

The Life Cycle of a Lease in Dubai and the DIFC

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The leasing of premises in the Emirate of Dubai is generally regulated by Law No. 26 of 2007 (as amended by Law No. 33 of 2008) (the “Dubai Tenancy Law”). However, the leasing of premises located within the Dubai International Financial Centre (“DIFC”) is governed by the DIFC Real Property Law No. 4 of 2007 (the “DIFC Tenancy Law”), which is based on common law principles. Both Dubai Tenancy Law and DIFC Tenancy Law apply to residential, commercial, industrial and retail premises. This article focuses on the material differences between the two laws.

When entering into, renewing or terminating tenancy agreements, it is important to consider the provisions of the relevant law and what rights or obligations may apply.

Registration

Article 4(a) of the Dubai Tenancy Law prescribes registration of all tenancy agreements with the Real Estate Regulatory Agency (“RERA”) in the Ejari system. Whilst there are no penalties for non-registration stated in the Dubai Tenancy Law, a tenant who fails to register is likely to face practical problems, when, for example, renewing trade licenses, visa sponsorships and utility connections. The Ejari registration fee is currently set at AED 215 and upon successful registration, the tenant obtains an Ejari registration certificate evidencing registration of its tenancy agreement with RERA.

This differs from the position under Article 54 of DIFC Tenancy Law, under which the landlord is obliged to register tenancy agreements with a term exceeding one year, with the Registrar of Real Property (the “Registrar”), within 28 days from the date of the contract, failing which the landlord can be subject to a fine of USD 1,000. For all tenancy agreements with a term of one year or less, registration with Registrar is optional. The landlord can complete the registration of DIFC tenancy agreements, online through the DIFC client portal and the registration fee is currently set at AED 367.50.

Terms of the lease

Whilst the terms and conditions of the signed tenancy agreement regulate the relationship of landlord and tenant (so long as it is not against public policy), if the contract is silent on a matter, the parties may rely upon the provisions of Dubai Tenancy Law on that particular issue.

Under the DIFC Tenancy Law, the parties have the freedom to contract and the terms of the tenancy agreement will generally govern their relationship. This approach is driven by the fact that the DIFC Tenancy Law does not elaborate on the rights and obligations of the two parties and focuses only on issues such as registration, effects of termination, effects of the surrender of a lease and the implied powers of the landlord.

Renewal and Renewal Rent

The renewal rent in Dubai is governed by Decree No. 43 of 2013 which determines the permitted increase in rent in Dubai upon renewal of a tenancy agreement ("Decree 43"). Therefore, any increase of rent upon renewal by the landlord must comply with Decree 43. The parties to the contract can access the rental increase calculator managed by RERA at the DLD website (<http://www.dubailand.gov.ae/English/Pages/rental-increase-calculator.aspx>), which determines the permissible increase in the rent upon renewal of the tenancy agreement.

The tenant has a right to notify the landlord whether it intends to renew the tenancy agreement upon expiry, subject to compliance with the terms of the tenancy agreement. If the tenancy contract is silent about the renewal notification, then Article 14 of Dubai Tenancy Law applies and requires either party to the contract to serve a minimum of 90 days' written notice prior to the expiry date, notifying the other party of any amendment to the terms of the tenancy contract (including renewal for a successive term). The landlord does not have the right to terminate the tenancy agreement upon expiry except on four limited grounds, which are set out in Article 25 (2) of Dubai Tenancy Law. The four grounds are:

- personal use of the property by the landlord or for use by his first degree relatives;
- sale of the property;
- demolition of the property; or
- comprehensive maintenance of the property.

The crucial pre-condition for the landlord to seek eviction of the tenant is a prior 12 months' notice (served by the [Notary Public](#) or registered mail) on the tenant and providing its reason for termination and the proposed eviction date.

In the event that there is no discussion of renewal between the parties, and the tenant continues to occupy the leased premises upon expiry of the tenancy agreement without any objection from the landlord, the tenancy agreement is renewed for the same term or for a period of one year (whichever is shorter) on the same terms as the original tenancy agreement.

The DIFC Tenancy Law does not provide an automatic right of renewal for tenants and any right to renew for a successive term must be included in the tenancy agreement. Without such express terms to renew, the tenant will be required to vacate upon expiry of the tenancy agreement. It is important to note that Decree 43 also applies to the DIFC and therefore the landlord must comply with the permissible rent increase limits upon renewal. From a practical point of view, Decree 43 is often difficult to implement in cases where the tenancy agreement does not contain an automatic right of renewal and if discussions between the landlord and tenant on renewal fail. In such cases, the tenant will be forced to vacate the leased premises upon the expiry of the tenancy agreement. On the other hand, if the tenancy agreement does contain an automatic right of renewal, then upon the expiry date, the tenancy agreement shall be deemed to be automatically renewed and if the landlord and tenant fail to agree upon the renewal rent (which is in compliance with Decree 43), then the matter can be referred to the DIFC Small Claims Tribunal for resolution.

Dispute Resolution

The Rental Disputes Settlement Centre ("RDSC") has exclusive jurisdiction over the tenancy disputes in Dubai (excluding tenancy disputes within the DIFC), rent disputes arising out of a lease finance contract, and disputes arising out of long term lease contracts. The RDSC is made up of two levels of litigation. The first level is the First Instance Circuit which consists of a judge and two real estate experts. Some of the judgments issued by the First Instance Circuit may be appealed within 15 days to the Appeal Circuit. The Appeal Circuit's decisions are final and may not be appealed further.

The filing fee for an eviction claim is 3.5% of the annual rent with a minimum of AED 500 and a maximum of AED 20,000. If any outstanding amounts are owed, the fee is 3.5% of the claim amount with a minimum

of AED 500 and a maximum of AED 15,000. Once the claim has been filed and served, there will be a series of hearings approximately two weeks apart during which parties formally appear and file memoranda (or pleadings) which set out the claim, defence and all other evidence upon which the parties rely. Normally all arguments, pleadings and documents submitted to the RDSC are made by written submissions. The number of hearings (and hence the time it will take to set the matter down for judgment) will depend on the length of time taken to serve the defendants, which is required at all stages of the proceedings, and the complexity of the issues and memoranda that are filed. The execution stage is handled by the RDSC to increase efficiency. The execution fee for eviction claims is 1% of the annual rent with a maximum of AED 5,000, while the execution fee for a monetary claim is AED 135.

The DIFC Small Claims Tribunal has exclusive jurisdiction over tenancy disputes in the DIFC, where the claim amount does not exceed AED 500,000. The filing fee is 5% of the value of the claim, with a minimum of USD 100. Upon the filing and serving of a claim form, the Defendant has 7 days to admit the claim, defend the claim, or challenge the Tribunal's jurisdiction. If the claim is admitted, the Tribunal will issue a judgment on the claim. If the claim is defended, the Tribunal will schedule a consultation hearing, at which the parties will attempt to settle their dispute amicably. If a settlement is reached, the Tribunal will issue a consent order recording the terms of the settlement. If no settlement is reached, the Tribunal will either schedule a further consultation or make arrangements for the hearing of the claim. The hearing of the claim is relatively informal, with both parties ordinarily being unrepresented and the hearing being held in private. A winning party's recovery of its costs is usually limited to the Court or Tribunal fees that it has paid, unless the other party has acted unreasonably. The Tribunal's order is enforceable in the same way as a Court of First Instance order and appeals from the Tribunal are to the Court of First Instance.

Termination of Tenancy Agreement

Article 25(1) of the Dubai Tenancy Law set out the following events of default which permit the landlord to seek early termination of the tenancy agreement:

- failure to pay outstanding rent despite receipt of 30 days' notice from the landlord (or a shorter notice period agreed in the tenancy agreement);
- subletting the leased premises without prior written consent of the landlord;
- illegal or immoral use of the leased premises which is not in accordance with public order;
- abandoning commercial leased premises without reason for 30 consecutive days or 90 non-consecutive days within a year, unless agreed otherwise between the parties;
- any change caused to the leased premises rendering it unsafe for use or damages its original state;
- unauthorised use of the leased premises or use which is in violation of planning, construction and use of land regulations in force in Dubai;
- condemnation of the leased premises as evidenced by a technical report issued/ approved by Dubai Municipality;
- breach of the tenant's obligations as stated in the tenancy agreement or applicable laws despite receipt of 30 days' notice period from the landlord; or
- requirements to demolish or reconstruct the leased premises upon receipt of request to do so from the competent government authorities.

Should the landlord wish to terminate the tenancy agreement prior to its expiry pursuant to an event of default, a prior written notice of default to the tenant with a 30 days' notice period should be served through the [Notary Public](#) or by registered mail.

We often receive queries from our clients on the position of unilateral termination or early termination of a lease due to a change in the financial circumstances of the tenant. UAE law does not recognise the right of unilateral termination (without a court order) or early termination at the option of either party. Therefore, any commercial understanding between parties agreeing to such termination rights must be recorded in

writing.

Article 62(4) of the DIFC Tenancy Law allows the landlord to terminate and re-enter the leased premises upon the occurring of any of the following events of default:

- Outstanding rent which is more than 30 days overdue (there is no requirement to serve a default notice on the tenant).
- Breach of any term of the tenancy agreement (either express or implied) and the tenant's failure to remedy the breach, despite having received a default notice from the landlord providing 30 days to remedy the breach. The parties to the tenancy agreement may choose to increase the prescribed 30 days' notice period but cannot reduce this period.

Upon termination of a tenancy agreement due to tenant's default, Article 60 of the DIFC Tenancy Law requires the Registrar to record the termination in the register.

Conclusion

Tenancy laws in Dubai are the same for residential, commercial and industrial leases. With a maturing real estate sector in Dubai, there is a need for introduction of a new specialised law which is equipped to regulate the different needs for each sector. We are aware that the DLD and RDSC are currently working to introduce a new tenancy law(s) and we are of view that such new law will improve the leasing sector and thereby elevate the overall real estate market in Dubai.

The tenancy law in the DIFC similarly applies to residential, commercial and industrial leases. It generally upholds the parties' freedom to contract, though the rent caps in Decree 43 are applicable to premises in the DIFC despite any terms that expressly permit the landlord to increase rent in a manner contrary to Decree 43. However, practically, Decree 43 offers limited protection to tenants in the DIFC. This is because there is no automatic renewal of tenancies on the same terms and the DIFC Courts will uphold clauses permitting landlords to terminate at will if the tenant is unwilling to pay an excessive rent.