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## An Overview of the Development Process and Regulatory System in Dubai

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### 1. UAE Governance and Judicial Structure

- 1.1. Dubai is an independent Emirate, ruled by Sheik Mohammed bin Rashid Al Maktoum, which is part of the United Arab Emirates (“UAE”). For those who are students of language, the Arabic name for the UAE is المتحدة العربية الإمارات دولة and the English equivalent of that name is *Dawlat Al-Imārāt al-‘Arabīyah al-Muttahidah*.
- 1.2. The UAE comprises a federation of 7 emirates (Abu Dhabi, Ajman, Dubai, Fujairah, Ras al-Khaimah, Sharjah, and Umm al-Quwain) ruled by a Supreme Council made up of the rulers of the 7 emirates. The federation has a President and a Premier, both roles effectively being hereditary to the Al Nahyan clan of Abu Dhabi and the Al Maktoum clan of Dubai.
- 1.3. The Supreme Council elects the Government Ministers and the various emirates appoint 40 members of a National Council whose responsibility is to review and comment on proposed laws.

1.4. The UAE has a Federal Court system, although the emirate of Ras al-Khaimah has never been subjected to that system.

## 2. The legal system

2.1. Under the UAE Constitution law making powers are divided between the Federation and the emirates. All have both secular and Islamic law dealing with civil and criminal matters. The legal system itself is a civil law system (as opposed to a common law system).

2.2. As mentioned, Dubai is ruled by a single Sheik who has supreme power, subject only to Shari'ah Law and Federal law. Shari'ah law is the law as revealed by Allah, partly by the Prophet Mahammad (who is greatly revered by people of the Islamic faith) in the holy Qur'án. This relationship between Shari'ah law and secular law can lead to some interesting discussions at time.<sup>i</sup>

2.3. The UAE Civil Code has provisions that deal with property related matters.<sup>ii</sup> However, it does not deal with them comprehensively and leaves it to the emirates to fill in the detail, particularly as regards land ownership, land subdivision, land dealings and registration of those dealings.

2.4. Land rights vary according to one's citizenship. There are 3 categories:

- UAE Nationals (or Emirate's)
- Gulf Co-operation Council Nationals
- Foreigners

2.5. The various emirates have different rules, but there are generally 4 types of "land rights":

- Freehold (which is similar to but not the same as English common law freehold as we know it)
- Leasehold
- Usufruct
- Musataha

2.6. Freehold can be surface freehold or a form of "flying freehold". The latter is the right to own an apartment in, or floor of, a building without having any rights to the land on which the building is located. Therefore, if the building is destroyed the land right would be lost.

- 2.7. Areas are set aside by law (“free zones” or “investment zones”) in which foreigners can purchase freehold real estate. These areas are usually “master developed” by a local company. (This master development process is dealt with later in this paper.)
- 2.8. The Civil Code also recognizes a concept of common parts of a building being the subject of “co-ownership” (or jointly owned property)<sup>iii</sup> and has a few general provisions aimed at regulating rights and responsibilities relating to it. Those provisions are far from adequate and this has led the emirates (particularly Dubai and Abu Dhabi) to consider a more comprehensive law, which is affectionately referred to as the “Strata Law”.
- 2.9. The Ruler of Dubai made the *Jointly Owned Property Law*<sup>iv</sup> to regulate strata and community titles in Dubai. Abu Dhabi is presently working towards the introduction of a similar law. The application of the law is intricately associated with the way in which land is developed and sold in the UAE (which is not dis-similar to the way in which it is developed and sold in other parts of the Middle East and North Africa).

### 3. Approach to Land Development

- 3.1. All un-allocated land in Dubai is owned by the Ruler. Both allocated and un-allocated land is recorded in the Dubai Land Department, which is also responsible for the recording of dealings with land (although in the recent past the Department has only been concerned with a restricted number of dealings, others going unrecorded by Government).
- 3.2. A standard parcel of land is granted to every Dubai Emirate’ male when they turn 18. They are also provided with an interest free loan to build on this land. That grant is always recorded in the land registry. Land is also granted to local companies and individuals (i.e. UAE Nationals and companies owned by them) for particular purposes and those grants are also recorded in the land registry. Transfers of land rights involving UAE Nationals, GCC Nationals and companies owned by either of them are also recorded in the land registry.
- 3.3. So far as land development is concerned, there are generally 2 types of developers in Dubai –
- Master Developers
  - Sub-Developers

- 3.4. There are probably around 10 developers who can strictly be categorized as Master Developers. Most of these are effectively Government companies in that they are subsidiaries of the huge company, Dubai World. Dubai World is effectively the Ruler's company. Despite this close relationship, there is a high degree of "separation" between the Government (which was set up by the Ruler) and the development arms of the Government. In my regulatory work with the Government it has not been unusual to cross swords with Government developers on questions of policy and, in most cases, Government policy preferences have dominated. This is even despite political lobbying not unlike that which occurs in democratic countries.
- 3.5. Historically, since the rise of the Master Developers, the Ruler has granted (free of charge) large parcels of land to a Master Developer who committed to master plan and develop that land. The Master Developer plans an entire community on that land, which by any standards is huge. The Master Developer sells development sites to Sub-Developers who commit to build their particular development in accordance with the master plan. These sub-developments are themselves huge (e.g. the *Jumeirah Beach Residences* sub-development at Dubai Marina comprised 36 apartment towers, 4 hotel towers and hundreds of thousands of square feet of retail space; with each apartment tower containing over 500 apartments). The Master Developer of Dubai Marina is Emaar Properties, a listed public company in Dubai.
- 3.6. These sub-developments are serviced by infrastructure, including a range of utility services, constructed by the Master Developer. Water and electricity infrastructure are handed over to the Dubai Electricity and Water Authority (DEWA), who charges for supply in the same way as any other Government utility services provider. Telecommunication infrastructure is usually the subject of a profit share arrangement between the Master Developer and one of the telecommunication providers that operates in the emirate.
- 3.7. Other utility infrastructure (e.g. chilled water, treated grey water, security, etc.) is often retained by the Master Developer and converted into a profit making business. Remaining infrastructure (roads, open space, bridges, waterways, etc.) is also retained by the Master Developer who has responsibility for operating and maintaining them. The costs of operation and maintenance are recovered from individual apartment, house, retail and commercial owners in the form of annual "service charges". The Master Developer usually has its own facilities management company to attend to that maintenance.

- 3.8. This lack of transparency between Master Developers and end consumers of utilities and facilities is a cause of tension and a concern for regulators. This is likely to increase in the years to come because consumers are paying higher fees than they anticipated for these essential services and facilities, while some Master Developers are finding it difficult to operate them profitably. This area is likely to be the subject of further regulation in the short to medium term.
- 3.9. Master Developers finance the construction of core community infrastructure and services by requiring Sub-Developers to progressively pay for their development sites. These purchase price instalments are in many cases subsidised by loans from Regional Banks. In turn, Sub-Developers pay for their purchase price instalments and their construction costs by taking progressive payments from their “off-the-plan” retail purchasers. Again, this is at least partly supplemented by Regional Bank finance. The result is that retail purchasers substantially fund the development of these mega-projects. Typically, a retail purchaser will have paid their entire purchase price by the time their apartment or house is ready for delivery.

#### 4. Regulatory Measures

- 4.1. Because the real estate market, until very recently, was unregulated and marketing practices left a lot to be desired, many real estate purchasers were misled as to what they were buying and the costs that they would be required to contribute. This effectively put at risk the integrity of the Dubai real estate market at a time when Dubai was receiving unprecedented attention all around the world. This led to Government intervention in the market, starting in late 2006 and continuing until this day. One area the subject of this intervention is strata and community titles and the sale of those properties “off-the-plan”.
- 4.2. The practice of progressively paying the purchase price, in itself, presented serious issues for Government. Although the practice of “diverting” funds collected from purchasers away from the project was rare, it did occur and it raised concerns within Government. As a consequence, the Government made an “Escrow Law”, which requires pre-payments by retail purchasers to be placed in an escrow account with a Bank and released progressively to the developers as construction reaches certain milestones.<sup>v</sup>
- 4.3. Another practice that attracted regulatory attention related to re-sales of apartments and houses by retail purchasers. Many such purchasers are speculators.

They purchase the property with the express intention of re-selling it on the secondary market as soon as its value has increased sufficiently. Given the rate of increase in the market, this was often within 6 to 12 months. It is not uncommon for properties to change hands 2 or 3 times before the project is completed and handed over.

- 4.4. In a Torrens system this practice would not necessarily be of concern because of the availability of a public register and the ability to place a caveat on the title. However, in Dubai, until very recently, there was no ability to register freehold titles to apartments or houses within these master developments. Instead, the Master Developer maintained an “Owners Register” to keep track of who owned properties. Indeed, they even issued a “title” for the property. The result was that the Master Developer held the master development area title registered at the Land Department and recognised, via this register, the persons who “owned” the subdivided plots of land. The Master Developer even charged a fee (2% or 3% of the purchase price) for the favour of making the registration in its books. One problem is that this Developer’s register is not a publicly searchable facility.
- 4.5. Because purchases were not recorded by Government, there were a few instances where an original retail purchaser re-sold the same property to 2 or 3 sub-purchasers without any of them being aware of the other sales. This created the situation where there were 2 or 3 competing sub-purchasers of the same property. This led to the making of a further law, known as the “Pre-registration Law”. This law<sup>vi</sup> requires all off-the-plan sale contracts to be registered with the Land Department to be legally enforceable. This enables a sub-purchaser to verify the seller’s contractual rights and ensure that they have not already been disposed of.
- 4.6. This pre-registration law is related to new procedures under which the Land Department now registers all land and unit transfers and prohibits Master Developers from maintaining private land ownership registers.<sup>vii</sup>
- 4.7. Another regulatory measure that was introduced in 2007 was a Law to require real estate brokers (i.e. the Australian equivalent of real estate agents) to be licensed.<sup>viii</sup> There were estimated to be around 4,000 real estate brokers operating in Dubai at the time this law was introduced. Very few had any qualifications or experience in a mature real estate market. They have been described as “order takers” by experienced real estate people from developed countries. A new authority was set up to license these brokers and to act as the regulator of the market. This authority

is the Real Estate Regulatory Agency (RERA). It operates as a division of the Land Department.

4.8. RERA has introduced a course that is a pre-requisite for licensing as a broker. The course focuses on knowledge of the Dubai laws and market, with a strong emphasis on ethics and market practices. RERA has battled to ensure compliance with this new law but is now making good progress.

## 5. The Strata Law

5.1. Very briefly, the Strata Law introduces the following –

- Strata titles (for buildings)
- Community titles (for master planned communities)
- Volumetric (or stratum) titles for part building subdivisions (with a building management statement)
- Owners Associations with a governing Board
- Professional Owners Association Managers (called “General Managers”)
- A corporate governance and management regime
- Consumer protection for off-the-plan purchasers
- Dispute resolution mechanisms

5.2. The Strata Law is not intended to apply to master developments (i.e. the mega-projects) as such. Instead, it is intended to apply at precinct, neighbourhood and building levels of the mega-projects. The Government is presently considering a new law to regulate development at master development or mega-project level.

5.3. The following are the underlying philosophies of the law:

5.3.1. The conduct of the business of the Owners Association is the responsibility of the Board. The role of the General Meeting is to elect the Board, monitor its performance and, if appropriate, remove it for non-performance. The general meeting otherwise has no role in the day to day conduct of the Owners Association’s business. However, there are a very limited number of significant decisions that must be referred to the General Meeting.

5.3.2. The Owners Association Board is responsible for strategy and governance matters. The Association General Manager (the Dubai equivalent of a body corporate manager or strata managing agent) is responsible for management. The Board can delegate to the General Manager. The role of the General

Manager is more akin to the role of a Chief Executive Officer than to the role of an Australian body corporate manager.

5.3.3. Developers have a relatively free hand to structure projects the way they want. (Restrictions are relatively minimal.) The price they pay is a new requirement to disclose to purchasers what they propose and the costs to the purchaser associated with the proposal. The disclosure requirements are, by any standards, very rigorous. This approach was necessary to ensure that the extraordinary initiatives and innovations that have put Dubai projects on the world map are not un-necessarily impeded by the regulatory regime.

5.3.4. The law does not seek to anticipate all of the problems that have occurred in overseas jurisdictions, but rather to lay the foundations of a modern strata titles system that can evolve over time having regard to the specific requirements and problems of the jurisdiction. Over regulation at this point in time would have put the Dubai real estate development industry at serious risk of faltering.

5.4. The law itself is very brief - 11½ pages. Typical of a civil law jurisdiction approach, the law is supported by –

- Implementing regulations, namely:
  - Owners Association Constitution
  - Development Regulations
  - Survey Regulations
  - General Regulations
- Departmental directions and instructions
- Approved forms and procedures.

5.5. Trying to design and draft strata and related laws to cope with the Dubai real estate scene has been a real challenge. The size and nature of the projects and the speed with which they are developed demand innovative and flexible mechanisms that would be unacceptable in most mature real estate jurisdictions. In the Dubai environment, even such laws will continue to be challenged by the imaginations of its property industry. For example, no sooner had the Strata Law been approved by the Ruler when a major developer announced the commencement of a high rise residential tower that will rotate around its core so that, at different times of the week, unit owners will have different outlooks from their units as their units rotate. This requirement for a “moving strata title” has sent us all scampering back to our drawing board. Two other challenging examples are the underwater hotel (which



will be under the ocean) and the cloud apartments (which will be in the sky and supported by “legs” of rain).

5.6. Further regulatory intervention is planned as the Government desperately tries to keep up with an overheated market dealing in real estate product that is extraordinary in terms of both size and type.

5.7. As you continue with your strata and community title practices, spare a thought sometimes for your colleagues working away in the Middle East trying to keep up with the imaginations of this new breed of property developers and their artistic consultants.

## **Gary Bugden**

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<sup>i</sup> For a comprehensive coverage of this relationship see *Man-Made Laws vs. Shari’ah, Ruling by Laws other than what Allah Revealed, Conditions and Rulings* by Dr Abdur-Rahmaan ibn al-Mahmood (International Islamic Publishing House).

<sup>ii</sup> UAE Civil Code, Book 3, Chapters 1 and 2.

<sup>iii</sup> UAE Civil Code, Article 1188, Book 3, Chapter 1.

<sup>iv</sup> Law No. 27 of 2007 on Jointly Owned Property in the Emirate of Dubai.

<sup>v</sup> Law No. 8 of 2007 Concerning Real Estate Development Trust Accounts in the Emirate of Dubai.

<sup>vi</sup> Law No. 13 of 2008 Regulating the Interim Real Estate Register in the Emirate of Dubai.

<sup>vii</sup> Articles 7 and 8 of Law No. 13 of 2008 Regulating the Interim Real Estate Register.

<sup>viii</sup> Law No. 7 of 2006 Regarding Real Estate Registration in the Emirate of Dubai and Regulation No. 85 of 2006 concerning the Register of Real Estate Brokers in the Emirate of Dubai.