

Property Mortgages in the UAE

Banking and Finance

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Introduction

While taking security over property under UAE law is generally straight forward, it is important to understand the different legal regimes which apply across the various Emirates. Although a Federal subject under the UAE constitution, security over immovable property in the Emirate of Dubai is governed by Emirate level laws. Other Emirates such as Abu Dhabi follow the Federal laws. However, Abu Dhabi lacks the regulatory infrastructure to record a valid mortgage. In addition, the procedures and formalities involved in registering a valid mortgage can sometimes pose challenges as the practice can be at odds with the applicable laws.

Mortgages over real property are generally governed by the UAE Civil Code (Federal Law No. 5 of 1985), which requires due registration and the payment of applicable registration fees to create a valid mortgage. The mortgage must be registered in the land register of the Emirate where the property is located.

Priority is generally based on the first to record principle and the mortgage becomes effective against third parties from the date of registration. A mortgage over land includes all fixtures and buildings attached to the land.

A property mortgage can only be registered in favour of banks and financial institutions licensed to operate in the UAE. This means that foreign lenders must appoint a local bank to act as agent to hold the security on their behalf.

Dubai

Dubai has the most developed property registration system in the UAE, governed primarily by the Dubai property registration law (Dubai Law No. 7 of 2006). All real estate interests, including mortgages, in the Emirate

of Dubai must be recorded at the Dubai Land Department (the "DLD"). Mortgages in Dubai can be registered over freehold or leasehold interests, as well as rights and interests in off-plan properties.

The Dubai mortgage law (Dubai Law No. 14 of 2008) sets out the procedures for enforcement of mortgages in the Emirate. Self-help is not permitted under UAE law and creditors may only enforce a mortgage via the courts and the procedure set out in the mortgage law. In brief, before execution proceedings can be commenced, the mortgagor must be given a 30 day notice (to be served via notary), which can be extended by the court up to a maximum of 60 days, following which the property will be attached and sold via public auction through the DLD under court supervision. With a number of enforcement actions having been completed since the enactment of the mortgage law, this process has become fairly streamlined and lenders can expect to be able to enforce their security interests in a relatively short period.

For registration purposes, the DLD prescribes a standard form mortgage agreement which can be supplemented by a more detailed mortgage agreement and filed with the DLD. Given the statutory enforcement procedure set out in the mortgage law, the efficacy of the supplemental agreement is not entirely clear. The mortgage agreement must be signed by the parties (or their authorized representatives) in the presence of officials at the DLD. Registration fees applicable to conventional financings are the same as those applicable to Ijara (Shariah compliant) financings. Islamic lenders, although owners on paper, cannot automatically take over the property and must go through the same enforcement procedures.

This standard form DLD mortgage agreement sets out details of the property, the amount secured, details of the facility and the mortgage period. A real estate mortgage

must specify an expiry date, which in practice leads to mortgage terms being much longer than the facility. Despite the expiry date, in reality the mortgagor is unable to transfer the property or release the mortgage without the lender's written consent.

The Dubai mortgage law does not apply to granted land; the Ruler of Dubai recently issued Decree No (31) of 2016 on mortgaging of granted lands in Dubai, allowing such property to be mortgaged provided certain conditions are fulfilled. The conditions include that the finance raised against the mortgage will be invested to achieve the purpose of the initial grant. These conditions are not applicable if the granted property belongs to an entity with more than 50% government ownership. Furthermore, it is interesting to note that this law also permits the mortgagee to raise finance against the income of the granted property.

Abu Dhabi

The Emirate of Abu Dhabi only permits freehold ownership to UAE and GCC nationals. Other nationals are only allowed to enter into long term leases or to own units in apartment buildings but without having any right to ownership of the underlying land. Like Dubai, non-UAE / GCC nationals are only permitted to 'own' property in certain designated investment zones.

As there is no specific mortgage law in Abu Dhabi, provisions of the UAE Civil Code apply. Mortgage registration can be effected over freehold property (owned by UAE and GCC nationals) with the land department, which has established offices in the municipalities of Abu Dhabi and Al Ain.

Although Abu Dhabi has issued legislation (Executive Council Resolution No. 64 of 2010) providing for registration of ownership for foreign investors in the designated zones, no formal register exists in which ownership interests can be registered. For property located in these designated investment zones, mortgages can, at present, only be registered with the property developer. Such 'unregistered mortgages' are granted by way of an assignment of the borrower's rights under the sale and purchase agreement, giving the lender step-in rights which can be enforced in the event of a default. Lenders only have contractual rights against the borrower but no registered rights in the underlying property which they have financed. There are no examples of such rights having been enforced in the courts and the efficacy of such security remains untested. Such rights are likely to be invalid as a matter of law since the Civil Code requires interests in real property to be registered to be valid.

Unlike Dubai, mortgage over off-plan properties are not possible in Abu Dhabi since the Civil Code requires the real property to be in existence at the time of registration of the mortgage. An assignment of the sale and purchase agreement, if recognized, arguably has much the same effect.

Conclusion

Mortgages are generally the most robust form of security a lender can hope to have in the UAE, and this is especially true in the Emirate of Dubai. The legal landscape can be more problematic in Abu Dhabi where the mechanisms to register security interests are still evolving and it may be some time before the same level of certainty is achieved.

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