

United Arab Emirates: 25 Years of Change: Legal Developments in the UAE Since 1991

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It is not possible to set out all the important legislative changes in one article, and so instead we set out below a review of only some of the key changes, with a focus on change at the Federal level and in Abu Dhabi and Dubai. The changes to the property laws are covered in some detail given how important the property market is in the UAE.

The Constitution

It is a little known fact that although on 2 December 1971 the Emirates of Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al Quwain and Fujairah created the UAE (Ras Al Khalimah declared its independence the same day but did not officially join the federation until 10 February 1972) the constitution that was signed then was only provisional. It was an expression of the political compromises and negotiation that took place among the Emirates including other emirates that did not go on to form the UAE (Qatar and Bahrain). The constitution was originally designed to last five years. It was only in July 1996 that the Supreme Council adopted the provisional constitution as the country's permanent constitution, at which time the word "provisional" was formally dropped from the Constitution's official title.

New Courts

The early 1990s was a period of fast growth. The UAE courts and legal system faced an explosion in every facet of life in the UAE and subsequently grew alongside the population growth.

By 1989, work had begun building Dubai Courts' first purpose-built headquarters. The new building marked the beginning of a new age for the Dubai courts. Dubai Law No.3 of 1992 (Organising the Courts in Dubai) was issued, which confirmed that the courts are composed of three levels: Court of First Instance, Court of

Appeal, and Court of Cassation. Although the three courts worked in tandem already, the significance of Law No.3 of 1992 in the history of Dubai Courts is that for the first time it enshrined the three together as a working unit, in law.

In 2004 the DIFC was created, along with its own court system. This created a radical alternative to the pre-existing courts in the region: an English-language common-law court. When first created, the courts had jurisdiction to only deal with disputes between DIFC entities, but over the years the jurisdiction has been expanded to allow parties with no connection to the DIFC to opt-in to the jurisdiction. Recent judgments regarding the enforcement of arbitral awards and foreign judgments mean that the DIFC may serve as a conduit jurisdiction, allowing for easier enforcement of awards and judgments in the UAE.

In 2008, Abu Dhabi, having been part of the federal court system, chose to join Dubai and Ras Al Khaimah in setting up its own Emirate court system. In 2015 Abu Dhabi created a second court system when it opened the Abu Dhabi Global Market free zone. The ADGM has its own English-language common-law courts, carrying on the UAE's drive for better courts and choice, and encouraging more international investment into the UAE.

Commercial Laws- the Development of the UAE as a Centre for Global Trade

At the time Al Tamimi established its first office, there was no specific commercial law in the UAE. The UAE Commercial Code was promulgated under Federal Law 18 of 1993. Before the Commercial Code existed, the UAE Civil Code applied to commercial transactions, and it still does in circumstances where a question arising out of a commercial transaction is not determined by reference to the agreement between the parties, commercial custom, the Commercial Code, or other commercial statutes specifically governing the type of transaction in question (e.g. the Maritime Code).

Since 1993 a large number of commercial laws have been passed to develop and support the UAE's growing business community, including:

- Federal Law 18 of 1993 on the Commercial Transactions Law;
- Federal Law No. 24 of 2006 concerning the Consumer Protection;
- Cabinet Decision No. 2 of 2007 Forming the Supreme Committee for Consumer Protection and Its Functions;
- Cabinet Decision No. 12 of 2007 Concerning the Executive Regulations of Federal Law No 24 of 2006 on Consumer Protection;
- Cabinet Resolution No. 3 of 2011 concerning the Commercial Agencies Committee;
- Federal Law No. 4 of 2012 regulating Competition;
- Federal Law No. 2 of 2014 on Small and Medium Enterprises (SMEs);
- Federal Commercial Companies Law 2 of 2015.

Regulation of the Markets

The UAE securities law and the regulation of the securities and commodities markets are primarily administered by the Securities and Commodities Authority (the "Securities Authority"). The Securities Authority's rules and regulations were established by Federal Law 4 of 2000 concerning the Emirates Securities & Commodities Authority and Market.

- Since 2000, four securities and commodities markets have been established in the UAE, namely;
- the Abu Dhabi Securities Exchange
- the Dubai Financial Market
- the Emirates Securities Market
- the Dubai Gold & Commodities Exchange

These markets allow for secure and efficient trading. Most recently the Securities and Commodities Authority ("SCA") and the Financial Services Regulatory Authority ("FSRA") of Abu Dhabi Global Market

jointly signed a Memorandum of Understanding to exchange information and enhance mutual cooperation on areas including market supervision, investor protection, oversight of financial markets and management of entities such as listed companies and brokerages and others.

Free Zones

Since 1990, a number of free trade zones have been created. This was a significant initiative to promote foreign direct investment by exempting certain areas from the commercial regulations found in the UAE. Approximately 40 specially designated free trade zones now exist. These free zones have separate regulatory environments within their designated jurisdiction, and so are attractive to international investors. They are able to have clear, market-oriented regulations and offer the ability to incorporate wholly foreign-owned entities. They create an area where a number of industry-specific companies can be situated, allowing for greater cooperation and commerce.

Real Property in the UAE

Property ownership in the UAE has historically been primarily regulated at the federal level by the UAE Civil Code and by the Code of Civil Procedure. The Emirate of Dubai, Abu Dhabi, Ras Al Khaimah, Ajman, Sharjah and Umm al Quwain have enacted laws and/or regulations with respect to real property, and Dubai has enacted a separate set of regulations for the DIFC. Fujairah has not enacted any emirate-specific regulation. Each of the emirates has different rules and regulations governing foreign ownership of real estate.

Law No. 7 of 2006 concerning Real Property Registration in the Emirate of Dubai governs property ownership by individuals and companies in the Emirate of Dubai. UAE and GCC nationals and companies incorporated in the UAE that are wholly owned by UAE/GCC nationals have the right to own any property interest in the Emirate of Dubai pursuant to Article 4 of the Law No. 7 of 2006, and to have such rights registered at the Dubai Land Department. However, if a company is incorporated in the UAE and has foreign shareholders, it will not be considered a UAE or GCC national for the purposes of property ownership subject to certain exceptions. Article 4 of the Law No. 7 allows non UAE persons to own freehold title, long lease or a usufruct right up to 99 years in designated areas in Dubai. The Ruler has issued regulations that specify the designated areas in Dubai from time to time. There are over 25 such designated areas which have been approved by the Ruler for foreign ownership in Dubai.

Dubai's legislative framework in respect of real estate matters has developed considerably between 2006 and 2015. The laws were designed to add stability to the market and investor confidence in the emirate.

Following the creation of Dubai's Real Estate Regulatory Authority ("RERA") in 2007, we have seen it play an increasingly public and crucial role in developing and supervising Dubai's real estate regulatory framework and development.

The 'Escrow Law' introduced in 2007, brought protection for purchasers' money invested into off-plan sales in developments under construction, later supplemented by creation of the Interim Real Estate Register, further providing protection of purchasers' rights through a requirement to register off-plan sale contracts on the interim register, which is maintained by the Dubai Land Department.

In 2008, a framework for registration of lenders' pre-mortgage interests on the Interim Real Estate Register, as well as mortgages on the main Real Estate Register (with mechanisms for enforcement and sale of property by public auction) was introduced. Originally intended to provide banks and other financial institutions with the confidence they needed to lend against property in Dubai, this legislation was timely in providing an ability to deal with the new phenomenon of mortgage defaults brought about by the global financial crisis.

The Strata Law (Dubai Law 27 of 2007) was another major piece of legislation enacted, with implementing regulations following in April 2010. Today, developers continue to work towards implementation of

compliant strata schemes, empowering property owners to jointly manage their communities and buildings, whilst protecting transparency and fairness on issues such as service charge levels, contracting with service providers, and the use of common areas and facilities. The registration of owners association has not been fully implemented to date.

The global financial crisis resulted in the enactment of Dubai Law No. 9 of 2009 which established a process for a developer to terminate an off-plan sales contract when a purchaser defaulted of its payment obligations. It became imperative to ensure that in cases where developers sought termination of a sale contract due to non-payment by a purchaser, the measure of compensation that a developer could expect would be directly related to his own progress towards completion of the project and fulfillment of the sale contract. Law No. 9 therefore introduced a regime whereby the compensation that a developer could claim in the event of his termination of a sale contract was linked to the stage of construction reached on site. Law No. 9 was enacted with the purpose to protect the developers from defaulting investors.

The Executive Council Resolution No. 6 of 2010, which went further by also establishing grounds upon which a purchaser could seek termination of a sale contract due to the developer's breach. The Resolution also introduced the grounds upon which RERA could take action to cancel a development project and the process to be followed after such cancellation.

Decree No. 4 of 2010 introduced a mechanism to enable holders of industrial or commercial granted lands in Dubai to convert their granted title to freehold title upon payment of a fee assessed against the market value of the land in a deemed 'unimproved' condition. The benefits of having freehold title rather than granted title include the ability to mortgage the property to raise capital and to sell the property on the open market (subject to applicable nationality restrictions).

As regards Dubai's ability to capably deal with the rising volume and specific nature of real estate disputes, we saw a number of specialised dispute resolution forums introduced, such as the Property Court; the so-called 'Bounced Cheque Committee'; and the Special Judicial Committee established to resolve disputes involving Dubai World and Amlak Finance.

In 2011, a circular was issued by the Dubai Land Department confirming that it was prohibited for offshore companies (except for those incorporated in the Jebel Ali Free Zone) to own property in Dubai. Foreign companies and free zone companies incorporated in the UAE were not affected by this ruling, as these companies are not considered to be offshore.

More recently in May 2012, a draft law on the Protection of the Property Investor in Dubai was circulated for consideration and comment. This law seeks to introduce the notion that an investor should not be held to a Reservation Form, but should be entitled to see and agree to the full Sale and Purchase Agreement, and be given some time to consider this prior to signing. In the event of non-agreement on the terms, the purchaser is entitled to a refund of its deposit.

The relationship between landlord and tenant in Dubai is governed by Dubai Law No. 27 of 2007 which was subsequently amended by Law No. 33 of 2008. The law prescribes that the short term tenancy contracts are registered with RERA in the Ejari system. The Emiri Dubai Decree No. 43 of 2013 determines rent increases upon renewal of tenancy contract and RERA issues the rental index based on collated market data.

Development of the real estate market in Abu Dhabi gained impetus following the issuance of Abu Dhabi Law No. 3 of 2005. This law introduced the requirement to register real property. The law laid the grounds for the establishment of Land Registration Departments in the Municipalities of Abu Dhabi City, Al Ain and the Western Region. The law included the clear requirement for every document creating, transferring or extinguishing real property rights, including leases with terms exceeding four years, to be registered. Confirmation was also provided in the law, that the absence of registration would render such rights ineffective.

Importantly, the law further permitted UAE nationals to sell or purchase residential, commercial, investment or agricultural land allotted to them, with the main proviso that at least five years must have passed since the date of such allotment.

Subsequently, Law No. 19 of 2005 (incorporating amendments to it under Law No. 2 of 2007) introduced provisions relating to ownership, development, leasing and mortgaging of land and property in Abu Dhabi, and differentiated between the rights of UAE nationals, GCC nationals and non-UAE/GCC nationals.

Law No. 19 introduced the creation of a number of Investment Areas, as areas of land within Abu Dhabi in which GCC and non-UAE/GCC nationals were entitled to certain real property rights. The major difference from Dubai is that the law specifically excludes non-UAE and non-GCC nationals from acquiring freehold ownership rights in these Investment Areas.

These laws were supplemented in 2010 by Executive Council Resolution No. 64, which reconfirmed current legislation governing the rights of ownership and registration of property and property rights within Abu Dhabi, and set out specific directions to the Registrar of the Emirate's real estate registration departments to:

- register ownership rights (and issue registration certificates/title deeds) to non-UAE nationals for property rights located within the Investment Zones. (The Resolution also clarified and confirmed the status of long-term leases granted to non-UAE nationals over land located within the Investment Zones, by directing registration of rights to long-term leases);
- register ownership of property rights in respect of property located outside the Investment Zones (as may be permitted pursuant to current legislation); and
- register mortgages over property and property rights (whether these are located inside or outside the Investment Zones).

Abu Dhabi recently published its most substantial property law, Law No. 3 of 2015. The aim of this law is to better regulate the real estate market in Abu Dhabi and it took effect from 1 January 2016. The new law is a positive step towards attracting increased real estate investment in Abu Dhabi as it tackles many of the concerns raised by investors and developers in the past, while also drawing on the real estate investment experience in the UAE, and especially in Dubai, over the last ten years. Law No. 3 of 2015 introduces a range of new concepts to Abu Dhabi from the requirement for developers to establish escrow accounts for each project, initial title deeds for purchases of off-plan properties and requirements for developers, real estate brokers, valuers, surveyors and property managers to register and hold licences. Law No. 3 also addresses the concerns of banks with detailed provisions dealing with the registration and enforcement of mortgages.

Conclusion: Where is the UAE going?

This article only briefly touches upon some of the main legislative changes that have occurred in the UAE over the past 25 years. However even this short and select review reveals a country constantly striving to not only modernise, but to lead and innovate. Many of the legislative changes have been aimed at encouraging foreign direct investment by creating attractive commercial free zones, more robust judicial systems, and supportive property laws. The result is that those living and doing business in the UAE now enjoy an unprecedented array of lifestyles and business environments from which to choose.

The UAE will inevitably face numerous challenges in the next 25 years, but the past 25 years have already demonstrated that by learning from each other and supporting each other, the Emirates are able to overcome even the most challenging of circumstances.