

## Liquidation of cancelled real estate projects in Dubai

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His Highness, Sheikh Mohammed Bin Rashid Al Maktoum, UAE Vice President, Prime Minister and Ruler of Dubai, recently issued Decree No. 21 of 2013 concerning the formation of a special judicial committee (Committee) for the liquidation of cancelled real estate projects in the Emirate of Dubai and the settlement of relevant dues (Decree).

The Decree comes at a time of government activity to better protect the rights of investors and is one of a number of proposed changes to Dubai real estate law.

The main aim of the special Committee is to consolidate the process for investors to seek compensation against developers for cancelled real estate projects. It aims to further facilitate quicker proceedings, particularly since legal proceedings have not only been lengthy but also expensive.

This article discusses:

- The formation and powers of the Committee.
- Court cases that will be referred to the Committee.
- Whether the Committee is a step in the right direction.
- How the Committee will function going forward.

### FORMATION AND POWERS OF THE COMMITTEE

The Committee will consist of one or more panels, provided that the members of each panel consist of at least three judges from the Dubai Courts, including the Chairman. The Committee has the power to:

- Consider and decide any issues, demands and claims that may arise between developers and purchasers relating to cancelled real estate projects.
- Liquidate real estate projects cancelled under a final resolution issued by the Dubai government's Real Estate Regulatory Agency (RERA) in accordance with RERAs powers under Law 13 of 2008.
- Settle any debts with respect to such cancelled projects, after deduction of liquidation expenses.
- Consider all executive proceedings, complaints and grievances relating to cancelled real estate projects.

In exercising its powers, the Committee can seek the assistance of experts and consultants, in particular those from the Dubai Land Department. The Committee can appoint auditors (at the cost of the developer) to audit the financial position of the cancelled real estate project.

Decisions of the Committee are final and binding and cannot be appealed.

### COURT CASES REFERRED TO THE COMMITTEE

One of the most ground breaking provisions of the Decree is that all courts in the Emirate of Dubai (including in the Dubai International Financial Centre) will no longer consider any case or claim relating to cancelled real estate projects. All such claims must now be considered by the Committee. In addition, the courts are required to refer any current cases before them to the Committee. Cases or demands brought before the Committee will be exempt from court fees.

### A STEP IN THE RIGHT DIRECTION?

The Committee was established in an attempt to unravel the many cancelled real estate projects that exist in Dubai after the real estate crash of 2008. Moreover, the Committee would appear to give those unfortunate investors who have long since written off their investments a fast tracked and cost effective forum to recover at least some of their losses.

However, the Decree and establishment of the Committee raises some questions and practical issues.

Any prospect of recovery for investors relies on there being sufficient assets to liquidate. One of the most valuable assets of any developer of a cancelled real estate project is the land on which the real estate project is constructed. However, in many cases the developer does not own the land until completion of the project. In such instances, the prospect of liquidating just the under-construction building to repay hundreds of off-plan investors who have invested hundreds of thousands of dirhams seems unrealistic.

Also, investors expect the Committee to repay them from funds in the escrow account, the bank account set up to specifically protect the investors in the event of failed construction. The reality is somewhat bleak with escrow accounts. Many escrow accounts are fully depleted due to land payments, marketing costs and early development and construction works. In circumstances where the two main assets of any cancelled project (the land and funds in the escrow account) available for liquidation by the Committee are insufficient to repay an investor, the chance of an investor recovering his investment is unlikely.

The Decree specifically relates to "cancelled" projects rather than "on hold" projects. Investors seeking recovery of their money from developers in projects deemed "on hold" by RERA will still have to pursue developers through court action or arbitration, thereby protracting the process and increasing costs.

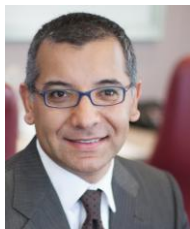
### GOING FORWARD

The Committee will need to deal with over two hundred cancelled real estate projects in Dubai as well as thousands of cases relating to cancelled real estate projects currently going through the Dubai courts. How quickly and effectively the Committee deals with such cases will go a long way in re-establishing confidence in a market which is still partially suffering from the wounds of the 2008 crash.

The Decree is a clear signal to international property investors that RERA is taking practical steps to deal with rogue developers of days gone by, introduce transparency and protection for investors

and, in turn, propel Dubai from a market of short term speculators to a more established and stable real estate market.

## Practical Law Contributor profile



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**Professional qualifications.** Juris Doctor, University of British Columbia, Canada, 1998; Master of Business Administration, Webster University, US, 2002; Bachelor of Engineering, University of British Columbia, Canada, 1992

**Areas of practice.** Real estate; construction. Extensive experience advising on joint ventures, shareholder transactions, purchase and sale transactions, hotel management structuring and transactions, leasing, jointly owned property strategies and documentation, and related court cases and arbitrations.

**Professional associations/memberships.** State Bar of California; Canadian Bar Association; Law Society of England and Wales; International Bar Association; Association of Professional Engineers of British Columbia. Registered professional engineer, previously working as a design engineer, a hydroelectric dam manager in charge of biologists, technicians, electricians and mechanics, and a construction engineer. Regular speaker at seminars on legal developments and current issues in real estate and construction law.

**Languages.** English, Farsi

### Recent transactions

- Advising and drafting sale, lease, architect and contractor documents in relation to an AED500 million, 45 storey hotel apartment project in Dubai.
- Sale of 25 million square feet of land in an AED1.2 billion transaction by a regional developer to an investment consortium.
- Drafting of jointly owned property and related documentation for the AED15 billion, 38 million square feet Motor City community in Dubai.
- Successfully supervising many court actions and arbitrations, with a recent matter involving a transaction dispute of about one billion dirhams.
- Regularly represents master developers, sub-developers, property owners, architects, engineers, contractors and government entities in all stages of the real estate and construction processes.

### Publications

- *Pay on Time – Is the Collection of Service Charges a Big Headache?*, *Property Times*, March 2013.
- *The Real Estate Market in the U.A.E.*, *Lawyer Monthly*, December 2012.
- *Practical Law Corporate Real Estate Multijurisdictional Guide* (co-author of the UAE chapter).
- *Dubai Real Estate*, *The American Lawyer*, October 2012.