Securing Healthcare premises

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February 2014

Protecting capital investment

All healthcare operators setting up in Dubai or Abu Dhabi will require premises for their businesses. For some this means finding a suitable plot of land and developing a specialist facility. For others it may be possible to secure and adapt existing premises. Whichever option is chosen significant capital expenditure is likely to be required to make the premises suitable for a healthcare business. Developing a specialist healthcare facility on a plot of land is inevitably a costly venture but for a healthcare operator the cost of adapting and fitting-out existing premises is also considerable. The operator therefore needs to ensure that its investment in premises and fit-out can be secured to enable recovery of this outlay in future years. For foreign healthcare businesses operating in Dubai and Abu Dhabi obtaining this security can be problematic due to legal restrictions on the foreign ownership of real estate.

Legal restrictions on foreign businesses

Dubai

In Dubai operators wholly owned by nationals of member states of the Gulf Cooperation Council (the “GCC”) are generally able to buy or take leases of up to 99 years of land or existing premises in any part of the Emirate. Other foreign operators wishing to purchase or take long-term leases of premises in Dubai are restricted to designated areas (“Investment Areas”) where laws allow foreigners a broad range of property ownership rights albeit subject to certain restrictions. Outside the Investment Areas (non-GCC) foreign businesses are restricted to taking leases of land or existing premises for terms of no more than five years. This restriction on lease terms is imposed by the rules governing the Ejari system for registration of leases in Dubai.

Abu Dhabi

In Abu Dhabi only healthcare operators wholly owned by UAE nationals can buy premises or take long-term leases of premises outside Investment Areas. All foreign operators (including GCC nationals) wishing to purchase or take long-term leases of premises in Abu Dhabi are confined to Investment Areas. Those wholly owned by GCC nationals may purchase land or buildings within Abu Dhabi’s Investment Areas whilst other foreign operators may take 99 year leases of land or existing premises within Investment Areas. Outside Investment Areas foreign healthcare operators (including GCC owned businesses) are restricted to taking leases of land or existing premises for maximum terms of no more than four years. This restriction on lease terms is imposed by the Tawtheeq rules concerning the registration of leases in Abu Dhabi.

Developing New Healthcare Facility

For healthcare operators wholly owned by UAE nationals there are few concerns around securing an investment in a new facility. Locally owned operators can purchase or take long-term leases over land anywhere in Dubai or Abu Dhabi and then, with the usual consents, develop new healthcare facilities. Wholly GCC owned operators benefit from the same freedoms in Dubai. These businesses can obtain title deeds for their properties from the appropriate land department when they register their legal titles. Obtaining development finance for these operators is usually more straightforward as the bank or financial institution can register a mortgage as security over the title to the healthcare facility.

Foreign healthcare operators usually encounter greater difficulties securing their investment in new facilities. Outside Investment Areas they are generally restricted to taking leases with terms of no more than 4 or 5 years and whilst these leases can be expressed to be renewable that is often not sufficient security for the considerable investment required to develop a new facility. Obtaining financing for the development is likely to be more difficult as the operator cannot grant the security of a mortgage over the facility due to the nature of its short-term lease. In practice foreign healthcare operators, with the exception of GCC operators in Dubai, usually choose to limit their investment in newly developed facilities to Investment Areas. Here operators get the security of land ownership or a long-term lease, which can usually be registered and a title deed obtained. Consequently within an Investment Area obtaining and securing finance over a new development is usually more straightforward for a foreign operator as a mortgage can usually be granted.

Leasing premises in existing buildings

Whilst the costs to a healthcare operator of adapting and then fitting-out an existing building for use are often lower than those of developing a new healthcare facility, the costs are still usually considerable. Frequently an operator will lease commercial or residential premises and costly works will then be required to make the premises suitable for a healthcare business. Fit-out works are often expensive and may require physical alterations to the building. If this expenditure is to be secured then the healthcare operator will need a robust lease which is either sufficiently long in term or which delivers rights of renewal.

If healthcare operator is UAE owned (or in Dubai, if the operator is UAE or GCC owned) then it is possible to negotiate and then register a long-term lease of up to 99 years regardless of location. A title deed can be issued in favour of the operator and there is certainty that the premises have been secured for the long-term.

Foreign healthcare operators are restricted to taking leases of just 4 or 5 years outside Investment Areas. These leases can however include rights to renew. In Dubai, whether or not there is a contractual right to renew in the lease, there are only limited grounds for a landlord to oppose a request to renew a lease. Healthcare operators in Dubai are also protected against steep rent increases on lease renewal by rent cap laws. Similar rent cap laws have recently been abolished in Abu Dhabi so operators there are exposed to the risk that landlords can demand unrestricted rent increases on renewal. For those who have incurred considerable expenditure fitting-out their healthcare facilities, and whose landlords are well aware of this expenditure, uncapped rent increases on lease renewal can be a daunting prospect.

If foreign healthcare operators lease premises within Investment Areas then they are free to negotiate lease terms of up to 99 years. An operator wanting the security of a long-term lease but with an ability to terminate early may choose to agree a tenant break clause with the landlord. With such a break clause the healthcare operator has both the guarantee of a long-term lease but also the flexibility to leave early should there be need. Long-term lease also usually provide the reassurance of a title deed and, subject to the terms of the lease, the ability to mortgage the leasehold premises to secure finance. The long-term tenant is also protected from the uncertainties of rent increases on lease renewal as rents can often be agreed for the whole term.

Conclusion

UAE and GCC owned healthcare operators in Dubai and UAE owned operators in Abu Dhabi can usually secure the necessary protections for their investment in premises wherever they choose to locate their businesses. Other healthcare businesses will usually finding it far easier to protect their investment in premises if they choose to locate within Investment Areas.