The Wait is Over: Abu Dhabi's New Property Law

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Abu Dhabi has recently published its long-awaited new property law aimed at better regulating the real estate market in Abu Dhabi, which will take effect from January 2016.

Al Tamimi & Company has had the privilege of working with the team responsible for drafting this new law, which has been through more than seven years of consultation, review and drafting. The new law is a positive step towards attracting increased real estate investment in Abu Dhabi, and across the UAE more broadly, as it tackles many of the concerns raised by investors and developers in the past, while also drawing on the real estate investment experience in the UAE, and especially in Dubai, over the last ten years.

The UAE's real estate sector witnessed a period of controversial development over the past decade, and it suffered a severe shock during the global financial crisis. Lessons were certainly learnt from that experience, leading to greater stability and maturity in the real estate investment market we see today. This new law is the next important step forward and should be welcomed as a balanced approach to providing important protection for stakeholders and the wider public interest.

This article discusses some of the main provisions of the new law, which includes many encouraging provisions, together with provisions that require the relevant parties to take swift measures to safeguard their rights and avoid legal penalties, which can, in some cases, lead to imprisonment and considerable fines.

Definitions

Part one of the law defines several important terms including, but not limited to, the real estate register, the interim real estate register, the real estate development register, real estate development projects, escrow accounts, off-plan sales, service charges and community charges.

Responsible Authority

The law authorises Abu Dhabi's Department of Municipal Affairs ("the DMA") to organise and develop the real estate sector in Abu Dhabi, to supervise and control all aspects related to the sector and to coordinate with municipalities in this regard. Further, the DMA's authority includes implementing the law, issuing licences, controlling escrow accounts and cancelling real estate projects. It seems that the DMA's workload will be significantly increased given that the DMA also controls all matters related to municipal affairs including other property related issues; however, the law provides that a new structure will be developed to help the DMA in implementing the new law and practising its functions.

Licensing and Registration

The types of entities or persons that are allowed to obtain a licence to engage in development-related activities are master developers and sub-developers, brokers and their employees, owners' association managers, appraisers and surveyors. The law stipulates that no one may engage in any real estate activities before obtaining a licence from the DMA. Further, no one is entitled to claim remuneration and fees if they are not licensed.

The law creates two new registers: the real estate development register and the interim real estate register, which will both be kept by DMA. Developers will not be allowed to engage in real estate development unless they have been registered in the real estate development register. Also, all data and documents that relate to licensees, escrow accounts, banks and project marketing will be kept in this register.

The law also states that all disposals of off-plan units must be registered in the interim real estate register and any disposal will not be legally binding on the parties to the sale agreement or a third party unless it has been registered in the interim register.

Off-plan Sales

Regulation of off-plan sales is intended to be one of the cornerstones of the law. This is where a purchaser is granted real estate rights over a unit that is proposed to be built in accordance with floor or complex plans.

A developer is not allowed to sell units off-plan unless, among other things, it proves that it owns a real estate right over the project land and that it has opened an escrow account for the project. Furthermore, the law includes requirements for opening an escrow account and paying money from the escrow account, and terms and conditions for advertising and marketing an off-plan project. It is therefore essential that developers of off-plan projects take steps to ensure that they are in compliance with the new law as soon as practicable but in any event within 12 months from the date on which the law comes into force.

The law prohibits developers from collecting registration fees from investors, and only allows developers to charge administrative fees, which must first be approved by the DMA. This should result in lower costs for buyers. The law also protects investors by requiring developers to register units sold off-plan in the interim real estate register.

Unsurprisingly, the law will not be well received by developers that fail to complete construction work. The law sets out clear guidelines for the DMA to follow in dealing with developers when there are delays in meeting project milestones, which is to ensure that investors' rights are protected and legal proceedings are not delayed. In this regard, where there has been a gross breach of the contract by the developer, the investor may be able to terminate the off-plan sale contract. Similarly, the law sets out the consequences of delays in starting construction of the project or failing to complete the construction. In these circumstances, the DMA may be entitled to cancel the project and distribute the amount kept in the escrow account in accordance with the priorities set out in the law. To strike a balance, the DMA may take into account circumstances where the delay has not been caused by a breach of the developer's obligations, for instance, if a competent authority has confiscated the land on which the project is to be constructed.

Real Estate Financing

The law allows units sold off-plan to be mortgaged provided that the loan amount is paid into the relevant escrow account and the loan is allocated for payment of the purchase price. Further, the developer is prohibited from mortgaging the project land or any related real estate right unless it is for the purpose of financing construction of the project and the loan amount is paid into the escrow account. The purchasers of the units must be notified of the mortgage by the developer, who must procure a release of the mortgage over the relevant unit once the purchaser has paid the full purchase price.

The mortgage provisions provide for enforcement if a debtor defaults in payment of their instalments. A bank will be able to enforce a mortgage immediately through the summary court after giving notice to the debtor, without having to obtain a court judgment that the debtor owes the debt.

We consider that these new provisions on mortgages will help address the issues and impediments that banks currently face in connection with real estate financing, and will encourage them to become more actively engaged in real estate lending.

Owners Associations

The new law includes provisions for setting up owners' associations comprising all the owners of units in multi-unit real estate developments. Owners' associations will be independent legal entities that hold title to the common parts of developments and will be responsible for the management of those common parts.

The establishment of owners' associations has been challenging in other jurisdictions, such as Dubai. In light of this, the law has given the chairman of the DMA the discretion to issue a resolution to replace the owners' association with the developer of the real estate project or any other specialised entity to run the common parts of projects until the practicalities of operating owners' associations are well established.

Punishments

The law sets punishments for anyone who violates its provisions. For example, any person who conducts the activities of real estate brokers, owners' association managers, appraisers and surveyors without having an appropriate licence from the DMA may be punished by imprisonment or a fine of not less than AED 50,000 and not exceeding AED 200,000. Furthermore, any person who conducts real estate development activities in the Emirate of Abu Dhabi, fraudulently markets off-plan units for sale, or does not deposit the required funds into the escrow account may be punished by a fine between AED 100,000 and AED 2,000,000.

The law provides for administrative punishments as well. The DMA may cancel licences, for instance, if a licensee violates provisions of the law and the executive regulations or if the licensee is not performing its obligations properly in the opinion of the DMA. Further, a developer may be removed from the development register if, among other things, it fails to commence construction within six months of the date on which it has received approval to sell off-plan units. The DMA can also cancel a real estate project if the developer fails to start building the project within six months from the agreed commencement date or if it fails to complete the project within the agreed timeframe.

Conclusion

It is important that all parties review and understand their obligations under the law, and that they start preparing for the winds of change that are about to sweep the Abu Dhabi real estate market and stimulate investors' appetite.

However, while the law itself is a great achievement for Abu Dhabi and the UAE, there remains the question of implementation. Having one authority, the DMA, in charge of developing the Abu Dhabi real estate market is beneficial, but for the changes to be truly effective, it is critical that the DMA is completely ready to regulate and supervise the market.

In a positive move, it seems that the DMA is taking the appropriate steps to prepare for the successful implementation of the law, and the real estate market in Abu Dhabi looks ready to enter a bold new phase in its development and maturity.