

Property law in the UAE

Foreign investors seeking to capitalize on the recent real estate developments in the United Arab Emirates face several legal challenges, both as to the nature of the legal entity to use and as to their ability to acquire freehold interests in real estate. Recently enacted laws in Dubai and at the Dubai International Financial Center (“DIFC”), however, permit foreigners to seek investment participation through the use of DIFC-formed Real Estate Investment Trusts (“REITs”), but these laws must be considered in the context of laws governing the right of foreign investors to acquire real estate in the different Emirates of the United Arab Emirates (“UAE”), particularly Dubai and the “free zones” of the UAE, including the DIFC.

OVERVIEW OF PROPERTY LAW IN THE UAE

There is currently no federal property law governing foreign ownership of real estate in the UAE. Each Emirate has developed its own approach ranging from Fujairah, which does not currently allow foreign ownership of real property, to Dubai, where foreign ownership of freehold interests in real property is allowed. In addition, there are “free zones” within each Emirate designated for specific uses. Each zone is a tax-free jurisdiction and has its own rules and regulations. A company established in a free zone can be 100% owned by foreign nationals and may own freehold interests in real property within that zone.

PROPERTY RIGHTS UNDER DUBAI LAW

In May 2002, the Ruler of Dubai issued a decree allowing foreigners to buy and own freehold property in selected areas within Dubai. In March 2006, The Land Registration Law of the Emirate of Dubai (No. 7/2006) (the “Dubai Property Law”) was enacted which clarified and confirmed the freehold ownership of land by UAE and GCC nationals, as well as by non-GCC citizens in certain areas designated by the Ruler. It also established a system of registration at the Department of Lands and Properties (the “Land Department”) in order to evidence ownership rights.

Registration of Title by Foreign Companies and Nationals in Dubai

UAE and GCC nationals can own real property throughout Dubai. However, Article 4 of the Dubai Property Law limits the right of non-national persons and companies to only own a freehold interest or a usufruct or leasehold right over real property for a period not to exceed 99 years in certain areas in Dubai designated by the Ruler. The Land Department has indicated that a lease or usufruct right may not be registered unless it has a minimum term of 10 years. With the exception of certain public joint stock companies, such as Emaar, which are listed on the Dubai Financial Market, a company with foreign shareholders will not be considered a UAE or a GCC national for the purposes of owning property.

In July 2006, the Ruler issued a list of 23 areas and 45 plots where foreign nationals can own a freehold interest in real property. Leases in areas other than those designated by the Ruler are not registerable by foreigners, although these leases are enforceable as personal contractual rights between the parties. Disputes with respect to unregistered leases will be

adjudicated by the Rents Committee. Disputes with respect to real property rights, however, will be heard by the Dubai courts.

Advantage of Registration

Registration of a property owner’s interest in real property provides exclusive evidence of its ownership. Any conditions, undertakings, encumbrances or other liabilities related to real property rights should be stated in the designated folio of the real property unit. Third parties, such as banks, may claim an interest in the property for any number of reasons. These types of third party rights are registered on a property’s title, and they become binding on the property itself. Anyone to whom the property is transferred will be subject to the third-party interest if it is registered. Without registration, the third-party interest is enforceable only against the original owner personally through a claim for breach of contract.

Property Rights in the DIFC

The DIFC is a federal financial free zone that was established in accordance with UAE federal law and Dubai law. The Real Property Law (DIFC No. 4 of 2007) (the “DIFC Property Law”) creates a new registration system, pursuant to which the DIFC will guarantee freehold and leasehold title (for a term of over 1 year) to real property within the DIFC for all companies and individuals, including foreign companies and nationals. An instrument does not transfer or create an interest in real property until the interest is registered. Completion of the registration, according to the DIFC Property Law, is conclusive evidence that the property owner is the owner of that interest and that its title to that interest is indefeasible and is enforceable by the DIFC courts. Leases with a term of less than 1 year may, but need not, be registered, and if they are not registered, they are still valid as contracts and enforceable by the parties. As with the Dubai Property Law, interests of third parties may be registered.

ESTABLISHMENT OF REITS

The DIFC has taken the lead in the UAE in terms of promoting the development of REITs by the passage of its Investment Trust Law and its Collective Investment Law No. 1 in 2006. These laws and related regulations promulgated by the DIFC and the Dubai Financial Services Authority prescribe the formation and operation of REITs and the qualification criteria, as well as the rights and obligations, of REIT operators and trustees. The DIFC expects to be the domicile for REITs managing in excess of \$10 billion in assets by 2011. Indeed, as in many of the world’s major capital markets to date, REITs are quickly becoming a favorite method for attracting public ownership in real property investments in the UAE.

A REIT is an entity that may invest in various kinds of real property-related assets, such as hotels, office buildings, shopping centers and mortgages secured by real estate. It may acquire, own, operate, develop, manage, and sell real estate assets of all types, providing investors access to a professionally managed diversified portfolio of real estate properties. The principal advantage of a REIT is that it permits an average investor to acquire an interest in such a

portfolio together with substantial rental income (a DIFC-formed REIT must distribute at least 80% of its annual income to unit holders), without any loss of liquidity in light of the fact that units in a REIT may be freely traded on a listed stock exchange. There is no minimum investment requirement, and investors are rewarded with stable current income. Although unit holders do not control the purchase or sale of properties in a REIT, the acquisition of units in a REIT permits an investor access to part ownership in property and attendant rental income, without the hassles of physical ownership and management.

Another key benefit is the liquidity and tradability which REITs bring to the market. A developer can sell his building to a fund in order to free up an asset, which in turn frees up cash to put into further development, thus providing an excellent strategy for people developing as well as investing in projects.

Although no REIT has yet been formed within the DIFC, the \$200 million Cayman Island-organized Arabian Real Estate Investment Trust was jointly developed and launched by HSBC Bank Middle East and asset management company, Daman. There are a number of commercial companies and finance institutions in the UAE with current plans to form and operate one or more REITs either along conventional principles or Sharia financing principles. The REIT vehicle is well-suited to the highly liquid marketplace in the UAE (and the Middle East generally), and it is likely that this form of investment will be increasingly utilized in the UAE.

CONCLUSION

Foreign investors can now share in the ever-expanding real estate development in Dubai by utilizing the recently enacted laws and regulations allowing REITs and foreign-owned entities to purchase freehold interests in real estate in the DIFC and the other “free zones,” as well as in certain designated areas of Dubai. It is expected that the use of the REIT as an investment tool and as confirmation of a foreign investor’s right to own properties in these areas will promote further investment in real estate in Dubai. ■

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