

Ministry of Housing issues Implementing Regulation for the 2020 regulation on Jointly Owned Property

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In March 2020, the Kingdom of Saudi Arabia, as part of its 2030 vision, introduced Regulation No. 440 on the Regulation of the Ownership, Subdivision and Management of Real Estate Units ('New JOP Regulation'). The introduction of the New JOP Regulation, which came into effect on 9 September 2020, represents the first significant overhaul (in over 17 years) of the regulations relating to jointly owned property and some key elements of the New JOP Regulation were set out in our article in the April 2020 edition of Law Update.

The New JOP Regulation contemplates, at Article 21, the Ministry of Housing issuing the implementing regulation, which will supplement the New JOP Regulation and provide further clarity on the interpretation and application of the New JOP Regulation ('Implementing Regulation'). On 14 June 2020 (corresponding to 22 Shawwal 1441 H), the Ministry of Housing introduced the Implementing Regulation by virtue of Ministerial Resolution No 168, with the Implementing Regulation to be in full force and effect from 9 September 2020 (being 180 days from the date that the New JOP Regulation was published in the Official Gazette).

What follows is a high level overview of some key concepts from the Implementing Regulation of which all developers, purchasers and owners should be aware.

Disclosure regime

The New JOP Regulation imposes a mandatory disclosure regime that must be complied with by developers when selling a unit in a jointly owned property. The Implementing Regulation clarifies, in more detail, the information required to be disclosed in the disclosure statement and ensures that a purchaser is aware of the specifications of the unit, its general rights and obligations (as an eventual owner of a unit in the jointly owned development) and other general matters pertaining to the operation and management of the jointly owned development. The disclosure statement would include, at least the following information:

- the address of the unit;
- the area of the unit;
- the plan of the unit;
- the units share of the common areas;
- the unit's appurtenant (if any);
- fixed and movable items (if any) of the unit;
- a copy of the constitution for the Owners Association ('OA') and the constitution for the community association (if applicable) which would set out matters pertaining to the administration of the OA and the operation and management of the jointly owned development ('Constitution') along with a copy of the general assembly resolutions (if any);
- any existing mortgage, usufruct and leases related to the unit, jointly owned development or real estate community (if any);

- any restrictions on the use of the common areas of the jointly owned development; and
- the anticipated construction, commencement and completion date, in case of selling or leasing off plan.

The Implementing Regulation indicates that the Real Estate General Authority ('REGA') will issue the form(s) for such disclosure and as at the date of the writing, the form(s) are yet to be issued by REGA.

It is important that all developers are aware of the disclosure requirements in this regard as failure to comply with this regime could provide a purchaser with a right to terminate the sale and purchase agreement.

Registration of owners' association

The Implementing Regulation, at Article 10(3), prescribes the requirements that must be satisfied to enable an OA or community association to be registered with REGA. At the time of registration, the OA or community association must provide REGA with:

- details of the owners of the units in the jointly owned development;
- details of the jointly owned development or real estate community, as required and as requested by REGA, which includes the national address and the title deed number;
- the Constitution for the jointly owned development;
- the names of the members forming the general assembly at the time of registration; and
- any other information or documents required by REGA.

REGA shall maintain a register for the registration of OAs and community associations and Article 11 of the Implementing Regulation reinforces the position under Article 12(2) of the New JOP Regulation, whereby an OA will only gain legal capacity and financial liability upon its registration with REGA. As such, it is crucial that an OA is registered with REGA as soon as possible so as to ensure the OA can perform its intended functions under the New JOP Regulation.

Role of REGA

Amongst other matters, REGA will be responsible for organising the works and affairs of the OA and these may include:

- issuing any resolutions regarding the governance of OAs, with such resolutions to be binding on all OAs; and
- providing general support and advice to OAs.

REGA shall also issue a technical guide that details the technical specifications and standards regarding the subdivision and re-subdivision of real estate and real estate units.

Constitution

In addition to the requirements detailed in Article 12(4) of the New JOP Regulation, the Implementing Regulation prescribes additional matters that must be appropriately dealt with in the Constitution for the jointly owned development, such as:

- the process for the calling of a meeting of the general assembly and the minimum quorum requirements;
- provisions regulating the management and use of the common areas;
- the method for determining an owner's contribution towards the costs of the OA (i.e. the service charges), including the mechanism for payment of such amounts;
- procedures for amending the Constitution; and
- general rules and regulations relating to the conduct of owners and occupiers in the jointly owned development.

As outlined above, the Constitution is required to be prepared and provided to REGA to enable the OA to be registered.

Article 17 of the Implementing Regulation confirms that by owning a unit in the jointly owned development, that owner is deemed to have approved the Constitution and agreed to adhere to the decisions of the general assembly.

Appointment of manager

The Implementing Regulation confirms the requirement for a manager to be appointed to manage the jointly owned development and the right of the developer to solely appoint the manager provided that:

- the developer commits to retaining ownership in 10 per cent of the units;
- the total number of units in the jointly owned development is more than 100; and
- the developer otherwise complies with any other requirements of REGA.

Once appointed, the manager, in performing its duties, must act honestly and sincerely, taking into account the interests of the jointly owned development.

Auditor

The Implementing Regulation details when an auditor must be appointed for a jointly owned development and details the role and responsibilities of the appointed auditor.

Maintenance and repair

The Implementing Regulation provides sufficient rights for works to be undertaken in a unit, if such works are necessary to preserve the integrity of, or improve the use of, or to maintain, the jointly owned development, whilst also detailing the responsibility for payment of the costs associated with undertaking such works and the compensation payable should an owner be required to vacate their unit during the period of works.

Moving forward

The Implementing Regulation provides a useful insight into how the New JOP Regulation is intended to operate and how it will be applied in practice. As the New JOP Regulation and the Implementing Regulation

are relatively fresh, Al Tamimi & Company has been working very closely with a number of master developers with respect to the implementation of the New JOP Regulation and is aware of a number of practical issues which require careful consideration. Additionally, Al Tamimi has well established relationships with REGA and other authorities, which enables us to seek clarity on certain matters, first hand, without delay.

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