

The Implementation of the Jointly owned property (Strata) law in Dubai

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The Strata Law's core principle is the division of property into privately owned units and jointly owned common areas, which are managed by an Owners Association. This is similar to other strata laws around the world such as those in Australasia.

Carefully considered and drafted Strata laws create a transparent structure for the management of the common areas and facilities and the administration generally of subdivided buildings or developments. This is primarily achieved through the use of an incorporated Owners Association to represent the owners' collective interest.

The actual regulation and implementation of the Strata Law in Dubai has however resulted in a unique and evolving framework.

The implementing regulations to the Strata Law

In April 2010, the Implementing Regulations to the Strata Law were issued as "Directions" rather than "Regulations".

In simple terms, the Directions regulate the following:

- the licensing and duties of surveyors and survey plans specifications;
- the content of Jointly Owned Property Declarations and Building Management Statements (the principal documents setting out the operational information in relation to any development);
- the developers' disclosure obligations, consumer protection matters and the licensing and registration of Owners Associations;
- the constitutional rights and obligations of Owners Associations and stakeholders, including the functions and obligations of the Owners Association;
- procedural matters such as the calling of meetings and passing of resolutions; and
- the role and obligations of the Owners Association Board and Association Managers.

The fact that the Directions were not issued as "Regulations" (as was anticipated) created a measure of uncertainty as to how the same were to be implemented. To date, uncertainties still remain.

One issue frequently discussed is the legal capacity of the Owners Association. Although the Strata Law and Directions contemplated that an Owners Association would have legal personality, no Owners Association has so far been licensed, which is generally considered a requirement for legal personality pursuant to United Arab Emirates law.

Some Owners Associations have nonetheless been granted provisional recognition for specific purposes by the Real Estate Regulatory Authority ("RERA").

This uncertainty as to whether an Owners Association has legal personality creates the following legal challenges:

- there is uncertainty as to the ability of the Owners Association to contract with third parties;
- there is uncertainty as to whether the Owners Association can open bank accounts;
- the status of the Owners Association Board is unclear;
- the ability of the Owners Association to sue or be sued is unclear.

Due to this uncertainty, many developers remain involved with managing their developments and still hold DEWA and district cooling accounts in their name.

Is the Strata Law effective?

At this juncture the reader may be inclined to believe that the Strata Law and Directions are of little or no legal effect. Although it would be fair to say that the Strata Law and the Directions have not been implemented in line with the expectations of many, a measure of implementation is taking place through RERA.

In order to understand how implementation is taking place through RERA it helps to consider the problems that existed before April 2010 when the Directions were issued. At that time developers were very exposed in the financial crisis and were seeking to bolster cash flows from whatever sources were available. One of the sources of cash flow available to developers was the fees for the management of their existing built properties.

A regulatory framework for the management of developments was therefore vital to prevent abuses by developers and to retain confidence in the market. In addition to publicizing the Directions RERA also amended them to require that developers obtain the consent of RERA prior to the levying of service charges upon owners.

Requiring developers to obtain RERA's consent prior to the issuance of service charge notices gives RERA the ability to withhold approvals if developers are not compliant and thereby ensure that developers take their compliance obligations seriously. In addition, RERA often require evidence that the goods or services required by the Owners Association have been procured in a transparent and competitive fashion, and may benchmark the price of such goods and services against their records of comparable services.

The current situation

Developers' compliance obligations at present remain as set out in the Strata Law and Directions and include the following:

- the obligation to file and have approved by the Land Department, Unit and Common Areas Site Plans;
- the obligation to file a Jointly Owned Property Declaration or Building Management Statement;
- in the case of master developers, the obligation to file Master Community Declarations.

In addition RERA have sought to enforce compliance by developers through the use of both financial and building audits.

Nonetheless, due to the lack of legal capacity Owners Associations are said to be operating on an "interim" basis. The degree to which the Board of any Owners Association controls the management of a development can vary significantly. The effectiveness of what is in some cases joint control and management by the Board and developer is dependent on cooperation between the parties and a breakdown in this relationship can cause problems.

RERA may intervene in the event of disputes between Owners Associations and developers and may, on a case by case basis, determine the legal rights of the Owners Association. Some of RERA's dispute

resolution techniques include facilitating the appointment of an independent Association Manager, calling additional General Assemblies, requiring building and financial audits, as well as convening and managing meetings between the parties in dispute. Association Managers are also licensed by RERA and are required to complete Dubai Real Estate Institute (part of RERA) courses as part of their accreditation.

Strata in the DIFC

The Dubai International Financial Centre (“DIFC”) has a separate strata law. Nevertheless, the DIFC Authority faces similar implementation issues. We understand that at least one “Body Corporate” (the DIFC equivalent to an Owners Association) has its own bank account. It is not completely clear however how the DIFC will approach Body Corporate registration and the granting of legal status.

Conclusion

Whilst the Strata Law and Directions may not have been implemented in the manner many predicted, they have nonetheless had a measurable impact on the management and administration of strata sub-divided developments in Dubai and have deterred bad practice amongst developers. It remains to be seen whether the manner of implementation to date represents a long term and sustainable model for the management of strata subdivided developments or can achieve international best practice for the same.