



Dubai
International
Financial
Centre

CONSULTATION PAPER NO.3

March 2019

PROPOSED NEW LEASING LAW AND REGULATIONS

CONSULTATION PAPER NO. 3

PROPOSALS RELATING TO LEASING LAW AND REGULATIONS

Why are we issuing this paper?

1. The Dubai International Financial Centre Authority (“**DIFCA**”) proposes to introduce a new Leasing Law (the “**Leasing Law**”) to enhance the current real property regime in the Dubai International Financial Centre (the “**DIFC**”) in an attempt to introduce areas of protection and assurance to Lessors and Lessees entering into leases of DIFC properties and further align the DIFC with international best practice in this regard. In doing so, we have taken into account specific factors relating to real property within the DIFC and the need to provide an appropriate regulatory environment which aligns with common law jurisdictions but also mirrors onshore Dubai practice to some extent given it’s unique location of being an offshore jurisdiction within the United Arab Emirates. This Consultation Paper No. 3 of 2019 (“**Consultation Paper**”) seeks public comments on the proposed Leasing Law and the Leasing Law Regulations (the “**Regulations**”).
2. The current legislative proposal is accompanied by the proposed Leasing Law and Regulations that will be issued together.

Who should read this paper?

3. This Consultation Paper would be of interest to persons owning or occupying property within the DIFC including their legal advisers.
4. DIFCA invites interested parties to provide their views and comments on the issues outlined in the Consultation Paper, using the table of comments provided in Annex C.
5. All comments should be provided to the person specified below:

Jacques Visser
Chief Legal Officer
DIFC Authority
Level 14, The Gate, P. O. Box 74777
Dubai, United Arab Emirates
or e-mailed to: consultation@difc.ae

6. You may choose to identify the organisation you represent in your comments.
7. DIFCA reserves the right to publish, on its website or elsewhere, any comments you provide, unless you expressly request otherwise at the time the comments are made.

What happens next?

8. The deadline for providing comments on the proposals in this Consultation Paper is the 1st of May 2019.
9. Once we receive your comments, we will consider if any further refinements are required to the Leasing Law or Regulations annexed to this Consultation Paper at Annex A and Annex B. Once DIFCA considers the Leasing Law and Regulations to be in a suitable form, they will be enacted to come in to force on a date specified and published.
10. The Leasing Law and Regulations are in draft form only. You should not act on them until they are formally enacted. We will issue a notice on our website when this happens.

Defined terms

11. Terms identified throughout this paper by the capitalisation of the initial letter of a word not specifically defined in this Consultation Paper are to be interpreted as having the definition provided in the Leasing Law or Regulations. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

Background

12. The proposal for a new Leasing Law and Regulations stems from the identification of certain areas that we felt could do with clarification or enhancement in terms of the leasing of Real Property and the respective rights of Lessors and Lessees. The previous Real Property Law No. 4 of 2007 (the “**Previous Real Property Law**”) dealt with very limited aspects of leasing which we felt required further enhancement and regulation. Much of Part 8 of the Previous Real Property Law was therefore removed as the intention was to enact a new Leasing Law to deal specifically with leasing matters going forward. In undertaking our review, we considered international best practice and comparable models in other jurisdictions, focusing on the United Kingdom and Australia on which most other aspects of our Real Property regime is substantially premised.
13. We also considered the local property market in the Emirate of Dubai to ensure alignment of certain recognised and accepted practices within the region. The Leasing Law attempts to balance the needs of the DIFC to provide proportionate regulation and stability in the Real Property market, instil confidence in persons seeking to grant or take a lease of Real Property within the DIFC and follow established and accepted common law principles relating to the collection of security deposits for properties and burdens of proof for the reinstatement conditions of properties at the end of Lease terms.

14. We also felt it necessary to introduce separate provisions for certain aspects of residential and commercial leasing as we did not feel that the one shoe fits all scenario would work well in practice given the vastly different nature of such leases.
15. We also intend to liaise closely with the DIFC Courts to discuss the possibility of having a separate arm within the Small Claims Tribunal to deal specifically with lower value leasing disputes such as those relating to residential tenancies.

Key concepts proposed

16. The Leasing Law and Regulations contain significant new proposals. The key aspects of the proposed concepts include:
 - (a) the introduction of general requirements for Leases and general obligations for Lessees and Lessors - see paragraphs 17-18;
 - (b) the introduction of a tenancy deposit scheme for Residential Leases to be administered by the Registrar of Real Property (the “RORP”) – see paragraphs 19-22;
 - (c) the production of condition reports in the format required by the Leasing Law by residential Lessors and how the burden of proof for the condition of premises at the expiry of the Lease depends on whether there is a condition report – see paragraphs 23-25;
 - (d) the imposition of a maximum limit on security deposits collected by residential Lessors and further specific provisions for Residential Leases – see paragraphs 26-29; and
 - (e) clearer provisions relating to the termination of Leases and the disposal of goods and chattels remaining at the property following termination or liquidation of the Lessee – see paragraphs 30-33.

General Requirements of Leases

17. We have introduced general requirements for items that should be specified in a Lease such as the term, the rental amount, payment days, permitted use and a description of the demised premises, as well as introducing general obligations on the Lessee not to cause nuisance or interference, and on the Lessor to ensure that the Lessee has quiet enjoyment of the Leased Premises. We further clarify in the Leasing Law that the Lessee is responsible for fees, charges, and taxes payable in respect of their occupation of the premises (with certain exceptions, such as the Lease registration fees). We introduce provisions prohibiting the Lessor from disconnecting utility services to the premises or

preventing the Lessee from enjoying the premises, thus imposing a statutory ban on such unsavoury practices.

18. We feel these specific items are the bare minimum required for a Lease to be regarded as a legally binding valid contract between the parties to it and for registration purposes.

Q1. Do you have any comments or concerns in relation to these general requirements of Leases?

Tenancy Deposit Scheme

19. We have introduced a tenancy deposit scheme for Security Deposits paid by residential Lessees to residential Lessors. We believe that it should be mandatory for all Security Deposits collected by residential Lessors to be deposited and maintained in a separate account administered by the RORP to avoid situations where unscrupulous Lessors can potentially list repairs or damages equal to the amount of a deposit at the end of a Lease to avoid granting a refund. We feel that a mandatory scheme where the deposit is kept in an account and cannot be released until both parties agree or there is an order of the DIFC Court would create a safeguard for Lessees against such unscrupulous practices. This is where we feel that a separate arm of the Small Claims Tribunal set up for the purposes of such disputes would be useful.
20. It is intended that any interest accrued on monies in the account will be sufficient to cover the cost of administering the scheme and dealing with the registration and paying in of Security Deposits.
21. The scheme will be administered by the RORP but the RORP shall not be taking any dispute resolution role in terms of making decisions as to the repayment of Security Deposits, which will remain with the DIFC Courts for adjudication.
22. Non-payment into the scheme where a Security Deposit has been collected will incur a penalty of two times the Security Deposit as damages for a Lessee.

Q2. Do you have any concerns about the tenancy deposit schemes for residential tenancies?

Q3. Do you have any comments or concerns on the additional regulation in general?

Condition Report

23. We have also decided that it is good practice for Lessors of residential property to provide a condition report in the manner of a photographic schedule of condition or otherwise at the time of hand over to a Lessee which is signed off by both parties to the Lease as evidence of the condition of the premises.
24. Whilst the report is not mandatory it serves as proof in the event of a dispute at a later date. In the event that the condition report is not provided at the outset then the burden of proof would remain on the Lessor as to the condition of the premises at the time of the grant of the Lease.
25. We feel that this condition report is specifically relevant to Residential Leases given that commercial Leases contain more sophisticated provisions in terms of reinstatement at the end of a Lease term and what is required from a Lessee.

Q4. Are there any concerns in relation to the production of such reports by Lessors?

Residential Leases

26. We will be imposing a maximum limit for Security Deposit amounts that are payable under a Lease. This mirrors what RERA does in terms of regulating the market for onshore Dubai property and we feel that we should follow suit. Currently we have set this in the Regulations as 10% of annual rent.
27. We are introducing specific provisions for Residential Leases which relate to rent increases and renewals and how these are to operate for Residential leases.
28. Also, we are introducing specific provisions which clearly set out the rights and responsibilities of Lessors and Lessees in Residential Leases, such as each other's liability for utility charges and other charges that arise. We are placing a statutory obligation on the Lessee to keep the premises clean and avoid causing damage to the premises. We have introduced a mechanism and resolution for dealing with repairs that need to be done on the premises, as a result of damage or routine maintenance, and clarify which party bears such costs. Furthermore, we are placing a statutory obligation on the Lessor to handover the premises in a reasonably clean and vacant condition.
29. Furthermore, we have introduced articles in the Leasing Law relating to the Lessor's right to enter Residential Premises which align with Article 55 of the Real Property Law DIFC Law No. 10 of 2018 (the "**New Real Property Law**"), so as to ensure consistency between both laws.

- Q5. Are there any concerns in relation to the RORP and DIFCA Board having control of the level of security deposit charged to residential Lessees? Do you think the maximum of 10% is too high/low?**
- Q6. Do you have any comments or concerns on the specific provisions for Residential Leases in general?**

Termination of Leases and Removal of Property

30. With DIFCA being the parent company of DIFC Investments LLC we have experienced first-hand in the shoes of a Lessor how difficult it can often be for a Lessor to navigate what to do with goods left at a property in the event of a termination of Lease for breach. We felt that there was no real statutory regulation or guidance as to what a Lessor's rights were in such circumstances which would often then lead to significant delays in Lessors being able to regain possession of their property from a Lessee who had often defaulted in payment or abandoned the property altogether.
31. We feel that the provisions in the Leasing Law provide some guidance now as to the rights of a Lessor over goods left at the property by a defaulting Lessee and when such goods can be stored and/or sold.
32. It must be noted however that specific rights relating to goods left at a property during a liquidation process are dealt with in detail in the Insolvency Law DIFC Law No. 1 of 2019 and we have introduced provisions in the Leasing Law relating to such rights which are congruent with the new DIFC Insolvency Law. We have also introduced rights in the Leasing Law that would apply in non-liquidation situations.
33. Also, we have reconciled the articles in the Leasing Law relating to the termination of Leases to ensure congruency with the New Real Property Law.

- Q7. Are there any concerns in relation to these provisions in the Leasing Law?**

Legislative Proposal

34. This legislative proposal contains the following:
- a. the Leasing Law (at Annex A);
 - b. the Regulations (at Annex B); and
 - c. a table of comments to provide your views and comments on the Consultation Paper (at Annex C).