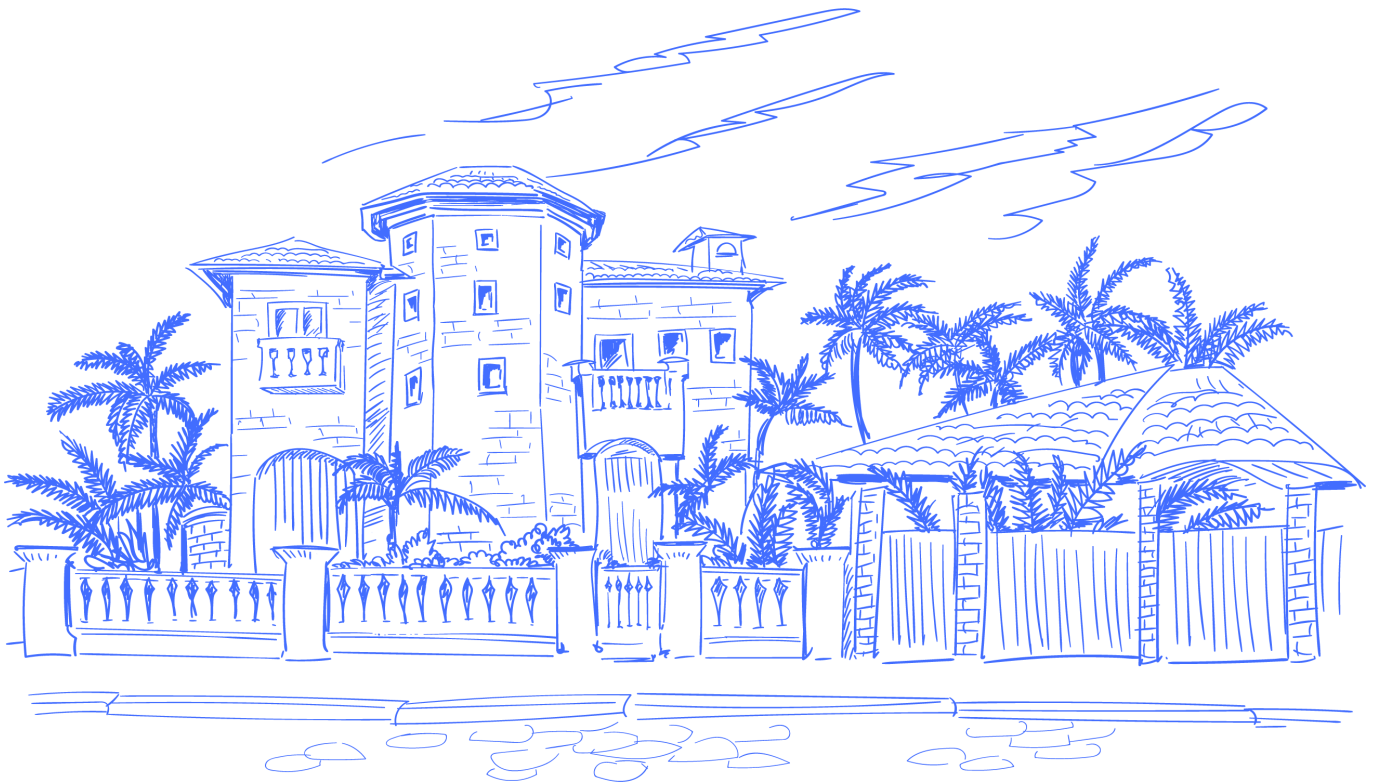


Holiday Homes: Dubai



With the Middle East, particularly Dubai, becoming an increasingly popular tourist destination for those who wish to explore this unique part of the world or make the most of their stopover on their way to Europe, property owners ('Owners') are presented with an opportunity to capitalise on the holiday home accommodation industry. In recent times, within Dubai in particular, we have seen an increase of Owners entering the holiday home market, which not only creates competition for the hotel industry, but also provides tourists with a wider selection of accommodation for the duration of their stay. The demand for holiday home accommodation within Dubai will inevitably increase with upcoming events such as Expo 2020.

In previous Law Update editions, we have provided readers with an understanding of the legal framework regarding the holiday home system in Dubai. While we will give readers an high level refresher on the legal framework, this article focuses more on the considerations to be given by the holiday home operator (i.e. the Owner or an appointed licenced operator ('Operator')). As always, Owners and Operators should always seek legal advice regarding the laws and requirements that regulate this industry.

The Law - Generally

As platforms such as Air BnB become more prevalent around the world there has been a call for regulations to be put in place in a number of jurisdictions to govern Owners offering their properties for lease on a short-term basis.

The Department of Tourism and Commerce Marketing ('DTCM'), in conjunction with the Department of Economic Development, oversee the licensing and regulation of the holiday home market in Dubai.

Prior to 2016, the operation of a property as a holiday home was restricted to Operators appointed by Owners, however this requirement was relaxed in mid-2016 with Owners (and tenants) now able to apply for a holiday homes licence.

The law defines a holiday home as a furnished real property unit leased out by a licence holder regularly and on an ongoing basis for the purposes of further sub-letting to end-user guests, with such guests being natural persons who intend using the property for overnight accommodation on a daily, weekly, monthly or yearly basis.

A holiday home can be an apartment, town house or independent villa, and falls within either of the two classifications prescribed by DTCM being, 'Holiday Homes - Deluxe' or 'Holiday Homes - Standard'. As the name of each classification suggests, the classification will depend on the nature of each property and the associated amenities and services available to guests. The classification of a property under the 'Holiday Homes - Deluxe' classification, will result in a slightly higher Tourist Dirham fee applying to each booking, with the licence holder responsible for remitting the Tourist Dirham to the relevant regulatory body.

The Owner (or the appointed Operator) will be responsible for self-classification of the property at the time of submitting the application to DTCM for registration of the property as a holiday home. Once the property has been registered with DTCM, the Owner (or its appointed Operator) must ensure that it complies with the requirements of DTCM, including but not limited to, guest registration and payment of the Tourist Dirham.

Owners

As outlined above, individual Owners are no longer required to appoint an Operator to manage the property, and may apply for a licence to do so in his/her own name.

While the ability for an Owner to hold a licence and manage the operation of their property as a holiday home themselves should allow the Owner to realise a greater return on their investment (i.e. no need to pay a management fee to the Operator), it does create a greater administrative and regulatory compliance burden on the Owner. The Owner, amongst other things, would be required to:

- manage the check-in and check-out process with guests;
- collect the Tourist Dirham and remit to the relevant authority;
- comply with the reporting obligations imposed by DTCM;
- be on call to address any queries or concerns of guests;
- arrange the cleaning and periodic housekeeping of the property; and
- arrange ongoing maintenance and repair of the property.

If an Owner was considering appointing an Operator to manage the property on his/her behalf, what follows below are some key considerations that should be taken into account by the Owner when appointing an Operator to manage his/her property as a holiday home. The below list is not intended to be an exhaustive list of the considerations that should be taken into account and both Owners and Operators should always seek legal advice prior to entering into a management agreement.

The Operator

An Owner should undertake due diligence on any proposed Operator that it intends to appoint.

It should be confident that the Operator is an established and licensed operator in Dubai (or elsewhere in the world) who has the necessary ability and experience to operate the property as a holiday home to an

high standard.

Agreement with Operator

Commercial provisions will vary, however the agreement with an Operator can be in the form of a:

1. lease of the subject property from the Owner to the Operator; or
2. management agreement between the Owner and the Operator.

Each arrangement has its pros and cons and it is strongly recommended that advice be sought from the outset as to the most appropriate structure to be adopted in each individual case.

Standard and Classification of Property

The required classification of the property should be agreed from the outset. If the property needs to be brought up to a specific standard (i.e. standard or deluxe), consideration needs to be given to who bears the responsibility for the refurbishment and payment of associated costs.

Depending on the commercial arrangement with the Operator, the Operator may prefer to refurbish and refurnish the property itself (at the Owner's cost) to bring it to the agreed standard which is consistent across the Operator's portfolio of properties managed.

Fee Payable to Operator

While there are a variety of fee arrangements that may apply to the management arrangement, typical fee arrangements are either a:

1. fixed return paid to the Owner; or
2. percentage of revenue paid to Operator with the balance paid to the Owner.

The first option would see the Operator pay a guaranteed return to the Owner, with the Operator entitled to retain revenue achieved over and above the guaranteed return. This would result in the Operator taking the financial risk of the operation of the property as a holiday home, as the Owner would be guaranteed the return regardless of the performance of the property.

On the other hand, the second option would see the Operator being paid a fixed percentage of the revenue achieved during the relevant period, which would vary depending on the performance of the property.

The fee structure may also vary depending on the nature of the agreement with the Operator and the fee structure must be carefully reviewed given that this will ultimately affect the returns realised by the Owner and the Operator respectively.

Maintenance and Repair

Consideration must be given to who bears responsibility for the maintenance and repair of the property for the duration of the agreement, including the payment of associated costs.

If the Owner remains responsible for maintenance and repair costs, the agreement could provide the

Operator with a right to undertake the works on behalf of the Owner, without the need to obtain the Owner's prior consent. If this right were being entertained, an Owner may wish to impose a cap on the costs that can be incurred by the Operator without the Owner's consent.

Consideration also needs to be given where the property is an apartment where maintenance and repairs are undertaken and controlled by the building's appointed FM provider as part of the services for which the Owner contributes by way of service charge payment. In this respect, arrangements would need to be put in place allowing the Operator to liaise with the FM provider on behalf of the Owner as appropriate.

Services to be provided to Guests

Given the competitiveness of the market, the extent of services available to guests may be a determining factor as to the performance of the property, and guests' requirements are likely to vary depending on the category of the property.

An Owner should discuss with the Operator the nature and extent of the services available to its guests, who will bear the cost of such services and how additional revenue generated from the provision of such services is distributed.

Right to Use Property for Personal Use

If the Owner would like to have the right to occupy the property for a certain period during the term of the arrangement with the Operator, such right to occupy must be included in the agreement. In considering such right for the Owner, an Operator is very likely to restrict the Owner's access during peak seasons throughout the year, in order to maximise revenue generation.

End-Users - Guests

Key considerations of an end-user should also be taken into account, as follows:

Fees and Services

A guest must have clarity on the fee payable for the duration of their stay and the services included in the fee being charged for rental of the property. The fee must include the Tourist Dirham, which is required to be collected by the Operator (or the Owner) before the guest's stay.

Key services that may be attractive to a guest are:

1. periodic housekeeping and cleaning;
2. internet connectivity and TV access;
3. airport transfers;
4. access to a driver or a cook for the duration of their stay; and/or
5. concierge services.

If such services are made available, it should be made clear at the time of booking as to whether the additional services are included in the holiday home fee or if such services will incur an additional cost on an a la carte basis.

Terms and Conditions of Occupation

A number of Operators have their own standard terms and conditions that guests agree to at the time of making their booking online, however some Operators may also require a guest to sign an end-user agreement.

Regardless of the nature of the agreement between the Operator (or the Owner) and a guest, the guest should have a clear understanding of the terms and conditions that apply for the duration of their stay at the property. As part of the terms and conditions, a guest will be required to comply with rules and regulations in place for a property located within a development, as well as the rules and regulations imposed by DTCM that apply to all holiday homes. Such rules and regulations must be displayed in the property.

Privacy of Information

The collection of guests' private information is inherent in the nature of the service to be provided by Owners and Operators (as applicable). Both Owners and Operators must comply with the local data privacy requirements in respect of the collection, storage and use of guests' private information. An additional layer of regulatory compliance may apply if persons in the European Union are targeted and/or their behaviour monitored for sales or marketing purposes as such activities are likely to trigger the extra-territorial scope of the EU General Data Protection Regulation 2016/679.

Owners and Operators should always ensure that policies and procedures that comply with the local and international data protection laws (as applicable) are put in place and it is strongly recommended that legal advice is sought in this regard to mitigate any risks of non-compliance. It is worthwhile noting that a guest will be required to provide a copy of their passport at the time of check-in in accordance with the requirements of the DTCM.

Conclusion

The holiday home market for both short-term and long-term stays is certainly on the rise in Dubai as more and more Operators continue to enter the market. An Owner or Operator should have a clear understanding of the regulatory requirements that must be complied with and should ensure that the commercial arrangement put in place aligns with standard market practices and best protects their and the guests' interests.

Al Tamimi & Company's [Real Estate](#) and [Hotel & Leisure](#) team provides a comprehensive range of legal services across the Middle East including Dubai, covering all areas relevant to the hotel and property industries and regularly advises both owners and operators looking to enter the holiday home market. For further information please contact [Tara Marlow \(t.marlow@tamimi.com\)](mailto:t.marlow@tamimi.com), [Sebastian Roberts \(s.roberts@tamimi.com\)](mailto:s.roberts@tamimi.com) or [Aruna Mukherji \(a.mukherji@tamimi.com\)](mailto:a.mukherji@tamimi.com).