

Abu Dhabi Department of Health: A New Land Allocation Standard for Healthcare Facilities

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Land Allocation Standard

Identifying a need for healthcare providers, operators and investors to be engaged with the Abu Dhabi Department of Health (“DoH”) (formerly the Health Authority Abu Dhabi – HAAD) at a strategic level before developments or investments are undertaken in the Emirate of Abu Dhabi, the DoH issued an updated standard for the allocation, extension, and cancellation of allocated land to build healthcare facilities effective 21 November 2017 (“Land Allocation Standard”). This article considers these new developments and their impact.

In line with the Abu Dhabi Capacity Master Plan of 2016 (“Master Plan”), the Land Allocation Standard seeks to ensure that new healthcare providers give the population timely and convenient access to facilities and services. The standard revamps the process for land allocation to build a healthcare facility and applies to all applicants seeking land allocated by the DoH.

Previously, an investor would first apply for a new licence to operate a healthcare facility, in accordance with the DoH approved application process. It would then request the allocation of reserved land. If land was not available for the proposed healthcare facility, the application was added to the waiting list or a request was made by the DoH to the Abu Dhabi government seeking allocation of government owned land.

Under the new standard, DoH will publically announce the land available for healthcare investment, specifying the area and location, as well as the type of healthcare facility and specialities. Such announcements are based on the priorities identified within the Master Plan and will remain open for one month from announcement. An interested party must first submit an application to the Land Allocation Committee. The committee will review all applications received and select the most suitable investor.

Potential for Enhancement

Whilst the DoH’s introduction of the Land Allocation Standard is a welcome step to clarify the land allocation process for building healthcare facilities, we consider that there is potential scope for the process to be further enhanced to deliver wider benefits. At present the standard is only applicable to Emirati nationals seeking land allocations for the development of healthcare facilities and is not applicable to foreign investors. Many leading international healthcare providers have shown keen interest to support Abu Dhabi’s healthcare aims and several well-regarded providers have opened facilities in recent years. The extent of this foreign investment has, however, been restrained by a lack of suitable land resulting from restrictions controlling foreign land ownership.

Legal Background

Healthcare providers typically choose to develop custom-built premises to accommodate their facilities, as suitable existing premises are often not available in Abu Dhabi. These premises are costly to build and frequently providers will need to raise finance to meet the costs of construction. Such investment and financing usually requires that the provider is able to hold a secure and long-term legal interest in the premises. In the case of healthcare providers that are wholly owned by Emirati nationals, it is generally relatively straightforward to ensure that legal title to the healthcare facility can be registered at Abu Dhabi Municipality (“ADM”) and a title deed issued, with a mortgage registered on the title if necessary.

Healthcare providers that are not wholly owned by Emirati nationals face some challenges when seeking to secure their long-term interests in healthcare facilities. Generally, these providers are restricted to developing facilities in those areas of the Emirate that have been designated for foreign real estate investment (“Investment Areas”) pursuant to Abu Dhabi Law No. 19 of 2005 and its subsequent amendments (“Law No. 19”).

Law No. 19 allows providers that are wholly owned by Gulf Co-operation Council (“GCC”) nationals to own land and buildings within Investment Areas. For these providers, it is possible to purchase a plot of land on a freehold basis within an Investment Area, develop a healthcare facility, raise finance, obtain a title deed and register a mortgage on the title at ADM.

Healthcare providers that are not wholly owned by either UAE or GCC nationals may take leases of land or existing properties for terms of up to 99 years within Investment Areas. GCC nationals are allowed to own freehold land and buildings within Investment Areas so GCC investors are advised to consider this option as a priority. Investors who are neither UAE nationals, nor GCC nationals, may own freehold title to buildings, but not the underlying land, within Investment Areas. The concept of freehold ownership of buildings in Investment Area is not likely to be helpful in practice for healthcare investors because this structure would require the building to be subdivided on a strata basis and the foreign investor would then own units within the building. It is most likely that these non-UAE, non-GCC providers will look to enter into long-term ‘musataha’ agreements of land within Investment Areas. These agreements can be for a term of 50 years with an option to renew for a further term of 50 years. Musataha agreements are similar to long-term development leases and allow the healthcare providers to arrange construction and then to operate their facilities. It is also possible for the rights granted by these musataha agreements to be registered with ADM and title deeds can be issued in favour of the foreign healthcare provider. If the provider wishes, it can grant a mortgage over its musataha rights and this mortgage can also be registered on the title at ADM.

Outside Investment Areas, foreign healthcare providers (including GCC owned providers) are restricted to taking leases of land or leases of existing properties for maximum terms of four years. This restriction on lease terms is imposed by the Tawtheeq rules concerning the registration of leases in Abu Dhabi, created pursuant to Executive Council Resolution No. 4 of 2011. Whilst leases can be expressed as being renewable for further terms, that is usually not sufficient security for the substantial investment necessary to develop a new healthcare facility. Obtaining financing for the development is likely to be more difficult as the healthcare provider cannot grant the security of a mortgage over the healthcare facility due to the short-term nature of its lease. These limitations are a major obstacle holding back development of more healthcare facilities throughout the Emirate and in areas where there is often a pressing need for new facilities to open.

Application Requirements

The investor applying for the allocation must be an Emirati national and should include various documents supporting the application, such as:

- new healthcare facility licensing application;
- initial trade name reservation from the Abu Dhabi Department of Economic Development;

- evidence of the applicant's experience in healthcare investment;
- documents detailing the proposed financing for the project; and
- project plan for building the facility, including its projected cost and the project management organisational chart.

Approval Process

Upon preliminary approval of the application for land allocation, the investor must apply for the healthcare facility licence within one month of the allocation approval. The preliminary approval will be valid for one year. During this time the schematic drawings must be submitted for approval, within six months of preliminary approval, in accordance with the DoH facility guidelines. Once the drawings are approved, the investor must apply and obtain the necessary approvals from the relevant government entities, including the Department of Urban Planning & Municipalities. Further, within six months of DoH's approval of the detailed drawings, construction of the healthcare facility must commence. Inspections will generally take place once 90% of the construction has been completed, and again once fully completed.

Cancellation

At any time, the DoH may cancel the land allocation in the event of the following:

- non-compliance with the project time schedule, and failure to provide clear and convincing explanation for the non-compliance;
- non-compliance with the DoH approved legal rules and regulations pertaining to the project;
- selling or renting of the land by the investor;
- breach of the undertaking signed by the investor; and
- non-compliance with the Land Allocation Standard.

Conclusion

As of 2016, there were 3.04 million residents in Abu Dhabi, of which 18.2 per cent were UAE nationals. The median age for UAE nationals was 19 and 31 for expatriates. By the end of 2016, there were 2,455 licensed facilities, including 56 hospitals (with 5,240 beds), 1,324 centres and clinics, and 750 pharmacies. The population is concentrated on or nearby Abu Dhabi island, with expected areas of growth in the short to medium term in Zayed City, Al Reem Island, Jabel Hafeet and Al Shamkha. Significant growth in demand is expected for primary care and services linked to lifestyle related diseases, such as diabetes and cardiovascular diseases and cancer. Capacity gaps have been identified in primary care, emergency care, psychiatry, obstetrics, neonatology, specialist paediatric care, orthopaedics, transplant surgery, as well as non-acute and long-term care beds.

Considerable investment will be needed in new healthcare facilities throughout the whole Emirate of Abu Dhabi over the coming years to ensure that the goals set by both the Master Plan and the Land Allocation Standard are achieved. New healthcare facilities will be needed in all parts of the Emirate, not only within the Investment Areas in Abu Dhabi City, but also in more peripheral areas. Meeting this need will be particularly challenging whilst international healthcare providers are not always able to secure long-term interests over the land on which they wish to develop facilities. We understand that the Abu Dhabi Government is aware of this concern and is currently giving consideration as to how the challenge may be overcome. One of the possible solutions that is being considered is to allow foreign investors to own musataha rights to properties outside Investment Areas. This would allow healthcare investors to develop and then use facilities for terms of up to 50 years with an option of being renewed for a further period of

50 years. Stay tuned for upcoming announcements from the DOH regarding lands available for healthcare investment in Abu Dhabi.