

Build it and they will come... Part 1

Mohammed Kawasmi, David Bowman

m.kawasmi@tamimi.com

Mohammed Kamran Tahir

d.bowman@tamimi.com

The UAE has witnessed an exponential growth in the development of building and infrastructure projects over the past decade. New communities have developed across the UAE for residential, commercial and leisure purposes. Although construction of certain projects were placed on hold or cancelled as a result of the global financial crisis, recent announcements of further “mega” projects in Dubai and continuing development in other Emirates show a clear revival of the property market generally in the UAE. The general sentiment amongst developers is to recommence construction activities and to strive forward with completion of stalled projects and the development of new ones.

Given the recent impetus on development, and following various legislative and regulatory changes, we thought it appropriate to focus on the regulatory requirements to register as a developer in the Emirates of Dubai, Abu Dhabi, Ajman, Sharjah and Ras Al Khaimah.

Registering as a Developer for Projects in the Emirate of Dubai

The registration of developers in the Emirate of Dubai is governed by the Real Estate Regulatory Agency (RERA). The registration requirements have evolved over the past few years through various laws, regulations and policies of RERA.

At present RERA only allows companies registered with the Dubai Department of Economic Development (Dubai DED), with real estate development activities noted in their trade licence, to engage in development activities. Such Dubai DED companies must be owned 100% by UAE nationals or companies wholly owned by them. The registration fee to establish a Dubai DED is currently AED 37,000 plus 5% of the office lease rent of the Dubai DED AED 25,000 of this amount is paid to RERA by Dubai DED as the developer registration fee.

The following documents must be submitted to RERA in order to apply for a developer registration certificate:

- Developer registration and project application form
- Copy trade licence from Dubai DED
- Title deed of land to be developed
- Unconditional performance guarantee from a UAE bank for 20% of the project construction costs to be issued in favour of RERA if units are to be sold prior to completion of 20% of construction of the project
- Units registration certificate from Dubai Land Department (DLD)
- No Objection Certificate (NOC) from master developer of the project sales and marketing plan
- Letter from the project consultant stating the following:
 - Main contractor name
 - Project name
 - Project value
 - Start date
 - End date
- Payment plan linked to construction milestones of project
- Financial report (RT01)

- Project timeline per floor
- Dubai Chamber of Commerce & Industry membership certificate
- Final building permit
- Contact details of project manager

It follows from the above requirements that RERA requires that the land subject to development should be fully paid and a title deed should be issued in the name of the owner.

Where the owner of the land cannot register as a developer, RERA permits the land owner to enter into a property development contract with an existing registered developer to develop the project on behalf of the land owner. The property development contract however must be approved by the senior legal adviser of DLD, to validate such an arrangement and to be accepted by RERA.

Developer wishing to sell units off plan

Pursuant to Law No 8 of 2007 ("Escrow Law"), where a developer wishes to sell units off plan, the developer must be a registered developer with RERA (as mentioned above) and apply to RERA to open an escrow account. The developer must ensure all proceeds of sale of the units sold off plan are deposited into the escrow account, and are used solely for the purposes of construction of the project. Failure to comply with the Escrow Law can lead to a fine of AED 100,000 or criminal sanctions resulting in a prison sentence (Article 16 Escrow Law).

Once the developer has submitted all the required documents to RERA and the developer is granted the authority to sell units off plan RERA will issue an NOC to allow the developer to open an escrow account with an authorized bank in the UAE. The following documents are required to open an escrow account:

- Dubai Chamber of Commerce and Industry membership certificate
- Trade License
- Title deed of the land to be developed
- Copy of the contract executed by the master developer and the sub-developer
- Architectural designs and layouts approved by concerned authorities and the master developer
- A financial statement certified by a certified legal accountant, containing the revenues and expenses of the project
- An undertaking by the sub-developer to commence the project construction after obtaining the master developer's approval to sell off plan or an undertaking from the master developer in case a sub-developer does not exist
- A sample sale contract between the developer and a buyer

In addition to the above requirements, pursuant to Law No 13 of 2008 Regulating the Interim Real Estate Register in the Emirate of Dubai as amended ("Pre-registration Law"), Article 3 provides that no sale of any off plan property shall be valid if not recorded on the Interim Real Estate Register, known as the "Oqood" system. Failure to register a contract by the developer could incur a fine of AED 10,000. Article 4 of the Pre-registration Law also states that a developer shall not commence the sale of off plan units unless the developer has possession of the land to be developed and has obtained all necessary approvals from the competent authorities.

The Pre-registration Law has been further clarified by the 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 ("Resolution"). Pursuant to Article 4 of the Resolution, no developer may commence construction or sell units off plan unless:

- possession of the land has been taken and the demarcation certificate is received;
- the developer has actual control of the land where the project is proposed to be constructed;
- the developer has obtained the required approvals from the relevant authorities to commence the construction of the project.

The owner of the land is entitled to mortgage the land, however all mortgage funds received by the owner must be paid into the escrow account of the project and used towards the construction costs of the project only as a measure to safeguard investors.

Registering as a Developer for Projects in the Emirate of Abu Dhabi

The registration of a developer in the Emirate of Abu Dhabi is governed by the Department of Economic Development ("Abu Dhabi DED"). A company intending to carry out real estate development should apply to the Abu Dhabi DED for a commercial licence which lists "real estate enterprises, investments and management" as one of its authorised activities. It is usually relatively straightforward for prospective developers to obtain a licence from the Abu Dhabi DED for this activity. There is no restriction for foreigners/GCC nationals or owned by them companies to apply for a license to engage in development activities with Abu Dhabi DED.

The developer will need to provide various documents to the Abu Dhabi DED in support of its application for a commercial licence. These documents will include a copy of its memorandum of association, its lease and passport copies for its shareholders and signatories. The developer will also need to supply an undertaking in a prescribed format confirming that the shareholding in the company does not comprise any third party monies.

At present there are no laws restricting off plan sales or imposing escrow account requirements in Abu Dhabi.

Registering as a Developer for Projects in the Emirate of Ajman

The registration of developers and real estate projects in the Emirate of Ajman is governed by the Ajman Real Estate Regulatory Authority (ARRA) pursuant to Amiri Decree No 11 of 2008 regarding the establishment of ARRA and Amiri Decree No 8 of 2008 as amended by Amiri Decree No 12 of 2008.

The required documents to register as a developer are as follows:

- Official request from the company to register with ARRA as a real estate developer
- Company profile
- Copy Trade License
- Company's Memorandum of Association (MOA) and the last Addendums (if applicable)
- A Board resolution for the authorized signatory
- Valid passport copy of all partners along with "Kholaset Al-Qaid" for U.A.E. nationals and residency visa for expatriates
- The company should have an office licensed by Ajman Municipality & Planning Dept, or an on-site office licensed by ARRA to represent the company and communicate with ARRA
- Six months bank statements for all the company's bank accounts (original or stamped copies)
- Audited financial report (for the last financial year) from an approved auditing firm in the U.A.E
- Affection plan from Ajman Municipality & Planning
- Project feasibility study from an approved consultant in the U.A.E.
- Sales & marketing plan for the project
- Undertaking from the company that all submitted documents are accurate and that it will submit any additional documents requested by ARRA
- Developer registration fee (AED 100,000)

The required documents for registration of a real estate project are as follows:

- Land registration certificate from Ajman Land Department or affection plan from Ajman Municipality & Planning Department
- Approved plans from the master developer, Ajman Municipality & Planning Department and project consultant

- Feasibility study from the project consultant
- A sample of the property reservation form
- A sample of the sale and purchase agreement
- A detailed list of all units to be sold including names of purchasers unit details and amounts received to be provided on CD
- SPA for the land purchase
- NOC from the project master developer, including payments received to date
- Project completion timeline from project consultant
- Contractor agreement approved by consultant
- Project name registration with Ajman Municipality & Planning Department
- Project registration fee (AED 50,000)

Registering as a Developer for Projects in the Emirate of Sharjah

The registration of real estate projects and the issue of permission for the sale of units in jointly owned buildings in the Emirate of Sharjah is governed by the Department of Real Estate Registration (DRER). Executive Council Decision No 25 of 2011 regarding the sale of units in the Emirate of Sharjah defines the rules and requirements for the registration of real estate projects and the issue of permission for the sale of units.

Article 4 of Decision No.25 of 2011 provides the requirements for the licensing of developers:

- The developer must own the project land and there can be no restrictions on the disposition of the land
- The developer must be licensed to undertake the activity of sales and marketing of real estate units
- Licenses may be issued to UAE and GCC nationals only unless the Ruler gives an exemption
- The developer must sign the undertaking provided by DRER
- The developer must obtain a report from the Planning and Surveying Department confirming the project's compliance with the rules and requirements of the sale of units
- The developer must provide DRER with a bank guarantee equal to 20% of the construction value if the project is to be sold off plan

DRER has the authority to exempt any developer from the 20% bank guarantee requirement provided that 15% of the project is completed, in which case a bank guarantee for 5% of the construction value of the project is required by DRER.

DRER issues a standard form of agreement for the sale and purchase of units in the Emirate of Sharjah and developers must link the payment of the purchase price with the progress of construction if selling off plan.

Registering as a Developer for Projects in the Emirate of Ras Al Khaimah

The registration of developers and real estate projects in the Emirate of Ras Al Khaimah is governed by Ras Al Khaimah Investment Authority (RAKIA) pursuant to Amiri Decree No 22 of 2008 concerning Guarantee Accounts of Real Estate Developments in the Emirate of Ras Al Khaimah. This is applicable to all developers who sell units off plan in real estate development projects in Al Jazeera, Al Hamra or in any other part of the Emirate supervised by RAKIA.

A developer wishing to sell units off plan must apply to RAKIA to open a guarantee account. The application should be accompanied by the following documents:

- Trade License issued by RAKIA or Ras Al Khaimah Department of Economic Development
- Membership Certificate from Ras Al Khaimah Chamber of Commerce and Industry (if applicable)

A special register called the "Register of Developers" (Register) is maintained by RAKIA which records names of developers licensed to carry out real estate development activities in the Emirate. No developer

may carry out real estate development activities unless it is registered in the Register and licensed by the competent authorities. The Register is reviewed and updated periodically by RAKIA.

Next month we shall focus on the requirements to register as a developer in Jordan, Kuwait, Kingdom of Saudi Arabia and Qatar.