

Foreigners' Right to Own Real Estate in Oman

by Richard Baxter - r.baxter@tamimi.com - Muscat

March 2017

The Sultanate of Oman is part of the Gulf Cooperation Council (GCC). The Sultanate has a Foreign Capital Investment Law, promulgated by Sultani Decree (SD) number 102/94 which restricts 100% ownership of juristic entities other than in certain Free Zones and a Special Economic Zone at Duqm (often referred to as 'Off-Shore' with the balance of the jurisdiction referred to as 'Mainland').

Wholly foreign-owned entities can be established 'Off-Shore' and acquire usufruct rights in respect of property within their specific zone of establishment.

This article discusses the restrictions applicable to the acquisition or possession of Mainland real estate by foreigners of foreign-owned entities.

For completeness, we note that Oman also has a Free Trade Agreement with the United States of America (FTA) but the FTA does not affect the restrictions discussed below.

A. Legal framework for the ownership or possession of land and general prohibition on foreign holding of absolute title

The Lands Law promulgated by SD 5/1980 constituted the State as owner of all land in Oman to which no individual could prove title. The State then commenced allocation of land for public purposes and the making of grants of residential and/or commercial or agricultural plots to individual citizens.

Omani nationals and mixed ownership SAOGs

Previously only Omani natural persons could acquire absolute title to land in the Sultanate.

Pursuant to SD 24/95, companies were permitted to own land, provided that:

- they were wholly-Omani owned; or
- in the case of public joint stock companies (SAOGs), where not less than 51% of the capital was owned by Omanis; and
- the use of the land in question was restricted to the purpose approved by the competent ministry.

The 49% cap on foreign participation in SAOGs was eased in 2010 and now SAOGs with up to 70% foreign ownership engaged in real estate development and with relevant objects in their constitutional documents can own land in Oman for the purpose of development, subject to internal conditions imposed by the Ministry of Housing.

GCC nationals

In 2004, the Rules as to the Acquisition of Immoveable Property for Residence and Investment by Nationals of GCC Member-States (Rules) were brought into effect. This extended the right to own land in the Sultanate to GCC natural persons and wholly GCC-owned companies (no non-GCC participation at any level), subject to the exception of certain reserved areas (noted below).

It must be noted that persons purchasing undeveloped land in the Sultanate pursuant to the Rules must develop it within four years of acquisition and cannot dispose of the land within four years of

acquisition or until any development is completed. Entities acquiring pursuant to the Rules can own such land for investment purposes.

The Ministry of Housing will not register ownership of land in favour of non-Omani GCC nationals in certain Reserved Areas (Al Batinah Coast, Al Gabal, Al Akhdar).

Non-GCC nationals and integrated tourism complexes (ITCs)

Since 2006 it has been permissible for non-Omani individuals and companies to acquire usufruct rights over land in areas designated as “integrated tourism complexes” (ITCs) for the purpose of building units for residential and investment purposes. Thirteen such designations have been made to date. ITC’s tend to have defined tourism, commercial and housing elements.

To give effect to an ITC, the government grants the developer a usufruct right over the development site (the nature of which is discussed below). The rights and obligations of the developer are recorded in a development agreement. Where the ITC includes the development of residential real estate, once the development is complete, the developer is authorised to dispose of the residential units to third party purchasers, including non-GCC nationals, with title absolute (subject to payment of an upgrading fee to the ministry). If the developer fails to develop the land as per the development agreement the government can take over the ITC project.

Registration

A register of land ownership was established under SD 5/1980 with the register maintained by the Ministry of Housing. Registration is a requirement to evidence valid ownership rights by way of Mulkhiya (title deed).

All transactions relating to the property, including transfer, usufruct and mortgage are annotated and stamped on the Mulkhiya.

Interests held by entities are not affected by changes to the shareholders of such entities.

It should be noted that the registry maintained by the Ministry is only open to inspection by those with an interest in a specific property.

B. Rights available to foreign individuals or entities

As noted above, other than ownership rights permitted in favour of SOAGs, GCC nationals (or wholly GCC owned companies) and to non-GCC nationals in respect of residential units in ITCs, generally speaking foreign entities’ rights in relation to Mainland real estate will be limited to usufructuary or leasehold rights.

Usufruct

Usufruct tenure, pursuant to the Usufruct Law (SD 5/1981), is carved out of absolute title, and resembles it. That is to say that the right gives the usufructuary (the grantee of the usufruct) virtually all the rights of an absolute owner, such as: the right to quiet enjoyment; the right to sell; mortgage; and give on lease. The grant is, however, restricted to the specific use for which the usufruct has been granted, and is limited in time (e.g. 30 years, or the life of the usufructuary). On expiry of the usufruct right all rights in the land revert to the grantor, who has remained the owner of the underlying absolute title. Compensation for the value of any additions to the land will be due to the exiting grantee, save as provided in any private agreement between the parties.

Any grant of usufruct requires the approval of the Ministry of Housing. It is the closest approximation to absolute title that foreign acquirers can obtain outside of ITCs.

As usufruct rights fall within the category of “real”, or proprietary, rights, a usufruct can be viewed as a more secure and durable form of tenure than a lease. A usufruct is, therefore, suitable for long-term projects which involve the creation of fixed assets. Usufruct is also suitable for companies with foreign participation, or for foreign natural persons, in circumstances where they would not legally be able to acquire absolute title.

Leases

Leases granted in the Sultanate confer rights to occupy land or premises. Leasehold rights are generally not viewed as a real property right, however, because they are not a form of property that can be readily mortgaged or entered as an asset on the lessee’s balance sheet.

The basic legislation on leases goes back to SD 6/1989, which sets a comprehensive legislative framework for the lessor-lessee relationship, and provides for a system of registration of all residential lease contracts with the competent municipality and commercial leases over 7 years with the ministry. A fee is payable by the landlord on registration, currently set at 5% of the lease value.

C. Conclusion

The appropriate structuring of real estate dependant projects and ventures in Oman will depend on the specific requirements of the venture, the nature of the project and the nationality of the participants.

While discussion of the legal structures available to persons (natural and juristic) in Oman is beyond the scope of this article, we do note that there are various forms of corporate entity that may be incorporated in Oman, each having its own particular characteristics, minimum capital requirements and foreign share capital restrictions.

Given the applicable restrictions on real estate rights and the various elements to be taken into account when considering suitable corporate structuring options, we recommend that parties obtain detailed legal advice to ensure that the correct structures are put in place at the outset. An early investment in sound structuring advice and securing appropriate real estate rights pays dividends and, in our experience, assists real estate ventures to progress and flourish in Oman.