

client alert

Kingdom of Saudi Arabia Real Estate Laws and Regulations

August 31, 2009

The following discusses recent developments in the Real Estate industry of the Kingdom of Saudi Arabia ("Kingdom").

Land Registry System

Currently, interests in real property and related transactions, such as transfers of ownership, encumbrances on the land, establishment of *Waqfs* (similar to the Western concept of trusts), and gifts and bequests of real property in wills are registered with notaries in special registers. The Law for Registration of Real Property was published in the *Official Gazette* on May 18, 2002 and became effective one year later. The law establishes a new regulatory regime for the registration of interests in real property and related transactions. For example, the ownership of interests in real property and any change or encumbrance on such real property would be registered at a public land registry. These public registries will be jointly established by the Ministry of Municipalities and Rural Affairs and the Ministry of Justice, but will be operated and maintained by the newly created Department of Real Property Registration in the Ministry of Justice. All changes in ownership interest will have to be properly registered to have legal effect. All lease agreements with terms exceeding five years will not be effective against third parties for the period exceeding the first five years of the lease term, unless they are recorded in the Register.

The Implementing Regulations of the Registration of Real Property (“Implementing Regulations”), published on October 15, 2004, provide for a fairly detailed procedural framework in relation to implementing the new regulatory regime, with responsibilities distributed between the Ministry of Justice and the Ministry of Municipalities and Rural Affairs. The Ministry of Municipalities and Rural Affairs is responsible for the technical and mechanical aspects of the process, which include, *inter alia*, the undertaking of surveys and statistical duties and preparing maps and plans for real property units. The responsibilities of the Ministry of Justice include, *inter alia*, supporting and supervising the technical and procedural processes during the transitional stage, safekeeping the real property registers and all documents relating thereto, recording interests and transactions in the real property registers, issuing title deeds and, upon a request by interested parties, rendering certificates describing the legal status of a registered unit of real property (the certificates will state the unit number of the property and certain other requested information but shall not include the name of the owner of the property or the owner’s address). It appears that the Implementing Regulations provide for some public access to the registry although the extent of access remains unclear.¹ The Law for Registration of Real Property and the Implementing Regulations have not yet been implemented.

Mortgage Law Package

The Shoura Council is currently deliberating the package of five draft laws related to mortgages. The draft laws can be described as:

- a) Mortgage Registration Law, which provides for the use of mortgages in real property financing, including the registration of such mortgages;
- b) Execution (Enforcement) Law, which expands the court’s authority to provide injunctive and declaratory relief; and to enforce such orders;
- c) Financial Leasing Law, which regulates the incorporation, activities and governance of financial leasing companies;
- d) Real Estate Finance Law, which regulates the incorporation, activities and governance of companies engaged in real estate financing;

¹ See Articles 10, 68-70 of the Implementing Rules.

- e) Control of Finance Companies Law, which regulates the incorporation, activities and governance of finance companies.

Essentially, the mortgage law package provides a clear framework for financing the purchase of residential and commercial property which will result in greater business certainty, and, consequently, increased confidence in this sector and the facilitation of financing in this sector.

Other related benefits are as follows:

- (i) Increasing confidence by developers, purchasers and foreign investors,
- (ii) Increasing liquidity in an under-liquid market,
- (iii) Reducing ambiguity, thereby reducing disputes and providing greater stability to transactions,
- (iv) Reducing transactional costs through clearer and more efficient processes, and
- (v) Permitting the Kingdom to adopt international best practices in real estate financing.

Real Estate Investment Funds Regulations

In order to facilitate financing for real estate development projects, the Capital Markets Authority (CMA) promulgated the Real Estate Investment Funds Regulations (“REIF Regulations”), which were approved by resolution of the board of directors of the CMA, No. 1-193-2006, and dated 19/6/1427H (July 15, 2006).

Investment funds focusing on real estate could rely on the already-established Investment Funds Regulations, but the REIF Regulations created greater certainty of what disclosure would be required for such regulations, thereby encouraging such funds. The REIF Regulations anticipate closed-ended funds with a term limit on the life of the fund, and are designed for development funds (terminate at sale of the developed properties) and income producing funds (terminate after development and leasing of land for a fixed period). Nevertheless, the REIF Regulations are flexible enough to permit other types and purposes in relation to real estate.

Ownership Of Property By Foreign Nationals

The Law of Non-Saudi Proprietorship and Investment of Real Estate² permits (i) foreign nationals legally resident in the Kingdom to purchase property for use as principal residences and (ii) foreign business investors to purchase property in the furtherance of their business objectives, including to house their own employees. The law provides only one geographic limitation: only Saudi citizens may purchase property in the cities of Makkah and Madina. The law permits leasing to non Saudi Muslims where the lease does not exceed two years. This law appears to be the most liberal of the Gulf state laws regarding foreign ownership of property.

A law issued by Royal Decree No. M/44, dated 29/11/1377H (June 17, 1958), provides that a fee equal to 10 percent of the price of the real property must be paid in the event such real property is being disposed of by a foreign national. The law is unclear if the fee applies to purchases by foreign nationals. Notably, the Shoura Council approved a directive on February 8, 2009 that the above fee be extended to any transfer of foreign-owned property, including any grants or assignments, except by bequeathment, endowment to a charity and assignment to the transferor's next-of-kin.

Time Share

Within the last three years, the Law of Time Sharing in Tourist Real Estate Units was introduced which permitted a long-term restricted proprietary interest in property for non-Saudi Muslims in Makkah and Madina.³ Time shares are a utilization right (right of occupancy and use) of a unit in a building dedicated to time sharing units, for a period of not less than three years. The law provides for cooling-off periods. The Supreme Commission for Tourism shall be responsible for maintaining and administering a register for "time sharing activity" (*i.e.* details on the sellers and purchasers of time shares). Time share contracts must be written and in the form as provided in the regulations. The chairman of the board of directors of the Supreme Commission for Tourism (SCT) has the authority to issue regulations in furtherance of this law. The related regulations,

² The Law of Non-Saudi Proprietorship and Investment of Real Estate was issued by Royal Decree on 17/4/1421H and published in the *Official Gazette* on 13/5/1421H (October 11, 2000).

³ The *Law of Time Sharing in Tourist Real Estate Units* was issued by Royal Decree No. M/52, dated 20/08/1427H (corresponding to September 16, 2006) and published in the *Official Gazette* on 13/9/1427H (October 6, 2006).

called Executive Regulations for Time Sharing for Tourism Real Estate Units, were introduced in 2007. Among other things it provides a licensing and registration process, form of deed, mandatory clauses of a timeshare contract and vendor's obligations.

Units In Multi-unit Building Or Plans

The Law of Ownership and Sorting of Real Estate Units⁴ provides for the development and sale of independently owned units and the joint ownership and management of common areas, common building structure and fixtures used by the independent units. The law is very similar to the concept of the condominium, although there may be some aspects of a housing co-operative. Among other things, the unit owners hold the common areas, structures and fixtures as joint owners (concept of sharing), and provides for the collection of maintenance fees, borrowing money and investment of money. The law provides for the establishment of an owners' association to management of common areas, structure and fixtures. The Executive Regulations provide greater detail with respect to the transfer of ownership, rights and obligations of the owners' association, and other information and control mechanisms (*i.e.* minutes of meeting, tax liability, maintenance fees).

Real Estate Schemes

A directive approved by resolution of the Minister of Commerce and Industry and based on the Council of Ministers No.7/D/21149, issued on 8/9/1403H (June 20, 1983), dictates the controls and restrictions placed on real estate investments for the development of property. It is commonly referred to as the Real Estate Scheme resolution.

Building Code

On July 30, 2007, the International Code Council and the Saudi Building Code National Committee (SBCNC) entered into a memorandum of understanding to share building code safety knowledge and technical expertise. The purpose of this information sharing is to assist the Kingdom in the implementation of a revised national building code which will contain building and technical requirements. Currently, most building code-like requirements in the Kingdom are municipal or regional in nature. The

⁴ The Law of Ownership and Sorting of Real Estate Units was issued by Royal Decree No. M/5, dated 11/2/1423H (April 24, 2002) and published in the *Official Gazette* on 27/2/1423H (May 10, 2002). The related Executive Regulations were published on 22/3/1424H (May 23, 2003).

This memorandum is intended only as a general discussion of these issues. It is not considered to be legal advice. We would be pleased to provide additional details or advice about specific situations. For additional information on this important topic, please feel free to call upon your Dewey & LeBoeuf relationship partner.

No part of this publication may be reproduced, in whole or in part, in any form, without our prior written consent.

© 2009 Dewey & LeBoeuf LLP
All rights reserved.

For further information on Dewey & LeBoeuf, please visit www.dl.com

SBCNC was established to unify the various municipal and regional requirements and develop the first draft law that addresses building requirements on a national level. The MOU will also serve to assist in the development of other specifications, technical seminars and publications. The Saudi Building Code has not yet been implemented.

Saudi Fannie Mae and Other Government Investments

The Minister of Finance announced that the Kingdom of Saudi Arabia intends to establish a state company, similar to the Federal National Mortgage Association of the United States (commonly known as Fannie Mae), to purchase mortgages from financial institutions and assist in the development of national sukuk and debt markets. The Minister of Finance announced that the company should be established before the end of 2009. This should assist in the development of real estate in the Kingdom. The State-run Public Investment Fund (a Saudi sovereign fund) is expected to hold up to 40 percent in new mortgage lenders.

For more information, please contact Khalid A. Al-Thebity at +966 1 416 9990 (direct dial at +966 1 416 9991) or kal-thebity@dl.com or your Dewey & LeBoeuf relationship partner.