

Client Alert

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Abu Dhabi Global Market: Real Estate Strata Title Regulations

Consultation Paper No. 6 of 2015: Real Property Regulations & Strata Title Regulations

On 6 January 2015, the Abu Dhabi Global Market (“ADGM”), the newly created free-zone and international financial centre located on Al Maryah Islands, Abu Dhabi, issued six consultation papers proposing new legislation for ADGM. This Client Alert provides an analysis of the proposals set out in Consultation Paper No. 6 of 2015 relating to the Real Property Regulations and the Strata Title Regulations.

Real Property Regulations

The stated aim of the Real Property Regulations is to reflect a modified “torrens”- type real property registration regime for Al Maryah Island similar to a number of other jurisdictions including Australia, Canada, New Zealand, Ireland, Singapore and a number of States in the U.S. A torrens-title system is an “absolute title by registration” system whereby registration of title is conclusive evidence of title subject to limited exemptions specified under law and a similar system was adopted by the Dubai International Financial Centre Authority (“DIFC”) to provide investors greater certainty with respect to property interests in the DIFC.

Interestingly, the draft Real Property Regulations provide that “freehold interests in real property” will continue to be governed by the real estate laws applied in Abu Dhabi, which also provide for a “title by registration” system but include foreign ownership restrictions for non-GCC nationals. As such, it is anticipated that the existing foreign ownership restrictions will continue to apply to Al Maryah Island.

Quite uniquely, the Real Property Regulations then overlay the existing real estate laws of Abu Dhabi with a system for registration and regulation of “non-freehold” interests in real property based on the common law system in England. The common law recognises a full array of interests in real property such as leaseholds, easements and covenants, future interests, life estates and statutory charges. These real property interests are either not

currently dealt with, or not dealt with to the same level of detail, in the prevailing Abu Dhabi laws.

It will be interesting to see how this amalgam of title systems works in practice, and in particular the inter-relationship between the Abu Dhabi land registry and the ADGM Registrar with respect to the registration of non-freehold interests in land in Al Maryah Island.

Notably, the Real Estate Regulations provide that the Abu Dhabi land registry will take priority with respect to any question of ownership of freehold interests, however it will need to be determined as to which registry will take priority in resolving potential conflicts with respect to registration of non-freehold interests in real property.

Strata Title Regulations

The Strata Title Regulations provide for a system of the subdivision of title along the horizontal and vertical planes, similar to draft laws for Abu Dhabi that are currently under circulation for industry comment.

As with similar strata title laws in the region, the law provides that “common property” will be effectively owned collectively by the owners of the lots within a strata plan, and that the “body corporate” (owners association) of which such owners will be members will have responsibility for the operation and management of such common property.

As currently drafted, the proposed Strata Title Regulations do not appear to contemplate a “volumetric” subdivision of a mixed-use building, namely a subdivision into cubic airspace lots known as “components”. This method of subdivision is favoured by international institutional investors and hotel operators as it enables components to be owned outside a body corporate structure, thereby increasing flexibility with respect to the operation and management of shared areas and facilities. As many of the developments on Al Maryah Island are mixed-use, further consideration to this issue may be required and amendment to the proposed Strata Title Regulations made to accommodate this need.

Notably, the Strata Title Regulations also provide for mandatory escrow requirements for off-plan sales, whereby developers may be required to deposit an amount equivalent to 10-25% of the total deposits received by a developer from pre-sales (as determined by the ADGM Registrar) into an escrow account to secure developer obligations. Further clarity on these proposed arrangements will be needed.



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