Abu Dhabi Real Estate Guide
2018-2019

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REAL ESTATE INVESTMENT IN ABU DHABI

Introduction

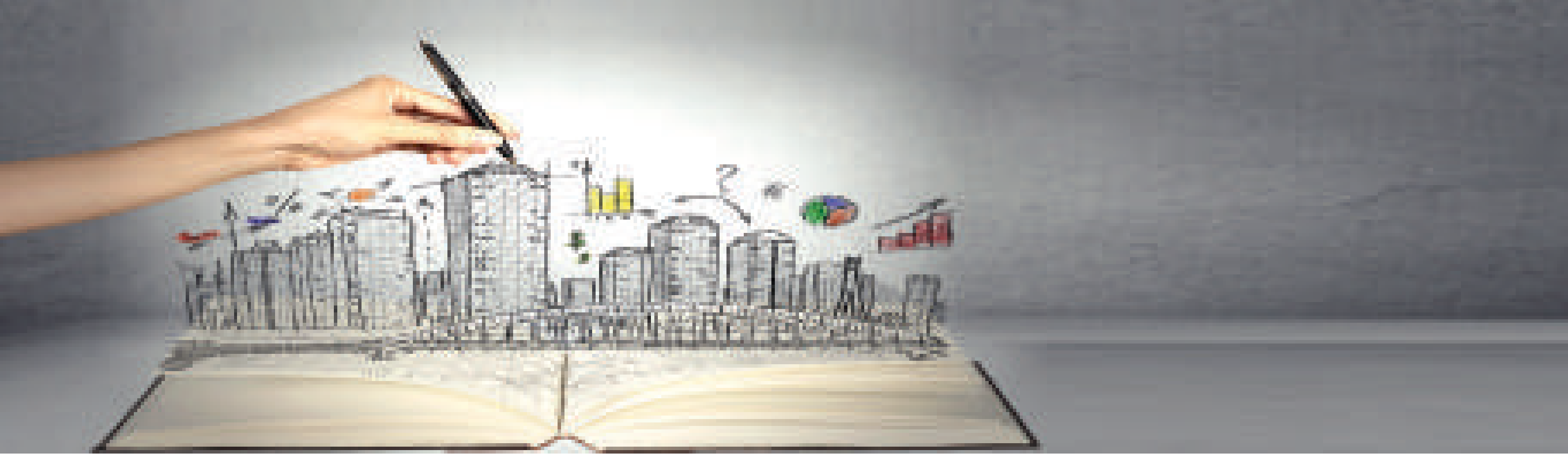
The growing number of expatriates migrating into the region looking to invest in the country's dynamic economy has created a rise in the country's industrial and commercial activities. But this also increases the need for more real estate units (domestic and business) to meet this growing demand. In 2007, the government of Abu Dhabi created the Abu Dhabi Urban Planning Council (UPC), whose resolution was to develop a strategic plan for the Emirate, by its' 2030 vision. This was to be done by developing a plan involving the unremitting creation and progression of Abu Dhabi's framework. This program includes raising the standards of living across the Emirate; including protection, promotion, enhancing Emirate culture and traditions, diversification, growing of Abu Dhabi's' economy as well as supporting and respecting various cultures of those living in Abu Dhabi. The Abu Dhabi Global Market (ADGM) is an international financial center located in Abu Dhabi. The ADGM is a financial free zone with its legislative framework. The center was incorporated to offer financial services for local, regional and international organizations. The ADGM was formed in 2013 and has since been developing its infrastructure to position itself as a top recognized financial center with reliable regulatory rules, including jurisdictional and dispute resolution systems, under the long-term economic strategy of Abu Dhabi on an international scale. The free zone has its own civil and commercial laws and judicial system which differs from federal regulations. Moreover, the ADGM has adopted English laws as the foundation for its legal outline. The aim is to create a legal background in a manner by which international investors know, trust and are familiar with.

In 2015, the Abu Dhabi Government issued a new law concerning the regulation of the real estate sector in the Emirate which contributed towards the growth of the economy, as well as attracting foreign investments (Law Number 3 of 2015 concerning the Regulation of Real Estate in Abu Dhabi, herein mention as the ***New Law***). The new law focuses on a broad range of topics including but not limited to the development and regulation of strata title, enforcement of mortgages, off-plan sales, the registration, together with the licensing of real estate developers, brokers, agents and other entities.

STA Law Firm houses one of the leading real estate lawyers in the world. We believe that knowledge of all investment structures is required, and we adopt a holistic approach to real estate matters. This guide serves as a primer to all the relevant laws in the UAE in regards to real estate investments.

PLANNING TO PURCHASE A PROPERTY?

#	Things to Know
1	Always ensure to conduct a thorough due diligence on the property and seller or developer before investing
2	Make sure that the property and the transaction is registered at the Abu Dhabi Municipality.
3	Engage a real estate lawyer to review your sale-purchase agreement.
4	Compare the asking price of the property with similar properties in the area.
5	Calculate the registration fee and confirm the proportion of the fee that both the parties would pay.
6	Ensure that the property has not been securitized for any debt obligations.
7	In case of a lease, be sure of your rights in the property and the obligation of the parties towards repair, maintenance and renovation.
8	Confirm about all the environmental hazards of the property with the seller.
9	VAT is applicable in case the tenancy contract is less than six (6) months' old. Confirm the VAT liability of the transaction (sale or lease) with a taxation lawyer in Abu Dhabi.



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Your where, when and how to invest in real estate in Abu Dhabi

Ownership of Real Estate is Cornerstone of a Strong Community

1. Ownership of REAL ESTATE

First and foremost, it is pertinent to note that all real estate transactions in Abu Dhabi should be registered at the Abu Dhabi Land Department (***LRD***). – although, the ADM (Abu Dhabi Municipality) takes care of real estate transactions including registrations. The seller has the underlying obligation to ensure that the transaction has been registered with the LRD and those transactions that are not registered with the LRD would not be considered as enforceable even if the parties have an agreement in place. The certificate issued by the LRD that identifies the ownership of status of a property is the pivotal evidence under the law. In UAE, there are three main types of ownership which are as follows:

√ Freehold ownership;
√ Leasehold ownership;
√ Jointly owned property.

1.1. Freehold ownership *(within the Abu Dhabi mainland)*

Freehold ownership confers the owner (natural or legal person) with complete, utmost and comprehensive ownership over the particular property, depending on their nationality or place of registration. There are four categories of people who would like to own property in Abu Dhabi: -

I. UAE nationals and companies wholly owned by UAE nationals;

II. The UAE Federal Government, governments of individual Emirates or their entities;

III. Entities owned by the Abu Dhabi government; and

IV. Foreign individuals and businesses that do not come within the scope of the two categories above.

The Abu Dhabi Property Law does not limit UAE nationals and UAE companies from owning real estate property in the Emirate. Citizens of Bahrain, Oman, Saudi Arabia and Kuwait (or the Gulf Co-operation Council) are permitted to purchase land (or properties) in designated investment zones in Abu Dhabi. However, Non-UAE nationals, i.e. foreigners (or expatriates) are only allowed to own, purchase, sell, mortgage and lease out a property in certain nominated areas which are known as Investment Zones. These Investment Zones are areas of land within Abu Dhabi in which foreigners and GCC nationals are entitled to real property rights. It worth to note that foreigners can own apartment units and entire floors within Investment Zones, or on usufruct and/or mustaha rights. However, this right does not contain an associated right to a portion of proprietorship of the original land on which the construction is situated. Presently, Abu Dhabi has the following investment zones:

i. Al Reef,
ii. Golf Gardens,
iii. Mangrove Village,
iv. Raha Beach Area,
v. Al Bandar,
vi. Al Zeina,
vii. Al Manara, and
viii. Al Reem Island.

Foreigners have limited rights to own property in the investment areas and may purchase property within the Investment Zones in the Emirate in accordance with the following: -

I. Interest in land (usufruct for 99 years)

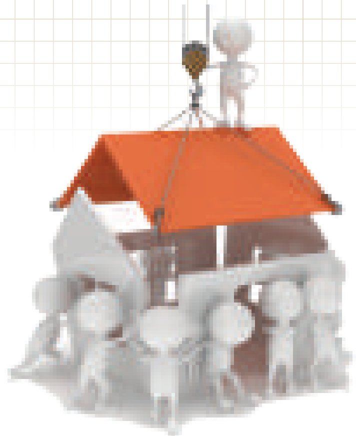
II. Interest in land (musataha for 50 years that may be renewed thereafter);

III. Ownership of whole floors in buildings; and

IV. Interest over land as per a lease agreement for a maximum period of 25 years.

Hence it is clear that expatriates may either hold this interest in their individual capacity or jointly with another party: -

a. Individual owner - this is the most common method of ownership where the individual purchaser buys and



The lease brings the project to hundred percent occupancy and a near closure to the business plan.

registers a property in his/her name.

b. Joint ownership - this method allows several or more people to own property. Under this method, all owners will be registered as the joint owners and will be fixed in the title deed.

Abu Dhabi Global Markets

Abu Dhabi Global Market has its separate real estate regulations (Property Regulations and Strata Regulation) that apply to properties located on Al Maryah Island. Within the ADGM, UAE and GCC nationals and companies wholly owned by them can hold land, floors or units in the territory of ADGM on a freehold basis. However, similar to the New Law, foreigners (individuals and legal entities), are not permitted to have freehold ownership over plots of land in the ADGM as this is reserved for UAE and GCC (nationals and legal entities). On the other hand, foreign persons and entities have no restrictions on purchasing floors and units in buildings. Also, ADGM recognizes the principle of a joint ownership where two or more owners may own a real estate.

Additionally, ADGM has its land registration department, named ADGM Land Register which has laid down a list of real estate transactions that should be registered with them. In the ADGM, the obligation to ensure that the transfer of title or the details of a real estate transaction to be recorded is placed in the person or entity that is granting and/ or selling and/ or leasing the specific property. However, the agreements concerning these real estate transactions that have been entered into by the parties are enforceable in accordance with the provisions of the conveyance document even if the same has not been registered with the ADGM Land Register. The Land Register records all documents relating to the creation or transfer of property rights in ADGM. Furthermore, ADGM will create its courts (ADGM Court) for hearing any matters arising from the Property Regulations and the Strata Regulations.

1.2. Leasehold and Mortgage

Leasehold means a property that can be taken on a lease from a freeholder for 99 years or 50 years in certain cases. Leasehold properties are available in two forms "***Musataha***" and "***Usufruct***." Under Article 1333 of the Federal Law Number 5 of 1985 the Civil Code (the ***Civil Code***), a tenant can have usufruct rights over property. Meaning when the owner of such property has entered into a usufruct agreement with the tenant wherein the tenant is allowed to use the feature provided such property remains in its original conditions. Usufruct will enable investors to use a built-up land as a lease for up to 99 years. Further, the Civil Code allows using musataha right which is 50-year development lease that will enable you to build and relish undeveloped land. Musataha, as well as Usufruct lease, can be renewed for a period upon agreement between the parties. Unless the parties agreed otherwise, a tenant might transfer of his/her right of usufruct or musataha to the other party without the permission of the owner of the land. However, the owner of the land cannot mortgage his/her interest without permission of the tenant, unless agreed otherwise. As mentioned earlier, leasehold interest for foreigners is restricted to real estate properties within the investment zones.

Leasehold interest in real estate in the UAE has more similarity with a license rather than ownership because of the duties that are placed on the concerned parties. That being said, there are no specific restrictions for foreigners to have a lease (not usufruct or musataha) over a real estate property in Abu Dhabi. What is a lease that is not a usufruct and musataha? A lease can be of various types wherein the parties may have different obligations, and the term of the lease may vary from each other. Foreigners may lease any property within the investment zones in Abu Dhabi for a period not exceeding twenty five (25) years, and these contracts should be registered with the Abu Dhabi Municipality.

Parties to a lease agreement are advised to register their lease agreements with the abovementioned authorities since unregistered leases would not be enforceable in the Emirate of Abu Dhabi and could cause certain ambiguities in the event of dispute between the parties.

1.3. Jointly owned property

Jointly owned real property is regulated by the New Law and is defined as "***the whole or any part of a building or a land, or both, which is partitioned into units intended for separate ownership where parts of such building or land are assigned as common areas***." Common areas are the common parts of the real property for common use by the owners

and occupiers, which incorporates the auxiliary components of the building, equipment and systems for the provision of the main utilities, lobby, passages, lifts, swimming pool and any other area which the owners would utilize jointly in terms of their use and enjoyment of the building. Whereas, in respect of real property, which does not comprise of a building, the common property will include roads, pathways, ponds, landscaped areas and the like[i]. A proprietor's union should be established in connection to each mixed-use property within each unit-holder inside the property participating in it and contributing to the upkeep of the standard parts through the payment of a service or community charge about their significant proportion.

The ADGM's regulatory framework concerning the title of joint ownership of properties is similar to that of jurisdictions such as South Africa and Australia. The developer of the property is placed with the following obligations in case of off-plan lease transactions with the Al Maryah Island, including: -

I. Establishing a body corporate within each developmental project;

II. Setting up an escrow account to receive the investments of leaseholders; and

III. Establishing a body that would be responsible for managing the property post-completion.

However, the developer is conferred and reserved with certain rights such as developmental rights, right to make improvements and changes in property, right to reserve easements and the like. This is likely to provide the developer with a degree of authority to ensure the flexible use of common and shared areas in property, and issues are likely to arise in cases where the property is used by hotels or other operators in the hospitality sector.

2. Acquisition of OWNERSHIP

2.1. Formal Requirements

Under the New Law, all real estate transactions should be recorded under the owner's name in the LRD, and the ownership of real estate shall be evidenced by issuance a title deed. The regulations also require that mortgages (over property and property rights) be registered at the Property Registration Department. Therefore, it is clear that in case a transaction has not been registered and recorded at the LRD, the status of the property would not change, and the purchaser would not acquire any rights.

Parties are advised to approach the LRD to conduct due diligence regarding the property before investing in the same to ensure that the seller has the right to sell the specific property. However, the register maintained by the LRD is not a public record and therefore, the purchaser may have to make an application to the LRD to obtain a copy of the particular title deed of the property. The transfer or assignment of real property may only be effectuated once all the parties are present at the LRD make the necessary applications for the transfer of ownership. However, parties may also appoint their representatives to effectuate the transfer vide a power of attorney. The purchasers pay the amount to vide a managers' cheque, and the seller is mandated to obtain written consent from the concerned person(s) who are currently residing or using the premises of the property.

Previously, the Abu Dhabi had not imposed any restriction or requirements on the registration of off-plan property sales in the Emirate. However, the implementation of the New Law has brought substantial changes to this scenario. The New Law has laid down that some requirements including the following to sell or market off-plan properties in Abu Dhabi: -

I. Set up an escrow account;
II. Provide information pertaining to the seller's and/or developers' right over the property; and
III. Approvals obtained from the LRD.

The New Law is expected to strengthen the position of investors in the Emirate as there would be a higher level of obligation and requirement to disclose information on the part of the developer. This legislation, therefore, has substantial similarity with the existing real estate regime in the Emirate of Dubai.

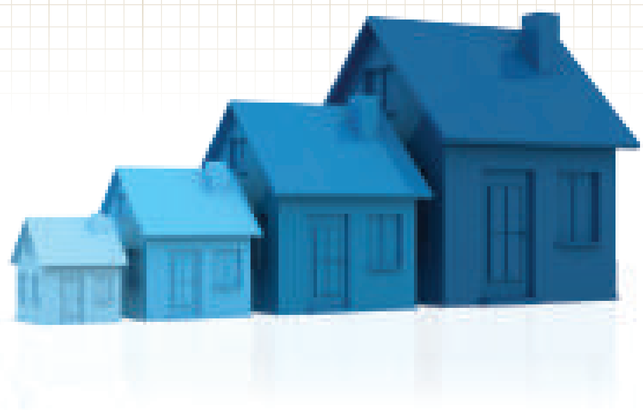
The LRD may also ask the developer or the seller to provide or furnish them with additional information or documents depending upon the specific property. For instance, in case the unit of the property is part of a master community with a master developer, then the seller would also have to submit a no-objection certificate (NOC) from the master developer. Similarly, in case the property that is being transferred is a plot of land, then the LRD may also ask for approvals and NOCs from the Abu Dhabi Water and Electricity Authority, Department of Transport, and any other authority or entity depending on the property.

The Registrar will record all documents regarding creation and/or transfer of property rights in ADGM. Moreover, ADGM regulations require that all documents shall be executed in the English language if the original documents are in another language and the translated version should be submitted. However, the New Law does not indicate whether translation need to be stamped by official Abu Dhabi government or ADGM approved translator. As for leasing rights, Abu Dhabi regulations require that every lease that exceeds four (4) years' term to be registered. Failure of such registration will lead to ineffective rights. Musataha and usufruct interests are not specifically recognized by the property regulations since they are distinct from leasehold rights. The property regulations, do, however, acknowledge that there were existing rights granted under musataha and usufruct agreements before the Property Regulations were published in 2015 and such

agreements should be registered in the Real Property Register by June 2016.

In case a party effectuates a real estate transaction by misrepresentation of facts or fraud, the agreement between the parties would be deemed as voidable then the other party (was misled due to the act of misrepresentation or fraud) may terminate the agreement.

The New Law does not permit parties to make priority notice for a property transaction. Priority notices are employed to ensure that the (off-plan) property is not transferred to any other party by the seller before the completion of the property. However, parties are permitted to file a priority notice if the property is situated in the ADGM.



How much to be paid while registering the property?

2.2. Registration Fee

The transfer act means transferring of ownership of the property. Therefore, both seller and buyer or their appointed representatives shall attend a transfe meeting with a developer to release the seller from contractual obligations and register the new buyer as an owner. According to the Law Number 49 of 2018, the fees for the registration of sales and purchase will be decided by the executive committee mentioned under this law. The fees to be paid for a registration is between a minimum of 1% to maximum of 4% of the transaction value. The relevant authority has the discretion to decide according to the value of the relevant purchase. However, the maximum fees capped at AED 1,000,000 for each transaction. The parties must share the fees equally between them unless otherwise, they agreed differently. The fee for registrationof mortgage is zero-point one (0.1) percent of the mortgage value up to a maximum fee of AED 1,000,000 (UAE Dirham one million). However, the registration fees within the ADGM are unknown.

In case a real estate agent is employed for purchasing a property, the agent should support you through the negotiations and process and attend the transfermeeting with you to ensure all the correct documents are in place and that the registration of the property into your name goes smoothly. Agency fees are normally two (2) percent of the new purchase price. Service charges ensure that the property is well maintained and serviced. On a property bought directly from the developer this annual charge is payable upon purchase, and on a resale property, you are likely to repay the seller the pro-rata amount for the remainderof the year from the date of transfer. Service charges arenormally calculated on the size of the property, i.e., per square foot and vary between each developer and typeof property. Ask your agent what they are beforehand.

2.3. Share deals

The Real Estate law allows a company to own a property in Abu Dhabi with some restrictions. Companies that are held by UAE nationals may own a real estate property anywhere in the territory of Abu Dhabi. According to Federal Law Number 2 of 2015 concerning commercial companies (the Companies Law), a company is only acceptable when UAE national holds not less than fifty-one (51) percent of the shares of a company. But, foreign companies can own a property within investment area. Companies that have foreign shareholders may only acquire property that is located in any of the investment zones in the Emirate. In the event when a company owns a property, the potential buyer shall perform due diligence to be on safe side. Since, in contrast to property ownership, the information on company ownership is not publicly available. Thus, the buyer shall request corporate documents from a seller such as a memorandum of association (MOA) and trade license and make sure that all information is up to date.

2.4. Public Auctions

Public Auctions are conducted when a lender took a mortgage on his property and was declared insolvent by a court order.

3. Other Rights to Property

3.1. Mortgages and charges

A mortgage in Abu Dhabi has a fairly low-interest rate of four (4) percent per annum. There are some conditions to obtain a mortgage loan in the UAE, as well as in any other country.

√ The loan is given to expatriates between the ages of 21 and 70 years.

√ The buyer of real estate can get up to seventy-five (75) percent financing of the cost of housing from the bank.

√ The UAE nationals can expect up to eighty (80) percent financing of the property value from the bank.

√ The maximum period of mortgage loan is 25 years.

√ And the age of the borrower at the time of the last payment should not exceed 65 years for expatriate and

70 years for the UAE citizens.

The offers on mortgages from each bank will vary depending upon the bank and whether a debtor takes a mortgage loan the first time or already took it before. If the value of the purchased property is less than 5 million dirhams and this is the first property purchased, the bank can pay up to seventy-five (75) percent of the value of the property. If the submission is submitted by UAE national, the bank pays up to eighty (80) percent of the cost. In some occurrences, if you are planning to purchase more than one property and this would be your first purchase, then it is more lucrative to buy a more expensive real estate since the banks cover seventy-five (75) percent of that cost. The same has been illustrated in the table below: -

Particulars	UAE Nationals	Foreigners
Maximum Mortgage Period	25 years	25 years
Maximum Age for last payment	70 years of age	65 years of age
Maximum loan to value ratio	70%	65%

When you are buying several properties, the banks reduce the amount of payment and pay only up to sixty (60) percent of the cost to foreigners and sixty-five (65) percent for UAE nationals. 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 including the full details of the lender, plus the borrower and any guarantor.

3.2. Easements

The Civil Code recognizes the concept of easements. An easement is a real estate concept that defines a scenario in which one party appropriates the (real) property of a third party for a fee paid to the owner of the property, and the right of the easement is given in return. In order easements are valid, it shall be done in writing. According to the Civil Code, the rights of easements can be terminated in the following cases:

1. Upon expiry of easement agreement;
2. The relevant property does not exist;
3. If the benefit of an easement is not used for a period of 15 years;
4. If the servient land is owned by easement user.

Easements, as well as any property rights, shall be registered at the LRD or ADGM Land Register. In this case, the easement will be binding on successors in title to the property. However, if an easement is not registered in the above-mentioned departments, then the contract will take effects as a personal contract. Under UAE law, the courts will not grant specific performance and do not grant injunctions.

3.3. Rights that cannot be Registered

The laws of UAE do not recognize the other rights that are available in other countries such as pre-emption rights, options, and overage rights. Therefore, they cannot be registered at LRD or ADGM Land register. However, if the parties such agreements wish to enter into such contracts, they have the freedom to do so provided that such agreements do not contradict public policy. It should be noted that such agreements will take effect as personal contracts, therefore, in case of breach of a contract, the courts will award damages only but not award injunction or specific performance since the first is not available under the Civil Code, the second is available only in a rare case.

4. LEASES

4.2. Duration and Rent

Residential and commercial leases will last for different periods. A residential lease will last for one year, and a commercial lease can range from 1 to 5 years. Given that absolute ownership is preferred in the UAE, long leases are not granted. Also, non-GCC nationals can only be granted a lease for a term not exceeding 25 years. Rent is calculated as 'per square foot' or 'per square meter' basis; rent is paid on an annual basis, although landlords will require post-dated cheques to be provided by the tenant upon signing the lease. Criminal Liability can arise from a dishonored cheques, and post-dated cheques are commonly used in the UAE. A tenant should make sure that they have sufficient funds in their accounts before making a cheque. The Abu Dhabi government had imposed a rent cap of five

(5) percent, but this is no longer applicable; rent can now be increased to one's wishes.

Chapter 7 of the Abu Dhabi Global Market Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations of 2015 define rent as: -

(1) 'Rent' means the amount payable under a lease (in advance or arrears) for possession and use of the demised premises denominated as "rent" according to the lease —

(a) including, to the extent denominated "rent" under the lease, any sums in respect of services, repairs, maintenance, insurance, mortgage interest or other ancillary matters; and (b) together with any interest payable on that amount under the lease.

(2) The amount payable for possession and use of the demised premises, where it is not otherwise identifiable, is to be taken to be so much of the total amount payable under the lease as is reasonably attributable to possession and use."

4.2 Operating Expenses

Responsibility to pay utilities and telecommunications for a leased property can be agreed on by the parties. Properties will be individually metered, and tenants can pay their charges directly to the provider. Property insurance is paid by the landlord (and can then be recovered by the landlord's service charge) and contents insurance is paid for by the tenant. In the case of '***master communities***,' property owners are required to pay a community service charge to maintain the community. Failure to do so can result in 'masters developers' sanctioning non-payment of the community service charge by blocking access cards, and prevent access to communal facilities such as car parking or swimming pools.

4.3 Maintenance, Repair, and Renovation

In case the lease does not explicitly provide details regarding who is liable for maintenance, repair, and renovation, the law provides that it is the landlord's responsibility to take care of these matters- such as any defect in the property. In the case where the landlord fails to carry out a necessary repair, the tenant may repair it and then deduct the cost of the rent. Nevertheless, this deduction can be problematic in the case of post-dated cheques and annual payments of rent. In contrast, the same laws do not apply to leasehold properties located in ADGM. It follows that in the case of leasehold properties in ADGM, these matters must be dealt with in the lease.

In general, the landlord will take a security deposit from a tenant. But the law does not specifically state that there is a requirement for this. It follows that it is important to address how the security deposit will be managed in the lease agreement. Moreover, the property must be returned to the landlord in the condition it was when it was leased.

4.4 Subleases and Termination

The landlord's written consent must be obtained to sub-let a lease. However, in some instances, the lease can fully prohibit the sub-letting of a lease. Sub-leases are not a common thing in Abu Dhabi, but if a sub-lease has occurred, it should be noted that it cannot extend past the head leases term. As for properties located in the ADGM, there are no provisions about sub-leasing so the landlord and tenant have the freedom to decide how they would like the sub-letting process to occur.

In the Abu Dhabi area, excluding ADGM, if a lease expires and the tenant has not vacated the property then it will be assumed that the lease has been renewed, namely at the same rent and duration. In order to prevent the renewal of the lease, or to renew it on different terms, written notice must be provided to the other party at least two months prior to the expiry of the lease in the case of residential properties, and at least three months prior to the lease in the case of commercial properties. As for properties in the ADGM, the tenant has no right renew their lease automatically.

5. TAX

UAE is known for its low tax rates in many respects such as no income tax and no tax liability for the payment of dividends to a shareholder. There is also no taxation for capital gain on the sale of real estate or sale of the stake in a real estate company. Nevertheless, some tax issues have to be taken into consideration by individuals and companies wishing to invest in the Emirate of Abu Dhabi.

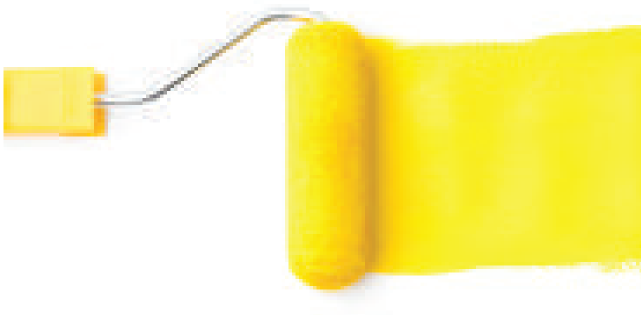
5.1 Transfer Taxes

In the case of sales and purchases of property, there is a fee to be taxed which is a flat rate equivalent of two (2) percent of the purchase price. In the case of the registration of a mortgage, a fee of 0.1% of the mortgage amount is due. Both these amounts cannot exceed AED 1,000,000 (UAE Dirhams one million). In case of tenancy, the landlords have the liability to pay various fees to the authorities for registering the lease agreement, amending the agreement and registering the building.

In the case of leases of less than four years, a lease registration system called 'Tawtheeq' exists. Fees are required to register leases, and also to amend and renew them. Fees are also required to register a building into the Tawtheeq system. Leases of more than four years are covered by another system called 'Tamleeq' where fees for one (1) percent of the rent are required.

5.2. Value-Added Tax

The Federal Law Number 8 of 2017 on Value Added Tax will implement VAT (***VAT Law***) at the rate of five (5) percent on 1 January 2018. Companies should register for this before the end of October or November based on their turnover rate. This measure has been implemented by the government in part to strengthen its revenue basis, in light of its desire to reduce its dependency on oil revenues. The applicability of VAT



on real estate transactions depends on the transactions themselves and whether the tax residency status of the parties in the transaction. Therefore, companies and individuals are advised to contact a law firm that specializes in both tax and real estate to provide you with their legal opinion on the transaction.

5.3. Other Charges arising from the Occupation of Real Estate

Although companies are technically required to pay a corporate tax of up to fifty-five (55) percent on their earnings, enforcement of this requirement has been limited to hotels, foreign banks, and oil, gas, and petrochemical companies. In the case of Limited Liability Company (***LLC***) registered with the Department of Economic Development (***DED***) in

If you Liked it, you should have put an offer on it...

Abu Dhabi, they must pay DED a yearly renewal fee, based on the activities listed on their license. There is no regulation on real estate investment trusts in Abu Dhabi or the ADGM.

6. Real Estate Financing

In the case of the financing of large developments in Abu Dhabi, the principal debt is secured by the capital value of the property, and debt is serviced by the income generated by the occupation of the property. To take a mortgage over a property in the UAE, the bank must be licensed by the UAE Central Bank. As a result, some non-licensed banks have been known to lend funds but take a security through a security agency agreement with a licensed UAE bank. Selecting a fixed rate loan or entering into a hedging agreement can protect against the risk of rising interest rates. Mortgages can be granted over three different types of interest: -

i. freehold interests;
ii. usufruct interests; and
iii. granted land interests.

The LRD, however, may not in practice register the security interest so banks should make inquiries on this. The mortgage must be registered at the LRD/ ADGM Land Registry. Besides, if the land is located in a free zone, there is no requirement of no-objection certificates from that free zone. In complex financing arrangements, banks will take additional security measures such as an assignment over rental income. Banks are also looking at taking share pledges. On another note, there is no taxation on the creation of securities in Abu Dhabi.

However, in certain financing arrangements in the real estate sector, the bank(s) may also ask for additional or extra security. These situations arise when the bank has been assigned the rental income from a particular unit of property. In such cases, a notice should be served on the tenant and acknowledged by him or her. Although these forms of security can be taken as security, it is not common for banks to take a fluctuating income into account. Another important example of additional security is share pledges of companies. Companies established in UAE mainland are not permitted to pledge their shares under Federal Law Number 2 of 2015 concerning Commercial Companies. However, companies established in the free zones may pledge their shares with the free zone authorities (the Registrar of the concerned free zone), and the banks may take such shares into account as security. There are no direct or indirect taxes that apply to securities that are deposited in favor of a bank. However, the parties may be required to pay a fee at the LRD or the ADGM Land Registry (as the case may be) when a real property has been registered as security (including the fees payable to the Notary Public).

6.1. Real Estate Investment Trusts

Real Estate Investment Trusts (or commonly termed as ***REITs***) are a common structure that is employed to invest in real estate transactions that are likely to generate income. However, the UAE lacks any formal Real Estate Investment Trust legislations and/ or regulations to govern the structure or the applicability of the same. However, many local banks and financial institutions provide investment opportunities in similar structures that invest in an income-generating real estate.

Nasdaq Dubai offers an international platform for exchange of funds in the different fund structures including REITs. REIT is an innovative fund structure that is fairly new to the UAE; however, has picked up pace rapidly. In the past few years, numerous investment funds and entities have also set up their platforms

for dealing in REITs due to the colossal growth in the country's real estate sector. These entities offer investors with a wide portfolio of real estate avenues and developmental projects in various parts of the UAE. Generally, each portfolio is presided and managed by a portfolio manager and the (entire) group or fund is managed by a fund manager. In such lucrative financial structures, corporate governance and compliance are one of the major aspects that the investors should analyze prior to making any investments, considering the fact that investments in REIT include large funds. Investors should carefully understand the specific portfolio of the fund and the different types of dividends that are offered to them.

Islamic REITs or Shari'a compliant REITs are gaining popularity in the region with their flexible investor-friendly payment programs and collection schemes. In simple terms, the tenant would be permitted to undertake or operate activities within the property in accordance with the Shari'a laws in an Islamic REIT. With the entrance of Islamic REIT, banks and private funds have also started setting up their investment schemes to attract investors from across the globe. Major banks in the region have announced their interest and initiated the plans to ally with popular investment funds and property development and management companies in the region in their pursuit to set up an Islamic REIT in joint ventures. However, REITs are simple financial structures (trusts) that have stringent rules to govern the payment schemes, period allocation and distribution of dividend. Investors looking for short term investments or allocation of funds find it difficult to maneuver their financial plans in accordance with the terms of the trust – since this is likely to reduce the liquidity of the Shari'a compliant trust compared to conventional REITs. Therefore, even with the high dividend expectancy and rate, investors shy away due to the obligations that are laid down by the trust. The hedging provisions and dividend distribution schemes of REITs (conventional and Islamic) are considerably different from that of regular trusts and investment funds. Therefore, investors are advised to engage a law firm prior to making such investments to safeguard the investors' interests. ADGM's REIT framework has been formulated so as to provide the investors with maximum flexibility. Generally, REITs are structured in the form of listed funds and their value (or price) is largely influenced by economic factors such as demand and supply; and other factors such as the portfolio and the expected distribution of earnings. However, ADGM permits fund managers to strategically formulated and develop REITs to offer maximum flexibility to the investors.

In close contrast, DIFC's Investment Trust Law aims to develop and promote investments in REITs in the country. Presently, REITs are only permitted to invest in certain areas on freehold basis in Dubai and should be regulated by the Dubai Financial Services Authority, the financial regulator of DIFC.

7. Dispute Resolution

Investors in the region prefer purchasing off-plan properties due to the purchase price and the flexibility of payment schemes that the developers offer. However, the fact that these properties are only in the process of construction (or the construction has not even started) ignited definite uncertainty in the transactions. Previously, real estate investors in Abu Dhabi who were investing in off-plan properties faced numerous issues since the regime was not stringent and there were no provisions pertaining to the registration requirements of off-plan property units and projects. However, the New Law mandates that property developers and sales agents should be registered with the ADM and the specific property (unit) in question should also be registered. Thereby increasing the certainty and regulatory hold over these properties in the eyes of the investors.

The dispute resolution method of each real estate transaction would be mentioned in the agreement between the parties in that transaction. Parties to each agreement have the option of referring the matter to either the Abu Dhabi Courts or to an arbitration tribunal. In case of the former, matters should be filed at the Court of First Instance. Abu Dhabi has a three-tire court system, namely, court of first instance, appeals court and the court of cassation. Most of the cases filed at the Abu Dhabi Courts are referred to the reconciliation department in case the court deems that the matter could be settled amicably. However, presently, most of the sale purchase agreements executed in Abu Dhabi refer the matter to arbitration to the ADCCAC

(***Abu Dhabi Commercial Conciliation and Arbitration Center***) because of procedural ease and the parties can decide the details of the arbitrators.

8. Environmental Aspects

Federal Law Number 24 of 1999 is the key piece of legislation concerning the protection and development of the environment in the UAE. The UPC has implemented the Estidama Program in the pursuit to meet sustainable development by the goals of Abu Dhabi Vision 2030. However, buyers are advised to undertake a thorough check for any environmental hazards and ensure compliance of the previous owners of a property with the regulations and standard requirements that have been laid down by the Federal Environment Agency, UPC, and Abu Dhabi Municipality. However, the seller has the underlying obligation to disclose all the information regarding such environmental hazards and the status of compliance to regulations and local legislations before effectuating the transfer to ensure that the agreement is not deemed as voidable as mentioned earlier in this article. The buyer may claim for damages (and even terminate the contract depending on the facts of the matter) in case the seller failed to disclose any material information regarding contaminated soil or any other environmental risks that would affect the buyer at a later stage. There are various environmental impact reviews and projects that are undertaken in the country, such as: -

i. Preliminary Environment Review or PER;
ii. Strategic Environment Assessment or SEA; and
iii. Environmental Impact Assessment or EIA.

9. Structuring Investment

Regardless of whether you're thinking about investing into a business, land, a ship, a gallery or a complex. It is necessary to structure the investment. Property assets will often be developed by a special force to protect the asset from the risks associated with the operations of the business. The decision of investment structure may likewise be guided by examinations, for example, legal proprietorship, the capacity to co-contribute with funders, the capacity to profit by remote indebtedness or confide in administrations; alleviation of expense or exchange charges; consistence with the standards of shariah law; and evasion of legacy issues. The selected investment structure should be framed within the limitations on foreign ownership and the requirement to register property rights. In the event that the seller is an organization, the investor may have the choice of getting the advantage or offers in the proprietor of the advantage. For each situation, any limitations on proprietorship (for the advantage or offers) ought to be recognized. A definitive structure by which the buyer wishes to hold the benefit ought to be distinguished to accomplish the most effective exchange strategy. This is especially critical in situations where an exchange will draw on property exchange charges.

Abu Dhabi companies encircle those based in Abu Dhabi (inland and outside the free zones) and incorporate limited liability companies and private joint-stock organizations. Where such an organization has foreign nationals or shareholders as investors, it might have the capacity to hold the property rights accessible to remote nationals in the investment zones and freehold regions. Abu Dhabi free zone company can hold rights over property within the respective free zone and Abu Dhabi Investment Zones.

Foreign corporations include those incorporated outside the UAE. A foreign entity can hold any of the perceived property rights over property situated in Abu Dhabi's speculation zones.

comprehensive and detailed, however, Abu Dhabi laws are still at a nascent stage and are in the process of developments. The coming years will focus on the ongoing implementation of real estate laws in the Abu Dhabi. Several challenges such as decreasing oil prices, fluctuating economy, and international issues

10. Recent Developments

The New Law has the capability to address various property related issues which were not addressed by the old law. The New Law has brought significant changes as follows:

i. The contracts for the purchase of off-plan property in Abu Dhabi will be registered with Abu Dhabi Municipality (ADM) on the real estate register to be prepared by ADM.

ii. The law obliges the parties to open an escrow account for off-plan property wherein the purchaser payments, funds for mortgage and other funds will be deposited.

iii. ADM will be authorized to prepare a register for all the services providers in real estate sector.

iv. A register for off-plan projects and their development plan will be prepared.

v. ADM also has the authority to deal with matters concerning the delay in off-plan property including powers to deal with canceled projects, distribution of escrow funds and other similar matters.

vi. A new concept of strata has been introduced, wherein multiple owners can own the off-plan project.

The implementation of the new Property Law has witnessed significant growth in the real-estate investment in Abu Dhabi. The government of Abu Dhabi has issued several administrative decisions for proper implementation of the new Property Law.

Conclusion

The introduction of new laws in Abu Dhabi protecting the investors and founders was roundly welcomed. The real estate investment guide offers detailed insight of the pre-requisites one must consider prior to investing

in real estate in Abu Dhabi. Comparatively, Abu Dhabi government delayed in promulgating laws in terms of protecting the investors or funders in real estate sector. Importantly, the laws in Dubai are more will continue to have a major impact on the real estate sector.

In our next real estate investment guide, we will focus on the Emirate of Sharjah and in the Kingdom of Saudi Arabia, considering the tremendous growth in real estate sector in these areas

It is pertinent for purchasers to note that the principle of caveat emptor applies in real estate transactions. The title of the property, searches of utilities etc. is not available in the public domain and hence, parties are advised to engage a law firm that houses a dedicated real estate team to conduct a thorough due diligence process and review the sale-purchase agreement prior to investing in a property.

[i] *Extract from the New Law.*

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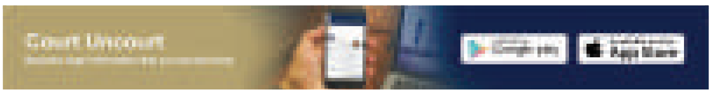

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