

Property Laws and Regulations in Egypt

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The Civil Code regulates ownership of land in Egypt and is supplemented by some general doctrines of law. There are also specific laws in relation to the ownership of real property. These specific laws impose several restrictions on foreign property ownership.

Types of real property rights and methods of transferring ownership

In Egypt property ownership can be transferred in several ways. We set out below some of the most common methods of transferring property:

Rights of Ownership

- Inheritance

Property can be inherited after the death of its owner. For Muslims, inheritance is governed by the principles of Islamic Sharia and for non-Muslims it is governed by their own religious principles. Ownership of property is transferred to heirs after the death of an owner and the issuance of an inheritance order from the competent court determining the heirs and their relevant ownership percentages.

Transferring the ownership of real property to another person by inheritance is also possible using a Will in accordance with the principles of Islamic Sharia, as long as the value of such property does not exceed one third of value of the total estate of the deceased.

Property can also be gifted using a gift agreement provided the customary regulations to execute transfers are complied with.

- Sale Agreement

The most common way to transfer ownership of property is by using a sale agreement. The Civil Code governs and regulates the rights and obligations of both the seller and the buyer of a property.

According to the Civil Code and the Notary Public Law No. 114 of 1946, the sale of a property in Egypt is not effective unless the sale agreement is registered. The Notary Public Law provides that the registration of sale agreements must take place at the offices of the Notary Public.

Nonetheless much property in Egypt has not been registered. Historically this has been a result of high registration fees which were calculated as a percentage of the sale price. Many land transactions were carried out using preliminary sale agreements that were not registered before the Notary Public. As a result, purchasers under these unregistered sale agreements did not acquire ownership rights or real property rights but had instead a personal contractual right over the property. This right must be registered with the Notary Public in order to become a real property right.

In a recent amendment a reduced registration fee was introduced to encourage property purchasers to register their ownership rights. The procedures for registration are however still cumbersome because it is often necessary to trace the ownership of a property to the first owner through a series of unregistered

transfers.

- Pre-emption (Priority Rights)

Pre-emption is a method of transferring property ownership applied by virtue of Islamic Sharia in many Arab and Islamic countries. The notion of pre-emption can be summarised as a priority right granted to the owner of a neighbouring property to purchase a property before any other third party. Use of this method of acquiring ownership is rare in Egypt due to its complexity but it is a prescribed option under the law and has been the subject of many disputes before the Egyptian courts.

Right of Use

- Usufruct

This is a right to use a property owned by another person for a specific period of time and on terms agreed between the parties. A person who holds a usufruct right over another person's property has all the rights granted by law to the owner, except for the right to sell or transfer the ownership of such property. Rights of usufruct are transferable real property rights.

Encumbrances

- Mortgages

Property can be mortgaged to third parties as a security for a debt or obligation. For a mortgage to be effective and valid it must be registered with the Notary Public. For such registration to be possible the property which is subject to the mortgage must also be registered in the name of the borrower or the person offering the property as security.

- Commercial Entity Mortgage

Property owned by a business can be mortgaged as a part of its commercial operations.

2. Regulations of Real Estate Ownership

The terms of property ownership vary according to the nature and location of the property. The type of land (desert, reclamation, agriculture) and proximity of the land from the country's borders determine which laws apply and these laws in certain instances restrict ownership.

Ownership of Real Estate

In general, Egyptian nationals, either natural persons or legal entities (regardless of their ultimate ownership), have the right to own property in different areas of Egypt. These rights are subject to various terms and conditions set out by the government. Legal entities in general have the right to own property necessary for their commercial objectives, for example as a head office or as an industrial plant. For foreigners, whether natural persons or legal entities, there are certain restricted areas and limitations that apply to their rights to own property.

Law No. 230 of 1996, regulating the Ownership by Foreigners of Buildings and Land Plots, governs the ownership of property by natural foreign persons for residential purposes. There are restrictions on such ownership; for example, a foreigner who owns a plot of land must erect a building on the land within five years of registering his ownership with the Notary Public. Ownership of non-residential property by foreigners is regulated by other laws. For example there are restrictions on the surface area and number of properties a foreigner may own (currently limited to a maximum of 4,000 square metres and two properties).

Ownership of Agricultural Land

Law No. 15 of 1963 was issued to prohibit the foreign ownership of agricultural land. Foreigners, whether natural persons or legal entities, may not own or hold rights of usufruct over agricultural land.

Law No. 15 of 1963 provides that the government must inform the relevant authorities of any transfer of agricultural land to foreigners by inheritance. In such cases the agricultural land is seized by the Egyptian government and compensation is paid.

Ownership of Desert Land and Agriculture Reclamation Land

The Law on Desert Lands regulates ownership of desert land. This law restricts ownership of such land to Egyptian nationals and to Egyptian companies that are majority owned by Egyptians.

The law defines “ownership” as holding full title or ownership, holding usufruct rights or being the tenant under a lease with a term of more than 50 years. The law also imposes a limitation of 50,000 feddans (approximately 50,000 acres) for such ownership.

Limitations on Ownership in Some Restricted Areas

The ownership of property in some areas of Egypt is restricted for all regardless of nationality. Ownership of land in these areas is limited to Egyptian government in order to protect the interests of the country.

Law No. 14 of 2014 restricts the ownership of property in Sinai. The government has designated development areas in Sinai where companies (whether owned by Egyptians or foreigners) may have the right of usufruct over designated property. Such usufruct rights can be granted for terms of up to fifty years. It must be noted that Egyptian must own at least 55% of the ultimate shareholding of such companies.

3. Government Allocation Rights and Sale Rights

Allocation Rights

Allocation is a method used under Egyptian law to grant conditional ownership rights to investors in certain investment properties.

Historically, different authorities (including the New Urban Communities Authority, Industrial Development Authority, Tourism Development Authority, Governorates and other public agencies) have been granted the right to allocate land by way of direct order to investors. Such allocation was usually done at prices determined by special committees that investigated and determined the fair market value of such plots for each authority. The different authorities were allocated the lands by law or by presidential decree which they could then allocate to investors.

The 1998 Tender Law caused a legal issue because it prohibited any governmental agency or authority from disposing of land without first undertaking a tender process. Nonetheless various governmental agencies continued using their direct order allocation rights under powers which had previously been granted to them. The first ministry to have regard for this legal issue was the Ministry of Housing which from 2006 began using tender processes for all its future land allocations. The issue became a wide scale problem when a judgment was issued by the State Council annulling agreements granted under direct order with effect from 1998. Several legal claims were issued by activists to annul a stream of similar land allocations and huge investments were put in jeopardy.

In an endeavour to safeguard the rights of investors that had contracted with governmental agencies, the Egyptian government issued a law ensuring that no third parties would be entitled to make such claims; annulment claims can now only be made by the parties to the allocation agreement. This change has substantially reduced the risk of annulments for investors.

Allocation, whether granted by tender or direct order, only allows the investor to register the land when

the price has been fully paid and the development, plant or other project has been finalised in accordance with the allocation decree or agreement.

Ownership of State Owned Land

Law No. 5 of 1996 regulates the disposal of state and corporate lands at no consideration and the leasing of such land for nominal consideration in order to establish or expand an investment project. Article 1 states:

“It is permitted to dispose of desert lands or lease same at nominal value for the purpose of establishing investment projects or expanding same whether such lands are owned to the state or other public corporate entities... The area of the land to be determined on the basis of the size of the project, its nature and the value of the invested funds ...”

The maximum permitted lease term for the purposes of Law No. 5 of 1996 is forty years.

As a result of the legal issues governmental entities in Egypt have increasingly been using the public tender process to protect land disposals from the risk of annulment.

4. Mortgages and Property Financing

The objective of Law No. 148 of 2001 regarding Property Financing is to enable the financing of property transactions and construction, whether for residential or commercial use.

It is worth mentioning that financial leasing, which is regulated by Law No. 95 of 1995, is also a method for the financing of real estate. It allows financial leasing companies to purchase property and then lease it to the user. At the end of the lease term ownership of the property is transferred to the user.

5. New Egyptian Investment Law Real State Rights

Law No. 17 of 2015 amending the Investment Law introduced a new mechanism for valuation of real estate properties. This is expected to improve the mechanics and process for the valuation and allocation of land for investment projects.

The amendment allows the General Authority for Investment and Free Zones (“GAFI”) to grant rights of usufruct to investors in respect of properties to be used for fulfilling commercial objectives under the Investment Law. These rights can be granted for periods of thirty years and can be renewed. This saves the investors from the cumbersome process of dealing with different authorities for land allocation.

Only companies established under the Investment Law can benefit from this new usufruct option. For a company to be established under the Investment Law it must undertake one of the activities defined in the Investment Law.

Conclusion

There are many various property ownership options and allocation regimes in Egypt and it is important to seek legal advice on how these provisions may overlap in certain instances. It is also worth noting that Egypt has recently seen major legislative change and the pace of this change is expected to increase with the imminent coming into power of a new parliament. Investors will therefore need to stay up to date with many upcoming changes to the laws regulating the property market in Egypt.