

Licensing requirements and restrictions for hospitals in the MENA Region: Challenges & Opportunities

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Establishing a hospital in the MENA region or investing into an existing medical facility is of significant interest for investors globally.

From press releases and a general exchange of updates amongst members of business community, we have been learning, quite regularly, of new healthcare sector investments.

Last year, NMC Group announced their acquisition of Sharjah's Al Zahra Hospital for AED 2.06 billion. Amanat Holdings PJSC has a number of healthcare assets under its investment portfolio and continues to grow. Aster DM Healthcare has lately opened a new hospital, has added new specialities and services under their existing facilities, and increased bed capacity, as well as upgrading their diagnostic technologies.

Although hospitals require highly-qualified manpower to be able to expand their operations, a growing and aging population in the MENA region inevitably lead to an increased level of use of medical services, particularly medical facilities by both in-and out-patients.

In investing in hospitals across the MENA region, investors must navigate country-specific regulatory requirements and restrictions. This article explores some of the basic requirements and restrictions imposed under relevant local law in relation to hospitals operation in Bahrain, Egypt, Iraq, Jordan, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

Regulatory Authorities

The most important aspect of a hospital licensing process is securing its healthcare regulatory license. In a majority of the GCC/MENA states, the role of the healthcare sector regulatory, and consequently the supervisory, body overseeing licensing and operations of hospitals has been the Ministry of Health. In the UAE, however, although the Ministry of Health looks after the licensing of hospitals in few emirates, the Dubai Health Authority performs this role in the Emirate of Dubai and the Healthcare Authority of Abu Dhabi performs this role in Abu Dhabi.

Commercial Registrars

There are regional differences across the MENA region in relation to commercial registration. Whilst in Bahrain hospitals are registered at the Ministry of Industry, Commerce and Tourism, in Egypt that role has been assigned to the Commercial Registry Office. In Kuwait, on the other hand, Ministry of Commerce and Industry takes care of the commercial registrations of hospitals.

Local Ownership Restriction

As with most other decisions about setting up a business or acquiring a stake in an existing business in the GCC healthcare sector, parties will have to pay attention to local ownership restrictions that may attach to the shares in the hospital-operating entity as well as to the assets the hospital is to own (for example, real estate).

In Egypt, for instance, any foreign national can own shares in a hospital, except for certain geographical regions (e.g. Sinai) where foreign investment restrictions apply.

Under UAE or Kuwait law, on the other hand, at least 51% of the entity that operates a hospital must be owned by local shareholder(s).

In the Kingdom of Saudi Arabia, before a non- Saudi party acquires shares in a hospital operator, that party will have to secure a license from the Saudi Arabian General Investment Authority.

Finally, in some GCC states, there are also certain nationality requirements in respect of medical staff or a Manager/ Director of the medical facility. This should be looked into country by country as there are differences between the local legal requirements in this regard.

Licensing requirements:

The licensing requirements that apply to hospital license applicants are, broadly speaking, aligned across the GCC. However, care should be taken to check country-specific requirements.

By way of example, in Oman a hospital entity will be required to have a capital of not less than OMR 150,000 (USD 390,000).

In Qatar, the authorities will conduct a preliminary evaluation of the hospital's premises and facilities while in the Kingdom of Saudi Arabia the location of the hospital will need to be approved by Civil Defense and the relevant local municipality office.

Practical Considerations

Although the legal requirements may look standard in a number of ways, it is crucial that you consider certain practicalities that may arise under the hospital incorporation or acquisition process that might not have been explicitly addressed under local law.

Let's consider the UAE, for example. Although in other jurisdictions a common expectation would be that the license be issued in the name of an entity that has applied for and obtained the license, as far as the UAE and the health authorities are concerned, in practice, sometimes Health Authorities issue the Health License in the name of the individual(s) local shareholder(s) in the relevant entity (i.e. the direct or indirect shareholder(s) in a given entity) or list the shareholder(s) as "Owner" of the license in question, rather than mentioning the given entity itself as the license holder or mentioning all of its shareholders as the license holders.

In other words, in such case, under a Health License the local (direct or indirect) shareholder(s) is listed as the “Owner” of the license.

Conclusion:

When planning for an establishment or acquisition of certain shares in or assets from a hospital, it is important to verify ownership restrictions to comply with local requirements.

As certain legal requirements and conditions, e.g. level of foreign investment or ownership of plot of land upon which the hospital has been built, can differ from one MENA state to another, it is important to thoroughly assess options that may be available to your business even though, at the outset, there are many structuring and licensing challenges.

The legal framework may appear restrictive. However, there are various options available that meet commercial business objectives as well as satisfy the legal requirements.