

Law No. 8 of 2007

Concerning Guarantee Accounts of Real Estate Developments in the Emirate of Dubai *-A Law to Regulate Developers and to Protect Purchasers' Payments in Off-Plan Transactions -*

Law No. (8) of 2007 concerning Guarantee Accounts of Real Estate Developments in the Emirate of Dubai was issued by His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Ruler of Dubai, on 6th May 2007. The Law came into effect upon its publication in the Official Gazette on 28th June 2007.

Background to the Law

Off-plan transactions, namely the sale of property by a developer to purchasers prior to completion of construction, are commonplace in Dubai. In such transactions, the Property Sale & Purchase Agreement entered into between the developer and a purchaser will provide for a completion date some time in the future, often months or even years away depending upon when the developer anticipates that construction will be completed and the property will be ready for hand-over to the purchaser. In the meantime, the purchaser has an obligation to make installment payments to the developer towards the purchase price, often up to 70% or 80% of the total agreed purchase price. However, the purchaser acquires no interest in the property that he has contracted to purchase until completion and transfer of the property title into his name. If the developer fails to complete the property or fails to transfer title to the purchaser for any reason, the purchaser will rank as an unsecured creditor of the developer and is at risk of losing the money that he has already paid to the developer pursuant to the Sale & Purchase Agreement. Legislative confirmation of this is to be found in Articles (9) and (10) of Law No (7) of 2006 concerning Real Property Registration in the Emirate of Dubai. This lack of security for purchasers in off-plan transactions has led many master developers in Dubai to contractually impose measures upon sub-developers with the aim of protecting purchasers' money during construction and prior to delivery of the property and title to purchasers. Such measures have typically required either that the subdeveloper lodges a 'construction bank guarantee' with the master developer as a condition of being given consent to commence off-plan sales of units, or that the subdeveloper open an escrow account into which the sales proceeds received from purchasers must be paid pending attainment of pre-agreed construction milestones. The main purpose of Law No (8) of 2007 is to provide legislative protection to purchasers in off-plan transactions. More generally, the Law seeks to introduce a regime of registration, licensing and regulation for all developers undertaking property development activities in the Emirate of Dubai.

The following is an unofficial translation of Law No (8) of 2007 prepared by Al Tamimi & Company:

Law No. 8 of 2007

Concerning Guarantee Accounts of Real Estate Developments in the Emirate of Dubai

We, Mohammed bin Rashid Al Maktoum, the Ruler of Dubai,
After perusal of Federal Law No. 5 of 1985 in respect of Civil Transactions, as amended; Law No. 7 of 2006 in respect of real property registration in the Emirate of Dubai; and Law No. 3 of 2006 specifying the areas where non-UAE nationals may own real properties in Dubai, Do hereby issue the following Law:

Chapter One Definitions and General Provisions

Article (1)

This Law shall be named "the Law Concerning Guarantee Accounts of Real Estate Developments in the Emirate of Dubai No. 8 of 2007".

Definitions

Article (2)

Unless the context requires otherwise, the following terms and expressions shall have the meanings as set out opposite each of them:

The Emirate: The Emirate of Dubai

Department: Lands Department

President: The President of the Department

Director: The General Director of the Department

Register: The Register prepared at the Department to register Developers

Guarantee Account: The bank account designated for a property development in which the amounts paid by buyers of units off the plan or the project financing parties will be deposited

Developer: A natural or legal person licensed to carry on the activity of buying and selling properties for developing and that includes the master developer and subdeveloper

Account Trustee: A bank or financial institution certified by the Department for the management of the Guarantee Account

Competent Authority: The Government authorities authorised to license the Developers

Real Estate

Development: The construction of multi-storey buildings or complexes for residential or commercial purposes.

Property: Everything that is permanently fixed in its space and cannot be shifted without destruction or alteration in appearance.

Unit: An allocated part of the property sold by the developer to third parties.

Article (3)

The provisions of this Law shall apply to a developer who sells off-plan units in real estate development projects in the Emirate and, in consideration, receives payments from buyers or financing parties.

Article (4)

A special register to be named "Register of Developers" shall be prepared at the Department. The names of developers licensed to carry out real estate development activities in the Emirate shall be recorded in the said register. No developer may carry out the said activities unless it is registered in the said register and licensed by the Competent Authorities pursuant to the conditions issued related thereto.

Article (5)

A Developer shall not advertise in local or foreign media, or participate in local or foreign exhibitions, to promote the sale of units or properties off the plan, until having obtained a written permit from the Department. The Director shall issue the necessary decisions as required to regulate the requirements for advertising in the media and participating in exhibitions.

Chapter Two Establishing a Guarantee Account

Article (6)

A Developer wishing to sell units off the plan must apply to the Department to open a Guarantee Account. The application should be accompanied with the following documents:

- 1- Dubai Chamber of Commerce and Industry membership certificate;
- 2- Trade License;
- 3- Title deed of the plot to be developed;
- 4- Copy of the contract executed by the master developer and the sub-developer;
- 5- Architectural designs and layouts approved by concerned authorities and the master developer;
- 6- A financial statement certified by a certified legal accountant, containing the revenues and expenses of the project and approved by the development's consultant about sums payable to creditors of the development;
- 7- 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.
- 8- A sample sale contract between the Developer and a buyer.

Article (7)

The Guarantee Account shall be created under a written agreement between the Developer and the Account Trustee through which sums paid by buyers of units off the plan or paid by financing parties shall be deposited in a special account to be opened in the name of the real estate project with the Account Trustee. The said agreement shall set out the terms for managing the account, the rights and obligations of the contracting parties and a copy of this Agreement shall be deposited at the Department.

Article (8)

The Department may record the purchase agreement entered into between the master developer and the sub-developer related to the land, or any part of it owned by the master developer, in the folio concerning such land.

Chapter Three Management of a Guarantee Account

Article (9)

1. The Guarantee Account shall be opened in the name of the project and the proceeds shall be used exclusively for the purposes of constructing the real estate project. The Developer's creditors are not allowed to attach the money deposited in the Guarantee Account.
2. If the Developer has many projects, a separate Guarantee Account must be opened for each project.

Article (10)

1. The Department shall prepare a special register named "Register of Account Trustees" to register the names of the Account Trustees.
2. The Account Trustee is required to be qualified to manage the Guarantee Account.

Article (11)

1. The Account Trustee must provide the Department with statements for the revenues and expenses of the Guarantee Account on a regular basis. The Department may request the Account Trustee at any time to provide it with the information and data it deems necessary, and the Department may appoint individuals it considers qualified to audit the statements and data.
2. If the Department finds that the Account Trustee committed any violation of the rules of this law and/or its implementation regulations, then it shall serve him written notice and grant him a period to rectify the violation.

Article (12)

The depositors or their representatives may examine their account records and request copies and the representatives of the official authorities may examine the records and obtain copies.

Article (13)

In the event a Developer mortgages a development to obtain a loan from financing establishments or companies, then these establishments and companies have to deposit

the loan sum in the Guarantee Account to be disposed pursuant to the terms of this law.

Article (14):

The Account Trustee has to retain 5% of the total amount of the Guarantee Account after the Developer obtains the completion certificate and the reserved amounts shall not be paid to the Developer until one year after the units are registered in the names of buyers.

Article (15):

In the event of a force majeure which prevents completion of the real estate project, then the Account Trustee for that project, after consultation with the Department, shall take all the required actions to safeguard the depositors' rights to ensure the completion of the real estate project or the refund of the depositors' money.

Chapter 4 Penalties

Article (16)

Without prejudice to any penalties provided for in any other law, a penalty of incarceration and payment of a fine not less than 100,000 Dirhams, or either one of them, shall be imposed on anyone who:

- 1- Carries on a property development business in the Emirate without a license.
- 2- Submits false documents or makes misstatements to concerned authorities in order to obtain a license for carrying on a property development business.
- 3- Knowingly offers to sell units in bogus property developments.
- 4- Embezzles, uses or squanders payments delivered to him for the purposes of construction of property developments, and misappropriates such payments.
- 5- Any auditor who deliberately prepares a false report about the results of an audit he conducts on a developer's financial position, or intentionally conceals significant facts from his report.
- 6- Any consultant who knowingly approves false documents about a property development.
- 7- Any Developer who deals with a broker who is not registered in the Broker's Register at the Department pursuant to by-law No. 85 of 2006 regarding the Real Estate Broker's Register in the Emirate of Dubai.

Article (17):

A Developer shall be cancelled from the Register in any of the following events:

- a. If he declares bankruptcy.
- b. If he does not commence construction within six months of the date he was granted approval to sell off plan without an acceptable excuse.
- c. If his license is cancelled by the licensing authorities.
- d. If he violates any of numbers (2) or (3) or (4) or (5) of article 16 of this law.
- e. If he is in violation of any of the laws and/or by laws regulating the real estate development activity.

Chapter Five Final Provisions

Article (18):

Existing Developers at the time this law becomes effective should adjust their status in accordance with the provisions herein within six months of the date of publication in the official gazette, and the Department may extend this period to any other period which it considers suitable.

Article (19):

The Department may collect fees against the services offered in accordance with this law.

Article (20):

Any article in any law or bylaw is cancelled to the extent it contradicts the terms of this law.

Article (21):

The President shall issue the necessary decisions to implement the terms of this law.

Article (22):

This law shall be published in the official gazette and shall be effective from the date of publication. Mohammed Bin Rashid
Issued in Dubai 6 May 2007.19 Rabi'11 1428 H.

Commentary

The following Q&A section has been compiled with the invaluable advice and assistance of the Dubai Land Department:

To whom does the Law apply?

The Law applies to all master developers and sub-developers carrying out the activity of property development in Dubai.

What basic legal requirements apply to developers?

All developers, without exception, must have a license. Those developers that do not have a trade license issued by the Dubai Department of Economic Development or by one of the free zones will have the ability to apply to the newly established "Real Estate Regulatory Agency" for a development license. In

In addition to the requirement to have a license, a developer must also obtain registration in the “Register of Developers” maintained by the Dubai Land Department before undertaking property development activities in the Emirate.

Under what circumstances does a developer need to open a Guarantee Account?

Any developer wishing to offer property for sale off-plan, that is to say before the property has been constructed and is ready to hand over to the purchaser(s), is required to open a Guarantee Account. This requirement for a Guarantee Account applies not only when a developer intends to construct and sell several units in a development to several different purchasers; it applies also in the situation where a developer intends to construct and sell just one unit, or intends to construct and sell multiple units to a single purchaser. In addition, the meaning of “sale” is to be construed widely to include not only freehold sales, but also off-plan lease sales. Thus, whenever a developer is to receive monies from a purchaser of a freehold or lease interest in a property, he must first open a Guarantee Account.

Who may operate the Guarantee Account?

A bank or financial institution licensed by the UAE Central Bank to receive third party deposits and operating in Dubai may act as an “Account Trustee”. Such bank or financial institution must be accredited by the Dubai Land Department. As a pre-requisite to accreditation, the proposed Account Trustee must first enter into a written agreement with the Dubai Land Department setting out the terms and conditions pursuant to which the Account Trustee will operate Guarantee Accounts.

Can an Account Trustee also provide development finance to the developer of a project?

Yes, a bank or financial institution can act as an Account Trustee as well as provide development finance to the developer of a project.

What monies must be paid into a Guarantee Account?

All monies received from purchasers in off-plan transactions (including monies received from their mortgage companies) as well as the proceeds of property development finance must be paid into a Guarantee Account for the project. The developer’s own capital contribution toward the project does not need to be paid into a Guarantee Account.

For what purpose can monies be paid out from the Guarantee Account?

As a general rule, monies can only be paid out from the Guarantee Account to settle the invoices of contractors and consultants engaged in the project. Not all the expenses incurred by the developer in connection with the project qualify to be paid from the Guarantee Account. For example, only an amount up to 5% of the Guarantee Account proceeds may be applied toward the costs of marketing

the project. The developer's general business overheads and monies required toward his purchase of the land cannot be paid from the Guarantee Account.

When can monies be paid out from the Guarantee Account?

The written Agreement between a developer and the appointed Account Trustee will contain details of the construction milestones that are required to be achieved on site in order to trigger payments from the Guarantee Account. The developer's project manager will notify the Account Trustee when a construction milestone has been achieved and he will make a request for payment to contractors and consultants. The Account Trustee's own engineer will inspect the development and certify whether or not the construction milestone has been achieved. Once satisfied, the Account Trustee will authorise payments to be made from the Guarantee Account to settle contractors' and consultants' invoices. These payments will be made by the Account Trustee directly to the relevant contractors and/or consultants against verified invoices and will not be paid to or via the developer.

What is the purpose of the 5% retention?

Article 14 of the Law requires the Account Trustee to retain 5% of the total amount paid into the Guarantee Account for a period of one year after the developer has transferred titles of the units into the purchasers' names. The purpose of this 5% retention is to act as a guarantee that the developer will promptly and effectively remedy defects in the property that are apparent on completion or which may become apparent within the first year following hand-over.

The Law came into effect on 28th June 2007 upon its publication in the Official Gazette. To what extent does the Law apply to projects that were launched before 28th June 2007?

Article 18 of the Law requires developers to bring themselves into compliance with the Law within 6 months of its enactment, i.e. by 28th December 2007. The Dubai Land Department is currently undertaking a survey of all real estate developments in Dubai. This process is anticipated to be completed by the middle of September 2007. As a result of this survey, each current development in respect of which off-plan sales have commenced will be put into one of three categories:

1. for developments that are 70% to 80% completed, the developer will not be required to open a Guarantee Account;
2. for developments where work has started on site and has reached beyond shoring stage, a Guarantee Account will need to be opened by the developer by 28th December 2007; and

3. for developments that have not reached shoring stage, a Guarantee Account will need to be opened immediately. For developments in respect of which off-plan sales have not yet commenced, a Guarantee Account will need to be opened prior to the commencement of sales.

If a developer has already commenced off-plan sales and now needs to open a Guarantee Account, will he need to pay into that account the amount of money that he has already received from purchasers?

No, but all monies that are received from those purchasers in the future must be paid into the Guarantee Account.

What if a sub-developer has already put arrangements in place with the master developer to protect purchasers' money?

In those cases where a sub-developer has already lodged a construction bank guarantee with the master developer or has opened an escrow account at the behest of the master developer, the Dubai Land Department will review the arrangements in place and may provide an exemption to the requirement to open a Guarantee Account pursuant to the Law if it considers it appropriate to do so.

Will purchasers be able to register their interest in purchase contracts with the Dubai

Land Department?

Yes, the Dubai Land Department is establishing a system of pre-registration whereby any purchaser who has contracted to purchase a unit off-plan from a developer may record his purchase contract as an interest on the title of the property. This will help to prevent the developer from double-selling the unit in question. In addition, since the system will enable the purchaser to record the percentage of purchase price that he has paid from time to time, in the event of a difficulty with the developer, the registration of the purchaser's contract will serve as prima facie evidence both of the fact that he is purchasing the unit and of the percentage purchase price that he has paid.

Final Note: The Dubai Land Department will publish implementing regulations for this Law, including a fees tariff, during the course of the next few weeks.