

ADGM real property regulations and strata title regulations

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ADGM occupies Al Maryah Island and is designated as the new financial centre for Abu Dhabi. The Regulations took effect from their publication on 14 June 2015 and will govern multi-owned developments in ADGM.

Creation of a Strata Title Development

The owner or developer of a freehold or leasehold interest in property within ADGM has the right to apply to classify the development as a strata title development. The same provisions apply to a scheme whether the owner or developer has a freehold or leasehold interest in the property. By registering a strata plan with ADGM ("Strata Plan"), the property can be divided into two or more lots or sub-lots ("Strata Lots") for strata ownership by individual strata lot owners ("Strata Owners") or for ownership by an association owned by the strata lot owners ("Association"). Strata Lots can be either lots owned by Strata Owners ("Strata Owner Lots") or lots owned by Associations.

Strata Lots can be created by dividing property both vertically (on single or multiple levels) and horizontally. Different areas within a Strata Plan may be designated for different uses, for example retail, residential, commercial areas.

Where a development will be phased into different stages it is possible to lodge multiple Strata Plans, either simultaneously or at different stages in the development ("Staged Development Scheme"). A volumetric development plan, where a plot is sub-divided into areas for different purposes, such as retail, residential, commercial, and where not all sub-divided areas are designated for strata ownership, is deemed to be a Staged Development Scheme.

Alternative contractual common ownership schemes are permitted and can be registered in the Real Property Register, for example leasehold interests in units may be granted and the common areas retained and managed by the developer. This will be the case even where a Strata Plan has been filed in connection with the scheme.

Requirements for Strata Plans

Strata Plans must identify the owner of the freehold interest in the site and the owner of any leasehold interests. The strata developer must also be included with details of its property interest in the site. The Strata Plan will only have legal effect once it has been accepted and registered by the Registrar. The Strata Plan must state whether or not it relates to a Staged Development Scheme. A description of the proposed strata development must be included with details of any amenities to be provided. The strata developer must also incorporate a schedule of materials and finishes to be used and provide details of the boundaries of the scheme.

Details of the proposed Association must be included in the Strata Plan together with a draft certificate of incorporation for the Association, the first by-laws of the Association and details of any special developer rights.

Where a Strata Plan specifies the use for any particular Strata Lot, the Strata Owners may not use that Strata Lot for any other purpose. If the Strata Lots include multiple uses then a statement of the maximum percentage of the floor area for each proposed use must be prepared.

The Strata Plan must also include a warranty in favour of anyone entering into a contract to buy a Strata Lot that the development will be carried out in accordance with the scheme. This warranty will be enforceable as a contractual warranty but the parties will be free to negotiate further warranties and, in so far as those warranties provide the purchaser with greater protection than the warranty contained in the Strata Plan, they will also be enforceable against the strata developer.

A Strata Plan must be endorsed with or accompanied by a certificate ("Surveyor's Certificate") from a duly qualified surveyor approved by the Registrar ("Approved Surveyor"), certifying that the buildings shown on the Strata Plan, and all proposed Strata Lots, fall within the boundaries of the site.

Where an appropriate authority in Abu Dhabi has notified the Registrar that planning approval is not required for a development or that any necessary planning approvals have already been obtained, the building plans that have been approved by the appropriate authorities may constitute the Strata Plan if accompanied by a Surveyor's Certificate from an Approved Surveyor.

Requirements for Staged Development Plans

A staged development plan must be submitted for any Staged Development Scheme. This will consist of a master plan and a disclosure statement. The master plan must show the overall development and Strata Plans for each stage. Warranties from the developer to any purchaser of a Strata Lot will also apply for Staged Development Schemes. The disclosure statement must include a warning as to the risks of staged developments in general, a description of the proposed stages, estimated times for completion of each stage, a schedule of hours of working for the second and subsequent stages, and a schedule of the proposed unit entitlements for each Strata Lot.

Effect of Prior Mortgages

If a mortgage was registered against a property before a Strata Plan is submitted, the Registrar will register that mortgage in the title to each Strata Lot. The consent of the mortgagee will be required for the registration of the Strata Plan. When a Strata Lot is sold and there is a repayment to the mortgagee, the Registrar may remove the registered mortgage from the Strata Lot title if the mortgagee provides written consent.

Registration of Titles

When a Strata Plan is registered, the Registrar will register titles for each Strata Lot. This title will record the benefits and burdens relating to that Strata Lot and the proportionate interest as a shareholder that the owner of the Strata Lot will have in the Association.

Creation of Common Property

The Registrar will register all parts of the site which are not Strata Lots as common property owned by the Association ("Common Property"). Common Property will include all structural elements of the development, such as the supports, foundations, structural walls, joists and roofs. Additionally, land under and surrounding buildings, roadways, landscaping, paths, beaches and service infrastructure will form the Common Property.

Allocation of Unit Entitlements

Each Strata Lot will have a unit entitlement, which may be shares in the Association or a fixed number of votes at a general meeting of the Association. Unit entitlements must be fixed on a fair and equitable

basis. Changes to unit entitlements are allowed by extraordinary resolution of the Association or by an order of the ADGM courts. The Strata Plan must state the formula to be used to reallocate unit entitlements if Strata Lots are added to or withdrawn from the strata development.

Rights and Obligations of Associations

Associations will take the form of private limited companies and the interests of the Strata Owners will usually take the form of shares in the Association. The Strata Owners will have all rights of shareholders in a private limited company as set out in the ADGM Companies Regulations 2015 (“Companies Regulations”). The Association will be run by a board of directors who may appoint committees and officers to carry out certain duties. Potential directors of Associations will need to understand the duties that will be imposed on them by the Companies Regulations. The Association may also appoint a manager to run the administration, management and control of the Common Property.

The Association will levy assessments on Strata Owner Lots as necessary to meet anticipated expenditure, which should be proportional to the unit entitlements of the Strata Owner Lots. Interest can be charged on late payment of assessments at a rate decided by an ordinary resolution of the Association. Ultimately, if assessments are not paid by Strata Owners then the Association will have a right of foreclosure over the Strata Owner Lots.

The Association will have powers to make by-laws concerning the Common Property and Strata Owners Lots. The Strata Title Regulations include a set of model by-laws which may be adopted by Associations. By-laws can be enforced in the ADGM courts.

Associations are required to insure the buildings and Common Property against fire and other usual risks. This requirement does not include any obligation on the Associations to insure the contents of Strata Owner Lots.

Establishment of Escrow Accounts

A strata developer must establish an escrow account unless its development is already substantially complete at the time the Strata Plan is lodged. Developers do not need to register with ADGM but the Strata Plan must be lodged with and registered by the Registrar appointed by ADGM.

All payments received from purchasers of Strata Owner Lots must be paid into the escrow account together with any financing obtained for the development. Amounts on deposit in the escrow account must only be used for construction and development of the strata development including other costs associated with the development such as marketing costs. The Regulations do not detail what limits will be imposed on these uses of escrow account funds, but withdrawals from the escrow account must be in proportion to the progress achieved in the construction of the development. Further, five percent of the total balance of the escrow account must be retained for 12 months after the date on which the building completion certificate is issued and may be used for the correction of deficient and outstanding work.

Conclusion

The Regulations bring the concept of strata title to Abu Dhabi for the first time. We expect, however, that the forthcoming Abu Dhabi property law will introduce similar strata title for the remainder of the Emirate of Abu Dhabi. When interpreting and implementing the Regulations, developers and investors in ADGM will also be able to draw on the considerable strata title expertise developed over recent years in Dubai. We expect that this legal framework will bring confidence to develop and invest in real estate in ADGM.