

Pledge Law No. 14 of 2008 of the Emirate of Dubai

The Pledge Law No. 14 of 2008 of the Emirate of Dubai aims to register the contract of pledge of property with the Land Department. The announcement of this law will serve to add further transparency and predictability for the mortgage market. The law stipulates that the size of the loan, the repayment period and the value of the property be registered with the Department. The Law shall become effective 60 days after it is published in the official gazette.

The provisions of this Law applies to the Pledge of Property or Property Units as security for a debt whether the debt is secured by the whole Property sold on plan, common part thereof, or real or personal right thereof (Article 3).

The Pledgee shall be a bank or a financing company or institution duly authorized and registered with the Central Bank of the United Arab Emirates for practicing property financing activities (Article 4).

The Pledge shall accrue only when it is registered with the Land Department, with any agreement to the contrary to be deemed invalid. The Pledgor shall incur the contract fees unless otherwise agreed by the parties (Article 7).

Legal Effect of Security Pledge

The Pledgor may not dispose of the pledged Property Unit or Property by sale, grant or otherwise or create any real or personal right thereon without the approval of the Pledgee, and provided that assignee accepts to replace the Pledgor in the obligations arising under the Pledge contract. The Pledgee may stipulate in the Pledge contract that the Pledgor shall act as a guarantor to the assignee in the performance of all such obligations (Article 10).

If it is stipulated in the Pledge contract that the Pledgee shall own the pledged Property for its debt if the Pledgor fails to pay its debt on the appointed date, or that the property shall be sold without regard to legal procedures, the Pledge shall be valid but the condition shall be void in both cases, even if it is agreed subsequently (Article 11).

Article 11 contemplates that the remedy of “self help” is not available in U.A.E. The Pledgee shall obtain a court order from the execution judge to sell the property through public auction. The Pledgor shall have the right to manage its Property and receive its revenues till the date it is forcedly disappropriated by public auction for failure to discharge the debt (Article 12).

The Pledgor has a right to receive revenues out of the pledged Property. In case there is any default by the Pledgor in paying his EMI against the Pledge, the Pledgee can recover the loan amount only through the proceeds collected out of the public auction of the pledged Property.

The Pledgee may assign its right to a third party provided that the debtor shall approve such assignment and the deed of assignment shall be registered at the Department.

A purchaser of a Property Unit sold off-plan or under-construction may Pledge the same as security for the debt amount, provided that such units or properties are entered in the Initial Property Register with the Land Department (Article 24).

As per this provision, if the Property Unit is sold off plan but is not registered in the Initial property Register, then it cannot be pledged for security.

Procedure for Attachment of Pledged Property

The Pledgee may commence procedures to sell the pledged Property in case the debt is not settled on date provided that the debtor or the possessor of the pledged Property/unit is served a notice within a period not exceeding thirty (30) days (Article 25).

In the event that the Pledgor fails to discharge the said debt within the time period stipulated under the Law, the execution judge shall at the request of the Pledgee issue a decision for attaching the pledged property in preparation of selling the same by public auction pursuant to the Land Department procedures (Article 26).

Article 27 provides that without prejudice to Article 26, in the event that the debtor petitions the execution judge to delay the public auction, the execution judge may delay the sale by not more than (60) days for only one time, in case the judge is convinced that:

- a. the debtor can discharge its debt if given such time; and
- b. the sale of the pledged Property/unit may cause serious damage to the debtor.

As per Article 28, if the debt is not settled within the fixed time, the pledged property shall be sold by public auction in accordance with the procedures applicable at the Land Department not later than thirty (30) days as from the date of expiry of the term. The Pledgor may discharge the debt secured by Pledge before the due date (Article 29).

The Pledge Law provides a logical frame work for the granting, registering and enforcing of mortgages and other pledges against property in the Emirate of Dubai. Such a law is a most welcome development for lenders and borrowers alike.

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