

OVERVIEW OF REAL ESTATE IN MOROCCO

THE VARIOUS LAND LAW SYSTEMS UNDER MOROCCAN LAW

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Morocco is an increasingly favoured target for international investors looking to diversify real estate investment opportunities. In 2014, the real estate sector represented 38.6% of foreign international investment compared to 14% in 2013.

A series of reforms to provide protection and simplification in real estate transactions is currently being introduced by the Moroccan authorities in light of certain recurring criticisms by international investors. The National Land Law Policy Conferences held on 8 and 9 December 2015 in Skhirat in Morocco enabled them (with the assistance of legal professionals, developers and property investors) to choose over 50 recommendations in several different areas: legislation, legal protection, the management and governance of State land, town-planning and development plans. The main challenge is to produce a clearer legislative framework by overhauling Moroccan land law.

THE VARIETY OF LAND LAW REGIMES

The complexity of the land law system in Morocco that investors face is a result of various factors, principally the variety of legal regimes governing land: “public” land (*Habous* or *Guich*) co-exists alongside *melks* and land privately owned by the State, whose characteristics are very different. For example, certain properties are inalienable or can only be transferred subject to certain conditions, while other properties require prior authorisation by the State in order to be transferred or, where the proposed purchaser of agricultural land is foreign, a specific certificate must be obtained (a certificate of non-agricultural purpose).

REGISTERED AND UNREGISTERED PROPERTY

The complexity of the land law system in Morocco is also a result of the co-existence of registered and unregistered property. Indeed, the lack of registration affects quite a significant proportion of properties in urban areas (mainly the *medina* historic town centres) and properties in rural areas. Registration procedures do exist but they are long and complex.

Under the “traditional” system, based on local customs, title to unregistered property is based on (i) peaceful possession, and (ii) uninterrupted common knowledge for a period of 10 years (*vis-à-vis* third parties) or 40 years (*vis-à-vis* family members). Title to unregistered property is proved by presentation of a *moulkiya*, namely a notarised document pursuant to which twelve ordinary witnesses confirm before two *Adouls* (Sharia law notaries) that the person claiming title to the property has lawful possession. Obtaining these declarations can be a tedious process.

Transfer of title is also a way of obtaining ownership. It presupposes however that the property in question is alienable, yet certain land (by virtue of its legal nature) is inalienable or can only be transferred on certain conditions. In practice, it is therefore advisable to carry out full due diligence on the legal nature of the land before purchasing and to conduct a prior check of the administrative/ town-planning consents required to carry out the proposed transfer.

The transfer of title to unregistered property occurs at the moment when both parties wish to be bound (Articles 488 and 489 of the Obligations and Contracts *Dahir/Decree*), although title will not be enforceable against third parties until it is registered with the Registration and Stamp Duty Authority. It is mandatory that any transaction relating to rights *in rem* over unregistered property be established by means of a notarised document drafted either by *Adouls*, notaries or (since Act No. 39-08) lawyers who are registered with the Court of Cassation.

While unregistered property has several drawbacks for real estate investors due to unreliable proof of ownership, the lack of precise identification and the uncertainty regarding which regime applies, many properties in Morocco, particularly in out-of-town areas, are registered.

Registered property is characterised by the registration/publication process and the probative effect of being recorded in the land register. Title to registered property passes when it is recorded in the land register.

The registration of land covered by any of the regimes remains a priority for the Moroccan State.

SALES OF UNCOMPLETED PROPERTIES

Whilst the acquisition of registered and unregistered property remains a significant way of transferring land, buying uncompleted properties off-plan (a method which is gearing up for a major new reform) has also been very popular with investors.

The sale of an uncompleted property (*vente en état futur d'achèvement*) is defined in Article 618-1 of the Obligations and Contracts *Dahir* as any contract by which a vendor agrees to build a property within a set timeframe and the purchaser agrees to pay the purchase price for it as work proceeds. In principle, a preliminary contract can only be entered into on completion of the building's foundations (failing which it will be null and void) and it is only at that point that the vendor is entitled to require a down payment. Although it protects the interests of purchasers, this provision constitutes a financial constraint for developers who have to advance the funds to build the foundations. However, in practice, in most cases vendors require investors to enter into reservation agreements and make down payments before any work begins. This highly contentious practice (given the legal context) is being exposed more and more in the Courts.

Mainly in order to end this practice, a draft law for an overhaul of the regime governing sales of uncompleted properties in Morocco and for better legal protection for purchasers is currently being discussed in Parliament. The draft law, which at this stage comprises about 20 articles and which adopts certain recommendations made by the Economic, Social and Environmental Council (ESEC), provides that vendors and purchasers may only sign a sale contract once the building permits have been obtained, bringing the practice of reservation agreements to an end while satisfying the concerns of developers in terms of the financing of building projects. Vendors must

define precisely a property's characteristics and surface area, and the instalment dates and percentage of the sums advanced. The draft law gives purchasers the right to insert an advance notice on the land register without the vendor being able to object, whilst the current law requires its prior consent. However, this right may not be exercised until the purchaser has paid at least 50% of the total purchase price. The project owner must provide the new owner with a certificate of conformity for the works, drawn up by an architect, proving that the structure complies with the specifications and that the developer has complied with its obligations.

BUILDING RIGHTS

In addition to sales, Moroccan real estate practice has seen an increase in the use of building rights (*droits de superficie*), defined as rights of ownership over buildings or structures on land belonging to third parties. The holder of a building right may assign it, mortgage it (if the underlying property is registered) or grant easements over the property in question. For example, building rights are used as part of project financing to enable lenders to register a mortgage as security for the loans granted to the project company.

LEASES

As for the principal methods for using a property, the *Dahir* of 24 May 1955 introduced a mandatory regime for leases of properties or premises in which a business undertaking is operated. This regime has many similarities to the French legal system governing business leases although is less developed. In practice, business leases entered into in Morocco incorporate the characteristics of triple net leases *i.e.*, fixed terms (with break option at three, six and nine years), costs being recharged to tenants, maintenance obligations on tenants, etc.

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