

The Dubai Land Department & RERA

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Emad Eldin Farouq, Senior Legal Counsel at the Dubai Land Department, is centrally involved in the process of identifying and facilitating the introduction of new legislation and regulation necessary to promote a stable, advanced and comprehensive system of property law in the Emirate of Dubai.

Emad met recently with Lisa Dale, Partner & Head of Property at Al Tamimi & Company, to discuss landmark achievements during 2010 and what we can expect during 2011.

2010 IN REVIEW

Implementation of the Jointly Owned Property Law

Law No (27) of 2007 on Ownership of Jointly Owned Properties in the Emirate of Dubai was issued on 10 December 2007 and laid the foundations of a “strata scheme” form of property ownership in Dubai. [The Jointly Owned Property Law](#) contemplated the passing of further rules and regulations providing more detail on how this form of ownership would be implemented and operated.

On 13 April 2010, the following Implementing Regulations were published by the Dubai Land Department as ‘Directions’:

- The Direction for General Regulation Concerning Jointly Owned Properties which sets out a range of consumer and investor protections;
- The Direction for Jointly Owned Property Declarations which sets out the requirements for Jointly Owned Property Declarations;
- The Direction Concerning Preparation of Survey Plans in the Emirate of Dubai and Directions for Surveyors which set out standards for the measurement and surveying of Units and Common Area and presentation of Plans; and
- Direction for Association Constitution introducing a standard form of Constitution to apply to all Owners Associations.

Whilst acknowledging that a lot of work remains to be done to fully implement the Directions for the several projects in Dubai’s new ‘freehold areas’, Emad commented that, “the Directions have been well received in the real estate market, and have greatly contributed to structuring the jointly owned projects in accordance with international standards. Developers are working tirelessly to conform to the new regulations.”

The Granted Land Decree

Decree No (4) of 2010 Regulating the Ownership of Land Granted for Industrial & Commercial Purposes in the Emirate of Dubai was issued, and came into effect, on 2 March 2010. This Decree introduced a mechanism to enable holders of industrial or commercial lands in Dubai to convert their granted title to freehold upon payment of a fee assessed against the market value of the land in a deemed ‘unimproved’ condition. The benefits of having freehold title rather than granted title include the ability to mortgage the property to raise capital and to sell the property on the open market (subject to applicable nationality restrictions).

Commenting on this Decree, Emad said that it had proved to be a timely and welcome initiative, with

many applications to upgrade titles having already been received and processed by the Granted Lands Committee at the Dubai Land Department.

Executive Council Resolution No (6) of 2010

Executive Council Resolution No (6) of 2010 Approving the Executive Regulation of Law No (13) of 2008 Concerning the Regulation of the Interim Real Estate Register in the Emirate of Dubai was issued, and came into effect, on 14 February 2010. This Resolution clarified many of the provisions of Law No (13) of 2008, but in addition it introduced the following:

- grounds upon which a purchaser could seek to terminate a sale contract where the developer is in breach; and
- grounds upon which RERA can take action to cancel a development project and the process to be followed after such cancellation.

On the subject of purchasers' rights, Emad welcomed the above initiative but indicated that more needs to be done, as we discuss below. Emad also confirmed that RERA is very active in using the new procedures, which are transparent and fair.

Registration of Property in the Name of an Offshore Company

On 7 July 2010, the Dubai Land Department signed a Memorandum of Understanding with the Jebel Ali Free Zone Authority to regulate registration of property in the name of offshore companies. Emad explained, "Offshore companies incorporated in foreign jurisdictions such as Isle of Man, Bahamas, British Virgin Islands, Cayman Islands, Gibraltar, Jersey and Mauritius will not be permitted to register ownership to property in Dubai except through a Jebel Ali Offshore Company.

The new policy also applies to foreign-owned free zone or offshore companies established in other Emirates, such as in the Sharjah Airport International Free Zone and the Ras Al Khaimah Free Trade Zone".

However, Emad clarified that the new policy does not apply to the registration of property by the following companies, provided that the property is located in one of Dubai's "freehold areas" designated for foreign ownership:

- Limited Liability Companies incorporated in Dubai with foreign shareholding of up to 49%;
- Companies incorporated in any of Dubai's free zones, such as Jebel Ali Free Zone, Dubai Multi Commodities Centre and TECOM, or in the Dubai International Financial Centre, provided that the relevant free zone authority issues a No Objection Certificate to the Land Department; and
- Companies incorporated in foreign jurisdictions such as the UK, USA or Germany, which are onshore in that jurisdiction.

The Real Estate Conciliation Committee

A final welcome initiative during 2010 was the establishment of the Real Estate Conciliation Committee at the Dubai Land Department. Made up of five members, this Committee's role is to endeavour to reach amicable resolution to disputes between developers and purchasers who are referred to it by the Land Department's Director General. Emad indicated that the Committee has achieved notable success in a number of cases to date. Given its successful track record, the work of this Committee will continue, with a view to enhancing market stability.

AGENDA FOR 2011

Regulating the Professions

Since the establishment of RERA in 2007, progress has been made to bring about regulation of the various professions connected with the Dubai real estate sector. Such regulation has introduced a regime of registration and licensing, minimum qualification requirements, training and professional conduct rules. So far, developers, real estate brokers and surveyors have been brought under such regulatory regime.

In 2011, Emad envisages that Regulations will be passed to regulate two further professions, namely real estate valuers and real estate conveyancers.

Besides regulating practitioners, the Real Estate Valuation Regulations are expected to introduce a scientific and uniform property valuation methodology which, according to Emad, is very much needed in Dubai to bring about consistency and transparency in the way that land and buildings are valued. Emad indicated that the Dubai Land Department has finalised the draft Regulations and that they are, “currently under review by the Legal Affairs Department and are expected to be issued soon”.

The Conveyancing Regulations will be another welcome initiative. The Conveyancing Regulations will introduce the applicable criteria for practitioners to become licensed and registered. It is also anticipated that the Conveyancing Regulations will streamline the registration process for property transactions at the Dubai Land Department by allowing registered conveyancers to access the Land Department’s system online. Again, Emad indicated that the draft Regulations are under final review and are expected to be issued soon.

General Reflections

The principal objective of the Dubai Land Department when shaping the legislative agenda is to achieve greater stability and fairness in Dubai’s real estate market. In Emad’s words, “The main objective of any law is to regulate the community with a view to helping it to achieve stability and progress”. Much has been achieved since Dubai’s real estate legislative process started in 2006 with the enactment of Law No (7) of 2006 Concerning Real Property Registration in the Emirate of Dubai. However, there is recognition that this is an ongoing process with more laws and regulations to come. In this regard, Emad assures us that the Dubai Land Department is committed to further progress: “I am confident that the Dubai real estate market will emerge from the financial crisis stronger, better and more attractive than before, and in this regard the Dubai Land Department will continue to play its role”.

About Emad Eldin Farouq

Emad joined the Dubai Land Department as Senior Legal Counsel in 2003. During his seven year tenure with the Dubai Land Department, Emad has played a significant role in the drafting and introduction of the several property laws and regulations that we have seen implemented during this time.

In December 2008, Emad was awarded “Best Government In-House Counsel” by the Dubai Corporate Counsel Group.