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Gulf Property Law Changes and Competition

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LONDON, 4 December 2006 — One of the by-products of high liquidity in the Gulf Cooperation Council (GCC) has been the stock market and real estate booms. While the GCC stock markets saw an average 30 percent market correction in March earlier this year and continue to fluctuate, real estate has maintained its position as one of the premier investment sectors.

However, in recent months, a new phenomenon is emerging — competition between some of the GCC countries in changing and effectively liberalizing their hitherto highly protectionist and nationalistic property ownership laws. Perhaps this is a sign of a genuine desire to open up and reform economies; on the other hand it may be a question of property market dynamics and economic reality catching up with the GCC states, who for the last few decades have been living in a world of "Walter Mitty economics", fueled by an abundance of petrodollars, state handouts in subsidies, the absence of personal income tax and a cash economy.

More recently a scramble for inward foreign direct investment (FDI) flows to finance GDP economic growth ranging from 6 percent to 10 percent per annum, has driven, some would say forced, most if not all the GCC states to start liberalizing their investment, property and other laws and regulations.

City-based international law firm, Trowers & Hamblins, in fact in a statement recently issued an investment warning to those considering buying property in the GCC region to either familiarize themselves "with the rapidly-changing property laws in the region, or risk making poorly-informed investment decisions."

The contribution of the real estate sector to GDP in the GCC countries, according to Kuwait-based Global Research, totaled \$27.27 billion in 2004, some 5.8 percent of GDP. Of this, Saudi Arabia accounted for \$12.80 billion followed by the UAE with \$8.05 billion.

Similarly, the market capitalization of listed real estate companies in the region totaled \$74.89 billion at Feb. 13, 2006 some 6.7 percent of the total market capitalization in the GCC. Of this, the UAE contributed \$41.46 billion and Saudi Arabia \$17.72 million. This accounted for 2.7 per cent of total GDP.

The three countries leading the property ownership revolution are Dubai, Oman and Bahrain. But even with these countries the liberalization of property laws is still patchy with major variations. Allied to ownership laws are the regulations relating to inheritance and residency, which according to Trowers & Hamblins, are even more confusing and often misunderstood by foreigners.

"Dubai is usually regarded as the Gulf state which is most open to foreign investment," stresses Abdul Haq Mohammed of Trowers & Hamblins' Bahrain Office, "but states such as Oman and Bahrain have now gone further than Dubai in opening their property markets to foreign investors, as both now allow absolute freehold ownership in designated areas. Dubai headed the charge in luxury developments aimed at the overseas investor market but Oman could become a viable alternative over the next few years. Oman is building a legal framework, which could make it very attractive to foreign investors."

But British investors, familiar with the GCC, for instance claim that they now prefer Oman because of its natural beauty and because they are tired of the incessant hype regarding Dubai Inc. and the creeping socio-cultural vulgarity the entrepot seems to have acquired over the last decade or so.

In terms of property ownership laws, Dubai from March 2006 allows foreign investors outside the GCC to buy properties on a 99-year lease in designated areas. In Bahrain (since 2002) and Oman (since early 2006) foreigners can buy freeholds in designated areas.

In terms of inheritance laws, in the case of Dubai, there is ambiguity whether foreigners will be subject to Shariah law or the law of their country of origin. The Bahrain Civil Code, however, says Trowers & Hamblins, “suggests that home nationality law will apply, but doubts remain.” In Oman, the laws are much clearer — home country inheritance laws would apply.

It is in the residency laws that there is much confusion. Foreigners, who own a 99-year lease on a property in Dubai, do not automatically get permission to reside in the emirate. In Bahrain, stresses Abdul Haq, “there is something of an urban myth among expatriates that buying a property automatically confers a right to residency, but in reality residency is much more restricted than that.” It is only in Oman that foreigners are granted the automatic right to residency on purchasing a property.

The situation in Saudi Arabia, Kuwait and Qatar is even more confusing and stringent.

Despite the aura of property ownership liberalization in the GCC countries, there are still major problems concerning legal and regulatory procedures which Britons for instance take for granted in their own country.

These include mortgage laws; mortgage regulation; land and deed title registration; noting interests such as mortgages before titles are available, which can be long after construction has started; and the lack of security for mortgage lenders.

As such obtaining finance from banks and mortgage corporations for purchasing off-plan property in the GCC, stresses Trowers & Hamblins, can be “problematic”. According to Abdul Haq, obtaining affordable mortgage finance needs to be made easier. Part of the problem is the land registration systems which can be frustratingly slow. The lack of security to lenders means that there is an extra cost which can make finance prohibitively expensive.

In Saudi Arabia, the largest potential market for mortgages, the Shoura Council is only now debating a draft mortgage law. Banks in the Kingdom are keen for such a law to be adopted urgently, especially given the growing Saudi market driven by a growing population and a young consumer profile.

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