

The new Dubai Timeshare Law: what does it say?

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Dubai, given its position as a global tourist destination, has long been well placed to benefit from and accommodate timeshare schemes and projects, as seen in other parts of the world. A timeshare law to regulate the industry in Dubai has been mooted and considered for some time. This has now come to fruition with the publication of Law No. 14 of 2020 on the Timeshare System in Dubai (the 'Dubai Timeshare Law') in the Official Gazette on 10 December 2020. In this article, we take a look at some of its key concepts and terms.

What is timeshare?

Although there is a wide array of different types of scheme, timeshare broadly involves property in hotels or resorts with either: (i) multiple purchasers buying use rights over a specific unit ('Timeshare Contract'); or (2) purchasers acquiring points which can then be exchanged for rights of use in a selection of properties of a certain type which may be located in a number of different countries ('Points Contract').

Timeshare differs from fractional ownership in that, in addition to periodic usage rights, investors additionally acquire an undivided share in the legal ownership of the property. Both timeshare and fractional ownership offer a more economical alternative to outright second home ownership.

It was announced last year that the Dubai Land Department is piloting a new scheme whereby investors can now obtain a title deed evidencing a fractional ownership interest in units located in certain hotel projects. It is therefore likely that specific laws and regulations relating to fractional ownership in Dubai will be released in the future.

The Dubai Timeshare Law does not deal with fractional ownership; it deals purely with timeshare and draws a distinction between Timeshare Contracts and Points Contracts. Its stated objectives are to:

- regulate the timeshare industry in line with international best practice;
- encourage tourism in Dubai and investment in tourism and real estate; and
- protect consumers.

It applies to owners, developers and real estate managers that own, manage or sell/market/advertise timeshare property. It applies to all freezone and investment areas in Dubai, including the DIFC. The law comes into force on 10 June 2021 and affected entities have six months to implement and ensure compliance with the law (i.e. 10 December 2021, subject to extension by the Department of Tourism and Commerce Marketing ('DTCM')).

The role of DTCM

DTCM is the relevant licensing and regulatory authority. It is responsible for issuing mandatory licences to relevant entities to practise the activity of selling timeshare products. The relevant properties themselves

also need to be approved by DTCM to ensure compliance with technical requirements and standards as determined by DTCM.

DTCM's role also includes:

- co-ordinating with the Dubai Land Department ('DLD') and DIFC regarding the registration of timeshare use rights (see below);
- inspection rights over rights over timeshare properties to ensure compliance with technical standards and the law;
- dealing with complaints to enforce and achieve the objectives of the law;
- establishing a database of licensed entities and relevant units approved as timeshare properties;
- determining the form of records that a licensed entity must keep regarding the Timeshare Contracts and Point Contracts entered into with purchasers;
- setting fundamental conditions that must be included in all contracts from time to time relating to the sale and transfer of timeshare rights; and
- classifying timeshare units into different categories depending on their relevant specifications.

Registration

Despite (unlike fractional ownership) such timeshare rights not giving purchasers any rights of ownership in the underlying real estate asset, the Dubai Timeshare Law provides for a concept of "deeded timeshare" usage rights, as seen in other parts of the world. For those timeshare units located in any part of Dubai, other than DIFC (which are registrable at the DIFC Registrar of Real Properties), such rights are registrable at the DLD.

In this regard, the law only refers to Timeshare Contracts, suggesting that those acquiring rights under a Points Contract (which may include the right to use non-specific units in Dubai) would not be able to register such rights with the relevant land registry.

The law underscores this concept of "deeded timeshare" by providing that a timeshare owner under a Timeshare Contract may sell such right to third parties and pass it on to heirs upon death, as with traditional real estate assets. However, any such transfer is void if the right has not been registered.

Obligations of those selling timeshare rights

The law specifies a number of obligations applicable to developers and owners selling Timeshare Contracts or Points Contracts involving property in Dubai, which include:

- obtaining and maintaining the requisite licences/approvals;
- maintaining records relating to Timeshare Contracts and Point Contracts and the relevant units;
- providing purchasers with "correct and complete data" about the relevant unit and its DTCM classification. Sellers of timeshare property are therefore advised to prepare a comprehensive disclosure statement to comply with this consumer protection requirement (similar to that currently required in relation to the sale of off-plan property);
- responding to complaints;
- not to act as broker between purchaser and an unlicensed entity;
- carrying out requisite maintenance and repair/replacement of furniture;
- bearing jointly owned property service charges relating to the wider master community in which the property is located;
- remedying all defects in units (which cannot be contractually excluded, although this is subject to obligations on the purchaser to not damage the property, to use it only for its intended purpose and to return the unit in the condition it was handed over prior to the relevant usage period);

- not charge any fees that are not expressly stated in the relevant contract;
- registering use rights with the DLD or DIFC land (as applicable); and
- not to interfere with the purchaser's use of the property (which extends to the acts of its affiliates and agents). The law also places primary liability on the seller vis-à-vis the purchaser regarding damage that has been caused to the property by others that have been granted rights in relation to the same unit (with the seller then having to take separate action against the relevant person that has caused the damage).

Mandatory contractual provisions

The law stipulates various terms and conditions that must be included in a Timeshare Contract or Points Contract. These are:

- the contract must be in writing and signed by both parties. It must name the parties and state the date and place where it is executed. A copy of the signed contract must immediately be given to the purchaser;
- the contract must state the term and relevant financial consideration;
- the contract must provide the purchaser with a withdrawal/"cooling off" period of 10 days from when purchaser received the signed copy of the contract. Any exercise of the withdrawal right shall be without any penalty or cost to the purchaser. Notwithstanding the above, it may be contractually agreed for the purchaser to make an advanced payment during such withdrawal. This is significant from an industry perspective. Under EU legislation, the introduction of a prohibition on the payment of such advance payments in the withdrawal period had a detrimental effect on timeshare operators; and
- the subject matter of the contract must be a unit that has been approved and classified by DTCM.

Any contract that does not contain such mandatory elements is considered void. The law also states that any provisions in the contract which infringe the purchaser's rights pursuant to the law shall also be void.

Purchaser's rights of termination

In addition to the withdrawal right in the 10-day withdrawal/"cooling off" period, the law specifies the following circumstances where a purchaser has the right to terminate the contract on written notice within the period of one year from the date of its execution:

- the relevant entity with whom the purchaser has contracted is not licensed by DTCM;
- the contract does not contain the mandatory contractual provisions;
- the purchaser is not provided with a copy of the signed contract;
- the seller does not register a Timeshare Contract with the DLD/DIFC (as applicable) following the expiry of the withdrawal period; and
- with regard to a Points Contract, the seller does not record it in its own records which it is obliged to maintain under the law.

Carrying over use/assignment of rights under a Timeshare Contract

The law provides that a purchaser may give at least 45 days' notice to postpone an allocated period of use to a later time under a Timeshare Contract (up to a maximum of two years in the future) provided such notice period is adhered to and the purchaser is not in breach of any financial obligations.

In addition, a purchaser may assign a period of use under a Timeshare Contract to a third party provided that the owner/developer/manager is notified in advance. If there is any damage caused to the unit by such third party, the purchaser and the third party will be jointly liable.

As mentioned above, a purchaser may assign its timeshare right to a third party by giving prior notice to the developer/owner/manager and such right may be passed down to heirs upon death. All such transfers must be notified to the DLD or DIFC (as applicable) and registered.

Disputes and enforcement of the law

The Dubai Courts and DIFC Courts have jurisdiction regarding all disputes relating to timeshare contracts, depending upon the location of the relevant timeshare property.

DTCM has the authority to take various punitive measures against those violating the law, including:

- issuing fines (up to AED1m (approximately US\$272,000));
- suspending the right of a company to practise timeshare related activities for up to six months; and
- cancel permits and approvals (which, if done, may not be reissued for at least 12 months).

DTCM also has the authority to judicially enforce such breaches and also has rights of inspection regarding the relevant timeshare properties and the records of the relevant developer/owner/manager.

The Dubai Timeshare Law is a welcome and long overdue piece of legislation for Dubai which will hopefully serve to boost the Dubai tourism and real estate sectors during these difficult times.

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