



## **CONSULTATION PAPER NO. 3**

July 2024

**REAL PROPERTY LAW  
DIFC LAW NO. 10 OF 2018 AND REAL  
PROPERTY REGULATIONS**

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PROPOSED AMENDMENTS TO THE REAL PROPERTY LAW NO.10 OF 2018  
AND THE REAL PROPERTY REGULATIONS

Why is DIFCA issuing this paper?

1. The Dubai International Financial Centre Authority (“**DIFCA**”) proposes to enact an amendment to the Real Property Law No. 10 of 2018 (“**Real Property Law**”) and the Real Property Regulations (“**Real Property Regulations**”). This Consultation Paper No. 3 of 2024 (“**Consultation Paper**”) seeks public comments on the proposed amendments to the Real Property Law made through a DIFC Law Amendment Law (“**Amendment Law**”) and the Real Property Regulations (“**Amendment Regulations**”).

Who should read this paper?

2. This Consultation Paper would be of interest to persons purchasing or intending to purchase Off Plan Lots within the DIFC, persons purchasing a property with a Mortgage, parties entering into Leases and their respective legal advisers within the DIFC.
3. 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 C.

How to provide comments

4. 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](mailto:consultation@difc.ae)**

5. You may choose to identify the organisation you represent in your comments.
6. 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?

7. The deadline for providing comments on the proposals in this Consultation Paper is 2 August 2024.

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8. Once DIFCA receives your comments, DIFCA will consider if any further amendments are required to the Amendment Law and the Amendment Regulations annexed to this Consultation Paper at Annexes A and B, respectively. Once DIFCA considers the Amendment Law and the Amendment Regulations to be in a suitable form, they will be enacted as amendments to the Real Property Law and the Real Property Regulations to come into force on a date specified and published.
9. The Amendment Law and the Amendment Regulations are in draft form only. You should not act on them until the Amendment Law and the Amendment Regulations are formally enacted. DIFCA will issue a notice on its website when this happens.

### **Defined terms**

10. Terms identified throughout this paper by the capitalisation of the initial letter of a word not specifically defined in the Consultation Paper are to be interpreted as having the definition provided in the Amendment Law and Amendment Regulations. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

### **Key changes proposed**

11. The key aspects of the proposed changes in the Amendment Law and Amendment Regulations include:
  - (a) increasing the period to Register an Off Plan Sale in the Off Plan Register from 30 days to 60 days;
  - (b) clarifying the timeline of when an Off Plan Sales Agreement can be terminated by a Prospective Owner should a Developer fail to provide a Disclosure Statement after the parties have entered into an Off Plan Sales Agreement;
  - (c) introducing a Mortgage Registration Fee in the DIFC based on the Mortgage amount, in line with the fee that is applied onshore in Dubai and charging a standard lodgement fee of \$100 for all Mortgage Instruments being Registered;
  - (d) increasing the period to Register a Lease with the RORP from 20 days to 30 days;
  - (e) removing the requirement for parties to Instruments to have an address for service of notices in the UAE, stating that a person's address as shown in any Instrument in which that person first lodges for Registration is treated as the person's address for service by the RORP and adding email as a valid mode of service of notices; and

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- (f) amending the definition of Prescribed Fee to mean the lodging fee for an Instrument.

### Off Plan Sales

12. Article 156(4) of the Real Property Law requires a Developer to lodge for Registration each Off Plan Sale in the Off Plan Register no later than 30 days after the entering into of an Off Plan Sales Agreement with the Prospective Owner. An Off Plan Sales Agreement is defined in the Real Property Law as follows:
- “any form of binding agreement between a Developer and a Prospective Owner for the sale and purchase of an Off Plan Lot including but not limited to a sale and purchase agreement, a reservation agreement and an expression of interest where the Prospective Owner forfeits any amount of deposit exceeding AED5,000 should the Prospective Owner not proceed with the transaction”.*
13. The above means that any type of reservation form or similar (which is often used at the launch of Off Plan Sales to secure interest in a Lot) where a sum of AED 5,000 or more is received by a Developer is caught within the definition of an Off Plan Sales Agreement. The 30 day period for Registration therefore runs from the effective date of such form or agreement. In practice it may take longer than 30 days for a Prospective Owner to sign the final Sale and Purchase Agreement, once received from the Developer. DIFCA therefore proposes that the time period for registration of an Off Plan Sale should be extended to 60 days to cater for this.
14. Separately, Article 160(1) of the Real Property Law requires that a Developer provides a Prospective Owner with a Disclosure Statement prior to the parties entering into an Off Plan Sales Agreement. The Disclosure Statement will generally outline details of the Off Plan Development including community amenities, service charge details and finishes of Lots etc. Article 160(6) of the Real Property Law permits a Prospective Owner to terminate an Off Plan Sales Agreement at any time prior to the date of handover of the Lot being purchased, if a Developer has failed to provide a Disclosure Statement. DIFCA is of the view that the period within which this right of termination can be actioned is currently too long, potentially giving rise to a scenario where a Prospective Owner may terminate the agreement at the last minute for reasons unrelated to the receipt of a Disclosure Statement. Whilst DIFCA notes the importance of the provision of the Disclosure Statement, it also recognises the need to strike the correct balance between the rights of Prospective Owners and Developers and the need to avoid unequitable results created by an arbitrary termination of an Off Plan Sales Agreement.
15. In the event a Developer does provide a Prospective Owner with a Disclosure Statement after the parties have entered into an Off Plan Sales Agreement, a Prospective Owner has a period

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of 60 days to review the same from the date of receipt. During this period of 60 days and for a further 20 days following this period, a Prospective Owner may elect to terminate an Off Plan Sales Agreement if it decides that the Disclosure Statement does not accurately reflect the Off Plan Development. Article 160(6) has been clarified to make it clear that such termination is only effective if exercised “*within twenty (20) days of the expiry of the sixty (60) day review period*”.

- Q1. Do you agree that the period to Register the Off Plan Sale in the Off Plan Register should be increased to 60 days? If not, please provide details.**
- Q2. Do you agree that Article 160(6) of the Real Property Law requires the amendments proposed by DIFCA? If not, please provide details.**
- Q3. Do you have any further comments in this regard that you would like to be taken into consideration?**

### Mortgage Registration Fee

16. Pursuant to onshore Dubai laws, a fee of 0.25% of the mortgage amount is levied by the Dubai Land Department to register a mortgage. Currently in the DIFC, the fee to lodge the Instrument for the Registration of a Mortgage with the RORP is \$100 for a non-Islamic Mortgage and \$273 for an Islamic Mortgage. Transactions with Mortgages require a substantial review of documentation by the RORP. DIFCA therefore proposes to introduce a Mortgage Registration Fee to the Amendment Regulations to mirror onshore practice i.e. 0.25% of the mortgage amount. In addition it is proposed that the lodgement fee for both Islamic and non-Islamic Mortgage Instruments is charged at a flat rate of \$100. DIFCA does not propose adding a period within which a Mortgage must be registered as it is in the interest of the Mortgagee to Register the Mortgage with the RORP if it wishes to protect its interest on the Register.

- Q4. Do you agree that the fee for Registering a Mortgage with RORP should be 0.25% of the Mortgage amount? If not, please provide details.**
- Q5. Do you agree that the lodgement fee for an Islamic Mortgage should be changed to \$100? If not, please provide details.**
- Q6. Do you have any further comments in this regard that you would like to be taken into consideration?**

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### Amending the period to register a Lease

17. DIFCA proposes to increase the period to Register a Lease in Articles 49(1) and 49(3) of the Real Property Law from 20 days to 30 days to ensure that Lessors have sufficient time to Register the Lease and pay the Lease Registration fee. Article 49(1) of the Real Property Law requires a Lessor to lodge for Registration a Lease registrable under Article 48(3) of the Real Property Law, within 20 days of the date on which the Lease was entered into by the Lessor and the Lessee. The RORP has received feedback from Lessors and Lessees that 20 days is often too short a timeline to Register a Lease especially in the case of Registered Owners that are overseas. DIFCA therefore proposes an amendment to the Lease Registration period in Articles 49(1) and 49(3) of the Real Property Law, extending the 20 day period to 30 days.

**Q7. Do you agree that the period to Register a Lease should be increased to 30 days? If not, please provide details.**

### Addresses for service of notices

18. Article 127(1) of the Real Property Law requires that an Instrument lodged with the RORP specifies an address in the UAE for the service or delivery of notices for the parties to the Instrument. Article 169(3) of the Real Property Law sets out the modes of service currently permissible under the Real Property Law. DIFCA is of the view that it is not necessary for parties to Instruments to provide a UAE address for service, given the number of foreign purchasers in the DIFC and proposes to remove the requirement for parties to Instruments to have an address for service of notices in the UAE.
19. DIFCA further proposes that Article 169(2) of the Real Property Law should be deleted and Article 127(1) of the Real Property Law should be expanded to include that an address for service on the first Instrument Registered by a person is the valid address for service of notices until an application is made to amend the Register. This ensures that parties to Instruments are aware that the insertion of a different address in a second or subsequent Instrument does not constitute a change in the valid address for service Registered with the RORP.
20. In addition, DIFCA further proposes adding email as a valid method of the service of notices to the already existing modes of service in Article 169 of the Real Property Law.

**Q8. Do you have comments with regards to these proposed amendments? If not, please provide details.**

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### Amending the definition of Prescribed Fee

21. As currently drafted the definition of Prescribed Fee includes any fee payable under the Real Property Law which by default includes the lodging fees for Instruments and more substantial charges such as the Freehold Transfer Fee. The Real Property Regulations attempt to segregate the fee for lodging Instruments from the Freehold Transfer Fee in the titles to Regulation 4 and Appendix 1. DIFCA is of the opinion that the definition of Prescribed Fee was always supposed to mean the lodging fee for an Instrument with the RORP and that the current definition creates some anomalies in the Real Property Law. DIFCA therefore proposes an amendment to the definition of Prescribed Fee in the Real Property Law to mean only the lodging fee for an Instrument and further proposes amendments in the Amendment Law and the Amendment Regulations to align with the amended definition of Prescribed Fee. These minor amendments can be seen in several clauses in the Real Property Law and Real Property Regulations and we feel are self-explanatory.

**Q9. Do you have comments with regards to these proposed amendments? If not, please provide details.**

### Legislative Proposal

22. This legislative proposal contains the following:
- (a) the Amendment Law (at Annex A);
  - (b) the Proposed Regulations (at Annex B);
  - (c) a table of comments to provide your views and comments on the consultation paper (at Annex C).