

New decree on uncompleted and cancelled off-plan projects in the Emirate of Dubai: what creditors and other stakeholders need to know

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On 15 December 2020, the Ruler of Dubai issued Decree No. (33) of 2020 in respect of the special judicial committee for uncompleted and cancelled real estate projects in the Emirate of Dubai (the 'Decree').

The purpose of this article is to highlight some of the key features of the Decree.

Scope of application of the Decree

The Decree is intended to apply to real estate projects that are proven to be uncompleted or which have been cancelled. An uncompleted real estate project is defined in the Decree as being any real estate project that has started but which has thereafter stopped for reasons relating to the developer, the purchaser or for any other reason. The definition is quite broad and captures any real estate project that has stopped, irrespective of the cause even if it has stopped for a short period of time. It could also be interpreted to include real estate projects that are carried out without the intention of selling units on an off-plan basis. Despite the foregoing, we are of the view that the definition of an uncompleted real estate project must be read in light of Article 4 of the Decree. Accordingly, an uncompleted project would only be an off-plan real estate project that has been considered uncompleted by the Real Estate Regulatory Agency of the Emirate of Dubai ('RERA') pursuant to Law no. (13) of 2008 and its executive regulations which regulates the initial registration of property in the Emirate of Dubai. For completeness, the Decree does not apply to real estate projects located within the geographical boundaries of the DIFC.

Special judicial committee

The Decree regulates the organisation authorities and conduct of work of the judicial committee (the 'Committee') which had previously been established by the Ruler of Dubai pursuant to Decree No. (21) of 2013 (the 'Previous Decree'). The Committee is now designated as the 'Special Judicial Committee for Uncompleted and Cancelled Real Estate Projects in Dubai'. Although the Decree provides that the members of the Committee are designated by the Chairman of the Judicial Council, it does not expressly state that the members must be judges. At the time of writing, the Committee consists of seven members, five of whom are judges, who have been appointed pursuant to the decision of the Chairman of the Judicial Committee No. (19) of 2020.

Nature of the Committee

The Decree refers to the Committee as a 'judicial committee' and expressly provides that its decisions are final, conclusive and may not be appealed by ordinary means of appeal.

The above notwithstanding, we are of the view that the Decree has vested the Committee with far-reaching authorities that are more extensive in nature than those that we would typically expect to see in a committee of a strictly judicial character. These authorities are further outlined below.

Authorities of the Committee

The Committee is authorised to review and settle all disputes, grievances and complaints arising from uncompleted, cancelled or liquidated real estate projects in Dubai, including disputes that remain unresolved by the Committee as at the date of the Decree.

The Committee is vested with judicial authorities such as:

- the authority to settle disputes relating to: (i) cancelled real estate projects; and (ii) uncompleted real estate projects whereas the Committee formed under the Previous Decree was only authorised to settle disputes relating to cancelled projects;
- the authority to offer mediation services to resolve disputes amicably between the parties; and
- the authority to review requests for the annulment or ratification of arbitral awards.

In addition, the Committee is vested with authorities that may not be strictly judicial in nature but which are nevertheless necessary and the inclusion of which makes business sense when dealing with distressed real estate projects. These authorities include:

- the authority to transfer an uncompleted project from the existing developer to a new developer and to further determine the respective rights and obligations of both developers in connection with the project; and
- the authority to form sub-committees and to set out their specific duties and authorities.

More importantly however, Article 6 (j) of the Decree provides that the Committee may carry out: 'any other duties as required to allow the Committee to preserve and protect the rights of all parties in the cancelled or uncompleted real estate project'. In our view, this sweeping provision (which was not included in the Previous Decree) provides the Committee with sufficient ammunition to confront the legal obstacles that it could face in the context of discharging its duties.

Duties of RERA

The Decree sets out the duties of RERA in the context of the support that it must provide to the Committee.

With respect to uncompleted projects in particular, RERA should provide a detailed report about the project which shall set out:

- the information relating to the uncompleted project and its condition;
- the suggested solutions to deal with an uncompleted project, including advising on the new developer who shall take over the project and advising further on its ability to complete it; and

- the steps taken by RERA in respect of the uncompleted project.

The Decree also provides that, prior to the liquidation of a project under review by the Committee, RERA may submit to the Committee a project withdrawal request which, if approved by the Committee, means that RERA can re-examine the project to assess whether it can be completed or whether it would be possible to resolve the disputes related to such project.

Status of the Higher Committee

Stakeholders and practitioners may recall that a higher committee (the 'Higher Committee') was established in 2018 pursuant to Decision No. (12) of 2018 and was vested with significant authorities that included the authority to approve the cancellation of real estate projects in Dubai. With due regard to Article 9 of the Decree which now requires RERA to co-ordinate directly with the Committee rather than to co-ordinate with the Higher Committee as was previously the case, and further to our discussions with officials at RERA, we understand that the Higher Committee shall have no role to play in connection with the matters set out in the Decree.

Exclusive jurisdiction

The Committee shall have exclusive jurisdiction in connection with the matters addressed by the Decree and the Decree stipulates that all courts in Dubai, including the DIFC Courts, must cease the review, and transfer to the Committee, any demand or dispute that falls within the jurisdiction of the Committee and which has been submitted to such courts prior to the date of the entry into force of the Decree.

Conclusion

There is a general consensus within the industry that the nature of distressed projects requires a special type of committee that does not necessarily need to be of a strictly judicial nature, but with wide authorities to implement innovative and commercial solutions to the significant practical challenges that uncompleted or cancelled projects create. In this respect, the Decree is positive news for financing banks, creditors and other stakeholders and a step in the right direction as it provides the Committee with the tools required to streamline the process for dealing with distressed projects. We welcome the changes and are hopeful that the Decree will help reduce the current backlog of distressed projects requiring governmental assistance.

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