

Mortgage of Real Estate in Saudi Arabia: Recent Developments

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The Registered Real Estate Mortgage Law (the 'Mortgage Law'), issued in 2012, was a significant step towards encouraging real estate finance in Saudi Arabia. Until recently, local banks typically took an outright conveyance of the title to real estate (Ifragh) to a nominee entity. The transfer of title structure involves the obligor transferring legal title to a special purpose company, set up by the bank providing the financing, for the duration of the financing. The title to the property would revert to the obligor, once the financing is repaid.

The Mortgage Law has now paved the way for a traditional mortgage structure, whereby the title to the property would remain with the borrower and the bank would obtain a registered mortgage. Some of the key features of the Mortgage Law are as follows:

- Once a mortgage over property is registered, the secured debt can be recovered from the sale of the property in priority to other creditors;
- The mortgage should be created in respect of a specific debt or future or contingent debt provided that the amount of the secured debt or maximum limit of the debt is specified in the mortgage agreement;
- The owner of the property (mortgagor) continues to receive the rentals and other proceeds being generated from the property;
- The mortgagor and mortgagee may agree in the mortgage agreement that the receivables from the mortgage property will be used to pay in accordance with the amortisation schedule of the debt and to service any other fees, charges, and profits;
- A lease of more than five years will not be enforceable if the property has been mortgaged; and
- A property may have more than one mortgagee, allowing for the creation of a succession of mortgages (e.g., first mortgage, second mortgage, and so on).

In May 2017, SAMA issued a circular urging banks and finance companies to:

- comply with the notarisation of real estate mortgages and to stop the process of transferring title to property rather than mortgaging the real estate;
- remedy the status of properties that are currently registered in their name within a three-year period, and inform their clients accordingly; and
- inform SAMA about the cases in which the notary public refrains from registering a mortgage.

This circular, in-effect restricts the outright transfer of title and instead requires any security over real property to be registered as a mortgage under the Mortgage Law.

Importantly, following publication of SAMA's circular, notaries have issued guidelines as to the information banks will be required to present in order to register mortgages. Most notably, banks are required to provide a letter confirming that the debt being secured by the mortgage relates to a Shariah compliant transaction (either a tawarruq, or murabaha). Yet another recent development is the issuance by SAMA of standard form ijara and murabaha documentation to be used when providing real estate finance. The template documents provided by SAMA are expected to be implemented by the end of March 2018.

These legal and regulatory developments, coupled with government sponsored housing schemes, are indications of further reform in the real estate and housing market in Saudi Arabia.

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