricts a developer from commencing sales for a project, before obtaining a site plan for the underlying land (which will require the issue of a No Objection Certificate certified by the previous owner of the land which confirms that the whole value of the purchase price for the land has been paid).

To complement the legislation issued as outlined above, the Ajman Real Estate Regulatory Authority (“ARRA”) was established in 2008 with the authority to regulate real estate developments in Ajman. In addition, Amiri Decree No. 12 of 2008 was issued to require the creation of project escrow accounts, certified by ARRA and registration of all real estate projects with ARRA.

Umm Al Quwain

Umm Al Quwain issued legislation in 2006, through Law No. 3 allowing ownership by UAE and GCC nationals, and Public Joint Stock companies, to own property anywhere in the Emirate. Foreigners were granted the right to own floors without land, together with a 99 year usufruct right or a 50 year musataha right, in designated investment areas.

In 2007, Law No. 3 was issued preventing any developer from carrying out real estate development unless it is registered in the Developers’ Register at the Survey and Planning Department. Further, any developer wishing to sell units off-plan must apply to the Survey and Planning Department to open a Guarantee Account in the name of the project, to be used exclusively for the purposes of construction.

Al Fujairah

There remain, to date, no specific laws regarding property registration and ownership in the Emirate of Fujairah. The provisions of the Civil Code, and the instructions of the Ruler, therefore continue to regulate the real estate sector.

(E) CONCLUSION

In 2010, we considered whether Dubai’s real estate market would see a recovery, and our opinion then was, “Yes, of course”, although not at the property prices and rental values of the dizzying heights of mid-

2008.

In 2012, we find a maturing market, with assets of quality and good location retaining their value and attracting most investment interest. There is a marked increase of appetite for commercial property providing good yields from occupational leases, and transactions in this area have grown. We have represented purchasers and sellers on several transactions of this nature over recent months, and see interest growing for those assets which are priced correctly.

The extent to which recovery of Dubai's real estate market has been assisted by the development of its legislative structure cannot be accurately ascertained, but in our view, it is an important contributing factor, and testament to the importance of the existence of a robust legal framework, to create protection, certainty and security.

The real estate market of Abu Dhabi continues to develop and mature, however, it has generally struggled since 2010 - both as a result of the global recession and, in the residential sector particularly, due to the timing of hand-over of a substantial supply to the market.

Regardless of this, Abu Dhabi has created, and continues to create, some much needed prestigious grade A accommodation, both in respect of commercial and retail space. Sowwah Square on Al Maryah Island has proven extremely popular both for commercial and retail tenants, and a number of new malls across Abu Dhabi are predicted to open later in 2012/2013.

Combined with the many new hotel developments which have recently opened or are shortly to be opened, Abu Dhabi continues to move on, and has delivered some prestigious real estate developments to date. These are in line with the Abu Dhabi 2030 plan, and the Government retains a long term view on the continued development of the Emirate. The recent reaffirmation of the Government's commitment to the delivery of a number of significant infrastructure projects reflects this, and we continue to watch its progress with interest.

In our view, issue of the long awaited strata regulations can only benefit investor confidence and certainty, and we hope that these will appear in the not too distant future.

Ras Al Khaimah continues to attract a great deal of interest, particularly in respect of its developing hospitality industry. Indeed, the Government of Ras Al Khaimah continues to actively promote the Emirate as a tourism destination, and the recent creation of the Ras Al Khaimah Tourism Development Authority is testament to this, and is very active in raising the profile of the Emirate within the region and internationally.

The Property team at Al Tamimi & Co looks forward with interest, to the new cycle commencing, together with the opportunities, issues and challenges this may bring. It might even be said that, for Dubai, the new cycle has already begun?