

Wafi Program: Off plan sales regime in KSA and the current policy of the Wafi Committee (Part I)

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On 6 September, 2016 the 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 Implementing Regulations include the:

- 'Licensing Regulations';
- 'Escrow Accounts Regulations';
- 'Beneficiaries Rights and Developers Obligations Regulations';
- 'Inspection Companies Work Regulations'; and
- 'Project Register Regulations'.

The regulations form the basis of what is known as the 'Wafi Program', or the off-plan sales and rent program. 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 (i.e. residential, commercial, investment, office, service, industrial, tourism etc.).

This article is intended to form part of a series of articles that will be issued by Al Tamimi & Company, for the purpose of addressing comprehensively the Wafi Law and the Implementing Regulations.

The Role of the Ministry of Municipal, Rural Affairs and Housing and the Wafi Committee.

The effect of the Wafi Law and Implementing Regulations is to regulate and oversee the activity of off-plan property unit sales unless those sales are made through the Wafi Program which is administered by the Ministry of Municipal, Rural Affairs and Housing, in support of the committee of sale and rental of off-plan real estate units established by the Wafi Law ('Wafi Committee').

Developer Registration

The Ministry of Municipal, Rural Affairs and Housing and the Wafi Committee have also created a Real Estate Developer Registry (also called Etnam), which records the names of all registered developers.

Should the Wafi Committee revoke a developer's licence, the Real Estate Developer Register shall be amended accordingly with the removal of the details of the developer.

The developer is required to obtain a qualification certificate from the Wafi Committee - prior to being registered on Etmam.

Project Licence

The Wafi 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 and documentation that the developer must provide in its application are set out in the Licensing Regulations. Indicatively, the following are required:

- Copy of the commercial registration of the developer;
- Architectural designs and layouts approved by the relevant authority;
- Economic feasibility study for the project, in accordance with the relevant requirements;
- A copy of the sale agreement (template form) between the developer and the prospective purchaser(s), together with the draft of the homeowner's association bylaws;
- Copy of the contract concluded between the main developer and sub-developer (if any); and
- Copy of the contract concluded between the developer and the real estate marketer (if any).

In the event that the developer is not the owner of the land (for the project), then the Wafi Committee must be provided with the agreement concluded between the developer and the owner of the land (in accordance with Article 5 of the Licensing Regulations).

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

- Developer becomes insolvent or bankrupt;
- Developer fails to 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;
- Wafi 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 Wafi 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.

Project Registration

Each project licensed by the Wafi Committee must be recorded in the Projects Registry of the Ministry of Municipal, Rural Affairs and Housing (which has been developed by the Wafi Committee). The requirements for registration are set out in the Project Register Regulations. Indicatively, the following information is required:

- Name of the project (if applicable);
- Commencement date of the project, and the time period for its completion;
- Location of the project, and its total area space;
- Name of the main and sub-developer (the latter, if applicable); and

- Name of the escrow account trustee (as well the relevant contract of appointment).

Upon signing the contract of sale of a real estate unit, the developer must provide the Wafi 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 purchaser. Only then can a contract be registered in the Projects Registry.

Failure of the developer to comply with its registration/disclosure requirements may lead to the Wafi Committee, among other things, issuing a decision ordering the temporary suspension of the activity of the developer (taking into account the rights of the purchasers), requesting the rectification of the violation and submitting to the Ministry of Municipal, Rural Affairs and Housing measures that must be taken against the developer. In the event that the violation persists without being rectified, the Wafi Committee may also refer the violator to the Bureau of Investigation and Public Prosecution to consider filing a claim (against the developer) before the competent criminal courts in order to be penalized.

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 informed decisions.

The Ministry of Municipal, Rural Affairs and Housing has become more proactive (than reactive) in identifying violations of the Wafi Law and its Implementing Regulations. Noting that, in accordance with an announcement made by the Wafi Committee, during the course of 2020, the Ministry identified sixty-one (61) projects which were not compliant with the Wafi Law and its Implementing Regulations - during the course of one hundred and forty-nine (149) inspection tours undertaken by the relevant control and supervision teams.

Al Tamimi & Company's real estate team regularly advises on the sale of off-plan unit sales. For further information please contact [Mohammed Kawasmi \(m.kawasmi@tamimi.com\)](mailto:m.kawasmi@tamimi.com).