

# LEASING OF REAL ESTATE IN THE DIFC

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Legal Briefings - By **Stuart Paterson, Benjamin Hopps and Scott Aitken**

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We are pleased to issue this update in respect of two important legal developments regarding leasing of real estate in the DIFC. First, DIFC Leasing Law No.1 of 2020 sets out a new framework for owners and occupiers who are leasing real estate in the financial centre. Secondly, the DIFC Courts have established a new specialist real estate leasing tribunal. We will discuss those developments below.

## OVERVIEW

The leasing of real estate in the Dubai has recently taken another leap forward with the introduction of the new DIFC laws and related regulations. The laws in relation to real estate located outside of the DIFC's boundaries have been relatively unchanged since 2008. In this context, it is interesting to consider several of the ways in which the new DIFC law now diverges from Dubai in some important legal and commercial respects.

We provide a brief overview of those differences which will be of interest to owners and tenants alike when considering the critical real estate decision of: Location, location, location!

The way in which leases that are granted for a period of less than 10 years are treated is somewhat different depending on where the asset is located, and the nature of its use.

Before entering into a lease, a prospective tenant should carefully consider the location of the property and the laws that will apply. Similarly, there are differences that a prospective owner ought to consider before buying a property to lease to tenants; these differences are discussed below.

## **SOME SIGNIFICANT DIFFERENCES - DIFC REAL ESTATE**

The new DIFC leasing law has significant protections available for a residential tenant which are not present in Dubai. These include:

- the security deposit scheme, and
- a residential condition report.

In the DIFC, rather than the security deposit being paid to the owner, as is the case in Dubai, the security deposit is lodged for safe-keeping with the DIFC Registrar.

The DIFC security deposit scheme is supported by a formal process for the parties to prepare and agree a report setting out the condition of the premises at the beginning of the lease and, if necessary, upon its renewal. This scheme makes it easier for the parties to a residential tenancy to ensure the security deposit has been retained and, at the end of the tenancy, to assist the parties to agree to its disbursement, and to ensure that it is in fact distributed according to that agreement.

The DIFC law also provides that in certain circumstances, compensation might be payable to a party where there is the loss, destruction or improper use of a document lodged with, or held by, the registrar, the register has been tampered with, or there is an error in the register. Accordingly, in the DIFC, an affected party might have recourse to, and obtain compensation from, the DIFC Assurance Fund that has been established for that purpose.

Arrangements in Dubai are different such that the validity of information in the property register may be challenged only on the grounds of fraud or forgery.

## **SOME SIGNIFICANT DIFFERENCES - DUBAI REAL ESTATE**

However, the DIFC does not include a number of features applicable to real estate tenancies in Dubai. These include:

- a rent cap,
- the tenant's continuing occupation rights, and

- lease renewal rights in favour of the tenant.

The rent cap provides protection for tenants by limiting the maximum potential rent increase that an owner may impose when the lease is being renewed. The cap prevents an owner from increasing the rent at all unless the rent for that property is more than 10% less than the average for similar properties in the same location. Even then, where the rent is 11% to 20% less than the average, only a 5% increase on the current rent is allowed. The cap then follows a sliding-scale up to allowing a rent increase of 20% where the current rent is more than 40% less than the average. No similar restriction exists in the DIFC.

Similarly, tenants are also afforded certain continuing occupation and lease renewal rights in Dubai, which are not present in the DIFC law. In particular, at the end of the lease in Dubai, if the tenant remains in occupation then, the lease will automatically renew on the same terms and conditions (but the period of the renewed lease is either the initial lease term or 12 months; whichever is the shorter).

The position on termination is also markedly different between Dubai and the DIFC. However, a detailed analysis is beyond the scope of this note. Suffice it to say that, apart from termination by mutual consent or breach by the tenant, the Dubai law provides substantial protections for a tenant, with the owner only having limited grounds entitling them to evict a tenant.

## **DIFC COURTS SMALL CLAIMS LEASING TRIBUNAL**

A new DIFC Courts Small Claims Leasing Tribunal has been set up by order of the Chief Justice of the DIFC Courts.

The Tribunal has the exclusive jurisdiction to hear and determine claims in relation to residential or commercial leasing of real estate property located within the DIFC, provided the amount of the claim does not exceed AED 1 million (or such amount as varied from time to time by the Chief Justice).

Once the claim has been filed and served, the defendant has seven (7) days to challenge the Tribunal's jurisdiction, or to admit, or to defend the claim.

Hearings are informal, held in private and usually without either party being represented by legal advisers. Accordingly, unless the unsuccessful party has acted unreasonably, any recovery of successful party's costs is usually limited to the amount of fees already paid to the Court or Tribunal.

The Tribunal's order is enforceable in the same way as a Court of First Instance order. Appeals from the Tribunal are to the Court of First Instance.

It is expected that the benefits of this new, specialist Tribunal will echo those of the judicial arm of the Dubai Land Department, the Rental Dispute Settlement Centre, including providing greater process efficiency, access to specialist decision-makers, and uniformity of decisions leading to more predictable outcomes. The Tribunal conducts its proceedings in English.

## **SUMMARY**

There are material differences between the rights and obligations of the parties entering into real estate leases in the DIFC and Dubai. Consideration should be given to the how these differences better suit either the owner or the tenant. Relevant considerations are:

- the rent cap in Dubai,
- the rights to renew the lease in Dubai,
- the residential security deposit and residential condition report in the DIFC,
- the Assurance Fund in the DIFC,
- the different circumstances under which the owner can terminate a lease or deny its renewal, and
- the availability and the DIFC's specialist, English language, leasing tribunal.

These differences should give pause to potential tenants and owners to consider how, and to what extent, these differences may affect their choice of the location of their rental property. It means the parties to real estate lease contracts have an increasingly wide range of commercial and legal issues to consider and should seek out advice to assist in making the right decision to best suit their needs, as well as obtaining assistance in drafting the lease agreement to optimise their rights or in the event of a dispute arising.



## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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