Built it and They will come – Part 2

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Requirements to Register a Real Estate Development Company in Kuwait

A prerequisite for a company to register as a real estate developer in Kuwait is that it must be 100% owned by Kuwaiti or GCC nationals or companies wholly owned by them. A company established for real estate development purposes must obtain approval from the Ministry of Commerce and Industry ("MOCI") to engage in real estate development activities. Once this approval has been obtained the company must also obtain approval from the Kuwait Municipality and the Kuwait Ministry of Interiors prior to commencing real estate development activities.

Real estate development companies may be established in Kuwait either as a joint stock company, limited liability company or a branch of a GCC company.

Joint Stock Company ("KSC")

The MOCI specifies three categories for establishing a KSC for the purpose of real estate development. Each category has a minimum issued capital depending upon the objectives of the KSC.

- The first category of KSC ("First Category") has a minimum capital of KD 2,000,000 and is entitled to undertake the following activities:

– Owning, purchasing and selling real estate and development of real estate for its own account inside and outside of Kuwait, in addition to management of real estate owned by third parties in accordance with the applicable laws and regulations.

– Owning, purchasing and selling on its behalf shares and bonds of real estate companies for account of the KSC in Kuwait or abroad.

– Preparing evaluations and studies on the real estate market, provided the KSC has suitably qualified employees to provide this service.

– Undertaking services to maintain buildings and projects owned by the KSC or third parties, including management, civil, electrical and mechanical services, elevator and air conditioning services.

– Organizing real estate exhibitions for projects of the KSC.

– Investment in portfolios managed by licensed companies.

– Engaging in build-operate-transfer projects related to residential, commercial and industrial projects.

- The second category of KSC ("Second Category") has a minimum capital of KD 4,000,000 and is entitled to undertake the activities of the First Category in addition to the following:

– Organising real estate auctions.

– Owning and managing commercial and residential real estate.

- The third category of KSC Development ("Third Category") has a minimum capital of KD 10,000,000 and is entitled to undertake the activities of the First Category and Second Category in addition to the following:

– Owning and management of hotels and resorts for tourism purposes.

– Operation, management and leasing of hotels, clubs, motels, guest houses, residential complexes, rest houses, parks, gardens, exhibitions, restaurants, cafeterias, health resorts, marketing and athletic projects.

Limited Liability Company ("LLC")

A real estate development company can be established as an LLC for the purpose of management and development of a real estate project. The minimum capital required to establish a LLC is KD 20,000.

Upon establishment of the LLC further activities may also be added by paying an additional KD 20,000 for each activity as mentioned below:

– Sale and purchase of real estate.

– Leasing real estate.

– Sale, purchase and leasing of property used for tourism purposes.

Branch of a GCC company ("Branch")

Law No. 237 of 2011 ("GCC Company Branch Law") permits the establishment of a branch of a GCC company in Kuwait for real estate development purposes. To qualify to open a Branch the company must be registered for at least three years in the home GCC country, be fully owned and managed by GCC nationals and the company objectives must not conflict with Kuwaiti laws.

Documents required

The following documents are required to open a real estate development company in Kuwait.

1. An application form that states the names of the owners, the purpose, capital and directors of the proposed company.
2. A copy of the Memorandum and Articles of Association of the proposed company.
3. A power of attorney issued by the proposed owners authorizing an individual to sign all documentation relating to the formation of the company.
4. A bank statement from each proposed owner showing an amount equal to or greater than the owner's capital contribution. Such statement should be issued by a Kuwaiti bank, however, recently the MOCI has accepted bank statements issued by GCC banks and foreign banks provided that a certified translation is provided.
5. A copy of the office lease agreement of the proposed company in the name of one of the owners.

Once the documents mentioned above have been obtained the following procedure must be followed to establish the company:

1. The application form (plus the additional information and documents mentioned above) must be submitted to the MOCI.
2. Previously there has been a requirement that an announcement appear in the Kuwaiti Official Gazette

regarding the proposed formation of a company, following which, if no objection is raised within 15 days, the procedure would continue. However this does not apply to every company and remains at the discretion of the MOCI
3. The MOCI will provide a letter of request to be delivered to the proposed company's bank to confirm the deposit of the capital of the project by each proposed owner. The MOCI will also provide a letter of request to be delivered to the Kuwait Municipality to examine and approve the proposed office premises.
4. A draft Memorandum of Association of the company (which should be consistent with the standard form issued by the Ministry of Justice ("MOJ") should then be submitted to the MOCI for preliminary approval. The Memorandum of Association is then delivered to the MOJ to be typed on official letterhead.
5. The proposed owner should then attend at the MOJ to sign the Memorandum of Association. Thereafter the company is formed and a certificate of incorporation of the company from the MOCI's Commercial Registry can be obtained.

The main regulatory authorities that govern real estate development projects in Kuwait are the Kuwait Municipality and Real Estate Registry Circuit. The Kuwait Municipality is authorised to approve a real estate development project. The Real Estate Registry Circuit is responsible for registering the transfer of ownership of real estate.

Requirements to Register a Real Estate Development Company in Qatar

Generally, only a company incorporated in Qatar ("Qatari LLC") can engage in real estate development activities. The Qatari LLC is required to register with the Ministry of Business and Trade in Qatar ("Qatar MBT") and must obtain a commercial registration certificate that includes the activity to engage in real estate development. At least 51% of the shares in the Qatari LLC must be owned by a Qatari national or a company wholly owned by a Qatari national. However if the proposed developer is a GCC national or a company owned 100% by a GCC national the shareholding by a Qatari national or company in the Qatari LLC can be reduced to 50%.

The minimum capital required to establish the Qatari LLC is QAR 200,000. If a foreign registered developer has been awarded a Qatari government contract then the developer can apply for a ministerial resolution permitting the developer to establish a branch office in Qatar to perform real estate development activities awarded under the contract. The branch office of the developer would be 100% owned by the foreign developer without the need to establish a Qatari LLC. There is no specific regulatory authority governing real estate developments in Qatar and the Qatar MBT governs the activities of the developer. There is no requirement for developers to open escrow accounts for real estate development projects in Qatar.

Requirements to Register a Real Estate Development Company in Jordan

At present Jordan does not have any specific legislation or authority that deals exclusively with real estate development. Real estate development activities are governed by contractual arrangements between the parties.

Foreign developers wishing to engage in real estate development activities in Jordan must register with the Jordanian Ministry of Industry and Trade. There are a number of different methods in which a company can be registered in Jordan that include both local and foreign companies.

Regulation No.54 of 2000 Regulating Non-Jordanian Investments ("Regulation") determines the limit placed on foreign ownership of real estate in Jordan. Article 2 of the Regulation provides that in areas not specifically mentioned in the Regulation foreign investors may own any project wholly or partially. If the company intends to carry out activities which could be construed as construction or engineering activities, the Regulation provides that such activities can only be carried out by a company with a minimum of 50% ownership by a Jordanian national or company wholly owned by Jordanian nationals. In accordance with Article 7 of the Regulation foreign investors are required to invest a minimum of JOD 50,000 when registering a company in Jordan.

The Jordanian Companies Law No.22 of 1997 (as amended) (“Law”), recognizes two types of company that can be established for real estate development activities; a limited liability company (“LLC”) and a private shareholding company (“PSC”).

The Law also provides two types of branch of a foreign company that can be established for real estate development, namely a “performing branch” and a “non-performing branch”. The performing branch can be divided into two separate branches in accordance with Article 240 of the Law:

1. A branch that operates for a limited period that is awarded a short term contract. The registration of such a branch shall cease upon the expiry of the contract.
2. A branch operating permanently in Jordan under license by the competent official authorities, such as the branch of a foreign bank.

A non-performing branch is a representative office of a foreign company that is registered in Jordan but cannot engage in commercial activities.

Requirements to Register a Real Estate Development Company in the Kingdom of Saudi Arabia (KSA)

KSA has a high local and expat population leading to sustainable demand for real estate. In common with other GCC states, there is now increasing interest in real estate as an area of investment to encourage the development of other industries such as hospitality, education and healthcare, as well as to serve the housing needs of the population.

In order to meet the high demand for real estate the government of KSA has introduced a number of laws which are set to increase the role of the private sector in the KSA real estate market.

KSA Real Estate Laws

The KSA real estate regime includes the following laws and regulations:

1. The Realty in Kind Registration Law (“Land Registration Law”)
2. The System of Ownership of Unit Estates and their Sorting (“Strata Law”)
3. Law of Non Saudis Proprietorship and Investment of Real Estate issued No 3806 (“Foreign Ownership Law”)

In addition, a number of financing laws impact real estate in KSA:

1. The Execution Law
2. The Law on Supervision of Finance Companies
3. The Lease Finance Law
4. The Real Estate Finance Law
5. The Mortgage Law

Finally, there are Ministerial Resolutions relating to “Off Plan” real estate sales and form part of the “financial” legal frame work for real estate development.

It is beyond the scope of this article to consider in depth these laws and their implementation, but suffice to say, they show a serious commitment by the government of KSA to involve the private sector in real estate development.

Setting up as a Developer in KSA

KSA nationals face very few barriers to set up as a real estate developer in KSA. A KSA national has the right to own real estate and develop this in accordance the rules of the relevant Municipality relating to the sub division of land. Stringent licensing rules do apply to the engineering and construction industries, however real estate developers generally sub-contract such activities. KSA nationals will however be required to comply with the Ministerial Resolutions if they wish to sell “Off Plan” (see below). Brokers must also be licensed appropriately.

Developers other than KSA nationals are entitled to become real estate developers pursuant to the Foreign Ownership Law.

Article 1 of the Foreign Ownership Law states:

“(a) Non Saudi investors of natural or corporate capacity licensed to practice any economic, vocational or professional activity may appropriate [an] estate necessary for practicing such activity, including the estate necessary for his domicile and the domicile of his employees with the consent of the authority which issues the license… (b) if the mentioned license includes the purchase of buildings or lands to erect buildings thereon and invested through sale or lease, the total cost of the project, including the cost of land and the cost of building, shall not be less than thirty million Saudi Riyals and the Council of Ministers may modify such amount. The said estate shall be invested within five years of its proprietorship.”

A foreign investor license (as referred to in Article 1) can be obtained from the Saudi Arabian General Investment Agency (“SAGIA”). Whilst SAGIA has discretion to require a certain amount of KSA national ownership of shares in the development company, foreign real estate developers, provided they meet the requirements of Article 1(b) of the Foreign Ownership Law are entitled to full foreign ownership.

Conducting “Off Plan” sales

Irrespective of whether a developer is a KSA national or a foreign national, it is illegal to sell real estate “Off Plan” except pursuant to the Ministerial Resolutions pertaining to “Off Plan” sales. Offenders may face criminal sanctions. The Ministerial Resolution sets out a regime regulating off plan sales and requires the following to be submitted to the committee formed by the Ministry of Commerce concerned with real estate development (“Committee”):

1. an application form
2. a credit report
3. a copy of the title deed for the development land
4. building approvals for the project
5. details of all brokers and contracts
6. details of all units to be sold off plan in the project
7. a project feasibility study
8. the commercial license of the developer
9. the articles of association of the developer company
10. identification details of all owners of the company
11. a resolution for the formation of the Board of directors and identification of the Board
12. a license from the Committee
13. details of the escrow trustee who must be a registered bank in KSA
14. a copy of the escrow agreement between the developer and the escrow trustee
15. a copy of the agreement between an auditor and the developer for the audit of the escrow account
16. a copy of the contract between the developer and engineering consultant.

The role of the escrow trustee, engineering consultant and auditor are clearly defined in the Ministerial Resolutions, which require the supervision of the escrow account and payments from it. All sales of units in a project must be notified to the Committee.