

Client Alert

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New Abu Dhabi Real Estate Law

Abu Dhabi Law No 3 of 2015 Concerning the Regulation of the Real Estate Sector in the Emirate of Abu Dhabi

The long-awaited real estate law aimed at regulating the real estate industry in the Emirate of Abu Dhabi has been released amid much enthusiasm with industry participants hoping it will give impetus to the real estate industry by providing additional clarity and legal certainty.

The enactment of the law represents a watershed in the Abu Dhabi real estate industry, particularly in the 'Investment Areas' where the absence of a real estate law has been keenly felt.

With the enactment of Abu Dhabi Law No. (3) of 2015 *Concerning the Regulation of the Real Estate Sector in the Emirate of Abu Dhabi* by the President of the UAE and Ruler of Abu Dhabi (the Real Estate Law), it seems an appropriate time to consider the likely impact on this law and the steps that developers and other industry participants will need to take to comply with this law and in particular the laws regulating multiply-owned developments (the Strata Law).

Key features of the new Real Estate Law

The new Real Estate Law introduces a number of key new features to the Abu Dhabi real estate industry, including:

- a program for the compulsory licensing, training and regulation of developers and other real estate participants such as agents, auctioneers, valuers, surveyors and owners association managers, with significant fines of up to 2 million Dirhams for those undertaking unlicensed activities;
- the establishment of an escrow account mechanism for the safe custody of monies paid by third party purchasers and lenders – importantly these apply to existing projects unless the building has reached at least 70% completion. The method for determining the percentage of completion will be set out in the Regulations;
- the establishment of new real estate registers for developers, projects and interests therein, including an 'interim' real estate register for off-plan

For more information, contact:

Moustafa Said
+971 2 596 7006
msaid@kslaw.com

Stephen Kelly
+971 4 377 9957
sjkelly@kslaw.com

King & Spalding
Abu Dhabi
Level 15, Al Sila Tower
Abu Dhabi Global Market Square
PO Box 130522
Abu Dhabi
United Arab Emirates
Tel: +971 2 652 3400
Fax: +971 2 652 3444

Dubai
Al Fattan Currency House
Tower 2, Level 24
DIFC | Dubai International
Financial Centre
P.O. Box 506547
Dubai, UAE
Tel: +971 4 377 9900
Fax: +971 4 377 9955

www.kslaw.com

sales, similar to Dubai's Oqood registration system – importantly this applies to existing sale and purchase agreements, subject to a 6-month grace period. The Department may also fine developers in case of non-registration within this period;

- the prohibition of registration fees collected by developers – this means that the existing customary 2% registration fee applicable on re-sales would be abolished, although developers would continue to have the right to charge an administrative fee of an amount to be determined by the Department. We expect that in due course this may open the door for the Department to levy its own registration fee for the initial registration in the interim real estate register;
- prohibiting mortgages on project land (except for related construction financing which must be expressly disclosed in the sale and purchase agreements);
- provisions for the cancellation of projects or appointment of a new developer, and return of installments paid where projects experience delays in starting construction – importantly this applies for existing projects unless the building has reached at least 50% completion. It is unclear at this stage how much delay there will need to be to trigger the Department stepping in and cancelling the project, other than what is contractually agreed or as set out in the Regulations. We expect that this will be approximately 6 months as that is the period before which the escrow account will be wound down and proceeds distributed;
- the right for the Department to fine developers and use such proceeds to compensate third party purchasers where the developer is delayed beyond 6 months. Importantly, this may apply to existing developments depending on the stage of completion. Although there are exceptions for delays beyond the developer's control, this demonstrates the importance of clear disclosure to purchasers of the development timeframe and passing on the risk of such compensation to contractors during the procurement process; and
- the developer now has an express decennial (10-year) liability for the structural integrity of the building, with a one-year defect liability period. This is similar to the position in Dubai.

The new Strata Law introduces a number of key new features to the laws regulating multiply-owned developments, including:

- the determination of surveyors' directions to standardise the area measurement methodology used by developers;
- provisions for the formation of owners associations which will hold title to common property within multiply-owned developments and be responsible for its repair and maintenance. As with Dubai, each owners association will have a prescribed form of constitution, and an owners association may itself be a member of a higher owners association, thereby permitting the registration of 'layered' strata schemes;
- provisions for the title subdivision into 'units' and 'common areas'. As with Dubai, the Strata Law contemplates the 'volumetric' subdivision of a building into designated components. This is particularly important for mixed-use developments that include a hotel as hotel operators wish to avoid being part of an owners association structure;
- new requirements for the sale and marketing of off-plan units, including that the developer owns or has development rights over the project land, establishes an escrow account, registers the key development plans and obtains the approval of the Department. Given the restrictions on withdrawals from escrow, the developer

will effectively have to self-fund (or obtain loan finance) to enable the project to reach 20% completion of construction works;

- giving off-plan purchasers express termination rights in cases of “substantial prejudice.” Although certain examples based on wrongdoing or default are given in the law as to what constitutes “substantial prejudice”, this list is not exhaustive. We therefore recommend that as much disclosure is given to purchasers to avoid any potential for purchasers to argue that they have suffered substantial prejudice;
- similar to the position in Dubai, there will be a general requirement for a “disclosure statement” to be attached to the sale and purchase agreement which provides prescribed information. The form of this disclosure statement will be set out in the Regulations although we expect that this will be similar to the form prescribed in Dubai, which requires disclosure of governance documents, utility arrangements and binding service charge estimates for the first 2 years of operation; and
- provisions for the automatic imposition of a lien to be placed on a real estate unit in the case of unpaid service charges. Dubai has a similar lien although the enforcement of this lien has proved to be difficult, so it will be interesting to see whether the same develops in Abu Dhabi.

Further details of the new Real Estate Law will be published in the forthcoming edition of the *Measure* newsletter issued by King & Spalding LLP.

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