

Virtual Realty: A Reality?

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The Advantages & Challenges of E-Governance

With electronic transactions now commonplace across consumer markets, it is appropriate to ask whether now is the time to allow real estate transactions to be completed electronically. Can a completely electronic real estate transaction, including all steps from the listing agreement to notarisation and registration, really be achieved?

UAE E-Commerce Law: Scope & Limitations

In 2006, the UAE government enacted Federal Law No. 1 of 2006 Concerning E-transactions and E-commerce ("the UAE E-Commerce Law") in order to foster e-commerce, including the provision of enabling procedure and framework. The objective of the UAE E-Commerce Law is to encourage and facilitate electronic transactions, reduce uncertainties around overwriting and signature requirements, and enable the filing of electronic documents with governmental and non-governmental agencies and departments. The UAE E-Commerce Law is based on the 1996 United Nations Model Law on Electronic Commerce.

While the UAE E-Commerce Law is applicable to electronic records and digital signatures generally, its scope is limited by exclusions set out in Article 2(2) which removes from its purview:

1. Transactions and issues relating to personal law such as marriage, divorce and wills;
2. Deeds of title to immovable property;
3. Negotiable instruments;
4. Transactions involving the sale, purchase, lease (for a term of more than 10 years) and other dispositions of immovable property and the registration of other rights relating to immovable property;
5. Any document legally required to be attested before a notary public; and

6. Any other documents or transactions exempted by special provision of law.

The exclusions for transactions concerning immovable property has meant that real estate transactions in the UAE could not be paperless.

As the UAE E-Commerce Law was enabled in 2006, we now have the benefit of over a decade's worth of insight and experience in implementing and administering it. It has allowed UAE to develop its technical and organisational ability and bridge any social gaps such as the so-called 'digital divide' or inequality in the access and use of digital technology. Further, the UAE has demonstrated a robust performance across a host of economic development indices and has lead the region in developing and implementing e-governance services in the pursuit of greater development and integration of e-governance services.

Accordingly, the UAE is now ideally positioned to widen the scope of e-transactions to include real estate transactions.

Recent Initiatives: Expanding to Real Estate

There have been a large number of recent e-governance initiatives in the UAE in respect of the real estate sector. With increased competition in this sector (including from a potential over-supply) and slowing demand, the real estate sector needs to innovate in order to attract investors. With developers focusing on affordability, offering e-transactions could be a valuable differentiator. Both buyers and sellers would welcome initiatives aimed at increasing the ease of dealing in real estate.

(i) E-Mortgage

The Dubai Land Department ("the DLD") recently launched an E-Mortgage initiative ('the E-Mortgage Agreement') in collaboration with Dubai Islamic Bank ("DIB"). The E- Mortgage Agreement between DLD and DIB establishes a common digital platform allowing DIB's representatives and customers to register their mortgage contracts with the DLD online, without the need to physically visit the DLD or any of its authorised registration trustees to verify and register such mortgage. This initiative will reduce transaction costs, improve efficiency and bring further development in the real estate sector, thus providing a stimulus to the digital transformation of the emirate.

(ii) Paperless Government Vision

The DLD is taking the lead in the Dubai Government's vision of achieving a paperless government by the year 2030. During the Gitex Technology Week in 2017, the DLD announced that it has become the world's first government entity to adopt the blockchain system. Blockchains maintain growing information on real estate property rights in blocks, and these blocks are secure in a way preventing any tampering or editing. This security is due to the design of the blockchains which prevent any modifications or alternations to any data recorded retrospectively; modifications can only be recoded in real time moving forward.

The DLD is currently working towards linking its blockchain database with various government authorities under a single database maintained by the Dubai Government. This would enable transactions such as title transfers, mortgage registrations and mortgage releases to be concluded in a paperless manner through an online portal. The DLD has already linked its system with the Dubai Courts, who now have access to view all records related to real property rights registered in favour of any litigating parties anywhere in the Emirate of Dubai.

The next step is for the DLD to link its blockchain system with the Department of Economic Development

("the DED"). This would mean that customers would no longer be required to bring hard copies of the corporate document of any company that desires to own or to dispose of a real property right. The blockchain would allow the DLD to access the database of the DED and view the relevant, up-to-date corporate documents of the company, thereby replacing paper documentation with digital records and digitally-signed contracts.

The efficiency of applying the blockchain system and creating a paperless government depends on including further partners participating in the process, such as Dubai Water and Electricity Authority, Dubai Municipality, Roads and Transport Authority, Dubai Police, master developers and sub developers, and free zone authorities such as Jebel Ali Free Zone Authority, Dubai Airport Free Zone Authority and Dubai Multi Commodities Centre. We understand that the DLD will provide access to the private sector, such as law firms and brokers, to access and view the information recorded in system, and that is to confirm the information pertaining to specific real property rights.

This process is currently at a very early stage. However the vision of the DLD is that title transfers will take place between concerned parties securely on the blockchain system by 2030 through various electronic mediums, including mediums as simple as a mobile phone application.

Singapore's Real Estate Initiative

The Dubai Government's proposed blockchain approach is similar to the approach taken by Singapore, which is poised to go a step further and integrate the digitalisation of property transactions more fully into its e-governance structures. The Singaporean Council of Estate Agencies ('CEA') and Building Construction Authority ('BCA') are working on an initiative which will provide access to government property data to "to move the industry towards seamless, end-to-end, efficient and secure transactions". Not only will this comprehensive approach reduce time and costs incurred through due diligence and title checks, but also leverage data integration across agencies (for example, to check whether a foreign tenant has a valid work visa). By 2020, the CEA and BCA intend to develop digitalised contract templates for use by consumers and property agents.

Conclusion

In the UAE, dealing with real estate often requires having regard to considerations of public policy, which is reflected in the restrictions in the UAE E-Commerce Law. That said, given that we are in changing times, the Dubai Government's adoption of robust blockchain technology and digitalisation presents an opportune moment to revisit the exclusions in the UAE E-Commerce Law and to include property transactions within the scope of e-transactions. Given that we have a secure digital signature technology, an efficient e-transaction system may actually be more safe and protected than traditional physical signatures and exchange.

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