

Update on succession planning for family real estate assets

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In the United Arab Emirates, large commercial enterprises and family businesses have usually adopted relatively simple corporate structures. More often than not, the founding individuals would retain ownership of the business and their real estate assets in their personal capacity.

However, these assets held by individuals may potentially be at risk in the following circumstances:

1. in the event of a legal claim against the individuals as their assets will be subject to execution proceedings for recovery of debts; and/or
2. on the death of the owner, the heirs cannot deal with the property until transferring the title to their names and this will take some time.

As the legal and policy framework in Dubai has developed, it is now far more common for business operators to adopt more complex corporate structures for their businesses and in respect of the ownership of their real estate assets in order to minimise the potential risks set out above.

This article sets out a number of key strategies that can mitigate against the risks associated with succession issues, and provides an high level overview of the legal requirements that may be considered in respect of such issues.

Mitigating legal risks

Often, the simplest approach is for an individual to ensure that their business-related real estate assets are owned through a corporate entity. The corporate entity has a separate legal personality and thereby relieves the individual founders of liability. Consequently, the risk that a particular real estate asset would be subject to a claim in respect of the personal liabilities of the individual founder is mitigated.

Mitigating succession issues

In the event of the death of an individual in the UAE, that individual's estate (including any real estate assets) will be distributed in accordance with Sharia law and, pursuant to UAE law. Dealing with the estate of the deceased is restricted until the Court issues its final judgment on the inheritance by settling all debts from the estate, and determining the respective entitlements of the heirs.

In practice, the time and potential issues involved in inheritance matters can pose a significant risk to the efficient, continued operation of any business enterprise that is reliant upon or conducted using real estate assets that are the subject of inheritance proceedings.

Using a corporate entity to own critical real estate assets provides some degree of protection against the risk that inheritance issues would impact upon the business itself.

Corporate ownership of real estate properties in Dubai

Law No. 7 of 2006 Concerning Real Property Registration in the Emirate of Dubai ('Property Law') provides that companies that are:

1. wholly owned by UAE or GCC nationals may own any real estate in Dubai; and
2. owned by foreign nationals may own freehold title, a long lease or a usufruct right up to 99 years in any area in Dubai that has been designated for foreign ownership ('Designated Areas').

Notwithstanding the general position set out in the Property Law, the Dubai Land Department's ('DLD') current policy imposes restrictions on foreign companies preventing direct ownership of real estate rights in Dubai, but allows such foreign companies to own real estate rights in Dubai through Dubai free zone companies.

Corporate entities allowed to own properties in Dubai

For UAE and GCC nationals, using a Limited Liability Company registered at the Department of Economic Development to own the relevant real estate assets anywhere in Dubai would be appropriate.

For foreign nationals, there are several options available, such as a Jebel Ali Free Zone Offshore Company or Dubai Multi Commodities Centre Offshore Company to own properties in Designated Areas.

Furthermore, the DLD signed a memorandum of understanding with Abu Dhabi Global Market Authority ('ADGM') and the Dubai International Financial Centre ('DIFC') to permit companies incorporated in these jurisdictions to own land in the Designated Areas.

DLD is currently reviewing its policy in relation to allowing trusts to own properties in Dubai, and we expect a by-law to be issued by DLD to regulate this issue soon.

Certified real estate lawyer

On 13 July 2019, the DLD announced the launch of a new real estate initiative known as 'Certified Real Estate Lawyer' in partnership with Al Tamimi & Company. This real estate initiative by the DLD is designed to increase transparency, streamline real estate transaction processes, reduce transaction time, and facilitate strategic partnerships between public and private sectors.

Through this initiative, we confirm that the launch of this initiative enables us to offer additional services for property owners and investors in Dubai. In particular, the initiative is designed to:

1. **facilitate property due diligence:** licensed law firms are able to remotely access the DLD's registers online, and access information relevant to an investment or transaction. This helps to provide greater certainty and transparency when advising on real estate investments.
2. **simplify the documentation and reporting process:** many corporate investors have complex ownership structures and as a result, complex corporate documentation, which is difficult to attest and translate into Arabic and this can often be viewed as a time-consuming process. However, producing such detailed corporate ownership documentation is a prerequisite for the completion of any real estate transaction in Dubai in accordance with the requirements of the DLD. Licensed law firms, are able to fast-track this process by preparing a report that certifies the ownership structure of a company in a form that is acceptable to the DLD.
3. **Escrow agent services:** certified law firms are able to provide and act as an escrow agent, administering the escrow account for the payment of deposits or purchase funds. This initiative will help investors to restructure their real estate assets faster, and in more cost-effective manner.

DLD gifting policy

The current DLD policy allows the transfer of real estate assets from individuals to a corporate entity owned by them (or by their first degree relatives) on a reduced transfer fee known as 'gifting fees'. Subject to the approval of the DLD, the gifting fees for real estate assets amount to 0.125 per cent of the current market value as determined by the DLD.

Registration of wills

Non-Muslim foreign nationals may also [register a will in the DIFC](#). Following the death of the individual with a registered will, their estate would be administered in accordance with the registered will, rather than pursuant to Sharia principles.

Currently, the DIFC Wills Centre offers the following four types of Wills for non-Muslims: 1. Guardianship Will; 2. Property Will; 3. Full Will; or 4. Free Zone Company Will.

It is recommended that not only such a will be registered, but that it also clearly describe how the shares in the real estate holding company are to be dealt with. By doing so, a further layer of risk mitigation is added to ensure the trouble-free transition of ownership.

Granted lands

Lands that are granted by the Ruler of Dubai for residential purposes are restricted from any real estate dispositions. However, in cases of lands that are granted for commercial or industrial purposes, the beneficiary is allowed to dispose of the land by converting the ownership right over the land from grant to private.

In this regard, Article 4 of Decree No. 4 of 2010 Regulating the Ownership of Land Granted for Industrial and Commercial Purposes in the Emirate of Dubai provides that a payment to the DLD of 30 per cent of the current market value of the land as determined by the DLD is required to convert the ownership right over the land from grant to private.

Additional considerations

When considering which corporate structure options to adopt, it is important that business and real estate owners seek professional advice relating to their individual circumstances considering their business and personal objectives.

Al Tamimi & Company's [Real Estate team](#) regularly advises family businesses in dispute. For further information, or updates on the report publication timetable, please contact [Mohammed Kawasmi](#) (m.kawasmi@tamimi.com) or [Abdulla Khaled](#) (a.khaled@tamimi.com).