

Foreign Ownership of Real Estate in Oman

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Introduction

The Omani market has witnessed an increased level of investment in recent years, which has encouraged further foreign investment participation in the Omani economy. The need to escalate direct foreign investment into Oman has manifested itself through the opportunity to own or take a long term lease of property for commercial purposes and as a consequence, it has become essential for foreign entities to have assurance from the State and a robust legal framework where the interests of such investors are protected. As part of this development in the real estate sector, the Omani government has introduced a number of laws and made amendments to existing laws to enable foreign individuals and corporate entities to achieve such development.

This article expands on the rights foreigners currently possess over real estate and provides an analysis on how recent legislation regarding such rights could serve as a benefit not only for foreign investors and companies but also the long term economic stability of the region.

Historic Lead to Foreign Ownership in Oman

Under Sultani Decree 5 of 1980 ('**Land Law**'), the general rule is that all land is owned by the Omani government, with the exception that property may be settled through inheritance, in which ownership is transferred to Omani citizens and becomes excluded from state property. The Land Law strictly served to cater for Omani citizens only and foreign ownership of real estate was not recognised between 1970 and 1980 as the economic and legislative structure of Oman was not focused towards encouraging foreign investment.

The application of land ownership was amended under Sultani Decree 24 of 1995, under which the concept of ownership evolved from Omani natural persons to Omani public joint stock companies, in which foreigners could hold up to 49% shareholding in such company. Further changes were made to foreign ownership restrictions in the real estate sector under Sultani Decree 76 of 2010, allowing foreigners to hold up to 70% of the equity of real estate companies.

In 2017, foreigners were given additional rights to exercise direct control over investment projects in Oman by way of access to Real Estate Investment Funds ('**REIF**') under Ministerial Decision 95 of 2017 ('**MD 95/2017**'). Regulated and licensed by the Capital Market Authority, a REIF is a collective investment model with a fixed share capital that owns commercial properties. The significance of MD 95/2017 is the complete control granted to foreigners over certain activities on real estate owned by the REIFs subject to the following conditions:

1. the property must already be constructed and a certificate of completion from the local municipality must have been issued prior to the investment;

2. the property must be used solely for commercial, commercial residential, industrial or tourism purposes;
and
3. a REIF may not own agricultural or unoccupied land.

Foreign Ownership and Integrated Tourism Complexes

Further advances to real estate laws for foreigners were made by Sultani Decree 12 of 2006, the Law on Foreign Ownership of Real Estate in Integrated Tourism Complexes ('ITCs') ('ITC Law'). ITCs include Al Mouj, Muscat Bay, Muscat Hills and Jebel Sifah. The basis of an ITC is that a developer enters into a development agreement with the Government of Oman under which real estate is made available to third parties to use for their own purposes. Under the ITC Law, these third parties are permitted to be foreign nationals who may purchase and own 100% of their chosen plots by way of usufruct for both residential and commercial purposes. Upon purchase of the land, foreigners have four years to complete construction if the land is not developed .

This four year period may be extended by the Ministry of Housing and Urban Planning ('MOHUP'), if appropriate. However, a risk that foreigners face is that the MOHUP may auction the land and sell it if they find that the purchaser of the land has not utilised it within the required time frame. Therefore, the four year rule encourages purchasers to act swiftly and benefits these ITCs in the long term.

Usufructs: The Shift from Commercial Use to Residential Use

The Usufruct Law issued by Sultani Decree 5 of 1981, grants all purchasers, mainly companies looking to run long term projects, absolute title that can be mortgaged, sold or subleased. However, obtaining a usufruct poses limitations to its use. There must be a set plan to execute the commercial purpose behind the grant of the usufruct right.

MOHUP's Resolution 357 of 2020 ('Resolution 357/2020') provides additional usufructs rights to foreigners, permitting them to purchase flats in multi-story, mixed commercial and residential buildings outside ITC areas. This significant change allows foreigners to obtain usufruct grants outside the scope of commercial projects as such change expands to personal residential use.

Resolution 357/2020 lays out certain conditions to foreign ownership, which are as follows:

1. the multi-story building must have at least four floors and
2. It cannot be sold for less than OMR 45,000; and
3. a fee of three per cent of the value of the residential unit is payable to the MOHUP upon the registration of the usufruct right at the land registry secretariat.

Foreigners are given the advantage of renewing their usufruct from fifty years to ninety-nine years, where they may grant or pass on the usufruct right to their heirs upon death, who are also permitted to renew the usufruct under their name. After four years of owning the property, foreign owners also have the option to grant third party access to the property by either selling their usufruct right or renting it.

The Sultani Decree 29 of 2018 ('SD 29/2018'), continues to apply and generally prohibits the ownership of land and real estate in certain areas by non-Omanis. Under SD 29/2018, non-Omanis are not permitted to own land in the following areas:

1. Dhofar (except Salalah, Musandam, Buraimi, Dhahirah and Al Wusta;
2. Liwa, Shimas and Masirah;
3. Jebel Akhdar, Jebel Shams and any mountains of strategic importance;
4. islands;
5. places situated near royal palaces, security and military installations; and
6. ancient archaeological areas.

A non-Omani that owns property in the areas referred to in SD 29/2018 would need to transfer it to an Omani citizen within a period of two years from the issuance of SD 29/2018.

Resolution 357/2020 and SD 29/2018 are beneficial to foreigners by providing the same rights as owners in which they can pass their property to their heirs who wish to continue carrying out their business or use the residential real estate in Oman.

Foreign Capital Investment Law

The Gulf's transition from dependence on hydrocarbons means that foreign investment and the focus on the commercial arena of the region are essential to ensure that such transition occurs successfully. With the recent implementation of the Foreign Capital Investment Law ('**FCIL**'), which allows 100% foreign ownership over investment projects (subject to the list of banned activities under Ministerial Decision 209 of 2020), the usufruct rights under Resolution 357/2020 take a larger step to encourage foreign investment into Oman. The FCIL also offers usufruct rights over real estate and land in accordance to the specific, designated locations in each governate for the purpose of establishing investment projects.

The FCIL and Resolution 357/2020 go hand in hand as foreigners may now launch their wholly owned businesses in Oman under a usufruct right and invest and own property, making it easier for them to properly execute their goals of the project in a comfortable and secure manner. These laws also encourage more foreigners to invest in the country, which would serve as a long term benefit to Oman's continued economic diversification.

Conclusion

Parallel to the development of the economy and the size of foreign investment in Oman, the Government of Oman has enacted relevant laws to serve the needs for foreign individuals and entities to reside and operate their commercial activities in Oman. Omani laws that cater to the flexibility of real estate ownership for foreigners is essential for the long term benefit as it encourages them to enter and invest in the region.

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