

Challenges of Developing New Schools in Abu Dhabi

David Bowman - Senior Counsel - Real Estate
d.bowman@tamimi.com - Abu Dhabi

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Abu Dhabi Plan 2030

Abu Dhabi Plan 2030 affirms that education is a key growth sector essential for Abu Dhabi's economic vitality and recommends that schools are incorporated in all new residential developments. Leading international education providers have shown a keen interest to support this aim and several well-regarded providers have opened schools in the Emirate over the last few years.

Legal Background

International education providers typically choose to develop custom-built premises to accommodate their schools as suitable existing facilities are not generally 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 school property. In the case of education providers that are wholly owned by UAE nationals it is generally relatively straightforward to ensure that legal title to the school property can be registered at the relevant municipality and a title deed issued, with a mortgage registered on the title if necessary.

Investment Areas

Education providers that are not wholly owned by UAE nationals face some challenges when seeking to secure their long-term interests in school properties. Generally these providers are restricted to developing schools 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 school, raise finance, obtain a title deed and register a mortgage on the title at Abu Dhabi Municipality ("ADM").

Education 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. These providers may also enter into long-term musataha agreements of land within Investment Areas for terms 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 education providers to arrange construction and then to operate their schools. 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 education 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

Outside Investment Areas foreign education 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 school. Obtaining financing for the development is likely to be more difficult as the education provider cannot grant the security of a mortgage over the school due to the short-term nature of its lease. These limitations are a major obstacle holding back development of more schools throughout the Emirate and in areas where there is often a pressing need for new schools to open. All the schools which operated from converted villa premises ("Villa Schools") have now been closed down by Abu Dhabi Education Council (ADEC) and their operations need to be moved and accommodated in more suitable premises. Villa Schools were frequently located in residential areas on the outskirts of Abu Dhabi City, close to the families they served but far away from the Investment Areas where at present new schools can be most easily developed. It will therefore not be easy to transfer students from Villa Schools to the new schools now being opened in often distant Investment Areas.

Conclusion

Considerable investment will be needed in new facilities for schools throughout Abu Dhabi over the coming years to ensure that the educational goals set by Abu Dhabi Plan 2030 are achieved. New schools will be required in all parts of the Emirate, not solely within the Investment Areas in Abu Dhabi City, but also in more peripheral areas. Meeting this need will be particularly challenging whilst international education providers are not always able to secure long-term interests in the facilities they wish to develop across the Emirate. We understand that the Abu Dhabi Government is aware of this concern and is currently giving thought as to how the challenge may be overcome.

Al Tamimi & Company's real estate team regularly advises on real estate matters in Abu Dhabi, the wider UAE and across the region. For further information please contact David Bowman (d.bowman@tamimi.com).