

New Dubai Property Law a Key Cornerstone I (April 2006)

It was Ralph Waldo Emerson who said that “if a man owns land, the land owns him”.

Next to human resources, land is every nation’s most valuable asset. By land, we mean not just the surface, but also the natural resources that grow on it or exist below, as well as the man-made structures that we build to house our families, factories, businesses, and religious/cultural activities.

The land (or “real property” in its broader sense) is truly the foundation and base of all daily activities. It produces our food, confines our water resources, supports our industries, and provides for our recreational enjoyment. It defines our national identity, not only in a physical sense, but also in a cultural and psychological way. Land is integral to our definition of governmental responsibilities and boundaries.

It is critically important, therefore, to recognize that real property is not simply a physical asset, but that it has other important social, ecological, legal, economic, and financial functions. Secure land tenure encourages investment. Land with clearly defined, and easily transferable ownership rights is ideal collateral.

There is a widespread recognition that dynamic and viable land and property markets contribute to economic growth. Property markets generate wealth. They facilitate foreign direct investment. They are the basis of a strong financial services sector, including insurance, and mortgage banking, as well as a construction and brokerage services industry. A dynamic market encourages labour mobility and thereby enterprise restructuring. All of the world’s successful modern advanced industrial economies have well regulated property and land markets.

In a landmark move, the Government of Dubai issued a much-awaited property law, legalizing foreign ownership of properties in pre-designated areas in the emirate. His Highness Shaikh Mohammad Bin Rashid Al Maktoum, Vice-President and Prime Minister of the UAE and Ruler of Dubai, issued Law No 7 of 2006 that legalizes freehold ownership of land and property to UAE and GCC citizens, while allowing the same rights to non-GCC expatriates, though limited to pre-designated areas that will be approved by the Ruler of Dubai.

The new law, which reaffirms in an unequivocal manner a landmark change of policies and reflects the Drive of Dubai Government towards liberalization of its land ownership policies, will form a fundamental cornerstone for the development of the real estate market in Dubai.

This incites to examine the dynamics which lead to the enactment of this law, its salient provisions, caveats which remain to be dealt with in a near future, and foreseen impact on the real estate market.

Although real estate ownership is governed by and falls under the jurisdiction of federal legislature pursuant to Article (122) of the UAE Constitution, however, in the void of Federal Laws in this regard, different local policies were applied in each emirate.

In fact there is no specific Federal Property Law in the U.A.E. Instead, each Emirate has established its own specific land ownership policies through local orders and decrees and according to its own economic and political circumstances.

Nearly four years ago, Dubai Palm Developers announced that residential properties to be constructed on the Palm Jumeirah and Palm Jebel Ali islands would be offered for sale on a freehold basis to UAE and foreign nationals. Emaar Properties PJSC made a similar announcement in respect of its existing Emirates Hills and Dubai Marina projects and its Arabian Ranches project. These announcements marked a departure from the strict land ownership policy which was followed earlier by the Government of Dubai.

As a result Dubai's property market witnessed a booming cycle as world-class projects were being launched by innovative property developers. The government played a distinctive role in defining and leading the development of the real estate market, through specialized quasi-governmental companies such as Emaar.

The law comes nearly four years after the Dubai government first unveiled plans to extend freehold ownership to expatriates. More than 13,000 expatriate families have already moved to their new homes, without securing title deeds in their names. The new law paves the way for the expatriate homeowners to register their properties in their names with Dubai Lands and Properties Department, which has been gearing for the rush in registration.

Law No.7 of 2006 stipulates that freehold is limited to UAE and GCC citizens and companies wholly owned by them, as well as public shareholding companies. The law also stipulates that upon approval of Dubai's Ruler, non-UAE nationals may be given the right to own properties in areas designated by the Ruler of Dubai. Non-UAE nationals will be given the right to acquire whether a free hold property, or a 99-year lease property, in such designated areas.

The law includes 11 chapters comprising 29 articles covering the issues of definitions, general rules, the implementation system of property hold, and the jurisdictions of the Dubai lands and properties Department. It also stipulates the setting up of a property registry at the Dubai Lands and Properties Department. This registry will be set for documenting property rights and their amendments.

The records of the property registry hold the ultimate evidence against all without exceptions. Its records cannot be challenged except in the case of forgery. Documents of the property register which are electronically saved have the same evidential value of the original documents.

All property transactions and deals that result in creating, transferring, affecting or extinguishing property rights ("rights in rem"), must be registered with the property registry. And so must all the final rulings that prove such dealings, which are not considered valid until they are registered. Any undertaking to transfer such rights remained unregistered shall only give the beneficiary of such undertaking a claim for compensation in case of failure or breach, whether such compensation has been stipulated or not.

Article [23] of the law further stipulates that a multi-storey and multi-unit property is considered a single property unit that shall be given one entry in the property registry. All apartments of a single property unit will have supplementary records that include names of the owners of its apartments, storeys and any common facilities.

The new law reaffirms the public trust in the government of Dubai and sets out the regulatory framework for freehold real estate ownership in Dubai. The law will contribute greatly to maintaining, building and boosting investor confidence, especially among expatriate buyers, and is further expected to give a boost to the secondary market in real estate. This is a positive development since it will be another sign of growing confidence and maturity in the market, and a key element in the emirate's emergence as a mature and prosperous economy.

In fact the setting of economic developmental objectives and their integration into an overall strategic vision form the key components of an effective land development planning process. Institutions are the "rules of the game" of a society. A modern market-based economy depends on various bodies of laws and institutions. Regulation is one of many instruments for public intervention in real estate and other urban markets.

One of the major sources of market failure is the absence of clearly defined and enforceable property rights (the definition of property rights

and the adjudication of disputes is essential for market transactions), the most oft-cited rationale for regulating land and real estate markets.

The new law outlines and affirms property ownership rights for expatriates in designated areas and sets up a recording system ensuring rightful title ownership and transfer through registration in the property registry. The key components for success are clear title arrangements and a well kept land registry to help clarify ownership rights, minimize disputes, and maximize the efficient transfer of land. Maintenance of a land information database is essential for institutional Vehicles for the delivery of Economic Development Services.

It is generally accepted that an efficient, formal land registration system is an essential prerequisite for the operation of a formal land market. Informal land markets do exist in many countries, but the operation of these markets is strongly inhibited by uncertainties in tenure. There is evidence of the economic benefit of improved tenure security. Property holders benefit economically through the increased tenure security provided by property titling. This benefit is often reflected in increased property prices. We believe that such benefit of titling will soon be witnessed in Dubai, for by international standards property is still fairly priced in Dubai compared to London and New York, and the constant flow of expatriates nourishes a lively rental market, and sustains the uptrend which is highly unlikely to be interrupted before two or three years.

In its own rights, the new law sets a unified model for the Emirate of Dubai whereby property rights and transfer of title are clearly defined. Prior to the enactment of the law, each property investment opportunity with a developer was considered unique and assessed on its own merits.

Though most of the early investors in the market were showing little concern, as confident as they were that the legislative framework will soon follow, however, some institutional and professional investors are a lot more sophisticated than the individual buyer and demand satisfactory due diligence and feasibility studies before taking the decision to invest. The new Dubai property law will tilt the investor confidence for sure, and result in a second wave of fresh investments and strong surge, which would be more concrete on a strong foundation.

As for financing availability, the new law will further contribute to boosting the mortgage market in Dubai. Bankers are cautious professionals who seek minimizing their risks. The UAE banks appear to have recognized the huge market opportunity for them in financing Dubai property, and will naturally feel more comfortable after the enactment of the new Dubai property law, and that should enormously contribute to developing a competitive mortgage market.

In fact the banking community welcomed the new legislation and emphasized that registration of title would play a crucial role in the establishment of a healthy mortgage market.

Competition in the mortgage market will also result in lower interest rates to new borrowers. There is probably scope for tighter pricing yet, particularly if some new entrants decide to take a loss on initial lending to gain market share against the incumbents.

To sum it up, the newly enacted law will definitely have a positive impact on the development of the real estate market in Dubai.

However, the law falls short of tackling several issues of great concern affecting behavioural trends in the real estate market.

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