Global Corporate Real Estate Guide - Saudi Arabia

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*This chapter was last reviewed in September 2023.*

# Authors

# Real Estate Law

## What is included in the term “real estate”?

The term “real estate” includes the following:

The land and what is under and above the land

Any buildings, fixed structures or

Plants, such as trees

The term excludes the following:

Natural resources

Unauthorized buildings/heights

## What laws govern real estate transactions?

In all provinces of Saudi Arabia, property law is primarily governed by Islamic Shariah, a comprehensive and complete system of laws that governs, among other things, all aspects of commerce, trade and contract.

In certain circumstances, specific legislation exists, to the extent that it does not contradict Islamic Shariah, for matters such as:

Off-plan sales: Under the Off-Plan Sales Law, developers that want to market or sell real estate units in a real estate development project on an off-plan basis need to first obtain a license from the Wafi Center. Among a number of other requirements (i.e., details of the project, prior experience, credit worthiness), a key requirement is setting up an escrow account with a Saudi bank (along with an escrow agreement between the developer and the escrow bank).

Real estate brokers: the Real Estate Brokerage Law regulates real estate brokerage and a number of real estate activities, such as real estate marketing, real estate management, real estate advisory, real estate auctions and facilities management.

The following are key highlights of the Real Estate Brokerage Law:

The Real Estate Brokerage Law requires that the entities practicing the activities regulated by the law obtain a license from the Real Estate General Authority. Under the law, practicing real estate brokerage is not limited to Saudi nationals or Saudi companies.

A real estate brokerage entity is not allowed to sell or broker the sale of any property unless it is in possession of copies of the title deeds. Additionally, it must also document the brokerage agreement and register the agreement in the Real Estate General Authority’s electronic portal.

A real estate brokerage entity is not allowed to receive more than 2.5% of the value of the sold property in commission, unless otherwise agreed in the brokerage agreement. Likewise, the brokerage entity in a leasing agreement is not allowed to receive over 2.5% of the first-year’s rent as a leasing commission, unless the parties agreed to this.

Real estate offices violating these rules may be punished by a fine not exceeding SAR 200,000, closure of the office for a certain period not exceeding one year, or the permanent revocation of the license of the office.

Real estate mortgage: For a mortgage to be valid, its creation must be in exchange for a debt, which may include a contingent, future or prospective debt. The benefit of the property may be mortgaged separately from the property itself.

The mortgage over a property includes all things ancillary to that property, including any improvements made to the property after the date on which the mortgage is created. A single property may be mortgaged to a number of mortgagees if their priorities fall in a particular order, determined by the date of the notation of the mortgage on the title deed or the date of the registration of the mortgage.

A mortgage is terminated upon the occurrence of any of the following events:

The termination of the debt (Should the debt, having been terminated, be reinstated for whatever reason, the mortgage in respect of that debt will be reinstated as well. Such reinstatement will be without prejudice to the rights of any bona fide third party that acquires rights over the mortgaged property in the time between the termination of the mortgage and its reinstatement.)

The merger of the rights and obligations of the mortgagor and mortgagee in a single person (However, if the consolidation of debt is reversed, the mortgage is reinstated.)

An authenticated waiver by the creditor

Upon the total destruction of the mortgaged property

## What is the land registration system?

Saudi law recognizes both freehold title to land and a leasehold interest in land.

In May 2022, a new real estate registration law was issued for the establishment of a formal system of land registration in Saudi Arabia. This new law governs registration and indefeasibility of freehold title to land as well as the registration of title deed interests. The Real Estate General Authority is authorized to implement this law and has contracted with the National Real Estate Registration Services Company on certain operational aspects of implementation. As of the date of this update, implementation of the law has commenced on a designated area basis, with certain neighborhoods announced as being subject to the new law. We expect it will take a few years before this law is implemented throughout Saudi Arabia.

Currently, the following applies in the majority of Saudi Arabia, excluding any neighborhoods that are designated as being subject to the new real estate registration system:

Title to real estate may be transferred without formal registration.

Recording of a transfer of freehold title to land can only be made with a notary public.

At present, evidence of ownership of the freehold title to land is generally recorded in a document known as a title deed, which is issued by the office of the notary public. Title deeds describe the land using words alone and do not include a map or diagram depicting the boundaries and location of the land in the context of surrounding lands. However, the local municipalities maintain official survey maps (korooki) identifying all plots of land within their district. A korooki is often used to verify whether the land described in the deed title matches the physical land identified in the official survey map.

In the absence of a centralized land registry in Saudi Arabia, there is no certainty or indefeasibility of title. Instead, there is only evidence of title, the best evidence of which is the title deed issued by the notary public. However, as title to real estate may be transferred under Saudi law without the need for formal registration, only a court judgment issued in respect of ownership of title offers conclusive evidence as to ownership and only as of the time such judgment is issued.

## Which authority manages the registration of titles?

The office of the notary public for the district in which the land in question is located manages registration of titles.

## What rights over real property are required to be registered?

Until such time as a centralized land registry is formed, only mortgages are generally registered on title deeds. Additionally, lease agreements are required to be registered for such lease agreements to be enforceable. However, lease agreements are registered online through the Ejar system and not on title deeds.

## What documents can landowners use to prove ownership over real property?

Evidence of ownership of the freehold title to land is generally recorded in a document known as a title deed, which is issued by the office of the notary public.

## Can a title search be conducted online?

Yes, but only where a title deed has been updated to the electronic form.

## Can foreigners own real property? Are there nationality restrictions on land ownership?

The law now recognizes the following two distinct groups of foreign nationals:

Citizens of the Gulf Cooperation Council (GCC) or companies domiciled in a GCC member country and wholly owned by citizens of the GCC

Foreigners of any other nationality, companies domiciled outside the GCC and companies owned by foreigners of any other nationality

**Citizens of the GCC**

Citizens of the GCC (i.e., Oman, UAE, Kuwait, Bahrain and Qatar) and companies in the GCC that are wholly owned by citizens of the GCC may now, pursuant to Royal Decree No. 22 dated 3/4/1432H (8 March 2011) (“**1432 Royal Decree**”), own and lease real estate in Saudi Arabia on the same basis and with the same rights as citizens of Saudi Arabia, subject to the following limitations:

Land must be developed or be used within four years (this may be extended) of the date of registration of the real estate in the name of the buyer.

Land must not be disposed of for a period of four years from the date of registration in the name of the buyer or until the land is used, developed or built upon, whichever is the earlier (authority can be granted to dispose of land earlier).

Note that built property such as villas, apartments and offices can be disposed of at any time.

Ownership of real estate in Makkah and Al Madīnah is still restricted to Saudi nationals only.

The 1432 Royal Decree implements the GCC Economic Agreement with respect to landownership and became effective three months after approval by the Higher Counsel (majlis al a’ala). After inquiries were made, the offices of the notary public in Riyadh confirmed that the Royal Decree is now in effect and is being applied by the offices of the notary public in the Kingdom of Saudi Arabia.

The 1432 Royal Decree supersedes previous laws on the issue and clarifies the status of GCC citizens and their ability to purchase real estate in Saudi Arabia.

**Other foreigners**

There are significant restrictions in Saudi Arabia on the ownership of freehold title to land by foreigners. There are no limitations on the leasing of land, by foreigners, except in Makkah and Al Madīnah.

Only in the following limited circumstances can foreign companies and individuals own or develop land in the Kingdom of Saudi Arabia:

Foreign individuals who are residents of Saudi Arabia may own property solely for the purpose of their own residence. This is subject to the issuance of a permit from the Ministry of Interior.

Foreign companies with licenses to conduct business in Saudi Arabia may own real estate as part of their business as well as to accommodate employees of their business.

Upon obtaining the necessary license, foreign companies may invest in and develop real estate if the development value exceeds SAR 30 million and the development is completed within five years of acquiring the land on which the development will be built.

Subject to reciprocity, foreign diplomatic missions may own land for their official premises and employee housing.

The Ministry of Foreign Affairs will approve landownership by certain unspecified international and regional organizations.

Additional restrictions apply to the holy cities of Makkah and Al Madīnah, as follows:

Only Saudi nationals may own freehold title to real estate.

Other than through inheritance, non-Saudis are prohibited from obtaining freehold title to easements or to otherwise use real estate.

Muslim non-Saudis may lease property for a period of two years (such leases can be renewed for similar periods).

## Can the government expropriate real property?

Property can be expropriated by government and quasi-government authorities with the payment of appropriate compensation.

## How can real estate be held?

Generally, an interest in real estate is held by the following:

Freehold

Leasehold

Ownership of estate units (i.e., strata title)

Usufruct

## What are the usual structures used in investing in real estate?

Joint-stock company

Limited liability company

Real estate funds

Real estate joint contribution/fractional ownership

## How are real estate transactions usually funded?

Saudi Arabia has some of the region’s largest banks. Many of these banks offer financing to the real estate sector, both on a conventional and Islamic basis, using all types of financing techniques.

Nonrecourse, limited-recourse and full-recourse financing, as well as secured and unsecured financings are used in different transactions. In the wake of the global financial crisis, over-collateralized security and full-recourse financing have become more common. Borrowers are not able to borrow as much as during the global financial crisis due to the requirement of lower loan-to-value ratios.

Equity is playing a greater role in the financing of real estate transactions, particularly through Islamic funds and Islamic bond (sukuk) issuances.

Despite the strong demand for housing, Saudi Arabia has a nascent mortgage finance market and strict consumer lending practices. This strict lending environment is expected to increase once the Registered Real Estate Mortgage Law is properly implemented and applied by the relevant authorities in Saudi Arabia.

## Who usually produces the documentation in real estate transactions?

Generally, the seller’s lawyer will prepare the initial draft of the purchase agreement.

## Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before the real estate was bought or occupied?

There is no specific legislation in place to address the remediation of contaminated land where contamination was caused by someone other than the current landowner.

Nevertheless, new owners and occupiers sometimes seek indemnities in respect of environmental liability and in respect of any damage arising from contamination on the land.

## Does a seller or occupier retain any liabilities relating to the real estate after they have disposed of it?

Yes, but only to the extent that the seller or occupier caused the liability, such as environmental pollution, during its occupation and use of real estate.

# Acquisition of Real Property

## What are the usual documents involved in such transactions?

The following are the usual documents involved in such transactions:

Sale and purchase agreement

Due diligence report

Assignment or renewal of lease

## What are the warranties given by a seller to a buyer?

Sellers are usually very reluctant to give representations and warranties. If they do, they are generally very limited in nature. Therefore, the obligation is on the buyer to undertake comprehensive due diligence. This is especially true because sellers are often reluctant to disclose a great deal of information that one would usually expect to see during the sale process.

## When is the sale legally binding?

The parties are legally bound when the sale and purchase agreement is executed, unless it is subject to conditions such as financing.

## When is title transferred?

Legal title is transferred upon the execution of the sale and purchase agreement and the payment of the consideration.

## What are the costs usually shouldered by the parties?

The buyer usually pays for the following:

Buyer’s agent’s fees

Legal costs

Due diligence costs for consultants who have prepared building condition reports, valuation appraisals and real estate surveys

Real estate transfer tax (5% in addition to the sale price)

On the other hand, the seller usually pays for the following:

Listing agent’s fees

Legal costs

Income tax on any profit made (zakat) on proceeds from the sale of the real estate, depending on the nationality of the seller

# Leases

## What are the usual forms of leases?

The following are the usual forms of leases:

Industrial leases

Commercial office leases

Retail leases

Residential leases

Development leases/ground leases

## Are lease provisions regulated or freely negotiable?

While there is no leasing law per se specifying lease provisions, if parties wish to benefit from having their lease being directly enforceable by the enforcement courts as an enforcement instrument, a unified form of lease is available and must be registered on the online Ejar platform.

Parties are free not to use the unified form of lease. However, this free-form lease must still be registered on the Ejar platform to be enforceable in the ordinary course (i.e., free-form leases are enforceable through normal courts and not as enforcement instruments if they are registered).

Additionally, leases of industrial land in Jubail and Yanbu and industrial land administered by the Saudi Authority for Industrial Cities and Technology Zones “MODON“ are subject to very limited changes from the prescribed form.

## Is there a maximum term for leases? Can these be extended?

Leases entered into by landlords with government departments or agencies are limited to an initial term of no less than five years. The lease can be extended to 50 years under certain conditions.

There is no maximum term or limitations on renewal for nongovernment leases in Saudi Arabia.

## What are the usual lease terms?

Most leases are for terms of one year, renewable for further one-year terms and subject to upward rent review, except for development leases or ground leases and for industrial leases, which are usually for terms between 15 and 25 years.

## Are there instances where tenants may demand an extension of the lease?

No.

## On what grounds may a lease be terminated?

In general, a landlord can only terminate a lease pursuant to the termination provisions contained therein (e.g., the tenant is in breach of its obligations under the lease).

A tenant may not terminate a lease without cause, unless there are specific provisions in the lease permitting such termination.

## Must rents be paid in local currency?

The parties to a lease are free to set the rent in currencies other than Saudi riyals. However, arrangements for payment of rent in foreign currency are not typical.

## Is rent paid on a monthly basis? Is it required to be paid in advance?

Rent is typically paid annually in advance.

## How is rent reviewed? Are there limits to the increase in rent?

There are no laws that set a cap on rent reviews or that seek to control renewals.

Rent is usually reviewed upward upon the renewal of the term, either at market rates or by a fixed increment of 5%-10%. There are no limits on the extent to which a landlord can increase rent, so long as the increase takes place at the time of renewal or at dates/intervals agreed by the parties.

## What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

Repair and maintain the structure of the property

Insure the property

Provide tenants with a valid notice of termination if terminating the tenancy

The following is usually required of tenants:

Pay rent on time

Keep the property in good order

Inform the landlord if repairs are needed and give the landlord access to the property to carry out repairs

Give the landlord access for inspections and to perform the landlord’s work

## What provisions or restrictions typically apply to the transfer of the lease by the tenant? May a tenant sublet the leased premises?

Tenants and landlords are free to agree on the extent to which a tenant can alienate their interest in the lease, except for industrial and governmental leases. Typically, tenants are prohibited from assigning or subletting the whole or part of the leased premises without the landlord’s prior written consent.

## What happens in the event of destruction of the leased premises?

If the tenant caused the destruction of the leased premises, they will be liable not only for the remaining rent due for the balance of the term but also for the costs arising from that destruction, including the cost of reinstatement.

If the landlord caused the destruction of the leased premises, the lease ends and the tenant can claim damages from the landlord for their direct losses. The tenant will be entitled to receive a refund on that portion of the rent paid in advance prior to the date of termination.

## Who is usually responsible for insuring the leased premises?

Neither party is obligated by law to insure against the risks arising in respect of the leased premises.

However, leases commonly contain insurance provisions, pursuant to which:

The landlord takes out all-risk property insurance and third-party/public liability insurance

The tenant takes out insurance in respect of its fixtures, fittings and belongings within the leased premises

## Will the lease survive if the owner sells the leased premises?

Yes, as the lease runs with the land and binds subsequent owners.

## Will the lease survive if the leased premises are foreclosed?

Yes, as the lease runs with the land and binds subsequent owners.

# Planning and Environmental Issues

## Who has authority over land development and environmental regulation?

The National Center for Environmental Compliance is responsible for the application and administration of environmental laws in Saudi Arabia.

Land development and planning is controlled by high commissions for development in various provinces, such as the High Commission for the Development of Riyadh and the High Commission for the Development of the Makkah Province. These commissions are commonly referred to as “Amana.”

## What environmental laws affect the use and occupation of real estate?

The Environmental Law and its various implementing regulations, enacted by Royal Decree No. M/165 dated 19/11/1441H (corresponding to 9 July 2020) and published in official gazette No. 4840 dated 26/11/1441H (corresponding to 16 July 2020) operates as a general regulatory framework for the development and enforcement of domestic environmental rules and regulations.

In Saudi Arabia, companies can be held liable for environmental contamination and resultant damages through the application of the Environmental Law and its implementing regulations and through tort-like claims that are based on the application of Islamic Shariah.

## What main permits or licenses are required for building or occupying real estate?

The following are the main permits and licenses:

Building permit

Permission to sell off-plan

Environmental license, depending on the extent of the environmental impact arising from construction and the proposed use of the planned development

Building completion certificate

Operating license

## Can an environmental cleanup be required?

The National Center for Environmental Compliance, together with any other relevant government agency, such as the local municipality, has the power to order any environmental damage caused in violation of environmental laws to be rectified and cleaned up.

## Are there minimum energy performance requirements for buildings?

The Saudi Building Code Energy Conservation Requirements (SBC 601) establishes minimum prescriptive and performance-related regulations for the design of energy-efficient buildings and structures. It also has regulations for portions that provide facilities or shelter for public assembly, educational, business, mercantile, institutional, storage and residential occupancies, as well as those portions of factory and industrial occupancies designed primarily for human occupancy. These requirements address the design of energy-efficient building envelopes, and the selection and installation of energy-efficient mechanical, service, water-heating, electrical distribution and illumination systems, and equipment for the effective use of energy in buildings and structures.

## Are there other regulatory measures that aim to improve the sustainability of newly constructed and existing buildings?

Riyadh has implemented a metropolitan development strategy known as Medstar, which deals with regulatory measures aimed at improving the sustainability of existing structures, among other things.

Mostadam is a sustainable building initiative by the [Ministry of Municipal, Rural Affairs and Housing that measures the sustainability of buildings and provides ratings for these in compliance with existing laws and regulations](https://www.my.gov.sa/wps/portal/snp/agencies/agencyDetails/AC174/!ut/p/z0/04_Sj9CPykssy0xPLMnMz0vMAfIjo8zivQIsTAwdDQz9LQwNzQwCnS0tXPwMvYwNDAz0g1Pz9L30o_ArAppiVOTr7JuuH1WQWJKhm5mXlq8f4ehsaG6iX5DtHg4Ayo0duQ!!/).

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