

GETTING THE DEAL THROUGH

# Real Estate

in 30 jurisdictions worldwide

# 2008

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# United Arab Emirates

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## ACQUISITION OF REAL ESTATE

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### Legal system

#### 1 How would you explain your jurisdiction's legal system to an investor?

The United Arab Emirates (UAE) is a federation established in 1971 between seven emirates, namely Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaima, Sharjah & Umm Al Quwain, and adopts a free market economy.

The UAE legal system is essentially a civil law jurisdiction influenced by Islamic, Roman and French law, and lately by the principles of Egyptian law.

We can note a presence of common law principles in commercial contracts; however, such principles are not recognised in the UAE legal system.

In the UAE a major consideration is given to federal law, however, if the issue at hand is not covered by a federal law then a reference is made to the provisions of the local laws issued on the scale of each emirate; if no solution is found, then Islamic Shari'a law is applied. However, usually only inheritance and family issues are subject to Islamic Shari'a.

The constitutional federation of the UAE calls for the establishment of a high court modelled on the French highest court. It also calls for the establishment of two other layers of judiciary: the Courts of First Instance and the Courts of Appeal. This structure will ensure that a case can be reviewed by three different panels of judges, a major factor in securing the equitable establishment of the judiciary system in the UAE.

The UAE Civil Procedure Code provides for a summary judgment procedure for precautionary measures. This procedure usually applies when:

- a creditor's entitlement to payment is confirmed in writing;
- the claim is for a specific or liquidated sum (provided that the claim is based on a commercial document, such as a cheque, promissory note or bill of exchange); and
- the claim is against the drawer or guarantor.

Injunctive relief and interim remedies are not generally available.

The courts have jurisdiction to make provisional orders, such as a provisional attachment of assets, to secure a claimant's claim (attachment orders). On receiving an application for an attachment order, the court must be satisfied that there is both:

- prima facie case against the defendant; and
- a risk that if the order is not granted, the claimant may not be able to enforce any judgment that is subsequently obtained.

Attachment orders are awarded entirely at the judge's discretion and the claimant must prove the need for attachment. Evidence

must be provided establishing that there is an imminent danger of assets being removed in a way that would negate the effect of any judgment subsequently obtained.

Under the UAE Civil Procedure Code, the UAE courts have jurisdiction to grant provisional orders (such as an attachment order) even if they do not have jurisdiction over the substantive dispute.

If an attachment order is granted, a substantive civil claim must be filed within eight days of the order. If the attachment order secures claims made in proceedings abroad, the substantive claim normally seeks only an order validating the attachment and does not seek a judgment on merits.

The application for an attachment order must specify the assets sought to be attached. The UAE courts do not normally grant a general attachment order over unspecified assets that have not been identified. The UAE courts may require a bank guarantee, or a letter of indemnity or other counter-security to be produced by the applicant before an attachment order is made. The UAE courts do not usually grant mandatory or prohibitory orders.

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### Recording conveyance documents

#### 2 What are the legal requirements for recording conveyance documents?

Historically, many foreign nationals were reluctant to invest in the real estate sector in the UAE due to the uncertainty as to what type of real estate interest a person could actually hold in the UAE. A freehold estate is one in which a person has an absolute ownership interest in a real estate property and can convey that property to any other person or entity without any encumbrances.

The UAE currently does not have a federal law defining freehold. Once the freehold property law is in effect, it will mean that the property purchased by a foreigner will be registered under his or her name for life, which allows him or her to register the property in the Lands Department. The owner will then have full rights to the property.

Non-GCC (Gulf Cooperation Council) expatriates living in the UAE were previously permitted to rent property, or own property on a leasehold basis for a period of 99 years. In 2002, the Dubai government permitted the ownership of freehold property by expatriates, which has changed the real estate industry in the Middle East and Gulf regions.

On 14 March 2006, Dubai's government issued its long-awaited Law No. 7 of 2006, which legalises foreign ownership of properties in designated areas of Dubai but does not give property owners permanent residence visas or an automatic right to work in Dubai.

Law No. 7 of 2006 stipulates that freehold is limited to UAE and GCC citizens and companies wholly owned by them, as well as public shareholding companies. Non-UAE nationals may be given the right to own properties in some parts of Dubai. They may be given the right to acquire a freehold property, or a 99-year lease property, in areas designated by the Ruler of Dubai.

Pursuant to the above developments in Dubai most of the other emirates (Ras Al Khaima, Fujairah and Umm Al Quiwain) followed Dubai's path and announced the development of several freehold real estate projects.

On 14 August 2005, Abu Dhabi released its property law in which it permitted foreigners to hold 99-year lease rights and renewable 50-year surface ownership in specified areas in Abu Dhabi.

In light of the above, there is no standard set of conveyance documents as to date, conveyance is executed with the developers and not before a centralised property register.

In an effort to regulate the real estate market, the emirate of Dubai announced recently the establishment of the Real Estate Regulatory Authority of the Dubai Land Department which will be in charge of recording conveyance pertaining to properties in Dubai.

The standard set of requirements for registering a transfer of an ownership of a real property, as per the requirements of the Dubai Land Department, includes the following:

- original title-deed;
- photocopy of the passport with file number or the unified number for UAE nationals;
- passport copy, including the permit, for expatriates;
- copy of nationality card including pages 26 and 27 for UAE nationals;
- original site map from the Land Department and Dubai municipality;
- original power of attorney attested by the court or the Ministry of Foreign Affairs, if empowerment has been given for a specific land;
- copy of general power of attorney attested by the court or Ministry of Foreign Affairs; and
- the purchase price.

To date, only the emirate of Dubai has issued a law regulating the registration of title deeds for expatriates in designated areas.

The standard transaction fee is 1 per cent of the sale amount, usually paid by the purchaser.

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### Foreign investors

- 3** What other factors should a foreign investor take into account in considering an investment in your jurisdiction?

Expatriates considering an investment in the UAE should understand the legal framework that will govern their investment in light of the laws applicable in the relevant emirate.

Expatriates should consider the area in which they will own a property and the laws applicable therein. Investors should conduct a due diligence on the project they will have shares in so that they can highlight their legal standing, liabilities and foresee any prospective obstacles.

Before investing, a foreigner should consider, among others, the following issues:

- whether it is permitted to make such an investment (eg, non-GCC nationals are not allowed to hold shares in real estate brokerage companies in the UAE);

- the appropriate structure that can be used for the investment; and
- the restrictions imposed by UAE laws on the type of investment

For example, in regards to owning a property in the UAE and depending on the emirate, foreign investors should, mainly, know whether or not:

- the property can be owned by a foreigner;
- the property can be registered with the local authorities;
- the investor can issue a title deed for the property;
- the Parties he or she will enter into contracts with are eligible to enter into such arrangements;
- the project fulfils all the local requirements and whether all the necessary approvals related to the construction of the project have been issued; and
- there are any complications that might hinder the successful closure of the transaction.

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### Exchange control

- 4** If a non-resident invests in a property in your jurisdiction, are there exchange control issues? What about return of capital?

There are no exchange control restrictions in the UAE and its currency, the UAE dirham, is freely convertible.

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### Legal liability

- 5** What types of liability does an owner of real estate face? Is there a standard of strict liability and can there be liability to subsequent owners? What about tort liability?

There are no special liabilities imposed on real estate owners other than their contractual obligations and the common liabilities applicable pursuant to the UAE Civil Code.

Investors will have to abide by the rules and regulations of the real estate development in which they own a property, including the service charges, the owner's association, if applicable, by-laws and all the local rules issued in regards to registration and ownership of properties in the UAE (which differ from one emirate to another).

Furthermore, article 292 of the UAE Civil Code regulates the tortious liability which arises when a party causes damages to another party by either committing a wrongdoing, a direct violation of a party's rights or a transgression of a public obligation. In all cases, the compensation will be evaluated in light of the damage suffered by the victim, which may include estimated loss of profits provided it is a natural effect of the harmful act.

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### Protection against liability

- 6** How can an owner protect itself from liability and what types of insurance can they obtain?

In order to protect itself from liabilities, an owner can conduct a risk assessment to evaluate the risks associated with the property it owns and subsequently arrange for the appropriate coverage including having the relevant insurance to minimise its damages and losses. Such insurance may include third-party liability cover.

**Choice of law**

- 7** How is the governing law of a transaction involving properties in two jurisdictions, one outside of your jurisdiction, chosen? What are the conflict of laws rules in your jurisdiction?

In general, for the UAE courts to have jurisdiction in a civil action, either the defendant has to be domiciled in the UAE or the transaction has to be executed, completed or intended to be executed in the UAE. If this is fulfilled, then the UAE courts will have jurisdiction. In other words, if the contract is signed in Dubai or intended to be signed in Dubai or part of the contract was executed in Dubai or in the case that the defendant is domiciled in Dubai, the Dubai courts will have jurisdiction on the matter. Otherwise Dubai courts will not have jurisdiction in the subject matter proceedings.

In regards to real estate properties, article 18 of the UAE Civil Code states that possession, ownership and other rights over property shall be governed by the *lex situs*.

**Subject-matter jurisdiction**

- 8** Does subject-matter jurisdiction exist? Who are necessary parties? What is required for out-of-jurisdiction service? Must a party be qualified to do business in your jurisdiction to enforce remedies in your jurisdiction?

Each emirate in the UAE is given the constitutional right to opt for joining the federal judicial system or to maintain its own independent judiciary system.

Currently, only Dubai and Ras Al Khaima maintain their own judicial systems; the other emirates have joined the federal system.

There are three principal divisions to the courts in the UAE: civil, criminal and Shari'a (Islamic).

The Shari'a division has jurisdiction over matters of personal status (marriage, divorce and inheritance) and has been recently given, in certain emirates, jurisdiction over specific criminal matters, including drug offences and offences involving minors.

The criminal division handles criminal cases whilst the civil division handles all other matters, including commercial disputes and labour law disputes.

An 'out of jurisdiction' service is available in the UAE by diplomatic ways through the embassy of the relevant party in the UAE.

It is not required that a party has a business in the UAE to be able to enforce remedies in the UAE.

**Investment entities**

- 9** What entities does your jurisdiction recognise? What are pass-through entities for tax purposes and what entities best shield ultimate owners from liability?

The Federal Law defines seven categories of business organisations that can be established in the UAE. It also sets out the requirements in terms of shareholders, directors, minimum capital levels and incorporation procedures. The seven categories of business organisations defined by the law are:

- general partnership company;
- partnership-en-commendam;
- joint venture company;
- public shareholding company;
- private shareholding company;
- limited liability company; and
- share partnership company.

The UAE Commercial Companies Law further stipulates a total local equity of not less than 51 per cent in limited liability, public and private joint stock companies.

In addition to the above, the following commercial business organisations and arrangements exist in the UAE:

- branch of a company;
- representative office;
- service and professional companies;
- free zone establishments and companies;
- defence companies; and
- other types of representations, such as a commercial agency relation pursuant to the Commercial Agency Law.

There are no taxes levied on companies or individuals in the UAE. The only exceptions to this are oil-producing companies and branches of foreign banks. Foreign companies may opt for incorporating offshore companies or free zone companies for the purpose of avoiding paying taxes in their home countries.

**US investors**

- 10** What form of entities do US investors customarily use in your jurisdiction?

US investors do not have a wide choice for operating their business in the UAE, and in most cases they enter into partnership with UAE partners for the purpose of incorporating a limited liability company (LLC).

LLC is the most common corporation for operating a business in the UAE. The liability of the shareholders in an LLC is restricted to the share capital of the company that is paid on incorporation.

The advantages of an LLC are obvious as the liability of the shareholders is restricted to the paid up share capital. In addition, the foreign shareholders (if individuals) will be issued an investor's visa and not an employment visa. The advantage of this is that the foreign investor will be seen as an entrepreneur to whom the labour laws and regulations will not apply.

The major disadvantage of an LLC is the necessity of a UAE citizen or UAE entity partner (owned 100 per cent by UAE citizens), who will hold 51 per cent of the share capital in the LLC. To mitigate the above disadvantage the parties will enter into side agreements to the LLC, which will protect the interests of the foreign shareholder against the 51 per cent UAE citizen or entity shareholder.

In addition to the above, US investors consider the following alternative legal forms:

- Branch of a foreign entity (previously only certain types of companies were allowed to open branches in the UAE, and thus there were a limited number of foreign branches. Lately the UAE Ministry of Economy amended the conditions pertaining to the application for establishing a branch of a foreign entity so that they can be more flexible).
- free zone entity, bearing in mind that such entities may not generally operate on the mainland without first obtaining a licence from the relevant authorities.

**Organisational formalities**

- 11** What are the organisational formalities of creating the above entities? What requirements does your jurisdiction impose on a foreign entity? What are the tax consequences for a foreign investor in the use of any particular type of entity, and which type is most advantageous?

The basic requirement for all business activity in UAE is one of the following three licences:

- commercial licences cover all kinds of trading activities;
- professional licences cover professions, services, craftsmen and artisans; and
- industrial licences cover establishing industrial or manufacturing activities.

Some categories of businesses require approval from different ministries: for example, banks and financial institutions from the Central Bank of the UAE; manufacturing from the Ministry of Finance and Industry; and pharmaceutical and medical products from the Ministry of Health; branches of foreign companies from the ministry of Economy and Commerce. More detailed procedures apply to businesses engaged in oil or gas production and related industries.

Fifty-one per cent participation by UAE nationals is the general requirement for all UAE established companies except:

- where the law requires 100 per cent local ownership;
- in the free trade zones where 100 per cent foreign ownership is permitted;
- in activities open to 100 per cent AGCC ownership;
- where wholly owned AGCC companies enter into partnership with UAE nationals;
- in respect of foreign companies registering branches or a representative office in Dubai; and
- in professional or artisan companies where 100 per cent foreign ownership is permitted.

#### Documentation

- 12** Does your jurisdiction or customs recognise a non-binding form of agreement? Is there a form of non-binding agreement before a contract? Is it customary to take the property off the market while negotiation of a contract is ongoing?

Yes, non-binding forms of agreements exist in the UAE. It is very frequent to enter into a memorandum of understanding prior to finalising the terms of the transactions, and in matters related to purchasing a property, parties do sign reservation agreements.

Reservation agreements include references to the fact that the seller may, for any reason, terminate the sale and refund whatever amounts he received. Investors are requested to sign such agreements and make an initial payment which usually starts at 5 per cent of the purchase price.

#### Contract of sale

- 13** What are typical provisions in a contract of sale?

Typical property sale and purchase contracts include the following terms:

- identification of the parties;
- purchase price and payment;
- obligations, representations and covenants of the parties;
- registration and transfer of title;
- rules of the owner's association (in case of more than one owner);
- assignment; and
- governing law.

The typical down payment starts with 5 per cent of the purchase price. Such amount is paid to the seller or to its agents against a receipt after which the parties will prepare the relevant documentations and agree on the instalments. The initial payment will not be deposited in an escrow account. Once the parties agree on all the terms of the transactions, the parties will enter into a sale

and purchase agreement whereby they define their agreement including their warranties such as:

- the seller owns the property; and
- the seller will not carry out any actions related to the property except for those done to implement the agreement.

It is very common to see investors paying the instalments of the property purchase price without entering into any kind of agreements with the seller.

#### Environmental clean-up

- 14** Who takes responsibility for a future environmental clean-up? By representation with survival provisions? What are typical general covenants? What remedies do the seller and buyer have for breach?

There are no direct obligations regulating the environmental clean up in the UAE. The environmental standards are mostly applied in oil/industrial entities in relation to the disposal of waste.

On a federal level, the UAE created the Federal Environmental Authority (FEA) in 1993 to protect and conserve the environment and to supervise the implementation of the following laws:

- Federal Law No. 1 of 2002 on the regulation of use of radiation sources and protection against their hazards;
- Federal Law No. 23 of 1999 on the protection and development of marine resources;
- Federal Law No. 24 of 1999 in regards to the protection and development of the environment;
- Federal Law No. 11 of 2002 regulating the international trade in endangered species of wild fauna and flora;
- Federal Law No. 22 of 2003 on the Executive By-Law of Federal Law No. 11 of 2002;
- Federal Law No. 39 of 1992 on the production, import and circulation of fertilisers and agricultural conditioners; and
- Federal Law No. 41 of 1992 on pesticides.

Lately, major efforts have been carried out, on a local level, to enhance the environmental legal framework and to launch an environmental clean-up campaign.

#### Leases

- 15** What are typical representations and covenants regarding leases? Do they cover brokerage agreements and do they survive closing? Are estoppel certificates customarily required and can estoppel certificates substitute for representations?

A landlord's standard covenants are as follows:

- the landlord will be responsible for the maintenance of the property; and
- the landlord will pay all taxes pertaining to the property.

A tenant's standard covenants are as follows:

- the tenant will vacate the property by the end of the tenancy period;
- the tenant is responsible for returning the property in the same conditions as when it was delivered;
- the tenant will not assign the tenancy contract; and
- the tenant will use the property for the purpose mentioned in the agreement.

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**Leases and mortgages**

**16** Is a lease generally subordinate to a mortgage pursuant to the provisions of the lease? What are the legal consequences of a lease being superior in priority to a mortgage upon foreclosure? Do lenders typically require subordination and non-disturbance agreements?

A mortgage is not put into effect except pursuant to an authenticated deed, attested by the Notary Public and entered in the Commercial Register.

A mortgagor has a priority right over all the creditors for collecting its right from the cost of the goods after deduction of the following amounts:

- taxes and duties due on the goods;
- judicial expenses incurred for the joint interest of the creditors; and
- expenses incurred for the safekeeping, storage and sale of the goods.

A lease can be superior in priority to a mortgage in the following instances:

- if the lender and the borrower agreed in writing to consider the lease superior in priority to any other right including the mortgage; or
- if the mortgage is not registered in the relevant registry and subsequently is not considered as a secured preferred mortgage.

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**Delivery of security deposits**

**17** What steps are taken to ensure delivery of security deposits to a buyer? How common is it to get a security deposit under a lease? Do leases customarily have periodic rent resets?

Security deposits are usually given in advance in the form of a cheque. On very rare occasions these deposits exceed two cheques.

Landlords do require deposit cheques as a pre-estimated amount of the cost involved for fixing the damages caused to the property by the tenant.

This security deposit is refundable at the end of the tenancy agreement in accordance with the terms and conditions of the tenancy contract.

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**Due diligence**

**18** What is the typical method of a title search and is it customary to order searches? Is there something akin to title insurance and opinion letters? Does your jurisdiction provide statutory priority for recorded instruments?

In most purchases, foreign investors involve their lawyers to carry out a due diligence on the property prior to concluding the purchase to cover the following issues:

- review the sale documents;
- carry out research on the property;
- carry out research on the developer or seller; and
- propose amendments to the agreements at hand or get further covenants from the landlord.

Sale of property will be recognised if registered with the Land Department of the Emirate in which the property exists.

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**Reviews**

**19** Is it customary to arrange an engineering or an environmental review? What are the typical requirements of such reviews? Is it customary to get representations or an indemnity? Is environmental insurance available?

It is not a customary procedure to conduct an engineering or environmental review in the UAE. In rare situations (mostly US) entities operating in the oil industry willing to enter the UAE market carry out limited environmental reviews.

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**Review of leases**

**20** Do lawyers usually review leases or are they reviewed on the business side? What are the lease issues you point out to your clients?

There is a one-page draft of a template tenancy contract widely used in the market. Lawyers can be engaged to draft appropriate agreements in circumstances where diligent legal care should be given to regulate the relationships between the parties or the conditions of the lease.

If the client is a tenant we need to make sure that:

- the landlord will be responsible for the maintenance of the property;
- the agreement is subject to renewal;
- the deposit paid by the tenant is refundable; and
- the landlord will pay all taxes pertaining to the property.

If the client is a landlord then we need to make sure that:

- we will be able to vacate the property at the end of the tenancy period;
- the tenant will be responsible for returning the property in the same conditions as when it was delivered;
- the tenant will not assign the tenancy contract; and
- the tenant will use the property for the purpose mentioned in the agreement.

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**Other agreements**

**21** What other agreements does a lawyer customarily review?

Lawyers are involved usually in the preparation and review of the following types of agreements:

- real estate agency or brokerage agreement;
- escrow agreements; and
- management agreements.

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**Closing**

**22** What does a lawyer customarily prepare for a closing?

At closure, lawyers should arrange for the original sets of documents – the agreements that will be signed by the parties, the price, the necessary arrangements and requirements of the authorities before which the registration of the transaction will be required. Prorations do not exist in the UAE.

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**FINANCING**


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**Form of lien**

**23** What is the method of creating and perfecting liens?

In the UAE, the official authorities credit mortgages for both individuals and various bodies. The mortgage is registered for the benefit of certified banks, government departments or local individuals and a mortgage contract is issued once the conditions are met and all necessary documents have been submitted.

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**Legal requirements**

**24** What would be the ramifications of a lender from another jurisdiction making a loan secured by collateral in your jurisdiction? What is the form of lien documents in your jurisdiction? What other issues would you note for your clients?

A lender is required to register the loan in the UAE and for that purpose the lender will be required to submit the agreement he or she signed with the borrower with regard to the loan (attested up to the UAE Ministry of Foreign Affairs and translated to Arabic). This will guarantee for the lender the possibility to seize the property if the borrower fails to make agreed payments on the loan.

The standard set of documents required to register a mortgage on a real estate property in the UAE is:

- passport copies of the parties;
- title deed for the land and land map; and
- mortgage contract signed by both parties.

Mortgages can be assigned in the UAE subject to the terms of agreements including in the mortgage contract.

The fees vary from one emirate to another but approximately can be assessed as follows:

- mortgage registration fees – 0.25 per cent of the debt amount up to the maximum of 1.5 million UAE dirham (approximately US\$408,000);
- mortgage transfer fees – 0.25 per cent of the debt amount up to the maximum of 1.5 million dirham; and
- mortgage release – 1000 dirham (approximately US\$270).

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**Interest**

**25** Is interest charged on a spread over LIBOR, Euribor or relevant equivalent? What rate of interest is usurious in your jurisdiction and what are the consequences if a loan exceeds the usury rate?

Most interest rates are charged on a spread over LIBOR except in limited cases where the parties opt for some of the local banks' rate.

Most real estate developments in Dubai that have relied on third-party funding have borrowed under conventional loan facilities from banks. Often these transactions are not public and banks will lend to developers with whom they have an existing relationship on a bilateral basis using the bank's own in-house documentation.

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**Enforcement**

**26** How are remedies enforced in your jurisdiction? Is one action sufficient to realise all types of collateral? What is the time frame for foreclosure and in what circumstances can a lender bring a foreclosure proceeding?

The main remedy available in commercial disputes is compensatory damages. The courts can also make an order confirming a right (for example, they can order the return of property).

If an attachment order has been granted earlier in the proceedings, the court will, in its final judgment, also make an order confirming or discharging the attachment order.

In contracts for the sale of immovable property in Dubai, specific performance to compel the sale is not available.

The principal means of enforcing a local judgment are:

- attachment and sale of the debtor's property (moveables);
- attachment of stocks, bonds and shares;
- attachment and sale of real estate;
- bankruptcy proceedings (this is unusual); and

- in exceptional circumstances, incarceration of the delinquent debtor.

Enforcement is sought before an execution judge, who is assisted by court officials to enforce the court order.

In the UAE cheques are used as credit instruments and collateral.

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**Protection of collateral**

**27** What actions can a lender take to protect its collateral until it has possession of the property?

There are no statutory rights of enforcement or foreclosure remedies available under UAE law, which means that any enforcement must be undertaken through the courts (a mortgagee cannot exercise self-help remedies and be a mortgagee in possession).

If the court orders enforcement of the mortgage, it will organise the sale of the land by public auction. The sale proceeds will be distributed amongst the creditors in accordance with the order of priority set out under UAE law: preferential debts, secured creditors (such as mortgages) followed by unsecured creditors (such as judgment creditors). Preferential debts include the following: judicial costs of preserving and selling the property, government taxes, employees' salaries, lessor's rental payments and amounts due to contractors.

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**Recourse**

**28** Do the security documents provide for recourse to all of the assets of the borrower? Is recourse typically limited to the collateral and does that have significance in a bankruptcy filing?

If the collateral is insufficient to satisfy the debt, the mortgagee may have recourse for the balance against the borrower's other assets. In this case, the mortgagee will lose its priority as a creditor and be ranked as an ordinary creditor in relation to such a balance.

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**Cash management systems**

**29** Is it typical to require a cash management system and do lenders typically take reserves?

Cash management systems are not widely applied in the UAE. It is left to the discretion of the relevant parties to create their systems depending on their needs and the type of business.

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**Credit enhancements**

**30** What other types of credit enhancements are common? What about forms of guarantee?

Credit enhancement is not commonly applicable in the UAE. Lenders in very limited cases require mortgage insurance. In most instances, certain internal precautions are applied such as the requirements for post-dated cheques from borrowers equal to the amount of the loan.

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**Covenants**

**31** What are commonly used covenants in loan documents? What is the difference depending on asset classes?

The commonly used covenants in loan documents are listed below. The borrower will not:

- incur or assume any debt that is not due and payable in the ordinary course of its business;

**Update and trends**

The sustainable growth of the UAE real estate sector requires the establishment of a reliable and comprehensible legal framework regulating and organising real estate activities.

Considerable efforts have been carried out lately by UAE authorities to regulate the real estate market. A series of laws has been enacted setting out the terms under which foreign ownership of real estate may take place, and standardising the registration of real estate and creation of escrow accounts for property developments.

Dubai is the pioneer emirate in developing a legal system for its real estate operations and this is expected to continue in 2008 with the preparation of a set of laws and regulations including, among others, the Condominium/Strata Law (a draft is circulating among market experts for their review and comments), which is expected to be issued within the first quarter of 2008 and will set the rules for the management of common hold areas and the formation of co-owners' associations.

- incur or assume any mortgage, pledge or other encumbrance of any kind upon any assets whether now owned or hereafter acquired;
- enter into any agreement, arrangement, commitment or understanding to, or actually acquire all or part of the substantial assets of any third party;
- enter into any agreement, arrangement, commitment or understanding to, or actually sell, lease, or otherwise dispose of any assets in the ordinary course of business;
- enter into any agreement, arrangement, commitment or understanding to, or actually, make loans or advances to any third party; or
- enter into any agreement, arrangement, commitment or understanding to, or actually, assume, guarantee, endorse or otherwise become liable for the obligation of any third party or other entity

ures a company's cash flow cushion and ability to pay its debt service and other fixed expenses by comparing its post-compensation cash flow to its fixed charges.

**Financial covenants****32** What are typical financial covenants?

A few of the financial covenants customarily included in financing agreements are:

- current ratio: this measures a company's liquidity, by comparing its current assets to its current liabilities;
- pre-compensation fixed charge coverage ratio: this measures a company's cash flow cushion and ability to pay its debt service and other fixed expenses, by comparing its pre-compensation cash flow; and
- post-compensation fixed charge coverage ratio: this is similar to pre-compensation fixed charge coverage ratio, but meas-

**Bankruptcy****33** Describe the bankruptcy system in your jurisdiction.

Federal Law No. 18 of 1992 (the Commercial Transactions Law) regulates bankruptcies. Upon declaration of a debtor as bankrupt and appointment of a trustee in bankruptcy, notice is given to all creditors to register their claims.

Local creditors are required to register their claims within 10 days of publication and creditors outside the UAE are required to register their claims within one month. The trustee in bankruptcy would verify the documents submitted by the creditors and prepare a schedule along with a statement of the amounts that the trustee intends to accept as debt owed will be sent to every creditor and the bankrupt. The creditors may file objection to the amounts in the schedules which would be considered by the judge supervising the bankrupt's estate before preparing a final schedule of debts with the amounts that have been accepted.

The judge will then designate the manner in which the assets are to be sold. The sale proceeds will be deposited with the court cashier or in a bank account designated by the judge. Fees and expenses incurred towards administration of the bankrupt's estate will be deducted from the sale proceeds. Thereafter, the amounts due to preferred creditors will be paid and the remainder will be distributed to the unsecured creditors in proportion to the debts due to them.

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**Lockboxes**

- 34** What are the requirements of creation and perfection? Is a 'control' agreement necessary to perfect a security interest and, if so, what is required?

There is no federal security law regulating the creation and perfection of security interests in the UAE.

Securities in the UAE are governed by the Federal Commercial Transaction Law No. 18 of 1993, the Federal Civil Code No. 5 of 1985 and the Commercial Companies Law No. 8 of 1984. In general, owners are able to provide a mortgage by way of a security interest over their land whilst the lender is required to have a valid trade license, therefore, it is not possible for a non-licensed lender to register a mortgage in the UAE. Also, it is only the interest of UAE-licensed financial institutions that can be noted in the relevant register.

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**Single purpose entity (SPE)**

- 35** Do lenders require that each borrower be an SPE? What are the requirements to create and maintain an SPE? Is there a concept of an independent director and, if so, what is the purpose? If the independent director is in place to prevent a bankruptcy filing, has the concept been upheld?

The preference amongst local banks is to lend on a corporate basis (rather than to a special purpose company through which a developer may be developing a project) or otherwise lend to the special purpose company with the benefit of a parent company guarantee. In this way, the real credit is that of the corporate parent and repayment of the loan is not entirely dependent on the success of the project.

Parent company credit is not always acceptable to developers given the need for disclosure in their financial statements and the impact that such loans or guarantees may have on borrowing restrictions imposed on their other banking facilities. Sometimes a compromise is reached whereby a parent company will give a guarantee or other support until the relevant development is completed.