

## **OFF-PLAN DEVELOPMENT REGULATIONS (PROJECT ACCOUNT) RULES 2024**

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## **OFF-PLAN DEVELOPMENT REGULATIONS (PROJECT ACCOUNT) RULES 2024**

Rules to govern the establishment and management of project accounts in respect of off-plan projects, and to make provisions for matters relating thereto.

Date of publication: 12 2024

The Board of Directors of the Abu Dhabi Global Market, in exercise of its powers under section 17(2) of the Off-Plan Development Regulations 2024, hereby enacts the following Rules:

### **PART 1 – OFF-PLAN SALES AND PHASED DEVELOPMENT**

#### **1. Requirement to establish Project Accounts**

- (1) A Developer shall be required to establish a Project Account for each Off-Plan Project prior to undertaking Off-Plan Sales.
- (2) If the Off-Plan Project shall be developed and delivered in phases, the Registrar shall have the discretion to require the Developer to open a separate Project Account for each phase of the Off-Plan Project.
- (3) The Project Account may only be established with an Account Bank registered on the Register of Account Banks in accordance with these Rules.

### **PART 2 – REGISTER OF ACCOUNT BANKS**

#### **2. Register of Account Banks**

The Registrar shall maintain a Register of Account Banks in accordance with these Rules.

#### **3. Contents of the Register of Account Banks**

The Register of Account Banks shall be in such form as the Registrar may determine appropriate, including in electronic form and shall contain, in respect of each Account Bank:

- (a) the Account Bank's name, legal form, registered number, Banking License number, address and website address;
- (b) the address to which notices in respect of the Account Bank may be served in the UAE;
- (c) the Account Bank's contact information;
- (d) details of any security bond that the Account Bank has in place or is required by the Registrar; and
- (e) details of the Account Bank's prior experience acting as an escrow agent for off-plan projects in the UAE.

#### **4. Maintenance, publication and inspection of the Register of Account Banks**

- (1) The Registrar shall publish a list of the Account Banks that are registered on the Register of Account Banks, including details of any Project Accounts which such Account Banks hold for any Off-Plan Projects and such other information as the Registrar may deem necessary for the purposes of transparency and in line with best practice.

- (2) The Registrar shall promptly update the Register of Account Banks to reflect:
  - (a) any change in the information set out in section 3 as notified by the Account Bank to the Registrar;
  - (b) any suspension or cancellation of the registration of an Account Bank under these Rules; and
  - (c) such other matters as the Registrar may determine to be appropriate for entry on the Register of Account Banks.
- (3) An Account Bank registered on the Register of Account Banks shall:
  - (a) co-operate with the Registrar for the purpose of ensuring that the Registrar receives and holds the information required by these Rules in respect of Account Banks;
  - (b) send to the Registrar (in the form prescribed by the Registrar from time to time) for entry on the Register of Account Banks any changes to the information referred to in section 4(2); and
  - (c) take reasonable care to ensure that the information provided by the Account Bank to the Registrar under these Rules is accurate and correct and that, in the case of information required to be provided by the Account Bank in this section 4, such information is sent to the Registrar as soon as reasonably practicable after the Account Bank becomes aware of the relevant change.

### **PART 3 – ACCOUNT BANK**

#### **5. Account Bank registration criteria**

- (1) An Account Bank must be able to demonstrate to the Registrar's satisfaction that the Account Bank satisfies the minimum registration criteria determined by the Registrar which shall include but not be limited to:
  - (a) the Account Bank holding a valid Banking License;
  - (b) the Account Bank having experience acting as an escrow agent for off-plan projects in the UAE;
  - (c) the Account Bank having the necessary resources and expertise required to act as an Account Bank in respect of Off-Plan Projects;
  - (d) the employees of the Account Bank entrusted with the management of Project Accounts being familiar with and understanding the requirements and obligations relating to the management of Project Accounts stipulated by these Rules and all other applicable regulations, rules and codes of conduct, issued from time to time and applicable in the Abu Dhabi Global Market in respect of Project Accounts; and
  - (e) the Account Bank having complied with any other requirement specified by the Registrar from time to time.
- (2) The Registrar shall be entitled to waive any of the registration criteria where it feels it is appropriate to do so and such waiver will not unduly negatively impact the governance of Project Accounts in the Abu Dhabi Global Market.

#### **6. Application for registration**

- (1) In order to be registered on the Register of Account Banks, an Account Bank shall:

- (a) submit an application to the Registrar in such form and with such information as the Registrar may specify, which will include the following:
    - i. a copy of the Account Bank's constitutional documents, which may include articles of association and a certificate of incumbency;
    - ii. evidence demonstrating that the Account Bank satisfies the applicable registration criteria set out in section 5, as such registration criteria may be amended or supplemented by the Registrar; and
    - iii. such other documents and information the Registrar, in its discretion, may require;
  - (b) pay such fees in connection with the Account Bank's application as set out in the Off-Plan Development Regulations (Fees) Rules 2024, as may be amended from time to time.
- (2) Following the Registrar's review of the Account Bank's application for registration on the Register of Account Banks, the Registrar may:
- (a) require the Account Bank to revise or update its application for registration on the Register of Account Banks;
  - (b) approve the Account Bank's application and register the Account Bank on the Register of Account Banks with or without conditions; or
  - (c) reject the Account Bank's application, providing its reasons in writing for rejecting the Account Bank's application.
- (3) The Registrar may decline to register an Account Bank on the Register of Account Banks if:
- (a) the Account Bank fails to provide the documents and information requested by the Registrar or to meet the applicable registration criteria;
  - (b) the Registrar deems it necessary in order to safeguard public interest; and/or
  - (c) the Account Bank fails to pay the registration fee under section 6(1)(b) above.
- (4) An Account Bank shall be required to maintain its registration on the Register of Account Banks until such date that the Account Bank is no longer the account bank of record of an Off-Plan Project registered on the Off-Plan Project Register or is otherwise removed by the Registrar from the Register of Account Banks in accordance with these Rules.

## **7. Licenses and other approvals**

- (1) The Account Bank must, while it is acting as an Account Bank managing Project Accounts, maintain its Banking License and maintain and obtain any other applicable licenses, permits or approvals required by the UAE Central Bank and any other Relevant Authority regulating financial institutions and account banks in the UAE.
- (2) An Account Bank operating a Project Account shall not be considered to be carrying on economic activities in the Abu Dhabi Global Market and shall not be required to obtain an Abu Dhabi Global Market license provided that:
  - (a) the Account Bank does not provide escrow account services from a permanent establishment maintained by the Account Bank in the Abu Dhabi Global Market; and
  - (b) the Account Bank maintains a Banking License issued by the UAE Central Bank.

## **8. Relation with the Registrar**

- (1) Each Account Bank must:
- (a) communicate with the Registrar in the English language;
  - (b) co-operate with any investigations or enquiries undertaken by a Relevant Authority and provide such information and confirmation as may be requested by the Registrar for any of the purposes of these Rules;
  - (c) ensure that all information provided by, or on behalf of, the Account Bank is not false, misleading or deceptive;
  - (d) not conceal any information where the concealment of such information is likely to mislead or deceive the Registrar; and
  - (e) not misrepresent its registered status under these Rules, expressly or by implication.
- (2) An Account Bank registered on the Register of Account Banks shall provide the Registrar with such information as the Registrar may, by notice in writing, require for the exercise of the Registrar's functions under these Rules.

## **9. Notification of changes and events**

- (1) An Account Bank registered on the Register of Account Banks shall notify the Registrar in writing:
- (a) immediately if the Account Bank becomes aware:
    - i. that the Account Bank no longer satisfies the Registrar's minimum registration criteria for Account Banks;
    - ii. that the Account Bank has failed to comply with the requirements of any code of conduct, these Rules, any other rules or regulations made by the Registrar which are expressed to be applicable to Account Banks or any other laws applicable to it;
    - iii. of a claim made against the Account Bank relating to the Account Bank's provision of escrow account services;
    - iv. that its Banking License has been revoked, or any application to renew it is rejected or such Banking License becomes subject to any new conditions;
    - v. that the UAE Central Bank or any Relevant Authority has started an investigation into, or has appointed inspectors to investigate, the conduct or affairs of the Account Bank; and/or
    - vi. of the imposition of disciplinary measures or sanctions on any director, manager and senior employee of the Account Bank by the UAE Central Bank or other regulatory body exercising powers and performing functions related to the regulation of Account Banks;
  - (b) as soon as reasonably practicable where the Account Bank becomes aware that the information contained on the Register of Account Banks is no longer accurate or correct and in such case the Account Bank shall provide the Registrar, as soon as reasonably practicable, with all necessary documents and/or information in order to update the Register of Account Banks.

## **PART 4 – PROJECT ACCOUNT AGREEMENT**

### **10. Requirement to enter into a Project Account Agreement**

A Developer shall be required to enter into a Project Account Agreement with an Account Bank registered on the Register of Account Banks in order to open a Project Account.

#### **11. The form of the Project Account Agreement**

- (1) The Project Account Agreement shall, at a minimum, include the following:
  - (a) the Project Account's details, including any applicable fees and charges;
  - (b) an obligation stipulating that sums deposited into the Project Account may only be disbursed from the Project Account once the Registrar's approval has been obtained in accordance with these Rules, unless otherwise directed by the ADGM Courts;
  - (c) an acknowledgment from the Account Bank that the funds held in the Project Account are not the property of the Developer, are not available for the Developer's creditors and cannot be subject to the Account Bank's set off rights in relation to claims against the Developer; and
  - (d) any other terms the Registrar deems necessary or appropriate.
- (2) Nothing in section 11(1) restricts the Registrar's ability and discretion to:
  - (a) introduce further mandatory provisions that must be incorporated in Project Account Agreements;
  - (b) issue a mandatory standard form Project Account Agreement; and
  - (c) review and approve, with or without conditions, Project Account Agreements entered into between Developers and Account Banks.

### **PART 5 – MANAGING THE PROJECT ACCOUNT**

#### **12. Amounts deposited in the Project Account**

- (1) The Developer shall not be entitled to require any Off-Plan Purchaser to pay any Sale Proceeds prior to the opening of the Project Account.
- (2) The Developer shall provide the Account Bank with details of each Off-Plan Sale which are pertinent to the management of the Project Account upon or prior to the deposit of the Sale Proceeds relating to such Off-Plan Sale in the Project Account, which shall include:
  - (a) the name and contact details of the Off-Plan Purchaser;
  - (b) the purchase price payable by the Off-Plan Purchaser;
  - (c) if the purchase price is being funded by a lender, details of the lender and the proportion of the purchase price being funded by the lender;
  - (d) the payment plan; and
  - (e) any other relevant details of the Off-Plan Sale that the Account Bank may reasonably request or the Registrar may specify.
- (3) The Developer must procure that all Sale Proceeds and Debt and Equity Financing are deposited directly into the Project Account.
- (4) If any funds arising from any Debt and Equity Financing:



- (a) relate to:
  - i. any component of the Off-Plan Project which is to be retained by the Developer and is not to be sold to Off-Plan Purchasers;
  - ii. any areas which are not to be deemed common areas but which are intended for use by an Off-Plan Purchaser or which must be completed so that an Off-Plan Purchaser may have the benefit of its interest in the Off-Plan Project; or
- (b) amount to no more than twenty percent (20%) of the total Development Costs and are provided by Equity Financing,

the Developer may apply to the Registrar for permission to exclude such funds from being deposited in the Project Account and the Registrar may grant such permission where it believes it is reasonable to do so and that such exclusion of funds from the Project Account will not negatively impact the progress and completion of the Off-Plan Project.

- (5) The Account Bank shall accept the deposit of Sale Proceeds or Debt and Equity Financing made by any lawful method approved by the UAE Central Bank and subject to all applicable anti-money laundering and know your client checks and procedures as are mandated by the UAE Central Bank and any other Relevant Authority when receiving funds as part of the provision of national retail banking services in the UAE.
- (6) The Account Bank shall assign a distinct reference number to each deposit made into the Project Account and shall maintain an electronic ledger for such Project Account in order that all deposits made by Off-Plan Purchasers and lenders are clearly identified and recorded.

### **13. Engineering Auditor**

- (1) The Developer shall be required to appoint an Engineering Auditor in respect of each Off-Plan Project.
- (2) The Engineering Auditor shall be responsible for the review and audit of the status of works undertaken on the Off-Plan Project and the associated Development Costs for the purpose of certifying the achievement of a Construction Milestone and issuing Milestone Payment Certificates.

### **14. Use and disbursement of funds deposited into the Project Account**

- (1) All amounts deposited into the Project Account shall first be used solely for the payment of Development Costs and the Developer may not use any amounts deposited into the Project Account to pay, in whole or in part, the land upon which the Off-Plan Project is to be constructed or any Marketing expenses.
- (2) The Account Bank shall, unless otherwise directed by an order of the ADGM Courts, only disburse amounts deposited into the Project Account in accordance with sections 14, 15 and 16.
- (3) No amount shall be disbursed from the Project Account unless:
  - (a) the Developer has:
    - i. completed not less than twenty percent (20%) of the development of the Off-Plan Project; or
    - ii. where the Developer has not completed twenty percent (20%) or more of the development of the Off-Plan Project, the Developer has provided the Registrar with a bank guarantee, obtained from a bank duly licensed by the UAE Central Bank to provide national retail banking services in the UAE, in a sum equivalent to the amount requested by the Developer to be disbursed from the Project Account; and

- (b) the Registrar has approved the release of funds from the Project Account.
- (4) If the Developer, acting reasonably, believes that the Off-Plan Project has achieved a Construction Milestone and wishes for funds to be disbursed from the Project Account in an amount proportionate to the Development Costs incurred by or on behalf of the Developer in respect of the corresponding Construction Milestone, the Developer shall request the Engineering Auditor to produce a Milestone Payment Certificate and provide the Engineering Auditor with such information as the Engineering Auditor shall require to properly issue the Milestone Payment Certificate.
- (5) Following a Milestone Payment Certificate request made by the Developer, the Engineering Auditor shall review the information provided by the Developer using due care and skill and if it is satisfied that a Construction Milestone has been achieved, the Engineering Auditor will produce the Milestone Payment Certificate.
- (6) Upon receipt of the Milestone Payment Certificate, the Developer shall submit an application to the Registrar for approval of the release of funds from the Project Account, in such form as the Registrar may specify and including the relevant Milestone Payment Certificate and any other documents and/or information requested by the Registrar.
- (7) Following the Registrar's review of the Developer's application for the release of funds from the Project Account, the Registrar may:
  - (a) require the Developer, the Engineering Auditor and/or the Account Bank to provide further documents and information;
  - (b) approve the release of funds from the Project Account, with or without conditions; or
  - (c) reject the Developer's application, providing its reasons in writing for rejecting the Developer's application.
- (8) The Account Bank shall promptly, following an application by the Developer, release from the Project Account the amounts set out in the approval of release of funds issued by the Registrar to such persons as the Registrar has directed.
- (9) The Registrar may issue guidance and rules from time to time with respect to the release of funds from the Project Account.
- (10) The Account Bank shall be entitled to seek clarifications from the Registrar where reasonably required with respect to the release of funds from the Project Account.

#### **15. The retention amount**

- (1) An amount equivalent to five percent (5%) of the total Development Costs shall be retained in the Project Account as security for the Developer's obligation to remedy and rectify all defective building works, materials, equipment and installations arising from or in connection with the construction of the Off-Plan Project and may only be disbursed:
  - (a) after the lapse of twelve (12) months from the date that Building Completion is achieved, provided that:
    - i. the Developer has applied to the Registrar for the release of all or some of the five percent (5%) retention amount and has submitted to the Registrar a report prepared by the Engineering Auditor confirming that all or a commensurate part of the defective building works, materials, equipment and installations arising from or in connection with the construction of the Off-Plan Project have been remedied and rectified by the Developer; and

- ii. the Registrar has approved the Developer's application in writing.
- (b) prior to the lapse of twelve (12) months from the date that Building Completion is achieved, provided that:
  - i. the Developer has applied to the Registrar for the release of all or some of the five percent (5%) retention amount and has submitted to the Registrar a bank guarantee, obtained from a bank duly licensed by the UAE Central Bank to provide national retail banking services in the UAE, in an amount equivalent to the funds to be withdrawn from the Project Account, which may not exceed five percent (5%) of the Development Costs; and
  - ii. the Registrar has approved the Developer's application in writing.
- (2) Notwithstanding a Developer making an application for the release of the retention amount in accordance with section 15(1), the Registrar may reject the Developer's application in full or grant only a partial release of the retention amount from the Project Account where the Registrar believes that such construction defects have not been duly and properly rectified.

#### **16. The profits of the Off-Plan Project**

Subject to the Developer obtaining the Registrar's prior written consent, the Developer may apply to withdraw the profits of the Off-Plan Project from the Project Account at any time after the Off-Plan Project has reached at least sixty percent (60%) completion, provided that the Developer can evidence to the Registrar that, following any approved withdrawal or series of approved withdrawals, the sums remaining in the Project Account are not less than the remaining outstanding Development Costs of the Off-Plan Project plus a sum equal to ten percent (10%) of the total Development Costs for the Off-Plan Project.

#### **17. Suspension or cancellation of the Developer's registration on the Off-Plan Developer Register and/or of the Off-Plan Project on the Off-Plan Project Register**

If the Registrar suspends or cancels the Developer's registration on the Off-Plan Developer Register and/or the Off-Plan Project's registration on the Off-Plan Project Register in accordance with the Off-Plan Development Regulations 2024, the Registrar shall notify the Account Bank of such suspension or cancellation and the Account Bank shall:

- (a) continue to manage the Project Account; or
- (b) freeze the Project Account, during which period no sums may be disbursed from the Project Account without the written permission of the Registrar,

as directed by the Registrar or in compliance with an order of the ADGM Courts, whereby any order of the ADGM Courts shall take precedence over any directions of the Registrar.

#### **18. Charges, pledges and taking security over the Project Account**

A Developer may not charge, pledge or offer as security the Project Account of the Off-Plan Project in any manner whatsoever and any purported charge, pledge or security is void and of no effect.

#### **19. Obligation to notify**

The Account Bank must immediately notify the Registrar of any act, breach or default of these Rules and/or the Project Account Agreement that may prejudice the Project Account.

#### **20. Project Account closure**

A Developer may not without the prior written approval of the Registrar:

- (a) request the closure of a Project Account; or
- (b) transfer the management of the Project Account to a third party Account Bank.

## **PART 6 – AUDIT OF THE PROJECT ACCOUNT**

### **21. Quarterly and annual reports**

- (1) For as long as the Off-Plan Project remains registered on the Off-Plan Project Register, the Account Bank shall:
  - (a) on the first day of March, June, September and December of each calendar year (or such other dates as the Registrar may specify by reasonable notice to the Account Bank), submit to the Registrar a report detailing the amounts deposited into and disbursed from the Project Account throughout the three (3) prior calendar months, prepared and stamped by an Auditor in accordance with:
    - i. the International Standards on Auditing (ISA),
    - ii. the International Financial Reporting Standards (IFRS);
    - iii. the ISAE 3000 (Revised), Assurance Engagements other than Audits or Reviews of Historical Financial Information;
    - iv. the ISRS 4400, Engagement to Perform Agreed-upon Procedures Regarding Financial Information; and
    - v. any other financial reporting and/or accounting standards required by the Registrar from time to time in its sole discretion.
  - (b) within sixty (60) days of the end of each calendar year and at the cost of the Developer, submit to the Registrar audited accounts of the Project Account, prepared and stamped by an Auditor in accordance with the required standards and which shall detail as a minimum the following information:
    - i. reconciliation of the total Sale Proceeds paid by Off-Plan Purchasers in the prior calendar year and the actual amounts deposited into the Project Account;
    - ii. details of the total Debt and Equity Financing obtained by the Developer;
    - iii. any variances or deficiencies in the amounts of the Sale Proceeds deposited into the Project Account;
    - iv. verification that the amounts disbursed from the Project Account in the prior calendar year were disbursed in compliance with the instructions of the Registrar in accordance with section 14(7)(b);
    - v. details of any payment or deposit made in breach of these Rules and the Project Account Agreement and of any steps taken by the Developer to rectify said breaches; and
    - vi. such other information required by the Registrar from time to time in its sole discretion.
  - (c) provide such other information, data and/or documents as the Registrar may request from time to time to verify the accuracy of the reports submitted by the Account Bank and to certify the Project Account's compliance with these Rules and the Project Account Agreement.

- (2) Every person having, directly or indirectly, deposited funds into the Project Account may request and obtain details of that person's deposits from the Account Bank, and the Account Bank shall promptly comply with any such request, without prejudice to any applicable rights and/or obligations under the Data Protection Regulations and any other applicable laws, regulations and/or rules.
- (3) An Auditor that falsely reports or provides misleading information to the Registrar in the reports and audited accounts prepared in accordance with section 21(1) or otherwise, commits a contravention of these Rules and shall be liable to a fine of not less than USD 27,000 and not more than USD 545,000.

## **PART 7 – POWERS OF THE REGISTRAR**

### **22. Powers of the Registrar**

The Registrar will exercise its powers and discharge its responsibilities as set out in these Rules in each case in accordance with the established principles of natural justice, ensuring that its actions are fair and transparent.

### **23. Registrar's power to request further information and documents**

Nothing in these Rules restricts the Registrar's ability and discretion to request further documentation and/or information deemed necessary by the Registrar to carry out its functions under these Rules.

### **24. Registrar's power to waive any conditions or requirements under these Rules**

Nothing in these Rules restricts the Registrar's ability and discretion to modify or waive any requirement under these Rules, including without limitation, the submission of any document or information in respect of any application under these Rules, subject to any conditions the Registrar may see fit.

### **25. Registrar's powers in respect of training requirements**

The Registrar may, from time to time, require the personnel of Developers, Account Banks, Engineering Auditors, Auditors and any other relevant persons attend training courses relating to the opening and management of Project Accounts.

### **26. The Registrar may state a case**

- (1) Whenever a question arises concerning the performance of the Registrar's duties or the exercise of the Registrar's functions, the Registrar may state a case for the opinion of the ADGM Courts.
- (2) The ADGM Courts' decision binds the Registrar and any other parties to the case.

## **PART 8 – TRANSITION PERIOD**

### **27. Developers**

- (1) A Developer that, prior to 1 January 2025, has commenced the planned construction works of an Off-Plan Project located on Al Reem Island and has established a valid escrow account in respect of the Off-Plan Project, or if applicable, for each phase of the Off-Plan Project under construction, in accordance with the applicable laws of the Emirate of Abu Dhabi, shall not be required to establish a new Project Account in accordance with the requirements of these Rules or the Off-Plan Development Regulations 2024, however the Developer shall, from 1 January 2025, take all necessary steps to administer any such existing escrow accounts in respect of Off-Plan Projects located in Al Reem Island in accordance with, and shall comply with, as far as possible, sections 12(2), 12(3), 13, 14, 15, 16, 18, 20 and 21 of these Rules.

- (2) Notwithstanding section 27(1), if an Off-Plan Project being developed on Al Reem Island is to be developed and delivered in different phases and separate escrow accounts must be established for each phase, in respect of any phase of the Off-Plan Project that the Developer has not yet commenced the planned construction works and for which no valid escrow account has yet been established prior to 1 January 2025, the Registrar may require that a Project Account be established by the Developer for each such phase in accordance with these Rules.

## **28. Account Banks**

All Account Banks providing escrow account services to Developers in respect of Off-Plan Projects already under construction on Al Reem Island prior to 1 January 2025 shall:

- (a) by no later than 17 January 2025:
  - i. submit to the Registrar a copy of each agreement entered into with developers for the provision of such escrow account services; and
  - ii. take all necessary steps and submit all required applications and documents to the Registrar to be registered on the Register of Account Banks;
- (b) from 1 January 2025, take all necessary steps to administer any existing escrow accounts in respect of Off-Plan Projects located in Al Reem Island in accordance with, and shall comply with, as far as possible, sections 7, 8(1), 9(1)(a), 12(5), 12(6), 14, 15, 16, 17, 19 and 21 of these Rules (irrespective of any contrary provisions contained in any agreement entered into with a developer for the provision of escrow account services, which provisions shall be deemed null and void); and
- (c) once registered on the Register of Account Banks, comply with all sections of these Rules.

## **29. Further extensions of time**

Sections 27 and 28 shall not restrict the Registrar's ability to grant extensions of time to Developers who are undertaking or have completed Off-Plan Projects on Al Reem Island and Account Banks that are providing escrow account services to Developers undertaking Off-Plan Projects on Al Reem Island.

# **PART 9 – CONTRAVENTIONS**

## **30. Sanctions**

If the Registrar considers that a person has contravened or has not complied with these Rules and/or the Project Account Agreement, the Registrar may, subject to the notification procedures set out below, take any or all of the following courses of action:

- (a) issue a private or public censure in relation to such contravention;
- (b) issue a prohibition order;
- (c) enter into an enforceable undertaking;
- (d) freeze the Project Account in accordance with section 17(b); and/or
- (e) in respect of Account Banks:
  - i. make a referral to the UAE Central Bank for failure to comply with its obligations;

- ii. suspend or cancel the Account Bank's registration on the Register of Account Banks; and/or
  - iii. require the Account Bank to handover the management of the Project Account to a third party Account Bank;
- (f) impose a financial penalty.

### 31. Warning Notices

- (1) Prior to the Registrar imposing any sanction pursuant to its powers under section 30, it must provide a warning notice (a "**Warning Notice**") to the person upon whom it intends to impose such sanction (the "**Warning Notice Recipient**").
- (2) A Warning Notice must:
  - (a) be in writing;
  - (b) state the action(s) which the Registrar proposes to take;
  - (c) give reasons for the proposed action(s); and
  - (d) specify a reasonable period (which may not be less than fourteen (14) days) within which the Warning Notice Recipient may make representations to the Registrar.
- (3) Following the receipt of a Warning Notice, the Warning Notice Recipient must have the amount of time specified in the Warning Notice, or such longer period of time as the Registrar may agree with the Warning Notice Recipient, to make representations to the Registrar in respect of the Warning Notice.
- (4) The Registrar must consider relevant materials, documentation or information relating to the matter, and consider the representations made by the Warning Notice Recipient within the permitted time (if any), and must, within two (2) months starting on the date on which the period for making representations under Section 31(3) ends, take one or more of the following actions:
  - (a) abandon all proposed actions set out in the Warning Notice, in which case the Registrar will notify the Warning Notice Recipient of that fact in writing as soon as practicable;
  - (b) issue a subsequent Warning Notice, proposing different or further action(s); or
  - (c) take one or more actions specified in the Warning Notice by issuing a Decision Notice.
- (5) If the Registrar has not taken any of the actions set out in section 31(4) within the prescribed period, the Registrar will be deemed to have abandoned all proposed actions set out in the Warning Notice.

### 32. Decision Notices

- (1) If the Registrar decides to take an action set out in a Warning Notice, the Registrar must provide a decision notice (a "**Decision Notice**") to the Warning Notice Recipient (the "**Decision Notice Recipient**").
- (2) A Decision Notice must:
  - (a) be in writing;
  - (b) state the decision(s) taken by the Registrar;

- (c) give the reasons for the decision(s);
- (d) if applicable, state any conditions the Decision Notice Recipient must comply with in order to reverse the Registrar's decision; and
- (e) state any right for the Decision Notice Recipient to refer a Decision Notice to the ADGM Courts under section 34.

### **33. The Registrar's procedures**

- (1) Without prejudice to the generality of section 22, the Registrar must comply with the following principles in relation to the issuance of Warning Notices and Decision Notices under this Part 9.
  - (a) a decision to issue a Warning Notice or a Decision Notice must be taken only by:
    - i. a person not directly involved in establishing the evidence on which the decision is based; or
    - ii. two (2) or more persons who include a majority of persons not directly involved in establishing the evidence on which the decision is based; and
  - (b) the procedural formalities and protections afforded to a Warning Notice Recipient or Decision Notice Recipient must be commensurate with the gravity or seriousness of the proposed action.
- (2) The ADGM Courts may take into account any failure of the Registrar in complying with these requirements in considering a matter referred to them under section 34.

### **34. Right to refer a Decision Notice to the ADGM Courts**

- (1) A Decision Notice Recipient may, within one (1) month of receipt of the Decision Notice, refer such Decision Notice to the ADGM Courts, which will review the matter in accordance with their own procedures.
- (2) A Decision Notice that has been referred to the ADGM Courts continues in effect until the matter has been resolved by the ADGM Courts, unless the ADGM Courts determine otherwise.

### **35. Access to materials**

- (1) Subject to sections 35(2) and 35(4), if the Registrar notifies a Warning Notice Recipient that it intends to take any of the actions set out in section 30(e), the Registrar must:
  - (a) allow the Warning Notice Recipient access to the material on which the Registrar relied upon in taking the decision which gave rise to the obligation to give the Warning Notice; and
  - (b) allow the Warning Notice Recipient access to any other material which was considered or obtained by the Registrar in connection with determining and reaching its decision.
- (2) The Registrar may refuse the Warning Notice Recipient access to any material which it would otherwise have to allow the Warning Notice Recipient access to if, in the Registrar's opinion (in its discretion), allowing the Warning Notice Recipient access to such material would:
  - (a) not be in the public interest;
  - (b) breach confidentiality requirements; or
  - (c) not be fair to the Warning Notice Recipient, having regard to:



- i. the likely significance of the material to the Warning Notice Recipient in relation to the matter giving rise to the Warning Notice; and
  - ii. the potential prejudice to the commercial interests of a person other than the Warning Notice Recipient which would be caused by the disclosure of the material.
- (3) If the Registrar refuses a Warning Notice Recipient to access material under section 35(2), the Registrar must give the Warning Notice Recipient written notice of:
  - (a) the refusal; and
  - (b) the reasons for it.
- (4) The Registrar may refuse a Warning Notice Recipient access to any material on the basis that it consists of a Protected Item in accordance with section 36, in which case, the Registrar must give the Warning Notice Recipient written notice of:
  - (a) the existence of the Protected Item; and
  - (b) the Registrar's decision not to allow the Warning Notice Recipient access to the material.

### **36. Protected Items**

- (1) A person may not be required under this Part 9 to produce, disclose or permit the inspection of any Protected Item.
- (2) "Protected Item" means:
  - (a) communications between a professional legal adviser and their client or any person representing their client which are made:
    - i. in connection with the giving of legal advice by a professional legal adviser to a client; or
    - ii. in connection with, or in contemplation of, legal proceedings and for the purpose of those proceedings;
  - (b) any items which are enclosed with, or referred to in, any communications that fall within section 36(2)(a).
- (3) A communication or item is not a Protected Item if it is held with the intention of furthering a criminal purpose or in contravention of this section 36.

### **37. Publication**

- (1) A Warning Notice, including the existence and content thereof, must not be published by the Registrar, a Warning Notice Recipient, a Decision Notice Recipient or any other person.
- (2) The Registrar may publish, in such manner as it considers appropriate, a Decision Notice, part of a Decision Notice, or such information about the matter to which a Decision Notice relates as it considers appropriate, taking into account the fairness of such publication, the effect of such publication on the Decision Notice Recipient, the interests of third parties in the Abu Dhabi Global Market or the interests of the Abu Dhabi Global Market as a whole.

- (3) Except with the prior written consent of the Registrar or to the extent that the Registrar has already published such information, a Decision Notice Recipient may not publish a Decision Notice, part of a Decision Notice or information about the matter to which a Decision Notice relates.
- (4) Notwithstanding section 37(1) and section 37(3), a Warning Notice Recipient or Decision Notice Recipient may disclose a Warning Notice or Decision Notice (as applicable), including the existence and content thereof, to its professional advisors.

#### **38. Censure statements**

- (1) A censure statement must describe, in such detail as the Registrar may determine, the nature of the contravention and may include such guidance as to any remedial action that the person should consider taking to avoid any repetition of such contravention or any other contravention taking place, as the Registrar may see fit to specify.
- (2) A public censure statement must be published in such manner as the Registrar determines and a copy of the censure statement must be sent by the Registrar to the person for whom it has been issued.

#### **39. Prohibition orders**

- (1) The Registrar may issue an order prohibiting or restricting a person from providing or otherwise being involved in the provision of a service in the Abu Dhabi Global Market as may be specified in the order and subject to such conditions as may be specified in the order.
- (2) The Registrar may, if it considers it appropriate or desirable, publish details of any such order in such manner as the Registrar determines.

#### **40. Enforceable undertakings**

- (1) If the Registrar considers that this would be an appropriate way in which to address any contravention of a relevant requirement or any other concern that it may have with respect to a person, the Registrar may accept a written undertaking from a person on such terms as may be agreed.
- (2) The Registrar may, if it considers it appropriate or desirable, publish details of any such undertaking in such manner as the Registrar determines.
- (3) If the Registrar considers that any person who has given such an undertaking has not complied with any of its terms, the Registrar may take such further action as it considers appropriate, including without limitation, imposing another sanction and taking any other action available to the Registrar under these Rules and applying to the ADGM Courts for an order or other relief to enforce or provide a remedy in respect of any such non-compliance.

#### **41. Referral to the UAE Central Bank**

The Registrar may, if it considers appropriate or desirable, make a referral to the UAE Central Bank notifying the UAE Central Bank that an Account Bank or its personnel have contravened a relevant requirement under these Rules or any other applicable regulations, rules, laws, codes of conduct or directions of the Registrar.

#### **42. Fines**

- (1) Save for the contravention listed in section 21(3) which attracts the fines set out in that section, a person that contravenes:
  - (a) section 37(1) or section 37(3) is liable to a fine not exceeding Level 3 on the Abu Dhabi Global Market's standard fines scale; and

- (b) any other sections of these Rules is liable to a fine up to level 8 on the Abu Dhabi Global Market standard fines scale.
- (2) The contravention by a person of any of the sections of these Rules continues until such time as the contravention of the obligation(s) in any of these sections is rectified by such person.
- (3) Each contravention of an obligation stipulated by any section will be considered an individual offence and it will attract a separate fine.

## **PART 10 – GENERAL**

### **43. Defined terms**

In these Rules, unless the context indicates otherwise:

“Abu Dhabi Global Market” means the financial free zone situated on Al Maryah Island and Al Reem Island, and further bounded as described in Cabinet of Ministers Resolution No. (4) of 2013, as amended by Cabinet Resolution No. (41) of 2023, and as the same may be further adjusted or modified in accordance with applicable law;

“Account Bank” means a bank providing escrow account services to off-plan projects;

“ADGM Courts” has the meaning given to the term in the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015;

“Auditor” means a person registered on the Register of Auditors maintained by the Registrar;

“Banking License” means a UAE Central Bank license permitting the Account Bank to act as a conventional or Islamic bank providing national retail banking services in the UAE or such other licensed activity as the Registrar may determine is appropriate from time to time;

“Building Completion” means, in accordance with the requirements of the Relevant Authority, the substantial completion of a real property and the issuance of all required permits and approvals by the Relevant Authorities permitting occupation of such real property;

“Construction Milestones” means the construction progression milestones of an Off-Plan Project (i) agreed with the Registrar as part of the registration of the Off-Plan Project on the Off-Plan Project Register and (ii) against which funds may be released from the Project Account;

“Debt and Equity Financing” means monies received by the Developer by either borrowing from a bank, financial institution or other person or provided by the shareholders of the Developer in respect of the Off-Plan Project;

“Developer” means a person who engages in or procures the development of an Off-Plan Project;

“development” means carrying out or procuring the construction of real property (regardless of its proposed use) and for which Building Completion has not been reached;

“Development Costs” means the cost of constructing an Off-Plan Project, as verified by an Engineering Auditor, including all soft and hard costs and fees payable to all Relevant Authorities, an estimate of which shall be set out in the business plan prepared by the Developer and submitted to the Registrar, which costs may be subject to such inclusions and exclusions as the Registrar may require;

“document” means paper or other material (including electronic material) containing writing, words, figures, drawings or symbols;

“electronic” means of or relating to technical having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

“Engineering Auditor” means an Auditor who has experience in carrying out financial audits of real property development projects;

“Equity Financing” means monies received by the shareholders of the Developer;

“future interest” means any interest in real property that becomes effective at a future date as permitted under the Real Property Regulations 2015;

“Marketing” means any written, electronic or printed communication or any communication transmitted on radio, television, the internet, outdoor, or similar communications media, including pictures and videos, published, disseminated, circulated or placed before the public for the purpose of creating an interest in and promoting Off-Plan Projects;

“Milestone Payment Certificate” means the certificate prepared by an Engineering Auditor in accordance with section 14(5);

“Off-Plan Developer Register” means the register of Developers established pursuant to the Off-Plan Development Regulations 2024;

“Off-Plan Project” means the development of real property in the Abu Dhabi Global Market which has been or will be disposed of in whole or in part by way of Off-Plan Sales;

“Off-Plan Project Register” means the register of Off-Plan Projects established pursuant to the Off-Plan Development Regulations 2024;

“Off-Plan Purchaser” means the purchaser in an Off-Plan Sale;

“Off-Plan Sales” means the sale of a future interest in real property (including, without limitation, leasehold, strata and freehold), where the building, unit or other permanent physical structure which shall make up the real property has not yet been developed or is under development, pursuant to a Reservation Agreement;

“person” means a natural person, body corporate or body unincorporated, a partnership, incorporated or unincorporated or other legal form not having separate legal personality;

“Project Account” means the project account established in respect of an Off-Plan Project and managed in accordance with these Rules;

“Project Account Agreement” means a project account agreement in the form set out in section 11;

“real property” means, in accordance with the Real Property Regulations 2015, as amended from time to time, (i) land, buildings, and items located or placed in, on or under the soil with the intention that they should remain in position permanently or indefinitely, and (ii) and interest therein;

“Relevant Authority” means any authority within the UAE (with jurisdiction in the Emirate of Abu Dhabi), the Emirate of Abu Dhabi or the Abu Dhabi Global Market charged with the duty of implementing policies of Abu Dhabi whose subject matters falls within its authority. Relevant Authority includes, without limitation, the Registrar and any other authorities established under the ADGM Founding Law, and also the Abu Dhabi Department of Municipal Affairs and any other governmental or quasi-governmental agencies or instrumentalities to which the Abu Dhabi Global Market may from time to time delegate rulemaking, adjudicatory or approval authority within the Abu Dhabi Global Market;

“Register of Account Banks” means the register of Account Banks established pursuant to these Rules;

“Register of Engineering Auditors” means the register of Engineering Auditors established pursuant to the Off-Plan and Real Property Professionals Regulations 2024;

“Reservation Agreement” means a Reservation Agreement as defined in the Off-Plan Sales Register Regulations 2022, as amended from time to time;

“Sale Proceeds” means the sums paid by or on behalf of Off-Plan Purchasers in respect of an Off-Plan Project; and

“UAE Central Bank” means the Central Bank of the UAE or any replacement authority responsible for the licensing and regulation of banks providing national retail banking services in the UAE.

**44. Short Title, extent and commencement**

- (1) These Rules may be cited as the Off-Plan Development Regulations (Project Account) Rules 2024.
- (2) These Rules apply in the Abu Dhabi Global Market.
- (3) Without prejudice to sections 27, 28 and 29, on the date of publication.