

THE RECENT REGULATION ON REAL ESTATE COMMERCE

The Regulation on the Real Estate Commerce which was published in the Official Gazette dated 5 June 2018 and numbered 30442 and entered into force on the same date (the “**Regulation**”) has been enacted as per the Law no 6585 on Retail Commerce which was published in the Official Gazette dated 29 January 2015 and numbered 29251 (the “**Law**”).

This Monthly Update aims to provide a brief explanation on the Regulation and highlight the recent novelties introduced with this Regulation.

Scope of the Regulation

The Regulation principally covers (i) professional activities of tradesmen and craftsmen, real or legal persons, who provide consultancy and management services related to real estate, act as intermediary for title deed transactions and are engaged in real estate buying, selling and renting transactions whether or not registered in the relevant land registry; (ii) procedures and principles regarding the authorization, renewal, suspension and cancellation of the authorization certificates to be granted to such persons; (iii) requirements for enterprises engaged in real estate commerce and their obligations in connection with their activities; and (iv) duties, authorities and obligations of the Ministry of Trade (the “**Ministry**”) and the other authorized administrative bodies, institutions and organizations regarding the real estate commerce.

Authorization Certificate

Real estate commerce is only carried out by tradesmen or craftsmen who are granted with an authorization certificate on behalf of their enterprises. An authorization certificate is issued exclusively for each enterprise and cannot be transferred. The Regulation details the qualifications/conditions required for the authorization certificate. Once issued (and unless cancelled), an authorization certificate is valid for five years. The Regulation requires that the authorization certificate is displayed in the enterprise where it is distinctly visible by everyone.

An authorization certificate is issued, renewed, suspended and cancelled by the Provincial Directorate of Commerce (the “**Provincial Directorate**”) via the Real Estate Commerce Information System (the “**Information System**”). The Provincial Directorate ensures the compliance of the enterprise with regard to the required conditions via site visits within 7 days of the application of the relevant enterprise requesting a certificate. If the enterprise meets all the conditions, an authorization certificate is issued within 10 days of the application date. In case the application for the authorization certificate is rejected due to noncompliance of the conditions, such enterprise shall be notified via the Information System. Furthermore, the authorization certificate shall be renewed through the Information System at least 30 days before the end of its validity period. In the event that any information included in the authorization certificate changes, such change shall also be notified via the Information System within 7 days.

Professional Competence Certificate

The Regulation also introduces various qualifications for personnel working in such enterprises. Accordingly, marketing and sales personnel shall also have professional competence certificates. The Ministry is authorized to determine the minimum number of personnel that shall be employed with a professional competence certificate in an enterprises holding an authorization certificate.

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Real Estate Commerce Services

The Regulation requires that the following services shall only be provided under a written authorization agreement: (i) engaging in marketing activities and acting as an intermediary in the purchase, sale and lease of real estates, whether or not they are registered in the title deed; (ii) conducting research activities and preparing reports on real estates; (iii) provision of information on the current market value or the rental price of real estates; (iv) intermediating title deed transactions; (v) following up on rental payments and utilities payments and repair and maintenance services; (vi) providing consultancy and management services; and (vii) carrying out other services related to real estate commerce.

In addition to the above, other principles and rules to be followed in real estate commerce are detailed in the Regulation.

Real Estate Demonstration Certificate

In order to provide the service of demonstrating the real estate which is intermediated for purchase, sale or lease to buyer or tenant, a real estate demonstration document shall be issued for each real estate. No fee can be claimed for the real estate demonstration. However, in the event that such service is provided outside the district where the enterprise is located, prospective buyer or tenant may bare out-of-pocket expenses.

Service Fee

As per the Regulation, the service fee rate cannot be more than 4% of the sale price for the purchase and sale transactions excluding the value added tax whereas in the leasing transactions, the service fee cannot be more than a monthly amount of the rental price excluding the value added tax. The Regulation states that these fees shall be payable upon the registration of real estate with the title deed registry if the transaction is a sale or purchase of a real estate and the execution of the lease agreement between the landlord and the tenant if the transaction is a lease transaction. Service shall be payable equally by the seller and purchaser or the tenant and landlord unless agreed otherwise.

For other services, the service fee right arises from the execution of the relevant agreement.

In the event that the authorization certificate is cancelled, the authorization agreements that are in force as of the cancellation date shall be deemed to have been terminated. However, the enterprise is entitled to a service fee for services provided prior to the termination of the agreements.

Inspection and Fines

The Ministry is authorized to carry out on site inspections regarding the implementation of the Regulation and problems and complaints caused by such implementation. The Ministry may also carry out such inspections through the provincial directorates. The results of the inspections carried out by the competent authorities under the Regulation shall be notified to the provincial directorate within 15 days from the date of the conclusion of the inspection. Pursuant to the Regulation, provisions of the Law regarding administrative fines have been reserved.

Conclusion

The Regulation mainly provides novelties on the real estate commerce sector through requiring the authorization certificate and professional competence certificate for the market players. The Regulation prescribes services subject to the real estate commerce on *numerus clausus*. Additionally, the Regulation designates the service fee limits and the required principles and rules to be followed in real estate commerce in details.