

Annex D

In this document, underlining indicates new text and striking through indicates deleted text



Real Property Regulations

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CONTENTS

1. Introduction.....	<u>34</u>
2. Commencement.....	<u>56</u>
3. Amending or deleting Registrar's Directives.....	<u>57</u>
4. Fees payable to the Registrar, other than Freehold Transfer Fees.....	<u>57</u>
5. Changes in Shareholding and Unit Holding.....	<u>57</u>
6. Freehold Transfer Fee.....	<u>68</u>
7. Penalties for offences against the Law.....	<u>68</u>
Schedule 1 — Fees (other than Freehold Transfer Fees).....	<u>79</u>
Schedule 2 — Freehold Transactions and Freehold Transfer Fees.....	<u>810</u>
1. Purpose of this Schedule.....	<u>810</u>
2. Freehold Transfer Fees.....	<u>810</u>
3. Consideration as basis of Freehold Transfer Fee.....	<u>810</u>
4. Calculating the Freehold Transfer Fee.....	<u>911</u>
5. Duty to Register Freehold Transaction, and to pay Freehold Transfer Fee.....	<u>911</u>
6. Proceedings to recover Freehold Transfer Fee.....	<u>1012</u>
7. Cancelled Freehold Transactions.....	<u>1013</u>
8. Power to inspect, etc.....	<u>1013</u>
9. Delegation.....	<u>1013</u>
10. Developers pre-registration records.....	<u>1014</u>

REAL PROPERTY REGULATIONS

The Dubai International Financial Centre Authority, in exercise of its powers under Article 173 of the Real Property Law, being DIFC Law No. 4 of 2007 issued by the Ruler, and of all other enabling powers, makes the following Regulations:

1. Introduction

1.1 These Regulations are the Real Property Regulations.

1.2 Application and interpretation

1.2.1 A reference in these Regulations to a law is a reference to that law as amended from time to time.

1.2.2 A reference in these Regulations to a Schedule is a reference to a Schedule in these Regulations, unless the contrary intention appears.

1.2.3 In these Regulations ~~and the Schedules~~, unless the contrary intention appears:

- (a) ~~“the Law”~~ means the ~~DIFC~~ Real Property Law (DIFC Law No. 4 of 2007);
- (b) ~~“Registrar’s Directives”~~ means the Directives made by the Registrar of Real Property under Article ~~174~~ 170 of the Law;
- (c) terms defined in the Law have the same meaning in these Regulations and Schedules as they have in the Law;
- (d) a reference to these Regulations includes a reference to the Schedules in these Regulation; and
- ~~(d)(e)~~ the Rules of Interpretation contained in the Schedule to 1 of the Law apply to the interpretation of these Regulations and Schedules.

1.3 In these Regulations ~~and the Schedules~~:

~~“freehold transaction”~~ “Freehold Transaction” means any act or transaction by which a legal, equitable, beneficial and/or ~~registered interest in the freehold in real property within the jurisdiction of the DIFC~~ Real Property Interest is claimed or enjoyed, sold, transferred, or disposed of, as of the close of business in the DIFC on 21/06/2007, and thereafter whether

1.3.1 directly; or

1.3.2 indirectly, such as (but not limited to) by means of a ~~transfer~~ Transfer (including a Change in Control), assignment, allotment or dealing by which a person acquires one or more ~~shares~~ Shares in a body corporate, (or one or more ~~units~~ Units in a ~~unit trust~~ Unit Trust), which owns a legal or beneficial interest in the ~~freehold interest~~ Real Property.

1.4 For the purposes of ~~clause~~ Regulation 1.3.2:

~~1.4.1~~ “shares” includes a right to shares;

~~1.4.2~~ “transfer” includes an assignment and an exchange;

~~1.4.1~~ “unit”, in a unit trust “Shares” means shares in any incorporated or unincorporated body corporate (including a company, partnership and unincorporated association) which includes a right of ownership with respect to such Shares notwithstanding the legal ownership in such Shares is held by another Person;

~~1.4.3~~1.4.2 a “Unit”, in a Unit Trust, means a right or interest (whether described as a unit, sub-unit, or otherwise) of a beneficiary under the ~~trust~~Unit Trust, and includes a right of ownership with respect to any such right or interest notwithstanding the legal ownership in such Unit is held by another Person;

~~1.4.4~~1.4.3 “unit trustUnit Trust” means ~~an~~a scheme of arrangement that has the purpose or effect of allowing persons to participate, as beneficiaries under a trust, in any profits, income or distribution of assets arising from the acquisition, holding, management or disposal of any property under ~~the~~such trust.

~~1.5~~ ~~To remove~~ For the avoidance of doubt, a ~~freehold transaction~~Freehold Transaction includes a transaction by which a ~~person~~Person acquires ~~for value~~a legal ~~or~~, equitable and/or beneficial interest (~~whether that interest is a freehold or leasehold interest~~) under a ~~unit sale and purchase agreement~~Sale and Purchase Agreement or otherwise, but does not include ~~any other lease transaction~~a Lease or a ~~transaction by way of mortgage~~Mortgage nor does it include any of the following transactions where there is no change in beneficial ownership;

~~1.5.1~~ the Transfer into the name of a company where the party or parties transferring the ~~interest~~Real Property are the sole shareholder(s) of the company and, in the case where there is more than one party, the shareholding in the transferee company is held in the same proportions as the prior ownership of the Real Property by the parties;

~~1.5.2~~ the Transfer from a company to a party or parties where the ~~beneficiary~~transferee is the shareholder(s) of the company, and, in the case where there is more than one shareholder, the ownership of the Real Property by the parties is held in the same proportions as the prior shareholding in the transferor company;

~~1.5.3~~ Buyingthe buying and selling of shares of a publicly listed company through a regulated stock marketsmarket;

~~1.5.4~~ a Transfer of the Real Property as part of an Islamic financing ~~schemes~~scheme; and

~~1.5.5~~ A person who inherits the estate of another by law or by the terms of a will recognised by law.

~~1.6~~ In these Regulations:

~~1.6.1~~ “Freehold Transfer Fee” means the fee payable by the Transferee in respect of a Freehold Transaction in accordance with Schedule 2.

~~1.6.2~~ “Freehold Transaction Payment Date” means the date that the Freehold Transfer Fee is payable under these Regulations being:

(a) in respect of an Off Plan Sale, within thirty (30) days from the entering into of the Off Plan Sales Agreement;

(b) in respect of a Transfer of Shares, within thirty (30) days from the registration of the Transfer with the relevant regulatory registration body that regulates the body corporate;

(c) in respect of a Transfer of Units, within thirty (30) days from the Transfer of the Units; and

(d) in respect of any other Transfer, upon Registration of the Transfer Instrument.

1.6.3 “Unregistered Freehold Transfer Penalty” means the penalty payable by a Transferee for failing to pay the Freehold Transfer Fee on the Freehold Transaction Payment Date as specified in Schedule 1.

1.6.4 “Transferee” means a Person that receives a legal, equitable, beneficial and/or a Real Property Interest under a Freehold Transaction including a Purchaser.

2. Commencement

These Regulations commence on the date of their issuance.

3. Amending or deleting Registrar's Directives

3.1 The Registrar may from time to time amend, add to, or delete any ~~of the Registrar's Directives~~ Directive.

3.2 If the Registrar acts under ~~paragraph~~ Regulation 3.1, the Registrar must:

3.2.1 maintain a current version of the ~~Directives in their current form from time to time~~ Directive; and

3.2.2 make a copy of the current ~~form~~ version of the Directive available to any ~~person~~ Person who requests a copy, on payment of the fee the Registrar considers appropriate.

4. Fees payable to the Registrar, other than ~~freehold transfer fees~~ Freehold Transfer Fees

4.1 The fees specified opposite the matters listed in Schedule 1 are payable to the Registrar by the applicant in respect of those matters.

4.2 A fee is payable before the provision of the service to which the fee relates, unless the Registrar agrees otherwise.

4.3 ~~The Board of Directors of the~~ The DIFC Authority may from time to time vary the fees in Schedule 1, and may add other fees for matters not listed in that Schedule as it considers necessary or appropriate.

5. ~~Freehold transaction return~~

~~A freehold transaction return must be lodged in the circumstances set out in Schedule 2.~~

7. ~~Freehold transfer fee~~

5. ~~A freehold transfer fee~~ Changes in Shareholding and Unit Holding

The Transferee of any Shares in a body corporate or Units in a Unit Trust must notify the Registrar of such change in shareholding or unit holding and pay to the Registrar the Freehold Transfer Fee in respect of such change in shareholding or unit holding by the Freehold Transfer Payment Date.

6. Freehold Transfer Fee

A Freehold Transfer Fee is payable by the Transferee in the circumstances set out in Schedule 2.

8.7. Penalties for offences against the Law

7.1 ~~The~~ Except with respect to an offence under Regulation 6.2, the penalty for an offence against the Law is US\$ 1,000.

7.2 In the event a Transferee fails to Register a Freehold Transaction on the Freehold Transfer Payment Date, in addition to paying the Freehold Transfer Fee with respect to such Freehold Transaction, the Transferee and Registered Owner shall be jointly and severally liable to pay the Freehold Transfer Fee and the Unregistered Freehold Transfer Penalty.

REAL PROPERTY REGULATIONS

SCHEDULE 1 — FEES
(OTHER THAN ~~FREEHOLD TRANSFER FEES~~ FREEHOLD TRANSFER FEES)

Activity	Amount (\$US)
Lodgement of form or instrument Instrument for registration or recording <u>Registration</u>	100
Request to alter Register	100
Lodgement of caveat caveat <u>Caveat</u>	100
Request for search of Register <u>Official Search Certificate</u>	100
Request for official search copy of Register <u>Instrument</u>	200
Lodgement of primary application to bring land under the Law	500
Request for issuing of each title deed on an initial application for individual strata titles US\$100 per title deed sought <u>Lots in a Strata Development</u>	100 <u>per Lot</u>
Application for replacement title deed <u>Folio certificate</u>	273
Application for lapsing of a caveat <u>Caveat</u>	545
Application for cancellation of a caveat by the registrar	273
Application for Transfer under Regulation 1.5.1, 1.5.2, 1.5.3 or , 1.5.4, or 1.5.5	273
Application for registration of a conventional Mortgage	<u>100</u>
Application for registration of a Mortgage involving Islamic financing provisions	<u>200</u>
Lodgement of Lease with a term exceeding 6 months and less than 5 years	<u>100</u>
Lodgement of Lease with a term of 5 years or more and less than 10 years	<u>200</u>
Lodgement of Lease with a term of 10 years or more	<u>300</u>
Unregistered Freehold Transfer Penalty	<u>5% of consideration or market value at time of registration (whichever higher)</u>

**SCHEDULE 2 — ~~FREEHOLD TRANSACTION RETURNS~~FREEHOLD TRANSACTIONS
AND ~~FREEHOLD TRANSFER FEES~~FREEHOLD TRANSFER FEES**

1. Purpose of this Schedule

1.1 The purpose of this Schedule is to impose an obligation to ~~to lodge on the Transferee to Register~~ a ~~freehold transaction return~~Freehold Transaction and to pay a ~~freehold transfer fee~~Freehold Transfer Fee in relation to ~~freehold transactions in real property within the jurisdiction of the DIFC~~such Freehold Transaction.

1.2 The purpose of the ~~freehold transfer fee~~Freehold Transfer Fee is to help defray the cost of guaranteeing title to ~~real property within the jurisdiction of the DIFC~~Real Property.

2. Freehold ~~transfer fees~~Transfer Fees

2.1 Subject to this Schedule 2, a ~~freehold transfer fee~~Freehold Transfer Fee is payable in relation to each ~~freehold transaction~~Freehold Transaction.

2.2 A ~~freehold transfer fee~~Freehold Transfer Fee is payable in relation to a ~~freehold transaction~~Freehold Transaction regardless of whether the transaction is in writing, or is effected by the conduct or act of the parties, by order of court or other authority, under statutory authority, by operation ~~or~~of law, or otherwise.

~~**2.3** If a freehold transfer fee is paid in relation to a freehold transaction (“the earlier transaction”), then no additional freehold transfer fee is payable in relation to a later transaction that merely completes the earlier transaction.~~

~~———— *Example:* Assume that a contract for sale of real property is entered into. A freehold transfer fee is payable in relation to the contract, because the buyer acquires an equitable or beneficial freehold interest. However, no additional freehold transfer fee is payable in relation to the formal transfer of title on completion of that contract.~~

~~5.3.~~ 3.3. Consideration as basis of ~~freehold transfer fee~~Freehold Transfer Fee

3.1 The ~~freehold transfer fee~~Freehold Transfer Fee on the direct Transfer of a Real Property Interest is based on the amount of the consideration paid or payable for the ~~interest, or an amount that is 15% below~~ Real Property Interest, or the market value of the interestReal Property Interest, whichever is the greater.

3.2 The Freehold Transfer Fee on the indirect Transfer of a Real Property Interest by way the transfer of Shares or Units is based on the amount of the consideration paid or payable for the Shares or Units, or the market value of the proportional share of the Real Property Interest to which the Shares or Units relate, whichever is the greater.

~~3.23.3~~ 3.23.3 Where the amount of the consideration is contingent on the occurrence of an event that may or may not occur, the amount of the consideration is to be calculated as if the contingency were satisfied.

~~3.33.4~~ Where the amount of the consideration cannot be ascertained, it is to be determined on a reasonable estimate of the market value of the ~~interest~~ Real Property Interest by the DIFC Authority.

6.4. ~~Calculating the freehold transfer fee~~ Freehold Transfer Fee

The ~~freehold transfer fee~~ Freehold Transfer Fee is calculated at the rate of 5% of the amount of the consideration referred to in ~~clause 3.1~~ Regulation 3.13.1 or 3.23.2.

7.5. ~~Duty to lodge freehold transaction return and caveat~~ Register Freehold Transaction, and to pay freehold transfer fee Freehold Transfer Fee

~~5.1~~ The ~~purchaser~~ Transferee under a ~~freehold transaction~~ Freehold Transaction ~~must lodge a freehold transaction return and a caveat with the Authority within 30 days of the effective date of the freehold transaction provided however that where the Freehold Transaction is an Option to Purchase the requirements of these regulations regarding dates applicable for lodgment of a~~ must Register the Freehold Transaction Return and payment of on the Freehold Transaction Payment Date.

~~5.2~~ When Registering the Freehold Transaction the Transferee must state in the Transfer Fees Instrument:

~~5.7~~ — the date of the Exercise of the Option is deemed to be the applicable date.

~~5.7~~ — Subject to clause 7, the purchaser under a freehold transaction must lodge a freehold transaction return and a caveat with the Authority within 30 days of the effective date of the freehold transaction.

~~5.7~~ — The freehold transaction return must:

~~5.3.45.3.1~~ include an Transferee's assessment (a "self-assessment") of the ~~freehold transfer fee~~ Freehold Transfer Fee that, on the basis of the information contained in the ~~return~~ Transfer Instrument, is payable in respect of the ~~transaction~~ Freehold Transaction; and

~~5.3.55.3.2~~ be accompanied by payment of the amount Freehold Transfer Fee so assessed.

~~5.15.3~~ The ~~purchaser~~ Transferee is the party to the ~~freehold transaction~~ Freehold Transaction who is liable to pay the ~~freehold transfer fee~~ Freehold Transfer Fee.

~~5.25.4~~ If the ~~fee~~ Freehold Transfer Fee is not paid ~~within 30 days after the effective date of the freehold transaction~~ on the Freehold Transaction Payment Date, interest is payable at the rate of 5 per cent per annum until the fee is actually paid.

~~5.35.5~~ If the DIFC Authority considers that the amount of the self-assessment is less than the amount that is properly payable under this Schedule 2, the DIFC Authority may determine the additional amount that it considers payable, and the ~~purchaser~~ Transferee must pay that additional amount within thirty (30) days after the DIFC Authority notifies the ~~purchaser~~ Transferee of the additional amount.

~~5.45.6~~ The ~~purchaser~~ Transferee may appeal to the Court against the additional amount notified under ~~clause 5.5~~ Regulation 5.55.5, but cannot refuse to pay the amount on the ground that an appeal has been lodged.

~~5.55.7~~ On the appeal, the Court may make ~~the~~any order it considers appropriate.

8.6. ~~Proceedings to recover freehold transfer fee~~Freehold Transfer Fee

6.1 The DIFC Authority may bring proceedings in the Court to recover from a ~~purchaser~~Transferee and/or the Registered Owner the whole or part of the ~~freehold transfer fee~~ and Freehold Transfer Fee, the Unregistered Freehold Transfer Penalty, any interest—payable under Regulation 5.45.4 and any other moneys due and payable by the Transferee under these Regulations.

6.2 The Registrar may Register a Caveat against the Folio of the Real Property Interest to record its interest within respect to any unpaid Freehold Transfer Fees, unpaid Unregistered Freehold Transfer Penalties, interest payable under Regulation 5.45.4 and any other moneys due and payable by the Transferee and Registered Owner.

9.7. ~~Cancelled freehold transactions~~Freehold Transactions

No ~~freehold transfer fee~~Freehold Transfer Fee is refundable under any circumstance.

10.8. Power to inspect, etc

8.1 The DIFC Authority may authorise a person to inspect, make copies of, or take possession of, any property, records or files for the purpose of ascertaining:

8.1.1 whether a ~~freehold transaction~~Freehold Transaction has occurred;

8.1.2 the market value of the ~~interest~~Real Property Interest in respect of which a ~~freehold transfer fee~~Freehold Transfer Fee is payable; and

8.1.3 any other matter that the DIFC Authority considers relevant to the payment of a ~~freehold transfer fee~~Freehold Transfer Fee.

8.2 Any person having custody or possession of the ~~property~~Real Property, records or files must permit the person so authorised to inspect them, copy them or take possession of them.

8.3 Failure to comply with an obligation under ~~clause~~Regulation 8.2 is punishable in the same way as an offence against the Law.

11.9. Delegation

The DIFC Authority may delegate to the Registrar any or all of its functions under this Schedule.

12.10. Developers pre-registration records

10.1 A ~~developer~~Developer who maintains a register of ~~purchasers, sub-purchasers or assignees of purchasers~~Purchasers (and each subsequent Purchaser) is entitled to charge each ~~purchaser, sub-purchaser or assignee~~Purchaser (and each subsequent Purchaser) an administration fee to cover the

~~developer's~~Developer's reasonable costs of maintaining the register, not exceeding in any one case 5,000 dirhams.

10.2 A ~~developer~~Developer must make the register available for inspection by:

10.2.1 any former, current or prospective ~~purchaser~~Purchaser, sub-purchaser or assignee; and

10.2.2 the DIFC Authority.