

Foreigners Right to Own Real Estate in Iraq

Mohammad Norri

m.norri@tamimi.com - Baghdad, Iraq

March 2017

What was the law previously?

The Real Estate Registration Law Number 43 of 1971 as amended (the “Real Estate Registration Law”), provided that the right to acquire real estate is restricted to Iraqi nationals only and does not extend to foreigners save where the following exceptions apply:

- there must be reciprocity in treatment between Iraq and the country of the relevant foreigner who is seeking to acquire the real estate;
- there must be no administrative or military impediment in respect of the acquisition;
- the property must not be less than 30 kilometers from Iraq’s borders; and
- the Iraqi Ministry of Interior must approve the relevant acquisition.

Additionally, Kuwaiti nationals were allowed to acquire real estate pursuant to Law Number 19 of 1952 and other Arab nationals pursuant to Law Number 5 of 1955. This has resulted in many prime locations in Iraq being owned by Kuwaitis and other Arab nationals. Corporate entities, including foreign entities, may acquire real estate pursuant to Articles 152 and 153 of the Real Estate Registration Law subject to the following:

- the company’s registration must be attested in Iraq;
- the articles of association of such company must allow the acquisition of real estate;
- the Minister of Interior must approve the registration of the property; and
- the property must be located within the borders of a city or kasbah.

Since this time, a number of laws have been issued to allow the acquisition by foreigners of real estate in Iraq in particular situations.

What is the updated position?

Non Iraqi nationals were permitted to own real estate until 1994 (as set out above) when the situation was dramatically reversed with the issuance of a decision by the now dissolved Revolutionary Command Council which suspended all laws and decrees that allowed the ownership of real estate by foreign nationals.

Thereafter, in 2005 the permanent constitution of Iraq was introduced which granted Iraqi nationals the right to own properties anywhere in Iraq and denied foreigners the right to own immovable properties except as provided under the law . We consider the laws that have been introduced since this date and their effect.

Article 10 of the amended Iraq Investment Law Number 13 of 2006 (the “Iraq Investment Law”) provides that an Iraqi or foreign investor shall enjoy all of the privileges, benefits and guarantees set out in the aforementioned law. Furthermore, the Investment Law provides that an Iraqi or foreign investor shall have the right to acquire land reserved for residential projects and owned by the state or public sector, as well

as land owned by the private sector solely or in partnership with the public sector provided that the use of the same shall not conflict with the principally intended purpose. It is also worth noting that an Iraqi investor is allowed to acquire land reserved for agriculture or industrial use and to enter into a partnership agreement with a foreign investor for financing and management purposes.

When an Iraqi or foreign investor acquires a property, a lien shall be inscribed for the purpose of preventing any disposal of the property until the Iraqi or foreign investor satisfies its obligations as verified by the Investment Authority and the investor shall be required to use the property as intended and refrain from entering into any speculative activity with respect to such property. In the event that the investor fails in performing its obligations within the relevant period, the real estate registration department shall, upon request from the Investment Authority, cancel the registration of the property and return the property to its previous owner, provided that the investor shall receive back the previously paid purchase price less the equivalent rent in respect of the occupancy period.

The foreign investor is obligated to build residential units and to sell or lease such units to Iraqi nationals but shall have the right to dispose of the non-residential parts of the project during the entire licensing term in accordance with the conditions stated in the agreement executed with such investor. While the investor may transfer part of the investment project after completion of 40% of the project, it shall not be allowed to transfer the ownership of the project unless it is entirely completed. We also note that the Iraq Investment Law has prohibited the expropriation or nationalization of an investment project or the revocation of its ownership, whether in part or in whole, except for public interest, and in which case, the investor shall be entitled to a fair compensation. The Iraq Investment Law further states that any future amendment shall not operate retroactively so as not to affect the guarantees and benefits afforded under such law.

The Iraq Investment Law allows the foreign investor to rent, lease and acquire Musataha rights from the government and the private sector for the purpose of constructing investment projects for a period not exceeding 50 years subject to renewal.

What is the position in Kurdistan?

Article 3 of the Investment Law of Kurdistan Region Number 4 of 2006 (the "Kurdistan Investment Law") states that the foreign investor shall be treated in the same manner as the national investor. The Investment Law further provides that, subject to the other provisions of the Investment Law, the foreign investor is entitled to purchase and lease lands and real estate as required for establishing, expanding, diversifying and developing a project. The foreign investor is entitled to purchase and rent for the benefit its investment project such residential properties and vehicles as required in the context of the investment project. Moreover, the foreign investor is entitled to assign its investment, in part or in whole, to a foreign investor or to a national investor or to assign the project to its partner, provided that the investor obtains the approval of the Investment Authority. In the event of assignment, the new investor shall substitute the previous investor in all of its rights and obligations ensuing from the project. A lien shall be inscribed on the property by the relevant real estate registration authority for the purpose of preventing any disposal affecting a property which is dedicated for an investment project. The lien shall not be lifted unless the Investment Authority approves and provided that the investor satisfied all of its obligations.

Any other relevant laws?

The Iraqi Companies Law Number 21 of 1997 (the "Companies Law") prohibited foreigners from participating in Iraqi companies. However, an amendment to the aforementioned law was introduced in 2004 to allow foreigners to participate in and entirely own Iraqi companies, except in specific cases such as commercial agencies which must still be Iraqi owned. Given that companies incorporated in Iraq are considered Iraqi pursuant to Article 23 of the Companies Law and have a distinct legal personality and financial position irrespective of the nationality of its shareholders, these companies may acquire properties in Iraq. This has been confirmed in decision number 54/2010 issued by the State Council on 5

May 2010 (the “State Council Decision”) at the request of the Minister of Justice who wished clarity as to whether banks and companies owned directly or indirectly by foreign shareholders are allowed to acquire real estate in Iraq. The decision expressly states that, notwithstanding the existence of foreign shareholders in Iraqi banks, these banks are allowed to acquire real estate in a manner consistent with their objectives as set out in their memorandums of association. The State Council Decision also provides that Iraqi banks owned by foreigners are allowed to acquire real estate on the basis of Paragraph 2 of Article 33 of the Banks Law Number 94 of 2004 which allows the acquisition of property when required in the context of undertaking their operations, including for staff and workers’ accommodation.

It is worth mentioning that, despite the clear provision of the Companies Law which considers a company Iraqi notwithstanding the nationality of its founders, as well as the State Council Decision, and the absence of any legal impediment, the practice remains different on the ground. As a matter of fact, and save for companies that are subject to the Kurdistan Investment Law, it is challenging to transfer properties to Iraqi companies who have foreign shareholders. Although challenging, such transfers are not impossible to achieve on case by case basis. As at the date of this article, the issue remains of critical importance. A number of companies owned by foreigners have succeeded in registering properties under the respective company name in Iraq, while other companies were denied this request despite the clear provisions of the law and the absence of any legal impediment.

In relation to branches of foreign companies and their relevant offices established in Iraq, in accordance with Law Number 5 of 1989, we note that they are considered as an extension of the parent company under the applicable laws and therefore are not allowed to acquire real estate in Iraq. The same treatment applies with regard to branches of foreign banks that are licensed in Iraq and which are not allowed to own real estate. However, subject to obtaining the approval of the Central Bank of Iraq, it is possible for these branches to register mortgages under their names.

In conclusion, the acquisition of property in Iraq is possible for foreign investors in particular situations as highlighted in this article. Care requires to be taken in navigating local laws and it is important to understand the practical approach of the local Iraqi authorities.