



MENA Commercial Law Strengthening project- CLS

National Thematic Study on “The Legal Framework of the real estate Sector in the Emirate of Dubai- United Arab Emirates- UAE”

Executive Summary

The purpose of the Report was to highlight the past experience of the Emirate of Dubai's real estate sector, to describe its laws and conflict resolution dispute mechanisms in vigor, to point out the current situation resulting from the collapse of the real estate market, to identify the strengths and weaknesses in order to figure out remedies and recommendations when necessary.

Two major elements should be taken into consideration while reading the Report: the first is that the Emirate of Dubai remains a young jurisdiction where the majority of the real estate sector laws have been recently enacted; the second is that the public has no easy access to information and data.

The Legal System

The United Arab Emirates are a federation of seven emirates amongst which the Emirate of Dubai. Thus, there is in the Emirate of Dubai a superposition of two legal frameworks; the federation's laws and the Emirate of Dubai's laws and regulations. In addition, the federation and the Emirate of Dubai have adopted a civil law system.

The Legal Principles

The UAE and the Emirate of Dubai legal system make a distinction between rights *in rem* (or realty) and personal rights (or personality). UAE law follows also the natural division between immovable (i.e. Land) and movables. In general all interests in land are real property, except leaseholds or leases, which are classified as personality.

One of the particularities of the Emirate of Dubai is that foreigners can own properties only in designated areas of the Emirate of Dubai.

Strengths

The Emirate of Dubai has adopted a state-controlled ownership protection for the real property. The registration of any transaction as regards real property proved to be *ad validitatem* as opposed to *as solemnitatem*. In addition, the real estate sector proved to be

controlled by the government through number of registration requirements. In other word 'registration' became the equivalent of valid protection:

- *Registration of the Real property and the Transactions over Real property are required for their validity;*
- *Registration of Private Players involved in the Development of Real Estate such as the Developers and the Brokers*
- *Opening of an Escrow Account for each Project;* this is a guarantee that the monies paid by the purchaser of off-plan units in a particular project are channeled only to the construction and development of that particular project.

Weaknesses

In the presence of a newly established real estate system governed by laws and regulations in most of its segments, (i.e. lease, mortgage, freehold, off-plan sales, escrow, agent ...), one cannot disregard the impact that the credit crunch had and is still having on an immature real estate market that was at the start of the crunch was not yet duly organized in some of its segments. We shall cite here-below, some lacunas and major concern the real estate market is facing nowadays.

First, some new laws and regulations have been enacted under the pressure of the recent economic events in the Emirate of Dubai and are being criticized as being in a way or another (i) unfair, i.e. being in favor of the developers, (ii) in contradiction with the essence of the juridical system in the UAE, (iii) and/or in breach of the Civil Code.

Second, nothing in the laws and regulations regulates expressly the situation of the escrow account (where the money of the purchasers are deposited and channeled for the sole purpose of the construction of the project) in the in case of bankruptcy of a developer.

Third, the inheritance laws as regards real properties owned by non-Muslims are not clear.

Fourth, emigration laws as regards real properties need to be improved.

Sixth, the master developer's obligations towards developers and purchasers need to be defined and determined.

Seventh, and despite the plethora of regulation in respect of rents, none of those special texts had the benefit of bringing legal stability to rentals in the Emirate of Dubai.

Eighth, the legal costs of the judiciary are high.

Ninth, specifications of the off-plan developments are not regularized.

Recommendation

First, the legislative body should align any new legislation with the Civil Code which actually sets out a general legal framework for contracts including property contracts.

Second, the enactment of one structured real estate code should occur to deal with the real estate sector.

Third, a full and complete coordination and cooperation between the major players in The Emirate of Dubai is highly recommendable.

Fourth, expropriation of lands should as well be regulated.

Fifth, inheritance laws should be reviewed to permit the smooth transmissibility of a real property to heirs. And the emigration laws should also be reviewed to accord residencies and visas to foreign owners of real property; in fact 80% of the UAE population is foreigner and the visas granted are working visas and not residential visas.

Finally, the construction completion dates, master community charges and payment installments linked to construction milestones should be regulated. Too often in practice a total opacity covers these matters!

In order to move forward, we recommend:

First, a legislative commission should be established to codify real estate law in a consolidated piece of law in consistence with the legal system in the UAE. This legislative committee should be composed of first rank professionals from the real estate and legal industries.

Second, the Emirate of Dubai Government should review the plethora of authorities competent to license and control building and completion permits, standards, rules and conditions.

Third, and on the short run, awareness programs and workshops should be organized in order to make the public more familiar with its rights and obligations. Media should be contacted as well to highlight the urgencies of the problems.

Fourth, and on the short run, professionals of the real estate sector should be contacted to propose organizational charts for their respective professions, along with its terms and conditions, and a code of conduct for each profession.