

Foreigners can own usufruct right for 100 Years in Sharjah

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March 2015

On 16 November 2014, H.H. Sultan bin Mohammed Al Qasimi, the Crown Prince in the Emirate of Sharjah, issued Executive Council Resolution No. 26 of 2014 Concerning the Usufruct of Real Estate Properties in the Emirate of Sharjah (the “New Resolution”).

This resolution allows foreign nationals and companies owned by foreign nationals to own usufruct rights over vacant plots of land for a period of 100 years in Sharjah, and to register such usufruct right with the Sharjah Real Estate Registration Department (“SRERD”). The New Resolution also permits foreign developers to register projects and sell usufruct rights to investors subject to obtaining a special approval from the Ruler of Sharjah.

Rules of Ownership in Sharjah

By way of background, Article 4 of Sharjah Law No. 5 of 2010 (the “Registration Law”) restricts the ownership of real property rights in the Emirate of Sharjah to UAE and GCC nationals, and companies fully owned by UAE and GCC nationals, or a combination of both.

The text of Article 4 of the Registration Law states that:

“The right to own Real Properties in the Emirate shall be restricted to nationals of the State, nationals of the Cooperation Council for the Arab States of the Gulf, and the companies and organizations wholly owned by any of the foregoing. Notwithstanding, the right to own Real Properties in the Emirate may be granted as follows: (a) Ownership with the consent of the Ruler and upon the conditions prescribed by the Ruler, and (b) By inheritance bequeath under decree of distribution or waiver from the owner to one of his first-degree relatives, according to what is prescribed in the Executive Regulations of this Law.”

Thus, Article 4 above clarified that the position till date was that foreign nationals could only be granted ownership of real property rights by prior consent of the Ruler and subject to satisfaction of conditions prescribed by the Ruler. In general, we are aware that the Ruler has granted exemption to several foreigners subject to satisfaction of certain requirements and payment of prescribed fees.

Usufruct Licensing Under the New Resolution – Rejoice for Foreign Developers

Usufruct is a real property right whereby the usufructuary enjoys the use and utilizes another person’s property without the disposition, alteration or destruction of the property itself.

The New Resolution permits the sale of usufruct rights through a usufruct system managed by SRERD. Under the usufruct system, whilst developers and real estate property owners from UAE nationals, GCC nationals, companies and institutions fully owned by them, are eligible to obtain such license, it also provides that foreign nationals and companies owned by foreign nationals may obtain such usufruct license to sell real estate in certain pre-approved areas in Sharjah, subject to prior consent of the Ruler.

This right of usufruct license by foreigners is viewed as a new and welcomed development in

Sharjah, one that will promote foreign investment in the Emirate.

Requirements for Obtaining the Usufruct License

Article 3 of the New Resolution lays down the requirements for the grant of usufruct license to developers. It should be noted that foreign developers pre-approved by the Ruler may be subject to further additional conditions.

The requirements are as follows:

- The usufruct period shall be for a maximum period of (100) hundred years.
- The project plot shall be owned on a freehold basis by the licensed developer.
- The licensed developer must register the project with SRERD prior to marketing or selling any usufruct rights over the vacant plots in accordance with the usufruct system.
- The licensed developer shall furnish to SRERD a bank guarantee from a UAE bank equal to 20% of value of the project prior to the sales of usufruct rights over vacant plots in accordance with the usufruct system.
- The licensed developer will be required to sign the SRERD commitment form which lays down the rules and conditions for selling the usufruct rights.

In our opinion, the above requirements set by Article 3 are to safeguard the investors in such projects, and to ensure that the licensed developer is capable and financially efficient to deliver the project.

Ownership of usufruct right by Foreign Investors

The earlier position was that foreign nationals or companies owned by foreign nationals were not permitted to own real estate in Sharjah. With the introduction of the New Resolution, whilst foreign nationals are not permitted to obtain freehold ownership of real estate in Sharjah (unless special exemption is obtained from the Ruler) they will now be permitted to purchase real estate pursuant to the grant of a usufruct property right for a maximum period of 100 years.

Article 6 of the New Resolution states that foreign nationals will be permitted to own a usufruct right over vacant land in Sharjah subject to the following preconditions, namely:

- For foreign natural persons, such persons must hold a valid residency in UAE; and
- For foreign corporate entities, such entities must hold a valid commercial license in the UAE.

Furthermore, foreign investors under the New Resolution shall have the right to assign the usufruct right to a third party provided that such assignment does not exceed the original usufruct period registered at SRERD and subject to prior approval from SRERD.

Implementation of the Usufruct

Article 9 of the New Resolution determines the usufruct title owner's rights, and states as follows:

“(a) The usufructuary shall be entitled to use and utilize the property subject matter of usufruct and annexes thereto like the way of owner's utilization of his property, provided that he shall not violate conditions of the usufruct contract, and (b) the usufructuary shall be entitled to dispose of his usufruct right in all kinds of disposal without contradiction with the purpose allocated for the property subject matter of usufruct and annexes thereto, provided that the disposal may not exceed the usufruct period after approval of the Department.”

The usufructuary shall be entitled to all natural, industrial and civil benefits of the property subject to the usufruct, namely:

- To personally enjoy the property without any limitations,
- To lease the property to any third party and to assign his usufructory rights over the real estate property to third parties. However, the assignment to the usufructory rights shall terminate upon the termination of the assigned usufruct right; and
- To make useful improvements or expenses for further benefits as the usufructuary deems fit (but without the right to radically change the structure or destroy it).

Finally, Article 10 of the New Resolution sets out the obligations of the usufructuary, summarized as follows:

- Upon the expiry of the usufruct lease, the usufruct right will terminate and the foreign investor is to reinstate the property back to the original condition prior to the usufruct commencement, unless agreed otherwise by the usufruct parties.
- Foreign investors are restricted from disposing of the ownership of the property unless approved by SRERD, provided that the assignment of the usufruct right does not exceed the original usufruct period.
- Foreign investors are permitted to make any substantial or structural amendments to the property subject to the prior consent of the developer and the competent authorities.

Article 7 of the Resolution provides that upon termination of the usufruct right, the licensed developer shall be entitled to recover the property, annexes and structures built on the land purchased by the usufructuary during the lease term.

Is it Usufruct or Musataha?

Usufruct is defined as the right to use and utilize a vacant plot, or a building on its present form, without having the right to dispose, reconstruct or demolish the existing building subject the 100 years lease. Whereas, the New Resolution allows the sale of property on a usufruct basis to foreign nationals with the right to construct over the property. In our opinion, the investor is effectively obtaining a Musataha right, Musataha refers to a right in rem conferring upon the owner thereof the right to build a building or to plant on the land of another. Strictly speaking, such arrangement is recognized at law as a Musataha rather than a usufruct right.

Conclusion

The New Resolution was issued to augment investment in Sharjah, by offering foreign nationals the opportunity to obtain usufruct rights which can extend up to 100 years. The Property Department at Al Tamimi & Company has worked on the first project which implemented the new usufruct system, which is located in a designated area in Sharjah, and assisted the developer with the drafting of the sale and purchase agreements for the sale of usufruct rights within the project. We are expecting supplementary resolutions and decrees to be issued, identifying the investment areas, and provide further rules in real property ownership for foreign nationals to encourage foreign investors to invest in the real estate market of Sharjah. Should you wish to further discuss the contents of this article, please feel free to contact any member of the Property Department.