Trust me, I'm a real estate developer

It is widely accepted amongst real estate professionals that the Middle Eastern property markets are less than transparent and have typically been administered under contract law as opposed to any real estate specific legislation. That is, until now.

During 2014 both the Bahraini and Qatari Governments confirmed their intentions to enact real estate development laws intended to regulate market practice, thereby strengthening their respective markets and more importantly, promoting investor confidence.

In Bahrain, Law 28 of 2014 was enacted with effect from 7 August 2014 and requires developers to comply with the provisions of the Law by 7 February 2015. Meanwhile Qatar's Real Estate Development Law was published in the Official Gazette on 7 April 2014 and came into effect on 7 October that same year.

Both pieces of legislation bear similarities and differences that are reviewed in further detail below.

Application

Law 28 applies to real estate development and the sale of units which, in theory if not in practice, requires anyone building a single unit for subsequent disposal to be registered and comply with the Law. Conversely in Qatar, Law 6 of 2014 specifically defines real estate development as "the construction of multi-storey buildings or complexes for residential or commercial purposes for the off-plan sale of units" and affects not only developers but contractors and vendors.

Licensing developers

Both countries require the developer to obtain a license before commencing works, although both have different requirements that need to be fulfilled to secure licensing. For example, in Bahrain the developer must demonstrate a right to develop the land and deposit 20 percent of the estimated project value with an escrow agent. There are no such requirements in Qatar, however, the Qatar legislation permits companies incorporated outside of Qatar to obtain development licenses albeit their activities are limited to the 18 Investment Zones, where non-Qatari nationals are able to own real estate.

Strata title

The Bahrain legislation makes no reference to the establishment of strata title whereas in Qatar the developer is required to request consent from the Ministry of Economy and Commerce to create strata title for their project before units can be sold off-plan, including the submission of architectural and engineering drawings with the collaboration of the Ministry of the Municipality and Urban Planning, which is more akin to the licensing requirements in Bahrain referred to above. There are also other requirements that need to be met in Qatar including the establishment of an escrow account, the submission of construction milestones, cash flow forecasts and the approval by the Real Estate Department of the Ministry of Justice of any promotional or sales collateral.

Registration

In Bahrain a real estate register is to be created to record the identity of developers and their projects and registration is a pre-requisite to being able to commence construction. Under the new regulations sub-developers and purchasers will be able to register their interests against the main developer/owner's title with the Survey and Land Registration Bureau. In Qatar the Real Estate Department of the Ministry of Justice is to be responsible for maintaining an interim register, recording details of strata title and issuing preliminary title deeds, which will be converted to final deeds on completion of the development, for each off-plan unit, providing details of the transaction including interested parties such as mortgagees.

In both Qatar and Bahrain the funds are to be held on behalf of the depositors and are protected from any other creditors, although it is not clear whether there is any hierarchy or ranking where monies are to be returned to depositors

Escrow

In both jurisdictions the developer is required to set up a separate escrow account for each project and pay in all monies including off-plan deposits, stage payments and financing and the monies are only to be expended on costs relating to the specific project. As mentioned above, in Bahrain, the developer is required to seed the escrow account with 20 percent of the total value of the project; there is no such requirement in Qatar.

Whereas monies held within the escrow account cannot be accessed in Qatar until 20 percent of the structure has been completed and thereafter the release of further sums is directly linked to construction milestones, conversely in Bahrain while it is envisaged that the intention was to link fund releases to the progress of the construction this is not referred to explicitly and as such, the intention remains unknown.

In both countries the funds are to be held on behalf of the depositors and are protected from any other creditors, although it is not clear whether there is any hierarchy or ranking where monies are to be returned to depositors.

On completion of the development, Bahraini developers are required to retain 5 percent of the total value of the project in the escrow account for a period of one year, whereas in Qatar the requirement is 10 percent but the period is unspecified, which merely makes reference to the retained sums being used to rectify defects.

Development delays and breaches

Following the issuance of a Developer's License, parties in both countries are required to commence development within six months, failing which in Bahrain the license may be revoked, whereas in Qatar failure carries a fine of QR200,000 (c.US$55,000.)

In terms of the delivery of units, in Bahrain if the handover of a unit is delayed more than 30 days past the agreed delivery date, the purchaser can give the developer 90 days' notice to handover, failing which they can ask the Ministerial Committee to terminate the sales agreement and pay damages if there are sufficient grounds. The penalty in Qatar is somewhat harsher and the failure to deliver units on an agreed date without reasonable justification or where they do not meet the agreed technical specifications, can lead to a maximum 12-month jail term and/or a QR50,000 fine (c. US$13,700.)

Failure of purchasers is not dealt with in the Qatari Law and as such it is assumed that unless they are able to negotiate a release from the Sale and Purchase Agreement (SPA) by the developer, then they will simply lose their deposit and any stage payments they have made. Where the unit is mortgaged, the beneficial interest remains with the Lender who would no doubt pursue the borrower along the normal channels. Bahraini legislation provides that, in the event of failure by the purchaser to complete, the developer can give 90 days' notice requiring completion following which they can request the Committee to invalidate the sale and they are then able to offer the unit for resale. At this juncture the developer can retain up to 10 percent of the purchase price returning the balance, if any, to the purchaser.

Conclusion

Both Governments have identified the need to introduce legislation that offers much greater protection to end users than the basic contract law contained within the SPAs. It is hoped this will bolster confidence in the off-plan sales markets in the future. Notwithstanding the foregoing, while significant inroads have been made into the drafting of the legislation there remain major gaps and areas which need to be covered, as such, the laws as currently drafted should perhaps be considered as first drafts which can be improved upon over time.

Well thought out and relevant legal infrastructure relative to a particular industry is essential in order to create confidence and the requisite level of activity. In many ways this is even more important in the case of the real estate industry, as this will often touch individuals and affect the daily lives and wellbeing of many people.

The Middle East real estate markets continue to evolve both physically as well as from a legal perspective and it is encouraging that certain countries are proactively moving towards the creation of robust legal systems, specifically Bahrain and Qatar.

	Bahrain	Qatar
Registration of developers		
Developer to be registered	Yes	Yes
Available to non-national developers	No	Yes
Strata Title		
Creation of strata title required	No	Yes
Real estate register		
Developments to be registered	Yes	Yes
Escrow account		
Escrow account required	Yes	Yes
20% estimated project value to be deposited in Escrow	Yes	No
Retention on project completion	5%	10%
Retention period	1 year	Unspecified
Breaches and delays		
Developer required to start within 6 months of license	Yes	Yes
Revocation of license in default	Yes	No
Fine	No	QR200k
Handover of units		
Delay more than 30 days - 90 days to complete and fine	Yes	No
Past agreed date or does not meet technical specification	No	QR50k and 1 year jail term

Whilst it is inevitable that all eventualities will not be covered in the initial legislation, over time it is expected that subsequent changes and additions will be implemented as appropriate.

Fundamentally the confidence of developers, buyers, investors and other stakeholders can lead to the development of a truly international investor audience which, like many other developed countries will attract associated taxes, that in turn will further benefit the country in question.

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