

A new form of Mustaha agreement in the Emirate of Abu Dhabi

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There are exceptions to this rule. GCC nationals can own property in areas designated for foreign ownership ("Investment Areas"). Other foreign nationals may own apartments or floors in buildings (without the right of ownership of the land) in certain Investment Areas, together with the right to own usufruct rights of up to 99 years or Musataha rights of up to 50 years. This article considers the recent changes to the content and use of Musataha Agreements in Abu Dhabi.

Musataha Agreements

A Musataha Agreement creates a real property right (a right in rem) which entitles its holder to construct a building or to invest in, mortgage, lease, sell, or purchase a plot of land belonging to a third party for a period of up to 50 years, provided that such acts do not contravene any Executive Council resolutions. This right is renewable once by mutual consent of the parties for a further period of up to 50 years.

In Resolution No.64 of 2010 the Chairman of the Executive Council ruled that it shall prescribe the rules, regulations and period of a Musataha Agreement over any real estate which falls outside the Investment Areas. Resolution No. 64 further prescribes that anyone who has a right of Musataha for a period that exceeds 10 years shall have the right, without the landlord's prior consent, to mortgage it. Further, the landlord shall not mortgage the land without the consent of the Musataha right holder, unless in both cases the two contracting parties agree otherwise. A Musataha Agreement must be registered (pursuant to Law No. 3 of 2005) with the Abu Dhabi Municipality in order for it to be enforceable in a court of law.

Circular No.11

In its most recent circular (Circular No. 11 of 2014) the Abu Dhabi Executive Council implemented a standard form Musataha Agreement to be used by government entities. This standard form must now be used for all Musataha Agreements made in the Emirate of Abu Dhabi between two or more Abu Dhabi government entities or between government entities and third parties. It will initially be applied between health and education related government entities and third parties. Circular No. 11 is not applicable to the federal government of the UAE or entities of the federal government.

Circular No. 11 stipulates that the standard form agreement may be supplemented by additional clauses as agreed by the parties.

The main provisions of the new Musataha Agreement template include:

- renewal rights, which oblige either party to give 6 months prior written notice of their intention not to renew the Musataha Agreement;
- an obligation on the holder of the Musataha right to complete construction within 24 months from signing the agreement;
- the time for construction can be extended by the landlord for reasons he sees fit;

- if the holder of the Musataha right does not complete construction within the prescribed time frame, the landlord has a right to terminate the Musataha Agreement;
- the obligations of the holder of the Musataha right is to bear all maintenance and infrastructure costs and expenses;
- the rent due under the Musataha Agreement is to be paid to the landlord annually in advance at the beginning of each year of the term;
- the holder of the Musataha right has 60 days from signing the agreement to submit plans and designs to the landlord and any other concerned parties and the landlord in turn has 30 days to approve such plans;
- the holder of the Musataha right is obliged to obtain all the necessary licences and approvals required for the development of the land/project, as well as insurance for the buildings;
- the holder of the Musataha right may not build staff or labour accommodation for workers or labourers engaged in the same Musataha project; and
- any dispute or conflict shall be referred to the competent court of the Emirate of Abu Dhabi.

Circular No.11 and the standard-form Musataha Agreement template has been issued in light of the growing health and education demand in Abu Dhabi and proposed major government projects which were announced earlier this year. In the initial phase, Circular No. 11 will specifically address and streamline Musataha Agreements between health and education related government entities and third parties. These government entities include Abu Dhabi Health Services (SEHA), Health Authority Abu Dhabi and the Abu Dhabi Education Council. The Musataha Agreements will eventually be used for all Musataha contracts involving all Abu Dhabi Government Entities. The registration of such agreements will not be possible without the inclusion of the standard conditions imposed by Circular No. 11; however the parties to the Musataha Agreement will be afforded the welcome flexibility of being able to agree to additional clauses as they see fit.