

THE BARE FACTS



Real Estate Law establishes transparency

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Following the publication of the latest Real Estate Law No. 7 of 2006 (the Law) governing properties registration in Dubai, a considerable number of legal advisors and real estate consultants have analysed and scrutinised the outcomes of this long awaited law.

The Law established an organised and transparent real estate sector where the ownership rights of foreign investors are regulated and protected. At the outset, we have to highlight that real rights in the UAE, including the rights of ownership, are only opposable to third parties after being registered with competent official authorities such as the Land Department in Dubai.

Until the present time, foreigners' ownership rights are always contractual. No title deeds have been issued yet in the UAE in the name of a foreigner. Notwithstanding the above statement, the Law confirmed the enforceability of two rules:

- Foreigners will have the right to lease or purchase a land in determined areas.

- The purchased land will be registered in the name of the buyer with the Dubai Land Department.

The Law further regulated the following real rights titles — freehold, commonhold and usufruct. The status of each is determined as follows:

- Freehold owners are granted outright ownership title to be registered with the Dubai Land Department.

- In regards to commonhold, the legal position remains unclear and vague. According to article 23 of the Law, each building located in the 'determined areas' will be considered a single property and will be granted a single title deed.

- Usufruct or long-term lease is also governed by the Law and is defined as the right to use another's property short of destruction or waste of its substance for a period extending from five to 99 years.

While the above rules are the essential consequential component of the Law, it introduced a new role allocated to the Dubai Land Department. Earlier, developers such as Emaar, Nakheel and oth-

ers used to play the role of the Real Estate Registrar carrying out the registration and record keeping of the freehold, commonhold owners and usufruct beneficiaries. However, starting from March 2006, the Dubai Land Department is, as per Article 6 of the Law, the exclusive authority empowered to register real rights and long lease or usufruct in Dubai.

On July 3, Order No. 3 of 2006 was published in the official Gazette designating the areas where expatriates can own freehold titles. This order is considered as an annexure to the Law giving a green light to proceed with the registration of freehold titles in the name of foreigners.

Although the above laws covered the key debatable issues in the real estate sector, there are other issues and fields that remain ambiguous and subject to interpretation.

First, commonhold ownership is still not clearly regulated. By way of example, given that the commonhold owners own jointly the land, what are their respective rights in case the building is demolished?

Second, most of the developers provide in their sale and purchase agreements that the buyers will be entitled to residency permits subject to the approval of the Dubai Department of Naturalisation and Residency. The latter department is not totally confident of its position till the moment. Some of the applications are approved while others are unjustifiably rejected.

Third, the mortgage conditions which are left to the sole convenience of the banks and financial institutions. We believe that this sector needs an urgent regulatory framework clarifying the position of the lender facing the financial institutions providing the loans.

As a conclusion, we are encouraging the Government of Dubai to pursue their efforts to regulate the real estate sector in order to offer further legal guarantees for present and prospective investors.

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