Structuring of Family Real Estate Assets: Legal and Policy Considerations

Mohammed Kawasmi - Partner - Real Estate / Family Business
m.kawasmi@tamimi.com - Dubai International Financial Centre

In the Middle East, commercial enterprises including dominant/market leading businesses, historically adopted relatively simple legal structures. In fact, the founding individual would often retain ownership of the business and his/her real estate assets in their personal capacity. In doing so, those assets were potentially at risk: (i) in the event of a legal claim against the individual; and/ or (ii) on the death of the owner, in the event of any disputes between the owner's heirs.

As the UAE's (and in particular Dubai's) legal and policy framework has developed, it is now far more common for business operators to structure their business and personal real estate assets in a manner that takes those issues into consideration and minimises potential risks.

Often, the simplest approach is for an individual to ensure that their business-related real estate assets are owned through a corporate entity.

Structuring to mitigate against legal risks

Owning a real estate asset through one or more corporate entities mitigates against the risk that the particular real estate asset would be subject to a claim in respect of the personal liabilities of the individual founder (or similarly, in respect of the liabilities of any of the individual founder's other business ventures).

Structuring to mitigate against succession issues

In general, on the death of an individual in the UAE, that individual's estate will be distributed in accordance with Sharia law and, pursuant to UAE law, dealing with the estate of the deceased is generally restricted until the Court issues its final judgment on the inheritance.

Practically speaking, the time and potential issues involved in inheritance matters can pose a significant risk to the continuity and viability of any business enterprise that is reliant upon or conducted using those real estate assets.

Using a corporate entity to own critical real estate assets goes some way to mitigating against the risk that inheritance issues would impact upon the business itself. In that scenario:

- the death of an individual shareholder would not, of itself, prevent the corporate entity from continuing to deal with the relevant real estate asset in its capacity as owner; and
- Sharia law would determine the distribution of any shares in that company in due course.

Legal basis for "corporate" ownership of real estate in Dubai

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

- wholly owned by UAE or GCC nationals may own any real estate in Dubai; and

- 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 generality of 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 foreign companies to own through Dubai free zone companies. However, please note that the current DLD policy does not allow Trusts to own properties in Dubai whether directly or indirectly.

For UAE and GCC nationals, generally using a Limited Liability Company to own the relevant real estate assets 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.

Furthermore, the DLD has also signed memoranda of understanding with other regulating authorities (including Abu Dhabi Global Market Authority ('ADGM') and the Dubai International Financial Centre ('DIFC')) to permit companies incorporated in those jurisdictions to own land in Dubai (subject to the existing restrictions on foreign ownership) and the terms of the signed memoranda of understanding between the regulating authorities.

Practical steps and costs

Importantly, where assets are currently owned by an individual in their personal capacity, implementing an appropriate risk and succession structure can be relatively cost effective.

Ownership of a real estate asset may be transferred from an individual to a corporate entity owned by them (or by their first degree relatives) by way of 'gifting'. Subject to the approval of the DLD, gifting fees for real estate properties are 0.125% of the current market value as determined by the DLD.

The procedure for gifting is a straight forward and predominantly a procedural process.

Registration of wills

Non-Muslim foreign nationals may also register a will in the DIFC (and should, in the near future also be able to register wills with the Dubai Courts). Following the death of the individual, 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: (i) Guardianship Will; (ii) Property Will; (iii) Full Will; or (iv) Free Zone Company Will.

As an additional layer of risk mitigation, we would recommend that such a will be registered and that it clearly delineates how the shares in the real estate holding company are to be dealt with.

Granted land

In the event that ownership of the land was granted by the Ruler of Dubai for residential purposes, it is important to consider that such land is often restricted from any real estate dispositions.

However, in cases of granted lands for commercial or industrial purposes, the owner will be required to convert the ownership of the land from grant to private prior to being able to avail himself or herself of the structuring options discussed above.

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 of 30 percent of the current market value of the land to the DLD is required to convert the ownership of the land from grant to private.

Additional considerations

While this article has focused on some key benefits of using corporate entities to own business real estate assets in Dubai, it is important that readers seek professional advice as to their individual circumstances and have regard to their own business and personal objectives when assessing what structuring options are most suitable for them.

Al Tamimi & Company's teams regularly advise family businesses in restructuring their real estate assets. For further information, or legal assistance on this subject please contact Mohammad Kawasmi (m.kawasmi@tamimi.com) or Abdulla Khaled (a.khaled@tamimi.com).