International Alert

July 2017

New real estate legislation in India

Mandatory buying of construction and title insurance

A new federal law in India, effective May 1, 2017 — Real Estate (Regulation and Development) Act, 2016 (RERA) — makes it compulsory for all new and under-construction real estate projects to buy title insurance in addition to project construction insurance. The new law covers only residential and commercial construction — which implies industrial or infrastructure projects do NOT need RERA approval.

Applicability of RERA

According to the new Act, no developer shall advertise, market, book, sell or offer for sale, or invite persons in any real estate project, without first registering it with RERA.

Projects are defined as:

- Where the area of land proposed to be developed exceeds 500 square meters, or the number of apartments proposed to be developed exceeds eight, inclusive of all phases
- Where the real estate project is to be developed in phases, every such phase shall be considered a stand-alone real estate project.

Obligations under RERA

The Act requires the promoters/developers to:

- Obtain insurance covering:
  - Title of the land and building of the real estate project
  - Construction of the project
  - Rectify any structural defect or any other defect in workmanship, quality or provision of services, etc. if it is brought to the notice within a period of five years from the date of handing over possession
  - Compensate the allottee, the person to whom a plot, apartment or building has been allotted, sold or transferred by the developer, in case of any loss caused due to defective title of the land, and such claim for compensation shall not be barred by any law of limitation

Implementation of RERA

- The federal law requires every state to frame their own rules and set up a Real Eestate Regulatory Authority to approve the projects in their state.
- Though the deadline to set up the Authority was 30 – April 17 only 15 states and five union territories have progressed on the enactments, with only two states (Maharashtra and Madhya Pradesh) setting up operational Authorities.
- Maharashtra state Authority has given approvals to more than 75 projects and has also imposed the first penalty on a real estate broker for marketing a non-approved project.

Willis Towers Watson

Status of mandatory insurance

The rules are silent on the requirement to obtain the insurance policy. Non-admitted insurance is generally prohibited in India and the local market does not currently offer title insurance. The insurance regulator, IRDAI, has created a working group to explore a local title insurance product but no report has yet been issued on behalf of the group. In the meantime, reputable developers are already considering buying title insurance from the London market with a local front as a matter of prudence and to support the marketability of their projects.

It is anticipated that the government will be enforcing the title insurance mandate prior to approving new projects.

Businesses affected

Many reports estimate global capital inflow to India in the range of $4 billion to $6 billion annually, with funds that flow in the form of:

- Private equity funds
- Real estate investment trusts
- Global real estate funds (India allocation)
- India-specific funds

Accordingly this development is germane both to multinationals within the real estate industry and those who may wish to capitalize on business opportunities by diversifying into real estate. It will be important to monitor this new development and update this Alert as necessary.

Contact

For more information, please contact your Network Country Manager or:

(Mr.) Jagdish Bhat
Vice President
Mumbai, India
+91 98673 28353
jagdish.bhat@willistowerswatson.com

(Mr.) Tapan Kumar Simlai
Executive Vice President & Head, West Zone
Mumbai, India
+91 98814 72312
tapan.simlai@willistowerswatson.com

(Mr.) Vivek Saharya
Executive Vice President & Network Country Manager
New Delhi, India
+91 98183 23736
vivek.saharya@willistowerswatson.com

About Willis Towers Watson

Willis Towers Watson (NASDAQ: WLTW) is a leading global advisory, broking and solutions company that helps clients around the world turn risk into a path for growth. With roots dating to 1828, Willis Towers Watson has 40,000 employees serving more than 140 countries. We design and deliver solutions that manage risk, optimize benefits, cultivate talent, and expand the power of capital to protect and strengthen institutions and individuals. Our unique perspective allows us to see the critical intersections between talent, assets and ideas – the dynamic formula that drives business performance. Together, we unlock potential. Learn more at willistowerswatson.com.

The observations, comments and suggestions we have made in this publication are advisory and are not intended nor should they be taken as legal advice. Please contact your own legal advisor for an analysis of your specific facts and circumstances.

willistowerswatson.com/social-media

Copyright © 2017 Willis Towers Watson. All rights reserved.
WTW-NA-2017-17259

willistowerswatson.com

Willis Towers Watson