



Dubai
International
Financial
Centre

CONSULTATION PAPER NO. 3

March 2018

PROPOSED AMENDMENTS TO THE STRATA TITLE LAW DIFC LAW NO 5. OF 2007 AND REGULATIONS

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PROPOSALS RELATING TO AMENDMENTS TO THE STRATA TITLE LAW AND REGULATIONS

Why are we issuing this paper?

1. The Dubai International Financial Centre Authority (“**DIFCA**”) proposes to enhance the current Strata Title Law regime (found in the Strata Title Law DIFC Law No. 5 of 2007 (the “**Current Law**”) and the Strata Title Regulations¹ (the “**Current Regulations**”) to bring that regime in line with international best practice, to introduce greater clarity in several areas and to expand the responsibilities of the RORP of Real Properties (“**RORP**”), the Body Corporates, and the Body Corporates Managers. In doing so, we have taken into account specific factors relating to the Dubai International Financial Centre (“**DIFC**”) and the need to provide an appropriate regulatory environment for the establishment of Strata Developments and the management of Body Corporates within those developments. This Consultation Paper No. 3 (“**Consultation Paper**”) seeks public comments on the proposed amendments to the Strata Title Law (the “**Amendment Law**”) and the Strata Title Regulations (the “**Amendment Regulations**”).
2. In order to ensure a highly regulated environment for the creation, administration, and management of Strata Developments in the DIFC we have introduced new or enhanced provisions to the Current Law which shall include: a) enhancing the provisions relating to the powers and functions of the RORP, b) expanding and refining the roles and responsibilities of the Body Corporates and that of the Body Corporate Managers, c) enhancing the provisions relating to the structure and subdivision of Strata Developments within the DIFC, d) introducing obligations on Developers, e) enhancing the provisions relating to the registration of Easements and Covenants in Strata Developments, and f) the abolishment of the Strata Title Board regime.
3. The current legislative amendment proposal shall include proposed amendments to the Current Regulations that will be issued with the Amendment Law. DIFCA proposes to seek public comment on the Amendment Law, along with the Current Regulations.

¹ The DIFC enacted the Strata Title Law and Strata Title Regulations in 2007, which govern the registration and management of strata developments in the DIFC.

Who should read this paper?

4. This Consultation Paper would be of interest to persons owning, developing, managing, and registering rights against and/or those planning to own, develop, manages, or register rights against Real Property in Strata Developments within the DIFC including their legal advisers.

How to provide comments

5. DIFCA invites interested parties to provide their views and comments on the issues outlined in the Consultation Paper, using the table of comments provided in Annex E.
6. All comments should be provided to the person specified below:

Jacques Visser
Chief Legal Officer
DIFC Authority
Level 14, The Gate, P. O. Box 74777
Dubai, United Arab Emirates
or e-mailed to: consultation@difc.ae

7. You may choose to identify the organisation you represent in your comments.
8. DIFCA reserves the right to publish, on its website or elsewhere, any comments you provide, unless you expressly request otherwise at the time the comments are made.

What happens next?

9. The deadline for providing comments on the proposals in this Consultation Paper is 15 April 2018.
10. Once we receive your comments, we will consider if any further refinements are required to the Amendment Law annexed to this Consultation Paper at Annex A and the Amendment Regulations at Annex D. Once DIFCA considers the Amendment Law and Amendment Regulations to be in a suitable form, they will be enacted as an amendment to the Current Law and Current Regulations to come in to force on a date specified and published.
11. The Amendment Law and Amendment Regulations are in draft form only. You should not act on it until the Amendment Law is formally enacted. We will issue a notice on our website when this happens.

Defined terms

12. Defined terms are identified throughout this paper by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the Amendment Law, Amendment Regulations or the DIFC Real Property Law. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

Background

13. The proposal to amend the Current Law with the Amendment Law results from the necessity to introduce greater clarity and process in the establishment, management, and regulation of Strata Developments in the DIFC. In proposing changes to the Current Law, we considered international best practice and other common law jurisdictions, specifically New South Wales, Australia which has an established and mature strata title regime, and on which the current regime is substantially based on.
14. We also studied the jointly owned property law² from the Emirate of Dubai to see if any or certain provisions and practices may or could apply to the current regime in the DIFC. The Amendment Law attempts to clarify and expand on the current regime and introduce a larger administrative role for the RORP, to provide proportionate regulation and stability in Strata Developments, with the aim of instilling confidence in persons seeking to develop, manage, and/or own Real Property in Strata Developments within the DIFC and follow an established and an accepted common law model to provide for the proper registration, regulation, and management of Strata Developments in the DIFC.

Key changes proposed

15. The Amendment Law contains significant enhancements and refinements to the Current Law:
 - (a) enhancing the provisions relating to the powers and functions of the RORP – see paragraphs 16 - 18;
 - (b) enhancing the legal status and licensing and regulatory requirements for the Body Corporates and of Body Corporate Managers – see paragraphs 19-25;
 - (c) enhancing the provisions dealing with the division of Real Property in a Strata Development and the powers of DIFCA, the Master Developer, and the RORP to

² Law No. 27 of 2007 on Ownership of Jointly-Owned Properties in the Emirate of Dubai which came into force on 1 April 2008.

- designate Lots and Common Property for different Permitted Uses – see paragraphs 26 - 27;
- (d) introducing new obligations on Developers – see paragraphs 28 - 29;
 - (e) enhancing the provisions relating to the registration of Easements and Covenants in a Strata Development – see paragraph 30; and
 - (f) abolishing the Strata Title Board regime so that the Court can hear appeals directly from Interested Parties against any decision or Order made by the RORP – see paragraph 31.

Increasing the role and powers of the RORP in respect of Strata Developments

- 16. The Current Law does not sufficiently empower the RORP to enforce registered interests and regulate the administration of Strata Developments contained in the DIFC. The RORP's powers under the Current Law have been extensively reviewed and we determined that the RORP should undertake a largely administrative role at the master community level to ensure the protection of registered rights and the enforcement of obligations, particularly in issuing fines, sanctions and Orders against defaulting Owners, Occupiers, Body Corporates, Developers, and other third parties that are in breach of their obligations.
- 17. In our view, the ability to enforce payment of Service Charges to the Master Developer needed to be enhanced and the Amendment Law has introduced a significant new provision which will enable the RORP to register a lien against the titles of defaulting Owners - see paragraph 18 (p). This is in alignment with the position in onshore Dubai where the Lands Department can refuse to register a transfer until a NOC from the developer has been obtained confirming that there are no outstanding service charges.
- 18. Under the Amendment Law, we propose to include and increase specific powers in favour of the RORP:
 - (a) to review and approve management agreements between the Body Corporates and the Body Corporate Managers and to issue Orders to terminate and replace the Body Corporate Managers or any Committee Member for breaching their fiduciary duty;
 - (b) to register Easements and Covenants in the Folio for each Lot and Common Property created on Registration of the Strata Plan if, immediately before Registration of such Strata Plan, an Easement or Covenant was already Registered

- in the Folio or Folios for the Strata Development, and to approve Easements and Covenants created by the Body Corporate;
- (c) to designate Lots and Common Property for different Permitted Uses, and approve changes in the Permitted Use and to prohibit the transfer of an Accessory Lot that is for car parking purposes separately from its Primary Lot without its approval;
 - (d) to issue an Order that an interim Body Corporate be established by the Developer pending Registration of the Strata Plan;
 - (e) to approve Lot Entitlements prior to Registration of the Strata Plan. Any changes to the Lot Entitlement will also require approval from the RORP;
 - (f) to approve the Staged Strata Scheme, along with DIFCA, and to approve the Disclosure Statement for each stage of the Strata Development. Also, any changes to the Strata Plan will require approval from the RORP;
 - (g) to approve transfers with respect to acquisitions of Real Property by the Body Corporate;
 - (h) to approve the Reserve Fund Forecast and the annual Services Charges to be levied on the Owners and approve the annual budget prepared by the Body Corporate Manager for the raising of Service Charges;
 - (i) to issue an Order against a Developer if a Developer fails to comply with its obligations to remedy non-structural defects and structural defects in the Strata Development on application by the affected Owner(s);
 - (j) to enhance the power of the RORP to appoint an Administrator for the Body Corporate's affairs on application by an Interested Party;
 - (k) to approve any restrictions to an Owner's right to use, deal with or dispose of a Lot. Under the Amendment Law, the RORP's power has been enhanced to enable the RORP to determine if any provision of a Strata Management Statement is void;
 - (l) to approve Exclusive Use Rights granted by the Developer, prior to the Registration of the Strata Plan, and to approve Exclusive Use Rights granted by the Body Corporate, following the Registration of the Strata Plan. Under the Amendment Law, Exclusive Use Rights will be made perpetual in nature, thus abolishing the five (5) year limitation on Exclusive Use Rights under the Current Law;

- (m) to issue an Order on an Owner or Occupier for the enforcement of a relevant provision of the Strata Management Statement or By-Law. Under the Current Law, the Body Corporate would need to apply to the Strata Title Board for such enforcement. In view of abolishing the requirement of having a Strata Title Board in the Amendment Law, the Body Corporate will now be able to apply to the RORP for such enforcement;
- (n) to approve any penalty or fine imposed on an Owner in respect of any breach of a Strata Management Statement or any By-law;
- (o) to approve any fee charged on an Owner for the provision of any service performed by the Body Corporate or the Body Corporate Manager under the Strata Management Statement or By-law; and
- (p) to record a lien over a Lot by way of Registered Caveat in favour of the Body Corporate where the Owner of the Lot is in breach of its obligations (including payment obligations) under the Amendment Law and the Strata Management Statement.

- Q1. Do you have any concerns about the expanded powers of the RORP in regulating Strata Developments? If so, what are they, and how should they be addressed?**
- Q2. Do you have any concerns about the expanded powers of the RORP in regulating the Body Corporates and the Body Corporate Managers? If so, what are they, and how should they be addressed?**
- Q.3 Do you have any comments or concerns on the additional regulations in general and the expansion of the regulating powers of the RORP?**
- Q4. Are there any issues that need to be addressed relating to the additional powers of the RORP? If so, what are they, and how should they be addressed?**

Expanding and refining the roles and responsibilities of the Body Corporates and that of the Body Corporate Managers in Strata Developments

19. It is considered that the current structure for the management of Body Corporates under the Current Law required improvement and greater clarity be given to the respective roles

and responsibilities of the Body Corporate, the Body Corporate Manager and the Management Committee. The legal status of the Body Corporate as an entity having a separate legal personality is clarified under the Amendment Law.

20. There is a requirement under the Current Law for the Body Corporate to appoint a chairperson, secretary, and treasurer from among its members at the first annual General Meeting, and at each annual General Meeting thereafter. Under this regime, the Body Corporate may allocate to the office bearers the duties and responsibilities appropriate to their position. We felt that such regime could lead to potential abuses of power by office bearers, therefore, the Amendment Law has been amended to remove the “office bearer” regime and place greater responsibility (and accountability) on the Body Corporate Manager and the Management Committee. It was viewed that the Current Law required improvement and greater clarity especially in relation to management and voting at the component level. Thus, the voting right at all levels, from the Owners, to the Management Committee, and the Developer (that retains ownership of more than fifty percent (50%) of the Lots and/or the Lot Entitlements) has been clarified in the Amendment Law.
21. Under the Amendment Law, an interim Body Corporates regime has been introduced to regulate the behaviour of the Developer between handover of the Lots and Registration of the Strata Plan. The RORP can now request the Developer to establish an Interim Body Corporate pending Registration of the Strata Plan, if a Strata Plan has not been lodged with the RORP for Registration by the Developer within one (1) month from Building Completion or such other period as approved by the RORP and the RORP can specify what requirements the Developer must satisfy during such period.
22. The Amendment Law will substitute the use of the common seal of the Body Corporate with that of the Body Corporate’s Stamp, to be in line with current practice, which can now be specifically used by the Body Corporate Manager if the Body Corporate Manager has been granted the delegated authority to affix the stamp to certain classes of documents by way Ordinary Resolution.
23. Under the Amendment Law, we have introduced a limit to the term of the management agreement entered between the Body Corporate and the Body Corporate Manager, which shall not exceed two (2) years. This is to ensure that Body Corporate Managers do not become complacent in discharging their obligations and responsibilities under such management agreements and to allow Body Corporates to change unsatisfactory Body Corporate Managers in quicker succession.

24. The Current Law has been amended to place greater accountability on the Body Corporate Managers, who will be expected to act at all times with integrity, in the best interests of the Body Corporate, in accordance with international best practice and in a manner that avoids conflicts of interest. Such principals will be embedded in the Amendment Law.
25. The management of funds to meet the financial obligations of the Body Corporate have been expanded under the Amendment Law, as we felt that they are vague under the Current Law which could lead to misappropriation of funds. The Body Corporate Manager will now be required to prepare the Reserve Fund Forecast, and submit the same to the RORP for approval. The Body Corporate Manager shall now be responsible for preparing the financial statements for each Operating Year and arrange for the independent auditing of the financial statements and provide a copy of the same to the Management Committee and the RORP. Also, there will be a new requirement that a copy of the strata roll (which is a written record or a computer record that contains information on the Strata Development) be provided to the RORP on an annual basis or earlier if so requested by the RORP at any time. We feel that these changes create greater transparency between the RORP, the Body Corporate Manager Management Committee, Owners, and other Interested Parties.

Q5. Do you have any concerns about the expanded role and function of the Body Corporates, Management Committee, and the Body Corporate Manager in the management of the Strata Developments? If so, what are they, and how should they be addressed?

Q6. Do you have any concerns about the proposed abolition of the current “office bearer” regime? If so, what are they, and how should they be addressed?

Q.7 Are there any issues that you feel need to be addressed relating to the greater responsibility and accountability on the Body Corporate Manager and the Management Committee? If so, what are they, and how should they be addressed?

Enhanced provisions relating to the structure and subdivision of the Strata Developments

26. It is considered that the manner in which mixed-use developments in the DIFC are subdivided requires greater clarity. The Current Law has been amended to appropriately deal with Strata Developments that are structured as both “layered strata subdivisions” (being developments that have two layers of Body Corporates) and “volumetric subdivisions” (being mixed-use developments that are subdivided into components without creating Principal Common Property) and a Body Corporate will be established for each Strata Scheme upon Registration of a Strata Plan. Also, under the Amendment Law, it is

clarified that there will be no need to Register any plan of consolidation, if the Real Property to be divided by a Strata Plan is comprised in 2 or more Folios, as the Registration of the Strata Plan effects any necessary consolidation of the Real Property contained in such Folios. The aim is to make this process more efficient and less bureaucratic.

27. A new requirement under the Amendment Law will be to specify the Permitted Use of the Lots in a Strata Development in the Strata Management Statement and the Permitted Use of the Common Property on the Strata Plan, which cannot be changed unless such change is authorised by way of Extraordinary Resolution and with the prior written approval of the Master Developer and the RORP. The aim is to create greater comfort and transparency among Owners and Developers.

Q8. Are there any concerns relating to the proposed changes to the structure and subdivision of the Strata Developments? If so, what are they, and how should they be addressed?

Q9. Are there any concerns relating to the new requirements and restrictions related to the Permitted Use? What are they and how should they be addressed?

Enhancements to the Developer's obligations

28. Under the Current Law, the liability of the Developers towards the Owners was not covered and we proposed that Developers should remain liable to Owners with respect to non-structural defects for one (1) year and for structural defects for ten (10) years after Building Completion in line with the Civil Code³, where certain provisions relating to the decennial liability on Developers for the construction defects to buildings do not apply to the DIFC. The Amendment Law will impose such statutory liability on Developers in line with the Civil Code, with the aim at giving Owners of new builds confidence when purchasing Real Property in the DIFC and legal recourse in the event of a sub-standard build quality.
29. In our opinion the Current Law could benefit from having further regulation over the activities of Developers wishing to sell off plan properties. Therefore, the obligations of the Developers have been enhanced in the Amendment Law, which includes obligations to:

³ The Civil Code (Federal Law No. (5) of 1985 on the Civil Transactions Law of the United Arab Emirates as amended by Federal Law No. (1) of 1987 dated 14/02/1987)

- (a) provide each Prospective Owner with a copy of the Staged Strata Plan and the Disclosure Statement prior to the Prospective Owner entering into the Sale and Purchase Agreement;
- (b) obtain written confirmation that the Prospective Purchaser in the Off Plan Register has fully complied with its obligations under the Sale and Purchase Agreement and that the initial Strata Management Statement of the Body Corporate is Registered on the Folio;
- (c) register a Strata Management Statement and By-Law. Under the Current Law, Lot Entitlements are required to be specified in the Strata Plan. Under the Amendment Law, Lot Entitlements will also need to be specified in the Strata Management Statement (as well as in the Strata Plan), with Services Charges to take into account the beneficial use of the Common Property.

Q10. Are there any concerns relating to the proposed Developers' statutory obligations? If so, what are they, and how should they be addressed?

Q11. Are there any concerns relating to the new regulatory requirements over the activities of Developers? What are they and how should they be addressed?

Enhancements to the provisions relating to the registration of Easements and Covenants in a Strata Development

30. We added a clarification to the Amendment Law dealing with Easements and Covenants that are registered in Folios for a Strata Development prior to the Registration of a Strata Plan. The Amendment Law now expressly states that the RORP has the power to register such Easements and Covenants in the Folios for the Lots and Common Property once the Strata Plan is registered or the Lots or Common Property that correspond the most closely to the part of the Strata Development over which the Easement or Covenant was granted.

Q12. Are there any concerns relating to the proposed clarifications referred to above? What are they and how should they be addressed?

Abolishment of the Strata Title Board regime

31. The Current Law provides for the establishment of a Strata Title Board that was intended to provide a review and dispute resolution function (including the review of decisions of the

RORP). The Strata Title Board was never established and so we have proposed to amend the Current Law to remove the requirement to establish a Strata Title Board, with the RORP and the Courts taking on the function of adjudication of disputes. Also, under the Amendment Law Interested Parties may now appeal directly to the Court against any decision or Order made by the RORP.

Q13. Are there any concerns relating to the proposed changes to abolish the Strata Title Board regime? If so, what are they, and how should they be addressed?

Enhancements to the Strata Title Regulations

32. Under the Amendment Regulations we have reconciled the wording relating to the variation of fees in the Real Property Law Regulations to clarify that it is the DIFC Authority that has the power to vary or add fees. No further substantive amendments were considered necessary at this time. A comparison of the Current Regulations and the Amendment Regulations are attached at Annex D.

Q14. Are there any concerns relating to the proposed amendments to the Amendment Regulations or anything you feel that requires to be added?

Legislative Proposal

1. This legislative proposal contains the following:
- (a) the Amendment Law (at Annex A);
 - (b) the Current Law (at Annex B);
 - (c) a comparison of the Current Law and the Amendment Law (at Annex C);
 - (d) a comparison of the Current Regulations and the Amendment Regulations (at Annex D);
 - (e) a roadmap of the proposed changes (at Annex E); and
 - (f) a table of comments to provide your views and comments on the Consultation Paper (at Annex F).