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Commentators argue that housing in Dubai still seems to be one commodity that is not freely available on equal terms to expatriates who can afford to pay. It has been alleged that inflated real estate values, coupled with soaring construction have led to speculation in the property market. This may soon be a thing of past with the UAE Government's can-do attitude and underlying objective to bring things under control. A few areas that the Government may need to consider whilst regularizing the newly adopted property law.

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**D**ubai's economic growth and development is a result of H.E. Sheikh Mohammed's vision which continues to underpin the region's development at a significant rate. With its 'can-do' attitude, the Dubai Government is today in a position to offer some better opportunities for residents to live and work in this high-tech growing economy. Factors such as fast moving economy, security and safety, presence of sizzling international brands, and quality education have strongly influenced expatriate residents to adopt Dubai as their new home. With a strong urge to invest in property by local residents and foreign investors, the demand has clearly exceeded supply. However, whilst the supply and demand dynamics are important element in any market, they do not necessarily tell the whole story.

Questions have been raised in past on the legal rights of these expatriate investors in regards to property investments held by them in the Emirates. The new property law sets at rest most of the ambiguities, however few questions may still need to be addressed by the Government.

There are, across the world, varied different institutions of property, radically different ways of separating the land space, and developing rights in consonance with other legal, economic and social institutions. These differences get in to limelight when one pays attention to the sometimes subtle differences in policies and regulations that govern them. The legal environment for investors is indeed critical making legal implications significant. From legal perspective certain jurisdictions in the Middle East such as Oman and Qatar had passed UAE in development, for instance in state of Qatar and Sultanate of Oman, the government(s) have certainly granted freehold rights to non-Qatari or non-GCC nationals. The laws in UAE are indeed positive but nevertheless not very accurate.

### **Understanding the term ‘Freehold’ and ‘Leasehold’**

In the sixteenth century, the allodium or the ownership in lands vested only in the king. Although, the King could transfer the property "forever", the conveyance deed made use of word "heir(s)" in place of "heirs of heir(s)". Hence, even if the transfer deed was positive enough to indicate transfer for life, in absence of expression "heirs of heirs" the grant could pass no more than a life estate. In medieval times the term meant that the property had no relation to tenure, and imports exclusively an estate of a certain extent and quality.

The term ‘freehold’ today means giving the purchaser a complete ownership of the land and all the buildings on it. In other words, you own both the property and the land on which it stands. A freehold gives the buyer the right to do as they like with their home (this includes right to transfer and mortgage), subject to the law and planning controls. Upon death of the Freehold owner, the property is transferred in favor of his/her legal successors, assigns.

The term ‘Leasehold’ on the other hand is used for property leased for a fixed period of time. A leasehold right is governed by contract and if the contract does not provide for transfer rights, it cannot be transferred in favor of third party. However, upon the death of the lessee, the lease rights can be transferred to his legal representatives. The other features of a lease hold right is that you cannot mortgage it with banks.

## **The Recent Regulations on Freehold Property in Dubai**

The new law (Federal Law No. 7 of 2006) was introduced to regulate the practice in relation to freehold property that could be owned and held by nationals and foreigners. The new law clarifies that nationals as well as foreigners (both, individuals as well as companies) can now own freehold title in designated areas of Dubai, as determined by the Ruler's approval. In response to the new law, the Land Department has demarcated properties that fall under the 'freehold' zone and a list of freehold properties was declared. The ownership in the property is concluded through registration of title deeds in the Register of the Land Department upon payment of fees which is 2% of the property value.

### **Unaddressed Issues**

A bare reading of the above regulations does answer many of the questions; however there are a few things which are yet not clear and are imperative to be addressed from investor perspective. It has been witnessed that many agents are still not in a position to clarify what constitutes freehold and what constitutes leasehold. As of today there is no mandate on pre-qualification or experience requirement on part of real estate agents.

Whilst the question as to inheritance and succession has been addressed by the new law, the procedural mechanism and surrounding ambiguities may need to be addressed. Importantly, it appears that only condominiums and separately owned freehold property owners would get the maximum benefit under the law, whilst apartment owners may not get the privilege and benefits as enjoyed by villa owners. Under a villa, the entire property along with the land on which property is built is owned by the villa owner, whereas in case of an apartment the apartment owner does not in essence have right to land as the land is shared by other residents of the same building. It has come to the knowledge of the author that for any alteration or modification required to an apartment would require prior approval of the Municipal authorities. This does not apply to a villa owner. The new regulations do not place any obligations on the developers to deliver project on time. A few projects have been delayed inordinately and have led to a pool of complaints by the consumer/investor forum before the authorities.

Based on past precedents, it may well be said that the authorities in the region are fast to respond to such ambiguities and clarify the matter by putting the legal fine print on time.

Yet another clarity which needs be addressed is the mode of assigning or inheritance of a freehold property. Generally, in cases relating to testamentary succession (meaning, where the property situated outside the country is bequeathed by way of a will), the personal law of testator (the person making the will) applies. However with regard to freehold property, in terms of Article 11 read with Article 17 (5) of the recent Federal Law No. (7) Of 2006 concerning Property Registration in Dubai, it is provided that the relatives of a deceased person must apply to the Dubai courts for a declaration identifying the beneficiaries of the deceased. The beneficiaries may then apply to the Sharia'h court to institute succession proceedings, in which the assets of the deceased are ascertained. The question that arises is when the new law clearly stipulates that the inheritance shall be governed by the law of expatriate's home country, why would one need to present an application before the Court in Dubai to transfer the said property in favor of the successors. Upon raising the matter with the Dubai land department officials, it has been confirmed that under any circumstances, the matter relating to disposing of real property in UAE by an expatriate, an application must be made to the Dubai Courts and the courts may upon being satisfied grant an approval in this regard.

It may be bought to the attention of the readers that contracts pertaining to these properties require legal consideration and it is recommended that such contracts are reviewed by lawyers. Care and caution needs to be exercised on specific clauses pertaining to property demarcation, rights and obligations of the investors, obligations of the developer including but not limited to issues such as the corporate profile of the developer, quality of property proposed, exit clauses, and the law governing the subject matter.

In essence, to conclude, the vision of His H.E. Sheikh Mohammed has been effectively met and it is felt that the new law or any subsequent amendments are expected to roll out soon would clarify the ambiguities and help in establishing a wider business culture.

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