



ABU DHABI GLOBAL MARKETS: NEW REGULATIONS

REAL PROPERTY

Here we consider some key features of the ADGM Real Property Regulations 2015 (“**the Regulations**”) and highlight topics that may be of interest to our clients operating within the Abu Dhabi Global Market (“**ADGM**”), which geographically covers the whole of Al Maryah Island, Abu Dhabi.

REAL ESTATE INTERESTS

The Regulations set out 10 categories of real estate interest that can now be created within the ADGM. These interests are quite different to the types of real estate interests that we have been used to dealing with in Abu Dhabi. The interests are now similar to the equivalent interests available in England & Wales. The principal interests are:

- Freehold interest in land (restricted to GCC-citizens) – this is outright ownership in an estate in land for an indeterminate duration;
- Joint estates – these are interests in real property held by more than one person (including joint tenancy and tenancy in common);
- Leasehold (which could include one or more sublease interests and excludes occupational (or otherwise) license arrangements) – this gives the tenant the right to use and occupy the property for a specified period of time;
- Strata interests – explored in detail within our separate strata title briefing note;
- Mortgage – an interest in real property held by a lender as security for repayment of a debt;
- Easement – an agreement giving an owner of real property a non-possessory right (such as right to light) over another parcel of real property; and
- Covenant – an agreement by the owner of real property in favour of another.

REGISTRATION

The ADGM will maintain its own land registration system (“**ADGM Land Register**”). It provides that:

- A defined list of conveyances (which includes all those interests listed above or a short-form thereof (which omit commercially sensitive details)) and subsequent variations must be registered on the ADGM Land Register;
- Agreements to create such conveyances must also be registered on the ADGM Land Register;
- The obligation is on the grantor of the conveyance to register it however the level of and responsibility for registration fees are not yet published;
- Conveyances should be executed in the English language and if not a translation into English language, should be provided;
- The ADGM land register shall be publically searchable and the ADGM shall issue certificates of title to interested parties and also priority searches (which can be used by lenders when taking security interests) – these are very useful features that are not currently available through the Abu Dhabi land registration system;
- A registered owner holds the registered interest free from all other interests except for: interests that are already registered; easements or public rights of way; rights in favour of the relevant authority; implied easements; or statutory charges; and
- There are no express references to compensation being paid to purchasers who rely on incorrect information in the registered title maintained by the ADGM Land Register or fraudulently registered conveyances. By comparison, the Dubai International Financial Centre, a similar free zone, maintains a compensation fund to allow it to pay compensation to affected parties in such instances.



LEASING

Leasing will be the area that most businesses operating within the ADGM will need to understand – leasehold interests are now equivalent to those known within the English & Welsh jurisdiction.

The key provisions of the Regulations in relation to leases are:

- Property within the ADGM may be leased for a period up to 99 years, renewable such that the term does not exceed 198 years.
- The lessor is responsible for the registration of a lease, which must be done within 28 days of the parties signing.
- In order to be registered, the lease should contain key details such as the parties, length of term, the commencement date, any renewal rights and sufficient detail to identify the premises.
- A memorandum (short form) lease can be registered in lieu of a full lease.
- There is no security of tenure – meaning that a tenant does not have a statutory right to renew their lease at the end of the term. The parties can walk away at the end of a contractual term, as they wish/as per the terms of their lease.
- The regulations are comprehensive but do not govern all of the same areas of landlord and tenant law that parties are used to having covered under Abu Dhabi law. For example there are no express provisions on termination grounds; repair obligations; and rental caps. As such the parties are fairly free to contract as they wish. This is likely to lead to leases that are more complex since there are fewer points at law that can be incorporated by reference.
- Leases and also agreements to lease (a pre-lease contract often signed when a development is under construction/not quite ready for occupation and use) can both be registered with the ADGM Land Register. The recognition of agreements for lease is a step in the right direction. It allows parties to sensibly split the development and operational obligations between two separate documents.

- Parties should contractually provide for the situation where the building is fully or partially destroyed or damaged, since there is no rent cesser provided for at law.

EXCLUSION OF LIABILITY IN RELATION TO LEASES

- The Unfair Contract Terms Act 1997 is incorporated into ADGM Law. It puts some limits and controls over the ability to provide for exclusion of liability so that, for example, parties can never validly exclude liability for death.
- Other liabilities can be excluded on a reasonable basis.

DISPUTE RESOLUTION

- The ADGM will have its own courts system and arbitration centre – albeit not yet functioning.
- It is understood that the jurisprudence of English & Welsh courts will have an influence over the ADGM courts, but its previous judgements will not present a binding precedent.
- Parties are free to opt in and elect to use them in the event of a dispute between the contracting parties. They are however, able to use the Abu Dhabi courts or arbitration elsewhere.

CONCLUSION

- The Regulations are comprehensive and contain various helpful features, such as: the recognition of and requirement to register pre-contractual interests (such as pre-leasing contracts) which allow parties to sensibly split obligations between two separate documents; and the ability to search the ADGM Land Register will be a useful tool to those doing business within the ADGM as there will be no uncertainty as to the ownership and status of real property.
- It remains to be seen how contracting parties as well as the courts or arbitration centres (whether it be that of the ADGM or otherwise) interprets the various sources of law applicable to AI Maryah lettings.

www.dlapiper.com

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com
Copyright © 2015 DLA Piper. All rights reserved. | JUN15 | 2963432