

KSA LEGAL ALERT:

New Off-Plan Sale or Rent of Real Estate Projects Law

January 2024

This month the government of Saudi Arabia issued the new Off-Plan Sale or Rent of Real Estate Projects Law (“Off-Plan Law”), replacing the old off-plan regulations administered by WAFI / Ministry of Housing. We have listed the key features of the law and what it means for the market and developers.

- As the name suggests, the law applies to both the sale and rent of real estate projects off-plan, in which amounts of money are received from purchasers, tenants or financiers. The law applies to both private sector and government real estate projects.
- The sale or rent of a real estate project is considered “off-plan” if it has yet to be built and title deeds are yet to be issued for the units the subject of the sale or rent.
- The Off-Plan Law comes into effect in April 2024, ninety days from its publication.
- The implementing regulations for the Off-Plan Law will be issued in April 2024, ninety days from the date of publication of the Off-Plan Law.
- The Off-Plan Law, and the implementing regulations once issued, will supersede the existing off-plan regulations issued by the Council of Ministers and administered by WAFI.
- The Real Estate General Authority (“REGA”) is now responsible for the administration and implementation of the Off-Plan Law. This is consistent with the recent transfer of the WAFI centre from the Ministry of Housing to REGA.
- The Off-Plan Law now broadly defines a real estate development project to capture all asset classes, namely residential, commercial, office, service, industrial, tourism and other real estate projects.
- Developers need to be licensed under the Off-Plan Law before being allowed to apply for licenses to market or sell / lease real estate off plan. As was the case previously, there will be a register of licensed developers.
- Those real estate projects that are licensed for marketing and sale off-plan will be recorded in a public database. The licensing requirements remain much the same as before.
- When an off-plan license is issued in respect of a real estate project, a notation will be recorded on title preventing the disposal of the project land until completion of the real estate development. The notation can only be removed with the prior approval of REGA.
- The requirement to establish a project specific escrow account, and for all project funds received to be deposited therein, remains. Escrow accounts continue to be excluded from, and protected against, any action by a licensed developer’s creditors. Funds can only be released from the escrow account once certified by the appointed chartered accountant and REGA approved engineering office. It remains the case that up to 20% of the value of the sold real estate units can be withdrawn from the escrow account for project related administrative, marketing and non-construction expenses.
- It remains the case that 5% of the total construction cost needs to be retained in the escrow account for a period of 1 year following completion of construction of the real estate project.
- The Off-Plan Law now provides that financial compensation is to be paid to purchasers where there is a delay in handover of land or real estate units, other than where delays arise for reasons beyond the developer’s control. In the case of residential units, that compensation is the equivalent rent a purchaser has to pay during the period of delay. For land, compensation is an amount that the parties determine in advance, presumably in the off-plan sale contract.



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