

Off Plan Sales in the Kingdom of Saudi Arabia

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On 6 September 2016 (4 December 1437 AH), Resolution No. 536 concerning the Regulations on the Sale or Lease of Off Plan Real Property Units ("Off Plan Regulations") was implemented by the Council of Ministers.

The Off Plan Regulations have superseded the Council of Ministers Resolution No. 73, as amended by the Council of Ministers Resolution No. 47, which previously covered off-plan sales. Various implementation regulations have also been issued in support of the Off Plan Regulations; these include the requirements of licensing, escrow accounts, the obligations of developers, the principles of property project registration and marketing/advertising.

The aim of the Off Plan Regulations is to ensure that the off plan real estate market within the Kingdom of Saudi Arabia is properly regulated and structured by placing requirements on various stakeholders, including developers and real estate development projects, to obtain the relevant consents and approvals. The aim is to regulate the real estate market and business practices, with the effect of boosting confidence and assisting end users, developers and investors.

Off-plan sale or lease licensing

The Off Plan Regulations prevent the following activities without an approval from the Ministry of Housing:

- Off plan sale or lease of property units;
- All property development including residential, commercial, investment, offices service, industrial or tourism property; and
- The carrying out of the marketing of property, whether locally or internationally including participation in property exhibitions.

A Committee has been formed at the Ministry of Housing which has the power to approve or reject an application to obtain a license in order to undertake the activities noted above. The Committee shall have 10 days from receipt of a complete application to determine whether the application has been successful or not.

Once a project has been registered with the Committee a certificate including the license number, the developer's name, the name of the real estate project and the duration of the license is issued to the developer.

The Committee has the prerogative to revoke a license granted to a developer should the developer fail to commence construction of the project without an acceptable reason, if the development has stalled or the developer does not have any intention of continuing with the project, any provision of the Off Plan Regulations are violated, or if the developer has acted in a fraudulent manner.

If a developer is unable to complete a project or should a project be stalled or suspended for a period of more than 6 months, the Committee shall take all required steps to safeguard the rights of end users and ensure the completion of the project or the return of funds paid by end users to the developer or any financed obtained by the developer. The Committee will also have the ability to liquidate the project.

The Ministry of Housing and the Committee has created a Real Estate Developer Registry which records the names of all registered developers. Should the Committee revoke a developer's license, the Real Estate Developer Register shall be amended accordingly with the removal of the details of the developer.

Also, once an off plan property project has been registered with the Ministry of Housing a block will be placed on the title deed of the land preventing any disposition.

When registering a project with the Ministry of Housing a developer is required to submit various documents including but not limited to the following:

- A copy of the developer's commercial registration;
- A certificate showing the developer has sufficient financial capability;
- A copy of the title deed or its equivalent;
- A copy of the contract with the sub developer (if any);
- Confirmation of the opening of an escrow account;
- The approved architectural designs for the project; and
- A feasibility report.

A consultation office, which has been accredited with the Organisation of Saudi Engineers and has no less than 3 years' experience in construction and project management, will be required to supervise the project. The role of the consultation office shall include submitting quarterly technical reports to the Committee on the progress of the project and to provide a certificate, which has been notarised by the Chamber of Commerce, confirming the project has been completed.

Marketing, advertising and displaying in property exhibitions

No marketing, advertising or exhibitions of real estate projects within the Kingdom are permitted, whether for projects based inside or outside the Kingdom, without the approval of the Committee.

When applying for a marketing license, a marketer will need to provide the Committee with several documents which include a copy of the title deed, and a copy of the contract between the marketer and the developer. Where the project is outside the Kingdom, the marketer will also be required to provide a financial guarantee of 1% of the value of the project up to a value of SAR1 million for up to 3 months after the expiry of its license.

Al Tamimi & Company's real property team regularly assist developers and firms that market properties in KSA. For further information please contact Unkar Chanian (u.chanian@tamimi.com)