

Wafi Program: Off-plan Sales from a Developer's Perspective and Etnam - Developer Registration

Jeremy Scott - Partner - Real Estate
- Dubai International Financial Centre

Stavros Marcou - Senior Associate - Corporate / Mergers and Acquisitions
s.marcou@tamimi.com - Riyadh



On 6 September, 2016 Resolution No. 536 concerning the Regulations Relating to the Sale or Lease of off-plan Real Property Units was implemented by the Council of Ministers ('Wafi Law') along with a number of implementing regulations ('Implementing Regulations').

The Wafi Law and the Implementing Regulations supersede the Council of Ministers Resolution No. 73, as amended by the Council of Ministers Resolution No. 47, which previously covered off-plan sales. The Implementing Regulations include the:

1. 'Licensing Regulations';
2. 'Escrow Accounts Regulations';
3. 'Beneficiaries Rights and Developers Obligations Regulations';
4. 'Inspection Companies Work Regulations'; and
5. 'Project Register Regulations'.

The laws form the basis of what is known as the 'Wafi Program', or the off-plan sales and rent programme. The Wafi Program is a platform that was launched by the Saudi government with the purpose of authorising and regulating off-plan property sales. The Wafi Program applies to properties which developers are selling or leasing before or during their development. This applies to all properties that meet the aforementioned condition regardless of their type or purpose.

The Role of the Ministry of Housing and the Committee

The effect of the Wafi Law and Implementing Regulations is to restrict the activity of off-plan property unit sales unless those sales are made through the Wafi Program which is administered by the Ministry of Housing in support of the committee of sale and rental of off-plan real estate units established by the Wafi

Law ('Committee').

The Committee may have the power to remove or limit the obligation of certain developers to comply with the Wafi Law and its Implementing Regulations as set out in Article (7) (3) of the Wafi Law. We understand this is only applied to the requirement to have an Escrow Account and associated obligations (detailed below) and it may not entitle a developer to be excluded from all of the obligations under the Wafi Law or its Implementing Regulations.

Developer Registration

The Ministry of Housing and the Committee have also created a Real Estate Developer Registry (also called Etnam), which records the names of all registered developers. Should the Committee revoke a developer's licence, the Real Estate Developer Register shall be amended accordingly with the removal of the details of the developer.

Project Registration

Each project licensed by the Committee must be recorded in the Projects Registry of the Ministry of Housing (which has been developed by the Committee). The requirements for registration are set out in the Project Register Regulations.

Upon signing the contract of sale of a real estate unit, the developer must provide the Committee with a copy of the contract within ten working days from the date of signing the contract, indicating the number of the unit, purchase price, mode of payment, date of the due instalments and obligations of the developer and beneficiary. Only then can a contract be registered in the Projects Registry.

Inspection Companies

In order for the Committee to be in a position to conduct its duties, it may contract with inspection services companies through a legal tender issued by the Committee to execute the inspection works required for the project. The developer shall incur the relevant costs if violations by the developer are proven.

Project Licence

The Committee considers the applications submitted by the qualified developers which are recorded in the Real Estate Developer Register within ten days from the date of completion of the application. The information that must be completed in the developer's application is set out in the Licensing Rules.

In the event that the developer is not the owner of the land (for the project), then the Committee must be provided with the agreement concluded between the developer and the owner of the land.

The Committee may consider cancelling or suspending the project's licence if the:

- developer becomes insolvent or bankrupt;
- developer does not commence the construction works (without a reasonable excuse), within the agreed timeframe - despite having received the necessary approvals for the construction;
- developer has ceased constructing the project;

- Committee deems that there are other reasons obstructing the completion of the project; and/or
- developer violates the Wafi Law and/or Implementing Regulations or acts in a fraudulent manner.

Before cancelling or suspending a licence, the Committee shall notify the developer in writing of the reasons that led to its decision. The developer shall have the option to respond to the notification within 21 working days of notice of the decision.

Escrow Account Regulations

An escrow account shall be created under the name of each project into which must be deposited the funds of the investors in the project. The account shall have a unified number to be referred to in each contract of sale with the beneficiaries.

The agreement with the escrow trustee for the escrow account must include the following provisions:

1. obligations of the escrow trustee, namely:
 1. not to activate the escrow account except after the issuance of the licence for the project;
 2. not to seize the accounts of the project for its interest or for the creditors of the developer;
 3. not to assign its tasks under the agreement to a third party;
 4. to submit to the Committee quarterly regular statements for the escrow account or at any time deemed necessary by the Committee; and
 5. to release the proceeds in the escrow account to the developer once the prior approval of the Committee is secured.
2. an obligation on behalf of the developer to not receive any amounts directly from the depositors and to require depositors to deposit funds in the escrow account directly;
3. standards that must be met before paying any funds to the developer from the escrow account;
4. the terms of managing the escrow account of the project by the account trustee and his powers in disbursing from the escrow account to the developer; and
5. a term stipulating the link between the payment of disbursements from the escrow account and the percentage of actual completion of the project works in accordance with the approved payment dates.

The developer shall not be allowed to depend exclusively on the funds of the beneficiaries to complete the project and the Committee shall issue a decision to specify the percentage of works required to be completed with regard to the project, prior to the payment of any disbursements from the funds of the beneficiaries deposited in the escrow account.

Licensing Regulations

It is not permissible to market, advertise or participate in exhibitions either inside or outside Saudi Arabia in relation to projects in Saudi Arabia unless the required licence has been procured from the Committee. A developer cannot obtain a marketing licence. It must engage a marketing company/real estate marketer to carry out activities such as marketing or advertising in exhibitions.

Beneficiary Rights and Developer Obligations

The Beneficiary Rights and Developer Obligations Regulations set out the obligations of the developer and the rights of the Beneficiaries, as well as the minimum required information that must be included in the contract between the developer and the beneficiary. Indicatively, we mention the following obligations of the developer:

1. commence and complete works in time;
2. follow up and supervise the subcontractor's execution of the assigned works, in accordance with the approved technical specifications;
3. achieve the approved technical specifications, in accordance with the project's designs;
4. deliver the unit to the beneficiary at the date defined in the contract and under the approved technical specifications that were agreed contractually; and
5. deliver to the beneficiary a copy of the owners' association bylaw upon the signing of the contract of sale.

Additionally, the Beneficiary Rights and Developer Obligations Regulations mention that the Committee has the right to develop an obligatory form regulating the relation between the developer and the beneficiary.

Conclusion

The aim of the Wafi Law and its Implementing Regulations is to ensure that the off-plan real estate market within the KSA is properly regulated and structured - with a view to enhancing confidence and transparency in the real estate market as well as assisting developers and investors in making better informed decisions.

Al Tamimi & Company's [Real Estate team](#) regularly advises on the sale of off-plan unit sales. For further information please contact [Jeremy Scott \(j.scott@tamimi.com\)](mailto:j.scott@tamimi.com).