THE REGULATION OF MASTER-PLANNED COMMUNITIES IN DUBAI

I will first introduce master-planned communities in general, then will describe master-planned communities in Dubai, before taking up the subject of their regulation in general. I will then focus on a real-life example, that of the Palm Islands in Dubai, before I try and summarize the big topics that should be dealt with in any declaration governing a master-planned community, and will conclude on how to get this issue right in Dubai from a legal standpoint.

ROADMAP

- Master-planned communities in general;

- Master-planned communities in Dubai;

- Regulating master-planned communities: what a typical declaration should deal with;

- The example of the Palm Islands;

- Summary: main topics to be covered when regulating a master-planned community;

- Conclusion: how to get this right in Dubai.

INTRODUCTION: MASTER PLANNED COMMUNITIES IN GENERAL

A master-planned community or a new town is a real estate project where, in addition to housing plots, office buildings, hotels, recreational parks, and commercial centers are developed all at once.

For a master-planned community to be built, there needs to be available a significant portion of land area – in the case of Dubai, the sea might just suffice and help achieve the same purpose if one only thinks of the Palm Islands.

The idea of a master-planned community is that of a careful, advance planning, which is made at the inception stage. The subject matter being by definition an undeveloped area, there is no way around precisely determining which zones will be residential, which zones will be commercial, which zones will be designated for hotels and resorts, what standards the design of the buildings will need to conform to, what landscaping will need to be put in place, and the like.

What distinguishes master-planned communities is that general shopping, commercial centers, office buildings, and hotels or resorts are planned and included in the initial stages by the developers themselves. These communities usually feature extensive recreational amenities such as lakes, golf courses, and expansive parks with bike paths and jogging trails.

Master-planned communities or new towns are not recent as a concept, since they date back to the Roman Empire's colonies, which used to feature basic grids of streets and planned water supply. Also, several of our world capitals are actually planned cities (Brasilia is an obvious example, but Washington DC, Casablanca, and New Delhi fall also into that category).

However, it is mostly in the US, starting in the fifties, that they have had a unique and ongoing history. It is also in the US that the regulation of such communities has matured the most, offering the rest of the world a useful example of a real systematic regulatory approach to the subject matter.

Beyond regulation, master declarations of conditions, covenants, and restrictions, which are meant to be the governing documents for master-planned communities, strive to maintain the spirit, quality and overall standards of the community that is being built, and, moreover, envisioned.

Dubai is a place that need not be introduced from the standpoint of real estate developments. Here, new cities and communities spring up constantly, and it is a challenge to keep up with the pace at which they are constructed – and delivered.

In this city where even new towns are called "old town" and given antique cachets from their incipience, in this city where a full-fledged development that has been handed over for occupancy six months ago is deemed a fairly old one, master-planned communities are not always as planned as one might think, at least from a legal standpoint.

Time is always running out in Dubai and, as it is often the case, people don't always think of hiring lawyers early enough in the process, so as to associate them with the vision and strategy of the community to be.

While reflecting on the regulation of master-planned communities in Dubai, one example will constantly be on my mind, namely that of the Palm Islands. As you all know, these – already legendary – islands are made of reclaimed land, and they have been or are currently being constructed off of Dubai's shoreline.

Along with the Dubai Marina and Downtown Burj Dubai, they are the most vivid examples of master-planned communities in Dubai, and one that I have had the privilege to have been involved in.

MASTER PLANNED COMMUNITIES IN DUBAI

Master-planned communities in Dubai are usually outside the scope of the restrictions applying to foreign ownership, as they are typically built in areas where non-locals can acquire property, as these areas were determined in the regulation N°3 of 2006 issued by H.H. the Ruler of Dubai.

Master-planned communities are designed for foreigners so to speak, since they are here to provide a response to Dubai's unprecedented growth.

As entire populations move to Dubai, most of whom are foreign, master-planned communities present an interesting, stand-alone, and for all concern self-sufficient model for these populations to feel that they are in familiar surroundings. Home; leisure; shopping; work: all four meet in master-planned communities.

From a regulatory standpoint, there seems to be a need to distinguish the ultimate owner of the land/infrastructure, i.e. the government or a private entity, from the declarant, who issues the master declaration that is to govern the community. The declarant is the regulator, the person who runs and operates the land/infrastructure, some sort of a property manager with vast powers of delegation.

There is also a need to distinguish the declarant from the developer, who is not supposed technically to even own the land despite a practice that is sometimes different in Dubai in this respect.

On top of these three main actors, the people who are meant to reside, work or play on the master-planned community are ones that the regulations should worry about. Their rights and obligations have to be specifically defined, and the community should both protect them and be protected from them.

THE REGULATION OF MASTER-PLANNED COMMUNITIES: CONTENTS

Master-planned communities are usually regulated by a master declaration of conditions, covenants, and restrictions ("CC&Rs"), or "master declaration". The master declaration should contain three main elements:

- Why
- Who
- What

WHY

The master declaration is intended to regulate the development, improvement, protection, management, operation, and maintenance of the community and its property.

It sets forth the rights, duties, obligations, agreements, and easements relating to, in, on, over and across the community's premises.

Property in the community is conveyed, rented, used, and occupied subject to a certain number of limitations, restrictions, covenants, and conditions.

The declaration is also meant to encourage a spirit of good citizenship and community service among the owners.

The considered master-planned community should be depicted in the declaration. The physical description is a critical component of the document, especially when the community is being created from scratch and when its geographic appearance will have an impact on the rights of the people who will own bits and pieces of it, or who will just visit it. Describing the community helps understand it, and therefore regulate it better.

Does everybody have access to the beach, and if so, on what conditions? Can an apartment owner park his boat in front of the building where he or she lives? Are all cars allowed to circulate on service roads or tunnels? Can service trucks transit in residential areas and if so on which days or hours?

Zoning is also a fundamental issue, along with permitted uses and construction.

The master declaration should help the various parcels relate to each other, through affecting them, under certain conditions, as equitable servitudes that run with the other portions of the community's premises. This way, each separate interest is coupled with easement rights appurtenant to such separate interest. The declaration's rules are meant to run with all the parcels in the community, and to be binding upon all parties having any right, title or interest in their respective parcels.

WHO

It is essential to identify in the declaration the persons who are subject to the regulations of a master-planned community; this depends on these persons' respective connection to the community itself.

These are usually:

- The Declarant itself
- The Owners of private parcels
- Their Tenants and Subtenants
- The Permittees of the Declarant, an Owner, a Tenant or Subtenant: employees, directors, officers, agents, contractors, guests, customers, visitors or any other occupants. Even unlawful occupants need to be taken up by the declaration.

WHAT

The master declaration governing a master-planned community typically contains:

- Physical /Infrastructure description
- Designation of parcels
- Ownership provisions
- Easements: principle and mechanics
- Use restrictions; what's allowed; what's not
- Environmental laws
- Construction; Insurance; Casualty and Destruction
- Public Areas/Private Areas
- Operation, maintenance, management, budget, and service charges.
- Enforcement; assessment liens
- Owners' associations
- Horizontal associations
- Vertical associations
- Further rules and regulations

THE EXAMPLE OF THE PALM ISLANDS IN DUBAI

Each of the Palm Islands constitutes a community of integrated residential, retail, commercial, office, hotel, entertainment, cultural, convention and community developments, which is governed by a master Declaration.

The Declaration is to be read in conjunction with the development control and administration regulations and the development control and design regulations that were issued initially by the developer of the Palm (these deal with the initial construction phase, development, zoning, and design guidelines).

Main topics dealt with in the Declaration

Ownership
Allowed/Prohibited uses
Construction
Easements
Insurance/casualty
Operation, maintenance, and service charges
Enforcement/Assessment liens
General legal provisions (governing law, disputes, term…)

Vesting of Ownership. The ownership of the Palm is vested in the Declarant. The Declarant may, in turn, use, transfer, sell, ground lease, lease, sublease and otherwise convey to any person, who shall become an Owner by virtue thereof, freehold title to one or several private parcels. Laws and regulations such as law N°7 of 2006 and regulation N°3 of 2006 have made such freehold or fee simple ownership possible for non-GCC nationals under Dubai law.

Description of the various Geographic areas

Trunk, Spine, Fronds, Crescent: each treated in a separate section.

Description of the different parcels and their zoning, the different types of buildings located in the considered area

Hotel and Resort Parcels, which are meant to be owned and operated by selected hotel professionals (Atlantis/Kerzner is an obvious example, who owns 25% of the Hotel and Resort Parcels on the Palm Jumeirah);
Residential Lots;
Retail and Shopping Areas;
Office Buildings;
Mixed-Use Buildings (such as the Trump Tower);
Owner Common Areas; and
Public Areas.

Description of the Different types of parcels on the Palm.

Private parcels belonging to Owners;

Community Services Parcels: Mosques, Monorail, Transportation and Storage parcels, Emergency/hospital stations, Helicopter Pads, Motor Vehicle Petrol/Fuel Stations, Marinas, Boat Station…;

Utility Parcels;

Reserved Parcels: zoning and use reserved by the Declarant;

Logo Islands.

Allowed/Prohibited Uses.

In addition to applicable laws, a list of objectionable uses or operations is provided in the Declaration.

Environmental matters are also taken up by the Declaration and hazardous materials, hazardous waste, petroleum, contaminant, and other pollutant are regulated therein.

Public Areas. The Declarant owns, manages and may delegate the management of all of the public areas, i.e. all residuary lands, roads, tunnels, bridges, sidewalks, walkways, crossways, waterways, beaches, jetties, landscape, utilities, infrastructure, and improvements thereon… after all parcels have been conveyed by the Declarant to private owners or other persons.

Owner Common Areas. Associations of Owners. The Declarant may manage the common areas relating to private parcels/buildings (hotel, residential, retail, office) or delegate such Management to associations of owners. The powers of such Associations shall be limited.

Associations Generally. There shall be an Association for each residential building parcel, retail building parcel, office building parcel, and hotel building parcel that are organized as fractional ownership interest projects, each of which shall be in charge of the management of the relevant building parcel.

Vertical and Horizontal Associations. Where a single building or group of buildings contains multiple types of parcels that are situated in vertical and/or horizontal configurations in relation to each other, each such building or group of buildings may have a separate Association.

Operation, and Maintenance: Service Charges, Assessment Liens.

The Declarant shall, prior to the end of each financial year, prepare a **Budget** of estimated expenses for the following financial year in respect of the Public Areas. Upon taking transfer of a private parcel from the Declarant, an Owner becomes liable for payment of **Service Charges**, representing the Declarant's reasonable assessment of the Owner's share of the

expenses incurred in connection with the management, operation, administration, repair, maintenance, service provision and control of all portions of the Palm.

Service Charges are due and payable by an Owner to the Declarant **annually in advance** upon service of the Budget upon the Owner. Adjustments of Service Charges are be made ex post, based on the actual expenses incurred during the same financial year. If an Owner fails to pay his Service Charges in full to the Declarant on the due date, the Declarant may place an **assessment lien** on the Owner's title and charge a penalty for late payment on any amounts.

Construction. Buildings and improvements shall be constructed only in areas designated by the Declarant. The Declaration sets forth procedures and rules for initial building approval, alteration approval, review fees and other construction procedures. The Jebel Ali Free Zone (JAFZA) has a say when it comes to construction permitting.

Easements.

(i) The Declarant grants to each Owner, its Permittees, and all occupants, rights of easement on all or any portion of the Public Areas.

(ii) Each of the private parcels is for the exclusive use of the Owners and Permittees of the particular buildings to which it relates.

(iii) Each Owner of a private parcel shall grant to the other Owners of private parcels, and to the Declarant, an easement on the Owner's private parcel, to allow ingress and egress to and from, utility services and other material amenities benefiting the private parcel.

Insurance. Each Owner shall obtain insurance against (i) loss or damage by flood, and by standard perils, (ii) commercial general liability insurance, including broad form coverage of property damage, blanket contractual liability and personal and bodily injury, as well as liability arising out of the maintenance, use and occupancy, (iii) business interruption insurance (where applicable), (iv) insurance against loss or damage affecting the utilities, (v) worker's compensation insurance (where applicable), (vi) "all risk" builders insurance or "course of construction" insurance (where applicable), and (vii) coverage for terrorism.

Casualty.

(i) In the event of a damage or destruction of buildings and improvements on private parcels or Owner Common Areas: the Owner shall promptly (i) repair and/or reconstruct such buildings or improvements, or (ii) remove the debris from the parcel and keep the affected portions of the parcel well maintained, until subsequently improved or constructed upon.

(ii) In the event of a damage or destruction of the Public Areas: Declarant shall have the right to restore such damaged or destroyed Public Area or, in the event Declarant does not elect to so restore such damaged or destroyed Public Area, the affected Owners shall restore such damaged or destroyed Public Area.

TO SUM UP, THE DECLARATION GOVERNING A MASTER-PLANNED COMMUNITY SHOULD CONTAIN THE FOLLOWING TOPICS:

FIRST BIG TOPIC: DESIGNATION OF AREAS/PARCELS

SECOND BIG TOPIC: BUDGET AND MANAGEMENT

THIRD BIG TOPIC: USE RESTRICTIONS

FOURTH BIG TOPIC: EASEMENTS

FIFTH BIG TOPIC: CONSTRUCTION

SIXTH BIG TOPIC: MAINTENANCE, OPERATION, AND SERVICE CHARGES RELATING TO COMMON AREAS

SEVENTH BIG TOPIC: ASSOCIATIONS

SMALLER TOPICS:

INDEMNIFICATION AND INSURANCE

DAMAGE AND DESTRUCTION

ENFORCEMENT / ASSESSMENT LIENS

ADDITIONAL RULES AND REGULATIONS

CONCLUSION: GET IT RIGHT IN DUBAI

- Not enough consideration is being given to this subject in Dubai
- First, “call all the lawyers” and get them involved from the early stages
- Understand who the players are: government, government-controlled entity, or private entity
- A good hierarchy of applicable rules should be in place
- Get the declaration ready first; avoid disputes and the bargaining power problem (Atlantis example)
- Let the owner of the land/infrastructure, or the entity that will, going forward, own, run, and regulate the community, issue the regulations, not the developer (even if the latter is a related entity)
- Farm-outs come only next – the developer (including sub-developers of infrastructure such as Atlantis), then the architects and contractors enter the scene
- Pre-sales should occur last, despite the market’s liquidity and the exceeding popularity of off-plan sales in Dubai.