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The regulatory framework of the real estate sector in the Arabian Gulf countries

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Abstract

Over the last fifteen years, there has been a rapid expansion in the Arabian Gulf real estate sector, where it plays a significant role in the economy of the Arabian Gulf countries, which is considered as the second biggest sector after the energy sector. The purpose and aim of this thesis is to analyse and investigate the usefulness of the current real estate regulation and whether the current regulatory rules of the real estate sector are sufficient to protect local and foreign real estate investors or not.

The thesis will examine the current governing legal framework of the real estate sector in all Arabian Gulf countries. The thesis also intends to find whether the current regulatory framework of the real estate regulation in divergence or convergence among Arabian Gulf countries. This thesis intends to provide suggestions of the Laws and regulations that should be implemented to regulate properly the practices of the real estate sector in Arabian Gulf countries. The thesis will investigate the attractiveness level of the Arabian Gulf real estate markets to global real estate investors and analyse the general regulatory framework of foreign direct investment (FDI) in the Arabian Gulf region. Finally, there will be a close look at the effects of the recent financial crises on the sector and policies by way of response by the Gulf countries.

To achieve the above objective, the thesis will adopt a qualitative methodology and a comparative analysis between the Arabian Gulf rules and regulations with other developed countries in order to discover the main loopholes that need reform in the Gulf real estate sector.

Acknowledgment

All praise and thanks be to Allah, the Almighty, who gave me the ability to complete this research.

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Table of Contents

| | |
|---|-----------|
| Chapter one: | 9 |
| The historical background of the Arabian Gulf Countries | 9 |
| 1. Introduction | 9 |
| 2. The importance and the aim of the study Purpose | 14 |
| 3. Research Question | 15 |
| 4. Hypothesis and Thesis Objectives | 16 |
| 5. Methodology | 16 |
| 6. Comparative Law Methodology | 17 |
| 7. Primary Sources | 19 |
| 8. Secondary Sources | 19 |
| Chapter Two: The urban development of the Arabian Gulf Countries | 20 |
| 1. Introduction: | 21 |
| 2. The historical background of the urban development in the Arabian Peninsula | 21 |
| 2.1. The population growth of the Arabian Gulf countries and causes of immigration and establishment of the cities: | 24 |
| 2.2. The beginning of the influx of population in the modern era | 26 |
| 3. Factors affecting the real estate development in the Arabian Gulf countries, 29 | |
| 3.1. The discovery of oil and the evolution/ development of urbanisation in the Arabian Peninsula: | 29 |
| 3.1.1. The First Oil Boom | 31 |
| 3.1.2. The Second Oil Boom | 33 |
| 3.1.3. The Third Oil Boom | 36 |
| 4. The concentration of the Development Strategies of the GCC states on real estate projects: | 40 |
| 5. The size of the real estate sector in the Arabian Gulf countries: | 44 |
| 6. The real estate bubble in the Arabian Gulf countries: | 46 |
| 7. The historical background of the legal system in the Arabian Peninsula: .. | 47 |
| 7.1. The Islamic country legal system | 47 |
| 7.2. The legal system of the Ottoman Empire | 48 |
| 7.3. The legal system of the during the British Empire | 49 |
| 7.4. The French /Egyptian civil Law system | 52 |
| 7.5. The current constitutional system of the Gulf member state: | 54 |
| 7.6. The citizens' legislative role in the Gulf member states | 60 |
| 7.7. The role of the councils in the enactment of Laws | 62 |
| 7.8. The source of Law: | 65 |
| 8. Conclusion: | 66 |
| Chapter THREE: The historical background of the property ownership in the Arabian Peninsula | 69 |
| 1. Introduction | 69 |

| | | |
|---|--|-----|
| 2. | The conceptual background of land and property in the Islamic <i>shari'a</i> Law: | |
| | 70 | |
| 3. | The concept of land ownership in Islamic <i>Shari'ah</i> Law and the concept | |
| | Trusteeship | 73 |
| 4. | Right to Private Ownership under the Islamic Shari'ah: | 74 |
| 5. | Expropriation in Islamic shari'ah Law: | 77 |
| 6. | The land system in the Ottoman Empire: | 78 |
| 7. | Land-related Laws from the Ottoman government (the Ottoman Land Law | |
| | of 1858) | 79 |
| 8. | Regulating property ownership in the modern state | 83 |
| 9. | Regulation property ownership in the Gulf countries: and the constitutional | |
| | protection of property rights | 85 |
| 10. | The regulation of ownership (public- private ownership) | 86 |
| 11. | The regulatory framework of property ownership in the Arabian Gulf | |
| | countries | 88 |
| | 11.1. The first period: ownership by state nationals | 88 |
| | 11.2. The second period: 1970s Arab nationalism | 90 |
| | 11.3. Ownership during the globalisation period | 91 |
| 12. | Linking | 106 |
| | 12.1. The case of Bahrain, Qatar and Oman | 107 |
| | 12.2. The case of the United Arab Emirates..... | 107 |
| 13. | The expropriation process for public utility projects in the Gulf countries: | |
| | 109 | |
| | 13.1. The legal foundation of expropriation in the Arabian Gulf countries..... | 111 |
| | 13.2. The process followed by the Expropriation Department for the public benefit | |
| | under the principles of transparency. | 114 |
| | 13.3. The grey area between private and public property | 116 |
| 14. | Conclusion | 122 |
| Chapter 4: The regulatory framework of the Gulf's real estate sector 124 | | |
| 1. | Introduction: | 124 |
| 2. | The significance of the Land Administration System in the Arabian Gulf | |
| | Countries | 125 |
| | 2.1. The benefits for individuals | 126 |
| | 2.2. The benefits for the government..... | 128 |
| | 2.3. The benefits for society | 129 |
| 3. | The legal framework of the land administration system | 130 |
| 4. | The legal status of land and real estate property | 130 |
| | 4.1. Legislation that affects dealing in land and properties..... | 131 |
| | 4.2. The Laws of land reform and reorganisation | 132 |
| | 4.3. The Laws that govern land administration..... | 134 |
| 5. | Real estate types in the Arabian Gulf countries and the Land registration | |
| | system and the cadastre system | 137 |
| 6. | The significance of the Land Registration System and the Cadastre System: | |
| | 138 | |
| | 6.1. The land registration system..... | 139 |
| | 6.2. The cadastral system..... | 140 |

| | | |
|---|---|------------|
| 6.3. | Technology in the land administration system..... | 142 |
| 7. | Regulating the real estate sector in the Gulf region | 144 |
| 7.1. | Real estate brokers' regulations..... | 147 |
| 7.2. | The regulations of usufruct and surface (<i>musataha</i>) rights in the Arabian Gulf countries..... | 150 |
| 7.3. | The regulations of usufruct rights | 151 |
| 7.4. | The regulation of surface right (Musataha..... | 153 |
| 7.5. | Jointly owned properties regulations (Strata) | 154 |
| 7.6. | Regulations of real estate developers:..... | 160 |
| 7.7. | The regulation of off-plan properties in the Gulf region | 167 |
| 7.8. | The Law for escrow accounts | 173 |
| 7.9. | Regulation of real estate marketing and exhibitions..... | 182 |
| 8. | Conclusion..... | 185 |
| | | |
| Chapter 5: the legal framework of real estate finance in the Arabian Gulf Countries..... | | |
| | | 186 |
| 1. | Introduction | 186 |
| 2. | The nature of the Arabian Gulf economy (The Rentier Economy) | 187 |
| 3. | An overview of the financial systems in the Arabian Gulf | 193 |
| 4. | The regulatory overview of the Gulf's Central Banks in regulating the Gulf's financial sector..... | 198 |
| 4.1. | The role of the Central Banks in regulating the <i>Shari'ah</i> governance system in the Arabian Gulf countries:..... | 204 |
| 5. | Real estate finance in the Arabian Gulf countries (Pre and post the global financial crises): | 211 |
| 5.1. | Governmental real estate finance for individuals (housing system): | 212 |
| 5.2. | Individual and construction finance in the Arabian Gulf countries | 215 |
| 6. | Real estate finance post-global financial crisis (the impact of the financial crisis on the Gulfs' real estate sector) | 220 |
| 6.1. | The Gulf's general response toward the financial crisis..... | 222 |
| 6.2. | Individual home finance and real estate companies finance after the global financial crisis..... | 230 |
| 7. | Conclusion:..... | 233 |
| | | |
| Chapter 6: the real estate mortgage Law in the Arabian Gulf region. | | |
| | | 235 |
| 1. | Introduction:..... | 235 |
| 2. | The significance of mortgage finance in Emerging Markets..... | 236 |
| 3. | The current housing finance system in the Arabian Gulf countries | 239 |
| 4. | The mortgage Laws in the Gulf region | 241 |
| 4.1. | Mortgage Law in Dubai: | 242 |
| 4.2. | Mortgage Law in Saudi Arabia | 245 |
| 5. | Prerequisites for a successful mortgage finance system in the Arabian Gulf region | 250 |
| 6. | Legal and institutional requirements for mortgage finance in the Gulf region: | 253 |
| 6.1. | The real estate market regulations | 253 |
| 6.2. | The Primary Mortgage Market..... | 254 |
| 6.3. | The Secondary Mortgage Market..... | 255 |

| | |
|--|------------|
| 7. Challenges Facing Mortgage Markets Developments in the Arabian Gulf countries | 257 |
| 7.1. Inefficient Property Registration Procedures..... | 259 |
| 7.2. General Lack of Mortgage Loans | 262 |
| 7.3. Ineffective foreclosure procedures | 263 |
| 7.4. Mortgage Guarantee Corporation..... | 267 |
| 7.5. Inconsistency in the Valuation Process..... | 270 |
| 7.6. The lack of the Regulatory Framework of the mortgage secondary market 272 | |
| 8. Conclusion..... | 273 |
| Chapter 7: The legal framework of Foreign Direct Investment (FDI) in the Gulf's real estate sector. | 277 |
| 1. Introduction: | 277 |
| 2. Explaining an International Financial Centre | 281 |
| 3. Rationale for Financial Centres in the Arabian Gulf States..... | 283 |
| 4. The main factors that encourage foreign investors to invest in the region. 286 | |
| 4.1. The openness to, and restrictions upon, foreign investment in the Arabian Gulf region: | 289 |
| 4.2. The right to private ownership and establishment of foreign investments in the Arabian Gulf countries. | 292 |
| 4.3. The level of corruption in the Arabian Gulf countries..... | 312 |
| 4.4. Risk to political stability in the Arabian Gulf countries | 324 |
| 4.5. Expropriation, nationalisation and Compensation of foreign ownership in the Arabian Gulf countries | 327 |
| 5. Conclusion: | 331 |
| Chapter eight: Thesis Conclusion:..... | 336 |
| 1. Introduction | 336 |
| 2. An Analysis of the Current real estate Situation | 337 |
| 2.1. The first conclusion | 337 |
| 2.2. The second conclusion | 338 |
| 2.2.1. The first reason | 339 |
| 2.2.2. The second reason | 339 |
| 3. The Contribution of the Study: | 341 |
| 4. Further Research..... | 342 |
| Bibliography | 344 |
| English Literature | 344 |
| Arabic Literature | 352 |
| Journals articles and International Organisations Reports:..... | 353 |
| List of Statutes, Codes, Regulations and Resolutions:..... | 365 |

Chapter 1: The historical background of the Arabian Gulf Countries

1. Introduction

The Gulf Cooperation Council (GCC countries) share many characteristics. The countries that make up the GCC, currently Kuwait, Bahrain, Qatar, United Arab Emirates (UAE), Oman and the Kingdom of Saudi Arabia (KSA), exhibit a strong historic influence from the Islamic *Sharia'h* Law along with other rules of Law established in the Ottoman and English Empires. With the exception of Saudi Arabia,

they are all civil Law jurisdictions as is founded upon the French and Egyptian tradition. Islamic *Sharia'h* Law, derived from the *Qur'an* and the *Sunnah* (the Prophet's traditions)¹ is restricted to areas of family Law, succession and in some cases of torts and criminal Law. However, while the Arabian Gulf legal systems are similar on paper, the Laws are often enforced in different ways.²

Global real estate investors in the modern world have been exploring investment opportunities in emerging markets like Asia, South America, Europe and other parts of the world including the Arabian Gulf region. Generally, the real estate sector in the Arabian Gulf countries was considered an emerging real estate sector during the first decade of the present century. The real estate sector however plays a significant role in the Arabian Gulf economies; it creates new jobs and driving industrial activity, where their more than 92 industries and activities are associated with the real estate sector in the region.³ The development of the Gulf real estate generally began with the oil boom in the beginning of the 1970s. The Arabian Gulf countries began to establish a platform on which to build new cities and to build an infrastructure. In order to do this, it is often essential to expropriate older houses with a fair compensation for the public interest.⁴

During the 1970s, the real estate and construction sectors have begun to play an important part in the Gulf economy with little variation between the Gulf countries. It is essential to have well-regulated complementary industries in order to have an

¹ Islamic Law complies with the holy *Qur'an* and *Sunnah*.

² Segan, G. (2011). Bridging the Gulf between GCC Laws and the West. *Insead*
<http://knowledge.insead.edu/INSEAD-knowledge-bridging-the-Gulf-between-GCC-Laws-and-the-West-110921.cfm>

³ The utilisation of real estate consultancy, engineering offices, corporate marketing, and banks are linked to the pre-construction phase. Construction companies and other building materials industries are linked to the building phase while the operation and maintenance industries serve as the post-construction phase. Suwailm. M,(2009). *Foreign Investment in Real Estate A Comparative Study between the Law and Islamic Jurisprudence*. Alma'arif publisher

⁴ Kuwait Law No, 33/1964 expropriation for the public interest

organised and transparent business environment. However, the legal framework of the real estate sector in the Gulf countries is still relatively new, again, with some differences between the Gulf States. For example, real estate finance Law, foreign property ownership, mortgages, privatisation, build-operate transfer systems (B.O.T) and Real Estate Investment Trust/funds (REITs) are not will recognised in most of these countries. It is worth mentioning that some countries, that are not included in the following considerations, have developed a very reasonable framework for their real estate sector. For example, the Egyptian Law has developed a reasonable framework for real estate finance, encompassed in Law No 148 of 2001,⁵ the purpose of which is to support real estate projects and to facilitate financing for those projects, as well as to provide the maximum legal protection for the parties financing the projects.

However, several markets in the Arabian Gulf counties are still in the process of establishing a more robust legal framework for their real estate sector. For instance, the emirate of Dubai⁶ was the first city among the rest of the Gulf countries to create a special governmental entity to regulate all related real estate activities. In July 2007, the prime minister of the United Arab Emiratis and the ruler of Dubai established the Real Estate Regulatory Authority (RERA) as a part of the Dubai Land Department (DLD). The authority fosters a transparent regulatory environment that manages and licences various real estate activities⁷ such as selling, buying, leasing, mortgages and developing foreign ownership rules and regulations. Dubai's forward-looking achievements encouraged the Emirate of Abu Dhabi and Ajman⁸ to create similar agencies in order to improve their real estate sectors. Then, the domino effect

⁵ See the Egyptian Law, real estate finance Law No. 148/2001,

⁶ Dubai is one of the biggest business cities in the UAE.

⁷ See Real Estate Regulatory Authority http://www.rpdubai.ae/rpdubai/home/about_rera.do?lang=0

⁸ see. Ajman Real Estate Regulatory Agency, <http://www.arra.ae>

continued as the Emirate of Sharjah considered setting up a regulatory agency similar to those of its sister emirates⁹.

In addition, Dubai is the only city in the Gulf who enacted *Sharia'h* compliance in the Real Estate Investment Trust (REIT). This is notable because this opens up a very real pathway for the kingdom of Saudi Arabia to set up a similar system to the Dubai International Financial Centre (DIFC).¹⁰ As the real estate sector of the kingdom of Saudi Arabia grows, they may be confronted with the need to establish new rules to regulate REITs in KSA.¹¹ Notably, The Kingdom of Saudi Arabia has considering legislation to regulate the country's real estate finance in Saudi Arabia.

In the beginning of 2008 the government of Kuwait issued Law No.7/2008 to regulate the Build-Operate-Transfer (B.O.T) system and has enacted another Law No 8/2008 that has prohibited banks and companies (except development companies) in dealing in the private housing market or buying or selling mortgages.¹² Law No 37 of 2010 also regulates the privatisation system in the state of Kuwait.¹³ In a similar order, the Sultanate of Oman issued Law No 5 of 2008 to prevent investment companies with no developmental aims from owning private residential real estate and houses only for investment purposes.¹⁴ All of these Laws are generally observed and the ways in which this manifests will be discussed deeply in the upcoming chapters.

Since the impact of the world financial crises which hit the Gulf real estate market very hard, some of Arabian countries considered introducing new regulation to

⁹<http://www.zawya.com/Story.cfm/sidZAWYA20090428042042/Sharjah%20Plans%20Real%20Estate%20Regulatory%20Agency>

¹⁰ <http://www.tamimi.com/en/industry/our-industries/real-estate.html>

¹¹ AMEinfo.com. 2008. Saudi Arabia Sees Launch of Islamic Real Estate <http://www.ameinfo.com/173010.html>

¹² Kuwait Law No. 8/2008 prohibits banks and companies dealing with private housing by buying and selling mortgages.

¹³ Kuwait Law No 37/2010 to regulative the privatisation system

¹⁴ Oman Law No. 5/2008 prohibits banks and companies dealing with private housing by buying and selling mortgages.

increase investor protection in different sectors. For instance, Dubai Land Department (DLD) considered introducing a real estate investor protection Law to outline the foundation upon which a real estate property investor may request cancellation of a purchase, refund or replacement issue.¹⁵ This Law will clarify issues for investors by addressing, for example, what steps can be taken in the case of project delays, how to cancel contracts if developers fail to fulfill their obligations, etc.¹⁶ The Dubai Land Department has confirmed that it is preparing to introduce what it describes as the governance charter for real estate developers to improve transparency. Officials in DLD said, “The charter was designed to achieve a qualitative leap in the performance of real estate developers and increase the transparency of the market. It also aims to attract foreign investments, raise the level of confidence and enhance the efficiency of real estate companies”¹⁷ In addition, there are other recent significant legal and regulatory developments, to include the creation of the Dubai Financial Support Fund (‘the Support Fund’)¹⁸ and Dubai’s Supreme Fiscal Committee (SFC).¹⁹ “The creation of these new institutions clearly demonstrates a governmental commitment to provide financial support and liquidity to government-related entities,”²⁰

The main reason behind the lack of a well-developed legal regime in the real estate sector in some countries is the fact that such intense interest in the sector is relatively new and there are very few experts. Moreover, in some countries the procedure to

¹⁵Pauline, Renaud .(2010). Resolving Problems in Dubai’s Commercial Property Sector. *Financier worldwide*. <http://financierworldwide.com/article.php?id=6554> Retrieved on 19/3 /2012.

¹⁶ Overseas Property Professional. 2011. Dubai investor protection Law 'to be issued by year-end', says DLD <http://www.opp.org.uk/news-article.php?id=5748> Retrieved on 19/3 /2012.

¹⁷ Property wire. (2011). *Dubai preparing governance charter for real estate industry*. <http://www.propertywire.com/news/middle-east/dubai-real-estate-charter-201110105658.html> Retrieved on 19/3 /2012.

¹⁸Dubai Royal Decree 24-2009 to launch Dubai Financial Support Fund.

¹⁹ Reuters. (2009). FACTBOX-The men behind Dubai's supreme fiscal committee <http://in.reuters.com/article/2009/07/22/dubai-finance-idINLM18740020090722> Retrieved on 19/3 /2012.

²⁰ <http://financierworldwide.com/article.php?id=6554>

amend existing legislations and introducing new Laws can be very slow. As a result, there has been an impact on the development of such markets. However, it is important to note that this is not true of all Gulf countries.

2. The importance and the aim of the study Purpose

The aim of this thesis is to examine the current rules and regulations of real estate investment in the Gulf countries from an investor protection perspective. The focus will be on whether or not the rules of real estate investment adequately protect local and/or foreign investment. Thus, this thesis will carefully examine the rules governing investment in the sector. In doing so, the principles of comparative Law will be used as a tool with which to offer researchers a critical capacity in finding better solutions for their legal research.²¹

The general trend in the goals of Arabian Gulf Countries is to diversify their source of income by issue new policies meant to attract foreign investments and open up the market for foreign investors. Thus, it is essential to improve the existing regulatory framework for two important reasons. Firstly a well-developed legal framework will ensure the necessary legal protection needed in order to attract foreign investment in the region, this is especially necessary after the world financial crises and the subsequent tightening of the marketplace. Secondly, the Gulf real estate market is smaller than the markets in many developed countries. Therefore, the absence of regulations could place the national industries at risk and may attract speculative activities that would affect the function of those markets.

²¹ K. Zweigert and H. Kotz.(1998). “*an introduction to comparative Law*” Clarendon press. Oxford. p.15

3. Research Question

The thesis investigates the current legal framework governing the real estate sector in the Gulf Cooperation Council (GCC) countries that comprise (the State of Kuwait, the state of Qatar, the Sultanate of Oman, the Kingdom of Bahrain, The United Arab Emirates and the Kingdom of Saudi Arabia).

The research aims to analyse, in particular, the investment aspect of the legal framework and governing rules of the real estate sector. The thesis will analyse the legal framework of foreign real estate investments and foreign property ownership in the Arabian Gulf Countries as well as the key cross-border barriers that influence the decisions of those investors when accounting to invest in the GCC regions. In addition to analysis, the general foreign investment atmosphere and the attractiveness of the Arabian Gulf real estate markets to global real estate investors. The thesis will examine and the level of protection that been offered for foreign investors, contractors and banks that are offering facilities to real estate developments in the region.

The thesis will evaluate the current regulatory frameworks for real-estate investment meet international best practices. Moreover, since the aim of the Gulf Cooperation Council (GCC) is to unifying the business rules and regulation in the region, the thesis will analyses whether there is a divergence or convergence among the real estate regulations in all Arabian Gulf countries. Finally, the thesis will examine the recent financial crises in the region and the effectiveness of the current legal framework. In particular, the research will focus on foreclosure procedures and the governing rules under the current financial crises with emphasis on the role of the courts.

4. Hypothesis and Thesis Objectives

The initial hypothesis is that the current legal framework of investments in the real estate sector in the relevant jurisdictions fails to offer the needed protection for real estate investors. The thesis will examine the level of protection for investors, contractors and banks, especially under the current financial crises, and to what extent the Laws have proven to be reliable. The main obstacles that the region faces are multifaceted, including human-resources problems, social objections and lack of a proper legal infrastructure.

Apropos of this, the thesis will investigate and evaluate the regulatory framework of the real estate regulation in the region in order to the needed reforms, especially in the context of the current financial crises.

5. Methodology

To achieve the above-stated objectives of this thesis, socio-legal research techniques have been employed. Reliance on primary resources, e.g., legislation and regulatory rules, along with field research, are the main sources of information, which have been employed for accomplishing the thesis' stated objectives. The proposed research methodology is implemented throughout the thesis to reach conclusive findings²².

The “quantitative” and “qualitative” methods are the main two research methods used in social science. The quantitative method refers to counts and measures of things;²³

On the other hand, the qualitative method refers to the meaning, concepts, definitions,

²² Strauss, A & Corbin, JM Basics of qualitative research: Techniques and procedures for discovering grounded theory, Thousand Oaks, California: Sage Publications.

²³ See Bruce L. Berg, (2007), *Qualitative research methods for the social sciences (6th edition)* Pearson Education, Inc. (2007), P.3

characteristics, metaphors, symbols, and descriptions of things.²⁴ It emphasises words rather than quantification in the collection and analysis of data.²⁵ In addition, the qualitative method is far less unified in terms of the paradigms it assumes, unlike quantitative methodology, which is mainly based on positivism.²⁶ The qualitative research method is defined as “any kind of research that produces findings not arrived at by means of statistical procedures or other means of quantification.”²⁷

The primary method of this thesis is qualitative but some statistics will be used in order to obtain a better view of the current situation of the real estate sector in the region. The thesis will be a theoretical, historical, comparative study of different aspects of the Arabian Gulf real estate sector.

In addition, it involves an analysis of varying Laws and regulations surrounding the real estate sector and the foreign direct investment Laws in the Gulf region. The thesis will review the issued legislations that related to the real estate sector to find out the main legislation deference’s between the Gulf’s real estate Laws. The thesis will propose fieldwork that will include interviews to obtain the necessary first-hand information of a specific topic.

6. Comparative Law Methodology

There are many objectives of comparative Law but the main one is to illuminate the best way to improve the effectiveness of existing rules in addition to the formulation

²⁴ See Bruce L. Berg, *Qualitative research methods for the social sciences (6th edition)* Pearson Education, Inc. (2007), p. 3.

²⁵ See Bryman, A.(2001), *Social Research Methods*, Oxford University Press, p. 264.

²⁶ See Punch, Keith,(2005). *Introduction to Social Research: Quantitative and Qualitative Approaches (2nd Ed.)*, SAGE Publications , p. 134.

²⁷ See Corbin, J. and Strauss, A (1990). *Basics of Qualitative Research*. Newbury Park: SAGE publication, p. 17.

of entirely new rules, and thus better efficiency of the Laws.^{28,29} Several legislators believe that legislative improvement cannot be achieved without the investigation of comparative Law.³⁰ According to Zweigert, “Comparative Law does not simply criticize what it finds, but can claim to show the way to a better mastery of the legal material, to deeper insights into it, and thus in the end to better Law.”³¹

Across the Arabian Gulf countries, the legal systems are generally consistent. They are all civil Law jurisdictions (except Saudi Arabia used Sharia Law), which are based on Egyptian Laws, and all of them follow Sharia Law. The body of Sharia Law is increasingly restricted to family matters, succession and to some extent torts and criminal Law. Based on that, the thesis will adopt a comparative Law methodology to accomplish its objectives. A Comparison will be made between the real estate regulation of the Arabian Gulf countries and other developed countries that regulate the real estate sector activities such as real estate finance, and to compare the rules and regulation of the real estate mortgages, leases, real estate ownership as guidelines for the needed reforms in the relevant GCC markets.

It is worth mentioning that while a systematic body of writing on comparative Law methods has been produced,³² according to Zweigert and Kotz in their seminal work on comparative Law, “...even today it is extremely doubtful whether one could draw up a logical and self-contained methodology of comparative Law which had any claim to work perfectly.”³³ The statement by Zweigert and Kotz explains the difficulty in adopting a recognisable and perfect methodology when it comes to

²⁸ See, Zweigert, K., and Kotz, H.(1998). *An Introduction to Comparative Law (3rd Ed.)*, Oxford University Publications, p. 34

²⁹ See Hill, Jonathan, “Comparative Law, Law Reform and Legal Theory,” *Oxford Journal of Legal Studies*, Vol. 9, No. 1, 1989, p. 102.

³⁰ *Ibid.*

³¹ *ibid.*

³² See, Zweigert, K., and Kotz, H.(1998). *An Introduction to Comparative Law (3rd Ed.)*, Oxford University Publications, p. 33

³³ *Ibid.*

comparative Law studies. Nonetheless, there are some general guidelines for comparative Law methodology that are generally accepted by legal scholars.³⁴

7. Primary Sources hope

The lack of secondary sources makes the primary sources especially important in the treatment of this topic. The rules and regulations relating to this topic will be examined, and inferred from legislation; this will contribute significantly to finalising the descriptive portion of the thesis and it will help when discussing the existing rules. The executive branch resolution and the real estate independent bodies resolutions (such as Real Estate Regulatory Authority “RERA” in Dubai) and regulating bodies’ circulation and guidelines on this subject will also be examined and analysed as they are regarded as being a major part of the existing rules.

8. Secondary Sources

It is essential for any researcher to analyse the existing literature and refer to it throughout the thesis. For this thesis, secondary resources will be relied upon to substantiate the research findings, which will also help to explain the prevailing international standards and to assist in the comparative study of different jurisdictions in the Arabian Gulf region. Arabic and English Academic journals and textbooks will be used in this thesis, as they include in depth research and many updates regarding specific topics. Previous PhD theses that have covered certain specific topics related to this research will be also be referred to. Additionally, court and arbitration decisions related to the topic will be analysed as these decisions present the practical side of the implementation of these regulations; reports by local and international

³⁴*Ibid*

entities and newspapers also feed on this subject from the region, taking into account the limitation of materials generated on the subject.

Chapter 2: The urban development of the Arabian Gulf Countries

1. Introduction:

The cities of the Arabian Gulf States have developed at phenomenal rates in a very short period. Urbanisation in the Gulf States has been a remarkable transformation, where the Gulf countries have been transformed within a small period of time from small towns built with mud walls into extravagant modern cities including skyscrapers and extraordinary real estate projects.³⁵

This chapter will illustrate the process of urban development in the Gulf region. In addition, it will show the main factors that affected the present urbanisation development in the Gulf region. Starting with the history of urban development in the Arabian Gulf this includes the urbanisation and the population growth and discovery of oil in the Gulf region. Since the Gulf countries are all oil producing countries what are the factors that make the majority of the investment consecrated in the real estate sector and make it the second biggest sector after the oil sector. This chapter will show how the various Gulf governments focus on real estate projects which are at the heart of the development strategies and plans of most of the Arabian Gulf States. It worth mentioning that given the large number of countries involved, it will be difficult to provide full coverage of the phenomenon, since the region covers an enormous geographical area known for its diverse urban experience.

2. The historical background of the urban development in the Arabian

Peninsula

Urban development in the Arabian Peninsula can be traced back to the 8th century.³⁶

At that time, the region witnessed fundamental changes concerning the historical

³⁵Fadel Albuainain. *Urbanisation in Qatar: a study of the residential and commercial land development in Doha City, 1970-1997*. Unpublished PhD Thesis. E. S. R. I. European Studies Research Institute. Department of Geography. University of Salford, Salford, UK. P70

³⁶ Ashaq yaquop al-Qatab. Abdullelah Abu Ayash. *Growth and urban planning in the Arab Gulf States*. Kuwait University. p. 15 (here and after Abdullelah Abu Ayash “*growth*”)

evolution of urbanisation. During the first few centuries of the Arab expansion out of the Arabian Peninsula urbanism was flourishing and growing immensely. Among the most important changes that took place, were the creation of new towns in various locations and at various periods such as the city of Aden and Oman, which two cities are the most ancient cities in the Arabian region.³⁷

The advent of Islam played a major role in the life of Muslim Arabs and non-Arabs and this became apparent in the way the Arab Islamic city developed. A few areas and especially the merchant (caravan) cities of *Makkah* and *Almadinah* in the Arabian Peninsula had an urban life from pre-medieval times. The city of *Makkah*, for example, was established three thousand years ago, while *Almadinah* was founded at a later stage.³⁸ These two religious cities are striking examples of the overwhelmingly religious function that had been largely influenced by the teachings of Islam.³⁹

Furthermore, the excellent location is considered as an advantage for the Arabian Gulf, between Europe, Africa and Asia making it the focus of attention for trade and political rivalries. The location of the Arabian Peninsula has facilitated the transfer of the Indian trade to Europe by the Arabs, Portuguese, Dutch, French and English traders. The sea of the Arabian Gulf was always a place of commercial trade routes, which influenced the growth of certain seaside towns in the region. The strategic location of the Arabian Peninsula at the crossroads of Asia, Africa and Europe benefited many Mediterranean and Red Sea coastal cities and inland caravan towns. Therefore, were a number of coastal areas became port town areas in the Eastern side of the Arabian peninsula such as Oman, Kuwait, Manama, Dubai and Doha. They are

³⁷ Abu Ayash. *Growth*.p.16

³⁸ Morris, A. E. J. (1994). *History of Urban Form From Before the Industrial Revolutions*, John Wiley and Sons, Inc., New York

³⁹ Hakim, B. S. (1986). *Arabic-Islamic Cities Building and Planning Principles*, KPI Limited, London.

good examples of significant coastal areas which immensely benefited from their prime and advantageous location on major trade routes.⁴⁰

The western side of the Arabian Peninsula contain the port of Jeddah; its also a major financial and commercial cities and the leading seaport in the region. Jeddah for example, was and is also the gateway to the pilgrimage destination of *Makkah*. During the 19th century there were rapid demographic growths experienced by the city explained by the massive migration of Muslim pilgrims from Asia and Africa, who then stayed permanently.⁴¹ As a result, Jeddah, *Makkah* and *Almadinah* all became cosmopolitan cities were home to Muslim immigrants of numerous national and ethnic origins.⁴² The superb location of Jeddah made the city the leading commercial and trade centre during the 19th century. In the same way, the perfect location of Oman in the South East of the Arabian Peninsula assisted its ascent to be as a commercial, trade and transit centre that linked the Asian and Western markets during the 19th century.⁴³ In the same way, Kuwait, located in the Northeast side of the Arabian Gulf, was also a major seaport, linking commercial trade between the Indian continents and other Arab countries such as Iraq and Syria.

With the establishment of the coastal cities the population started to grow in the Arabian Peninsula. In the days before independence of the Arabian Gulf countries, there were many reasons for migration and tribal settlement. The most important reason was the political anarchy throughout the area, since there was no strong central government capable of controlling the chronic disorder among the tribes. Tribes changed their localities depending on war victory or defeat, and political instability

⁴⁰ *ibid.*

⁴¹ Abu Ayash. *Growth*.p.84

⁴² Costello, V.F. (1979). *Urbanisation in the Middle East*, Cambridge University Press

⁴³ Morris, A. E. J. (1994). *History of Urban Form from Before the Industrial Revolutions*, John Wiley and Sons, Inc., New York

and internal struggle was the distinctive feature of life in the Arabian Peninsula and Iran.⁴⁴

2.1. The population growth of the Arabian Gulf countries and causes of immigration and establishment of the cities:

Economics was another important cause of emigration and tribal settlement. In the previous three centuries, the Arabian Peninsula and Iran (Persia) endured serious economic crises, sometimes reaching the level of starvation, especially during times of drought. Hence the land became barren, forcing the inhabitants to emigrate in search of more fertile territories. Political disorder had a strong economic influence in making merchants move from one place to another in search of commercial centres that were more stable and peaceful.⁴⁵ Due to its strategic position and excellent natural harbour, Kuwait city became the gateway to Najd and to the Arabian Peninsula. In the same way Al-Hejaz was the western gateway for trade caravans that go from and to Yemen through Al-Hejaz.⁴⁶

One additional reason for the establishment of cities and villages in the region is the availability of water. People wanted a place with access to a source of water such as valleys with water and arable soil, and preferred to be near the caravan trade and travel routes, such as the pilgrims' convoys to *Makkah* and *Almadinah*.⁴⁷ For example, the cities of Buraida, Hail, Hejaz and Riyadh in Saudi Arabia are all located on the historical travel and convoy trade routes.⁴⁸ The spread of urban communities around the valleys and the occurrence of flooding, which became a key feature of the region's urban communities, distinguished *Makkah* and *Al-Madina*, making them destinations

⁴⁴ Mahmud Shakir, (1975) *Silsilat Mawatini Alshoub Allslamiah*. mu'assasat al-risala, p 55.

⁴⁵ Ahamd Mustafa Abuhakima, *tarikh sharg aljazera alarabiah Nash'a wa tatawur alkuwait we albahrain* (Lebanon: dar maktabat alhayah). pp.74-75.

⁴⁶ Abu Ayash. *Growth* .p. 86

⁴⁷ Makkah and Almadinah is the Islamic cities located in the west bank of the Arabian peninsula

⁴⁸ Abu Ayash. *Growth* .p. 84

for commercial convoys that stimulated trade and attracted tribes to settle in the region.⁴⁹

Finally, religious oppression brought about by sectarian persecution was significant. The strict Wahhabi⁵⁰ control over the areas was influential in the emigration of some *Shi'a* sects to Kuwait.⁵¹ There was corresponding emigration to the Arabian Peninsula of Persian Sunnis from the Iranian coast facing the Gulf, whereas the *Shi'a* from Bahrain immigrated to different parts of the Gulf, and particularly Kuwait, following the end of *Shi'a* rule in Bahrain after its fall to the al-Khalifa in 1782.⁵²

All of these factors drew settlers of different nationalities to the Arabian Peninsula, attracted by its religious toleration and its lenient political system. The region took into its fold a variety of sectarian and religious groups. In addition to the Muslims of the *Sunni* and *Shia* sects, Christians and a large number of Jews lived there.⁵³ All of these groups lived their religious and social lives in relative harmony and freedom that was unusual in the Arabian Peninsula.

Furthermore, the settlement of the migrant people in the Arabian region assisted the establishment of the coastal towns on the Eastern side of the Arabian Peninsula.⁵⁴ These cities emerged as the headquarters of the various ruling tribes that became the foundation of new political developments in the region. Equally important, they passed naturally into the status of state capitals with growing political, administrative

⁴⁹ Abu Ayash. *Growth* .p. 84

⁵⁰ It is a religious movement among fundamentalist Islamic believers established by Mohammed Ibn Al Abdul Wahhab 1703–1792.

⁵¹ Frank E. Vobel.(2000). *Islamic Law and legal system studies of Saudi Arabia*. Brill. Boston

⁵² Ahmad Mustafa Abu Hakima,(1983) *The modern history of Kuwait* , pp.150, 178.

⁵³ Abd al-Aziz Al-Rushayyid, *Tarikh Alkuwait*. (n.p: al-'Asriyya Press,n.d.), part 1, p.68.

⁵⁴ i.e. Dubai, Abu Dhabi, Kuwait, Manama and Doha

and commercial roles. According to Lorimer⁵⁵ these major towns were home to the highest proportion of the inhabitants living in these principalities.⁵⁶

One of the most significant factors in the region's urban development was European penetration dating back to the 16th century.⁵⁷ The colonial European empires added new dimensions to urbanisation and urban growth in the Gulf region. In fact, the region entered into a new era of urbanisation that involved dramatic changes in its economic structure and social organisation.⁵⁸ During that period, the European empires introduced town development plans that resulted in the dominance of several port cities within the urban hierarchy. Most of the European towns were structured around building a barracks for their military; these barracks was well organised and gave the local population a new idea of how to organise their cities in a modern way.⁵⁹

2.2. The beginning of the influx of population in the modern era

In the late 18th century the British involvement in the Gulf began as a Law-keeping mission in the Arabian region.⁶⁰ The British aims in this area were to secure the route to India and to prevent the establishment of a strategic position by another power that could threaten the approaches to India.⁶¹ More than any other European colonial power, Britain succeeded in extending its control over the entire Gulf region with the

⁵⁵ Lorimer, J. G. (1984). *Gazetteer of the Persian Gulf and Central Arabia*, Superintendent, Government Printing, Calcutta 1908-1915, reprinted by Gregg International Publishers.

⁵⁶ Fadel Albuainain. *Urbanisation in Qatar: a study of the residential and commercial land development in Doha City, 1970-1997*. Unpublished PhD Thesis. E. S. R. I. European Studies Research Institute. Department of Geography. University of Salford, Salford, UK

⁵⁷ That includes the Portuguese, Dutch, French, and British. see Roberts, B. H. (1979). *An Urban Profile of the Middle East*, Croom Helm, New York.

⁵⁸ Saoud, R. (1996). *Urban Morphology and Development in North Africa*, unpublished PhD Thesis, Department of Planning and Landscape, University of Manchester

⁵⁹ *Ibid*

⁶⁰ Herbert J. Liebesny, Administration and legal development in Arabia: The Persian Gulf principalities, *Middle East Journal* 1956, P.33

⁶¹ Morris, A. E. J. (1994). *History of Urban Form from Before the Industrial Revolutions*, John Wiley and Sons, Inc., New York

exception of Saudi Arabia.⁶² British officials worked tirelessly to exclude other powers from gaining influence in the region and discouraged other Europeans and Americans from visiting the Gulf region.⁶³ Consequently, Britain fixed the boundaries of the Arabian Gulf States, which are now reflected in the political map.⁶⁴ Since Bahrain was the headquarters of the British in the Arabian peninsula, British officials assisted Bahrain to be the most extensive and orderly modernisation in the Gulf, which development began in the mid-1920s before the exploitation of oil. At the time the British had more experience in organising cities and several government departments were established by British advisors such as the municipality of Manama, the Sunni endowment Department (waqf), the cadastre department and the Public Security Department.

The second urban development era was when the Gulf States gained independence from the United Kingdom between 1932 and 1971. The Kingdom of Saudi Arabia was established as the current state when *Abdul-Aziz ibn Sa'ud*, the founder and the King of Saudi Arabia (1932-1953) took control of the Western Province of Saudi Arabia (Hijaz).⁶⁵ The Hejar principle was employed again by the state a generation later in response to the severe drought 1958-61. The peak period of the scheme was during the 70s with the aim to settle the migratory tribes and the local farmers supporting them financially and in skills. Drought-stricken areas were targeted,

⁶²At the time there were no such authorities that control the whole Saudi Arabia. At the time most of the Gulf states was controlled by such tribe and ruled by the leader (sheikh) of this tribe, but due to the large size of Saudi Arabia there no such tribe control the whole area, the area (Saudi Arabia) been divided between a number of tribes in the same time and each tribe control a specific place. See Peterson, J. E. (1986). *The Emergence of Nation-States in the Arabian Peninsula*, *Geojournal*, 13 (3), pp. 197-200.

⁶³ AlShehabi, O. (2013). Real estate expansion policies from the viewpoint of demographic composition. In Al-Kuwari, A. (Eds.), *Public Policies and The Need for Reform in the GCC Beirut: Muntada Al-Ma'aref*. (Arabic)

⁶⁴ Herbert J. Liebesny, *Administration and legal development in Arabia: The Persian Gulf principalities*, *Middle East Journal* 1956, P.33

⁶⁵ Abu-Lughod, J. (1983). *Urbanisation and Social Change in the Arab World*, *Ekistics*, 50 (300), pp 233-231.

principally in the Northwest of the country, and Hejar established within each tribal territory.

After the Gulf States gained their independence from British influence,⁶⁶ they needed to establish alliances among the countries in the Arabian Peninsula. The British suggested that the Gulf rulers establish a specific cooperation and association, since there is a common language, a common religion, and closely comparable social structures, roughly the same standards of economic development, very similar systems of government, a collective culture and shared geography.

During the late 1970s,⁶⁷ political conditions caused the Gulf countries to form an alliance in the wake of the 1979 Iranian revolution when Ayatollah Ruhollah Khomeini seized power from the Shah, completely changing the security picture in the region. In December of that year the Soviet Union also invaded Afghanistan and the area's defenses began to look very thin indeed. In 1980 a border clash and artillery exchanges between the Iranians and Iraqis locked them into open war.⁶⁸ All of these factors made the formation of alliances desirable. In February 1981, based on the arrangement of the Gulf rulers, the foreign ministers of the Gulf countries met in Riyadh and unanimously agreed to establish the Gulf Cooperation Council (GCC) to foster cooperation and coordination "in all walks of life" and to present a unified position on major political, economic and social issues.⁶⁹ Three months later there was another call for the formation of the Gulf Cooperation Council of the Arabian Gulf States: a regional grouping that was officially established on 25th May 1981 in

⁶⁶ The state of Kuwait was established in 1961; Oman in 1970; Qatar, Bahrain and the United Arab Emirate obtained their independence in 1971

⁶⁷ I.e. After the independence and before the establishment of the Gulf Cooperation Council (GCC) in 1981

⁶⁸ AlShehabi, O. (2013). Real estate expansion policies from the viewpoint of demographic composition. In Al-Kuwari, A. (Eds.), *Public Policies and The Need for Reform in the GCC*, Beirut: Muntada Al-Ma'aref. (Here and after Alshihabi: real estate expansion.)

⁶⁹ *Ibid* p.10.

Abu Dhabi, the capital of the United Arab Emirates.⁷⁰ The six heads of the Gulf countries signed the charter and the Gulf Cooperation Council (GCC) came into formal existence. These six states comprise most of the Arabian Peninsula's area, except for Yemen, which is not a member. On the basis of the members' socio-cultural, historical, political, ethnic, economic and physical similarities, the GCC presents a regional homogeneity that is rarely found in other parts of the world.⁷¹

3. Factors affecting the real estate development in the Arabian Gulf countries,

3.1. The discovery of oil and the evolution/ development of urbanisation in the Arabian Peninsula:

Before the 20th century, the people of the Arabian Gulf countries lived a simple tribal life with a small economy and governed by customs and traditional Islamic spiritual values, with no modern state structure. Changes were noticeable as far back as the early 1950s, due to the accumulation of wealth caused by the discovery of oil, which had been flowing since 1946.⁷² Although the Arabian Gulf States constitute a small part of the peripheral area within the vast realm of the developed countries of the world, these six countries hold sizeable reserves of natural resources.⁷³ The Gulf region passed through three successive oil booms each of which has boosted the urban

⁷⁰ Al-Ammar, M.(1992).*An Evaluation and Impact Assessment of the Use of Urban growth Boundaries to control Urban Sprawl in Buraydah City Saudi Arabia*, Unpublished PhD Thesis, University of Wales College of Cardiff.

⁷¹Kabursi,A. A. (1984). *Oil Industrialisation and Development in the Arab Gulf states*, Croom Helm, London.

⁷² Simon C. Smith. (1999) *Kuwait 1950 -1965 Britain, the Alsabab, and oil*. The British academy Oxford University press. p.15. And also see, Sean Foley. 2010. *The Arab Gulf States, beyond Oil and Islam*. Lynne Rienner Publisher. London. p.17

⁷³ The first Oilfield was discovered in Bahrain in 1932, and was first extracted in quantity in the 1940s. Thereafter foreign oil companies began searching for oil fields in the region. In Saudi Arabia, the first oil field was discovered in 1933, and oil was first exported in 1958. In Kuwait oil was discovered in 1938, and first extracted in quantity in 1946. In 1939, Qatar discovered its first oil field, although the first extraction did not occur until 1971. In Oman and in the United Arab Emirates, oil fields were discovered in the 1960s, and the first extraction in quantity occurred at the end of that decade. See Abu-Lughod, J. (1983). *Urbanisation and Social Change in the Arab World*, *Ekistics*, 50 (300), pp 223-231

development and turned the Gulf region from a collection of small principalities into countries with a good reputation at the international level.

There are a number of additional factors affecting urban development in the Arabian Gulf Countries; one of the main factors is the internal migration from the desert and rural areas to the city and the international migration from the Gulf peninsula and from other neighboring Arab countries, in addition to Asian countries. This process has the distinct characteristics of the flow of immigrants in groups during successive periods that led to the construction of pre-urban suburbs in the region.

Although the oil fields were discovered during the 1930s and 1940s, it was not until the 1960s that the Arabian Gulf states were able to embark on a massive-scale development supported by the sale of oil in commercial quantity. One of the supporting issues that assisted these developments was the increasing the importance of oil at the beginning of the Second World War as the world’s most consumed energy source which in turn placed a high demand for this raw material on the international market. This intensified the trade in oil between the industrial world and the oil-producing states of the Arabian Peninsula.

Table 1 gives a medium projection for the state’s population and average annual growth rate (in thousand) in the Arabian Gulf countries.⁷⁴

| Year period | The state of Kuwait | The state of Qatar | Sultanate of Oman | Kingdom of Saudi Arabia | Kingdom of Bahrain | United Arab Emirates |
|-------------|---------------------|--------------------|-------------------|-------------------------|--------------------|----------------------|
| 1950 | 152 | 25 | 456 | 3.201 | 115 | 70 |

⁷⁴ UN, Department of Economic and Social Affairs, Population Division (2011). “World Population Prospects: The 2010 Revision, CD-ROM Edition.” United Nations. <http://www.un.org/esa/population/> [Accessed June 7, 2015].

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|------|-------|-----|-------|--------|-----|-------|
| 1970 | 744 | 111 | 723 | 5.745 | 220 | 223 |
| 1980 | 1.375 | 229 | 1.130 | 9.604 | 347 | 1.015 |
| 1985 | 1.720 | 358 | 1.426 | 12.238 | 413 | 1.552 |
| 1990 | 2.143 | 453 | 1.786 | 15.400 | 490 | 2.014 |
| 1995 | 1.691 | 612 | 2.154 | 17.091 | 573 | 2.352 |
| 2000 | 1,914 | 565 | 2.638 | 20.345 | 640 | 2.608 |
| 2005 | 2.175 | 610 | 2.989 | 23.765 | 698 | 2.840 |
| 2010 | 2.473 | 630 | 3.515 | 27.588 | 744 | 3.056 |
| 2015 | 2.766 | 693 | 4.110 | 31.748 | 793 | 3.230 |

Source: UN, Department of Economic and Social Affairs, Population Division (2011)

The changes brought about by oil exports included the fascinating phenomenon of urbanisation and the concomitant drastic development in all sectors. The economic growth achieved during the 1970s and beyond supported the Arabian Gulf governments to undertake ambitious plans aimed at development and modernisation. At the time the Gulf governments begins to establish political systems and institutions in different sectors such as infrastructure, education, finance, health and others and to organise social affairs and the economic development of the new growing population. The establishments of administrative organs of legislation and the judiciary and labour followed the Gulf governments' policies of expansion and development for which they imported expert workforce from around the world who specialised in cities reorganisation, infrastructure and expansion projects in various state facilities.

3.1.1. **The First Oil Boom** occurred at the beginning of the 1950s when Western demand for oil increased as a result of industrial growth and because of the nationalisation of operations of the Anglo-Persian Oil Company in Iran under⁷⁵

⁷⁵ AlShehabi, *Real estate expansion*.p.32

Musaddiq in 1951. That action required the Gulf oil companies to increase their output to compensate for the subsequent shortage.⁷⁶ The consequence of that high demand for oil on the British presence is that it starts the phenomenon of attracting expatriates workers to fill the gap in the labour shortage. Foreign workers, who have better skills than the locals, mainly operated the oil industry of the region between the 1930s and the early 1950s. Commercial exploitation of oil requires heavy construction and a large labour force. Administrative and skilled workers came from Western countries based on the needs of the companies that took over the construction of the oil industry, which were either American or British.⁷⁷

The British formed the nucleus of population flows into the Arabian Peninsula. The defining feature of this new flow of population was the resulting attraction of the work force that did not necessarily have any connection with the cultural, historical or geographical area, but that occurred in a systematic manner to perform the functions determined by the productivity of local decision makers.⁷⁸ The number of foreign workers in the oil sector grew rapidly after the end of World War II; the export of oil commercially from most countries in the region also increased. The number of migrant workers in the oil sector did not exceed 2,000 in 1940. However, the number of immigrants in the region rose to about 16,000 in 1950, the majority of whom hailed from the Indian subcontinent and the West.⁷⁹ The majority of workers in the oil sector were still citizens, although their numbers has reduced. For example, in Bahrain, in

⁷⁶ Simon C. Smith. (1999) *Kuwait 1950 -1965 Britain, the Alsabah, and oil*. The British academy Oxford University press. P15. And also see, Sean Foley. 2010. *The Arab Gulf States, beyond Oil and Islam*. Lynne Rienner Publisher. London. p.17

⁷⁷ In the areas under British control, there was a preference for British workers due to the signing of the oil concessions. As a result, most of the work force came from the United Kingdom. The same principle was applied to the categories of skilled and semi-skilled labourers, most of whom came from the Indian subcontinent which was under British colonial rule. ⁷⁷ AlShehabi, O. Real estate expansion. p.32

⁷⁸ *ibid*.p.32

⁷⁹ Ahmed Kanna (2011) *Dubai the city as corporation*. University of Minnesota Press. p.61

1945, 63% of the oil sector workers were citizens, while the ratio was 68% in Saudi Arabia. In Qatar, the proportion of citizens among the workers shrank to 54% by 1948, while the number of foreigners in Kuwait increased from 5% in 1945 to 28% in 1948 and to 68% in 1949.⁸⁰ Consequently, the urbanisation rate in most Gulf countries doubled during the period of a quarter of a century. This was based on the public spending policy of Gulf countries, where in Kuwait the urbanisation rate increased from 15% in 1950 to 90% in 1974. In Qatar, from 50% to 76.5% and in the United Arab Emirates from 25% to 64.1% for the same period. As for Bahrain and Oman, the urbanisation rate was already high in 1950, which was 71%, increased to 75% during the quarter of a century.⁸¹

We can see from this the influence relating to the control of the capital in the formation of the demographics in the region. The influx of population during this period were mainly based on the requirements of oil companies and the British presence and they comprised the dominant key to the establishment of the oil industry and the revenue that it generated. These number of foreign workers assist the urban growth in the region, where there are working class neighbourhoods and special cities and markets dedicated to foreign workers.⁸²

3.1.2. **The Second Oil Boom** was between 1973 and 1979 when all GCC countries had obtained formal independence and the ruling regimes were in total control over most of its oil revenues in the region. This era of time was the real platform for the establishment of the modern Gulf member states, and during that period of time there were a number of Laws that organised government spending

⁸⁰ *Ibid*

⁸¹ ashaq qutob. Abdullah abu akash. 1998. *Alnemow wu altakhtet alhadhari fe dowal alkhalej alArabi*. Kuwait university. Wekalat almatbuaat. p.90.

⁸² Ahmed Kanna (2011) *Dubai the city as corporation*. University of Minnesota Press. p.61

policies for development projects and other regulations regulating real estate activity differentiating between public and private property, as well as Laws governing public tenders issued by the State for Government real estate projects.

The second oil boom in the region began, (during the time of the war between the Arabs and Israel in October 1973) which is referred to in the West as "the first oil crisis".⁸³ This oil boom led to a steady rise in global oil prices, which increased the price of a barrel more than four times within a few days and led to unprecedented amounts of oil revenues in the region.⁸⁴ Consequently, the Arabian Gulf region became one of the world's largest oil exporting areas and the most important in the Middle East.⁸⁵ Corresponding changes then took place in urban growth, the social and economic systems, the administration system, and new Laws as a platform for the creation of modern states.⁸⁶ The exportation of oil is a leading component in the gross national product (GNP), which accounts for more than 50% of the gross domestic product (GDP) of the Arabian Gulf countries. In comparison with the remaining Arab countries, the Arabian Gulf States combined together enjoy the highest per capita income and standards of living, and the greatest degree of urbanisation.⁸⁷

During the 1950s to 1970s the governments of some Gulf countries began to draft urban development plans to organise the old cities in a better way. Which spread developments took place due to the influence of several factors, including the

⁸³ Jill Crystal,(1995) *Oil and Politics in the Gulf: Rulers and Merchants in Kuwait and Qatar* (Updated edn., Cambridge Middle East Library 24; Cambridge [England]; New York: Cambridge University Press,) xiv, 242 .

⁸⁴ AlShehabi, O. Real estate expansion.p.13

⁸⁵ Martha Dukas, *azmat alkuwait alelagat aliraqiya alkuwaitiyah 1961-1963* (Beirut: Dar Alnahr, 1973) p.14.

⁸⁶ Ali Fahad AlZumai.(1988) *The intellectual and historical development of the Islamic movement in Kuwait 1950- 1981*. Un published Phd. The Department of Arabic and Islamic Studies in the Faculty of Arts. University of Exeter.

⁸⁷ Fadel Albuainain. Urbanisation in Qatar: a study of the residential and commercial land development in Doha City, 1970-1997. Unpublished PhD Thesis. E. S. R. I. European Studies Research Institute. Department of Geography. University of Salford, Salford, UK.p.70

increased flow of funds, the sudden influx of migrants and the openness to the outside world.

For example, the government of Kuwait at this time established a new infrastructure for new Kuwait cities. The rulers of Kuwait at that time wanted to distribute the wealth that was generated by the massive oil revenues to the people so that they could enjoy a higher standard of living. The best method to distribute the wealth and restructure the old cities was thought to be by increasing the value of expropriated houses or lands and the revaluation and the price of houses built with mud walls was very high. In some cases the evaluation of a property reached double or treble of the actual price. For example in Kuwait, in the first six months of 1961, the government spent 43 million Pound sterling on the purchase of land in Kuwait.⁸⁸ The locals at the time received high compensation and a piece of land in place of their old houses. In addition, the municipality of Kuwait began to plan the construction of new modern urban cities. Consequently, the new infrastructure produced new cities linked by new roads. In addition, new airports, hospitals and schools and all type of services were built to meet the needs of these new cities. It is important to mention the expropriation process during that time to see the direction of the Gulf States to reach urban development; the expropriation process will be examined in the following chapter.⁸⁹

The second oil boom was the beginning of the foundation of the construction and real estate development companies in the region, most of which companies were owned by merchant families tied to the rulers and the decision-makers in these countries. At the time the governments of the Gulf countries wanted to invest these massive oil

⁸⁸ Simon C. Smith. (1999) *Kuwait, 1950- 1965 Britan, the AlSabah, and Oil*. The British Academy, Oxford University Press. p. 127 Kuwait: Economic situation', Note by Loombe , 14 Dec 1961, Fo 371/162904.

⁸⁹ AlShehabi, O. Real estate expansion.p.32

revenues to develop their countries and to boost the national economy, so most of the investment was in infrastructure and building services projects such as new hospitals, infrastructure, new governmental departments, schools and so on. The momentum of urban growth in this crucial stage varied in response to different factors. One of these factors the increasing oil revenue derived from huge oil investment projects. The second factor is the high natural growth rate of the national population resulting from higher fertility rates and declining mortality rates in the wake of rising standards of living and improvements in health care. A third factor is the increased employment opportunities that attracted foreign workers to fill the employment gap in the regions different sectors.⁹⁰

3.1.3. **The Third Oil Boom** begins with the new millennium, when the world consumption for primary energy sources increased from 9.3 billion tons in 2000 to 10.65 billion tons in 2004, and to 11.1 billion tones in 2007. The regions oil prices increased from \$20 in 2000 to reach \$60 in 2004 and another increase to reach \$140 in 2007, which led to the accumulation of huge oil revenues estimated at more than \$2 trillion, and to the existence and abundance of overseas assets owned by the Gulf states which was estimated at more than \$1.5 trillion in the end of 2009, or what constitutes 165 per cent of gross domestic product, which is the highest percentage in the world.⁹¹ These assets which formed a mass of unprecedented financial capital in size to a regional level were affected by the attack of Sep 11, 2001 on the World Trade Centre in New York. This raised the fear of Arab investors in the western countries, and according to the *Financial Times*, between U.S. \$100-to-\$200 billion was at that time withdrawn from the U.S, another source put the figure at more than

⁹⁰ Qutub, I. Y. (1983). *Urbanisation in Contemporary Arab Gulf States*, Ekistics, 50 (300), pp. 170-182.

⁹¹ Garbis Iradin, (2009). *GCC regional overview*, Institute of International Finance, p.1

U.S. \$300 billion. Regardless of the exact amount of investments that came back to the region, the main point is that the Gulf markets became more active, and more liquid. The return of these investment funds into the Gulf region resulted in the investment of these funds internally instead of overseas. This embraced a new policy to attract foreign investors. Most of these investments found their way into construction and real estate mega projects due to the ease of acquisition of lands to build these projects in addition to the availability of financial liquidity.⁹²

What characterises the Gulf's real estate sectors is that there are a large number of virgin lands that it not been built on good sites and most of these lands are ready to build on and do not need reclamation it, which makes real estate projects much easier and cheaper to be developed. In addition to this that is the easiness of taking decisions and issuing Laws or decrees to transfer a public property into a private one in most of the Gulf member states, since the power is concentrated in the hands of the decision makers and merchant families who are close to the ruling families.⁹³ Four (UAE, Qatar, Bahrain, Oman) of the Gulf states have attempted to liberate themselves from the oil economy, so they starts to boost other sectors such as the financial, tourism, transportation, free zones, luxury tourism, and real estate have become increasingly important.⁹⁴ At the beginning of the new millennium the real estate projects became one of the most important sectors in the region. Most of the investment finds its way into a number of real estate projects that are characterised by very high luxurious standards and unexpected size with unusual architectural designs of these real estate projects. Some of these projects are man-made islands designed as the shape of a

⁹² AlShehabi, O. Real estate expansion.p.13

⁹³ ibid

⁹⁴ AlShehabi, O., Hanieh, A., Khalaf, A. (2014). *Transit States: Labour, Migration and Citizenship in the Gulf*. Pluto Press.

palm on an artificial island, or in the form of the world map, build also on artificial islands in the city of Dubai. In addition to these are the designs of shopping malls and skyscrapers, where the Gulf region has become the dreamland for the world's architects.⁹⁵ For example, the blue city in Oman is a project, which cost around 20 billion dollars which is equal to half of the annual GDP of the state, and this project could accommodate around 250 thousand people.⁹⁶ The Amwaj project in the northern side of Bahrain, was a model for the Gulf's real estate phenomenon; this project was built on an area of 4 sq km from reclaimed land in the sea. This project is a collection of artificial islands, and within these islands exist several mini-projects such as the Tala project, which includes 90 villas and 585 apartments on the sea. In addition there is the Almarsa project inspired by the Italian city of Venice which has been set up with 213 residential units. The Amwaj Islands project is currently the most expensive area for property in Bahrain.⁹⁷ The expected number of real estate units to be established by the year 2020 is around 1million 329 thousand properties in four of the Gulf member states (UAE, Bahrain, Oman, and Qatar).⁹⁸

Furthermore, as most of these huge real estate projects are usually designed to be on the coast or ancient historical places, some of the Gulf governments have begun to use the same methods that were used by the Kuwaiti government in the 1950s-1970s, by which expropriate old houses or lands located on distinctive sites in order to build or restructure the new city or areas. Some of the Gulf States have begun to issue new Laws that allow investors to reclaim the sea in order to build a real estate project. Some other Arabian Gulf countries have expanded the provisions of Laws that allow

⁹⁵ Ahmed Kanna (2011) *Dubai the city as corporation*. University of Minnesota Press. p.77

⁹⁶ Zainab Fattah and Camilla Hall. (2010) Oman's Blue city teeters as bondholders debate future) Bloomberg business week (25 May 2010) <http://www.bloomberg.com/news/2010-05-24/oman-economic-plan-falters-as-creditors-try-to-save-20-billion-blue-city.html>

⁹⁷ Amwaj island, <http://www.amwaj-islands.com/intro.asp>

⁹⁸ AlShehabi, O. Real estate expansion.p.94

the government to expropriate distinctive sites under the pretext of public interest with fair compensation to former owners. All of these issues will be a major part in the upcoming chapter.

Based on the policy in some of the Gulf countries to liberate the market from the oil sectors, there have been a new form of Laws and regulations supporting the goal of freeing the market and directing the investment into the real estate sector. The some Gulf member states have issued foreign investment Laws and foreign property ownership Laws that allow foreigners to own a property in their territory. In addition a number regulatory bodies have been established especially to regulate the real estate sector and to regulate particularly the relationship between real estate developers and the new buyers. The role of these regulatory bodies is to issue a number of Laws that regulate the real estate sector to establish and develop cadastre Laws; to the off plan property sale, the Build, Own, Transfer system (BOT) and concomitant areas. These Laws have led to unpredicted rush by the international real estate developers, financial institutions and real estate investors finds their way into the Gulf's real estate sector. Based on that most of the Gulf countries have set up designated areas for massive real estate projects and these projects have become a part of the development plans and visions of the Gulf region. For example, the available statistics for Dubai's real estate market show that foreigners are the biggest buyer of real estate in Dubai. The study shows that 24 percent of foreign buyers are of Indian nationality, the British are second with 21 percent, and then the Pakistanis and Iranians with 12 percent for each; the percentages of Arab buyers are a very small percentage which is negligible.

4. The concentration of the Development Strategies of the GCC states on real estate projects:

Most of the Gulf States have set their development strategies to manage growth; given the dominance of first cities, most countries are now making an effort to shift growth to secondary cities.⁹⁹ These strategies focus on the well-being of all citizens and present a carefully designed programme to continue providing the finest education and healthcare system, in addition to social protection and employment opportunities. This part of the thesis will focus on the development plans of the Arabian Gulf countries concerning urban development and new real estate projects since they became a significant part of the Gulf's development plans. The development plans for the region, when they mention real estate projects, refer to them being generally usually operated and built by private companies.¹⁰⁰

For instance, **Oman** in 2010 launched its National Strategy; a thirty-year development plan focuses on the development of both urban land planning, economic development, infrastructure, tourism, social services, and environmental protection.¹⁰¹ The national strategy of Oman makes real estate projects and tourism areas its main objectives; the government set its strategy to produce luxurious real estate projects like *The Blue City*, a 200,000-resident city designed by Foster and Partners, the British architectural firm; *Salam Yeti resort*, a \$1.7 billion development stretching from a marina to mountain villas;¹⁰² and *The Wave real estate project*, a 4,000-residence site being built along a strip of beach in the capital, Muscat. Most of the real estate projects are in the tourism areas where foreigners and locals alike can purchase properties.

⁹⁹ Ahmed Kanna (2011) *Dubai the city as corporation*. University of Minnesota Press. p.97

¹⁰⁰ AlShehabi, O. (2014). *The Gulf Between The Constant and the Changing*. Beirut, Muntada Al Ma'aref. (Arabic)

¹⁰¹ Kola, A., '30-year road map for all-round prosperity'. Times of Oman, August 3, 2010.

¹⁰² Salam Yiti Resort & Spa, Yiti, Muscat. http://www.mashhoor.org/showcase_detail5.html

In **Bahrain**, whose limited in land resources and high population density combine to limit opportunities for expansion, the 2030 National Planning Development Strategy includes land reclamation projects around the coves and islands surrounding the mainland.¹⁰³ One of the most massive construction projects in the country is “*Diyar al Muharraq*” which will reportedly house 100,000 residents on reclaimed land off the northern coast.¹⁰⁴ Another residential and leisure real estate project is the “*Riffa Views*”, with a total land size of 7 million square meters, with a cost of \$300 million. The government of Bahrain also announced the establishment of the *Bahrain World Trade Centre* at a total cost of \$9.6 million, which will be located on the northern coastline of Bahrain. Another massive project located in the southern tip of Bahrain is called “*Durrat Al Bahrain*” with a total cost of \$3 billion, and with an overall size of 20 million square meters as one of the major real estate projects in the kingdom of Bahrain.¹⁰⁵ The government has also begun developing a new national master plan for the creation of new towns and industrial areas, balancing economic development with well-designed spatial planning.¹⁰⁶

In the northern said of Kuwait, the government plans to create a development corridor, which will include a deep-sea port, agricultural development, support for industrial and touristic activities and infrastructure upgrades for road, rail and air transport. In addition to the new commercial hub, “*Madinat Al-Hareer*” (*Silk City*),¹⁰⁷ one of the largest mixed-use project development in the world, the project will create an entirely new city with four distinct quarters; the financial city, the Leisure City, the ecological city and the residential city. In the south, the government will create a

¹⁰³Bahrain Tribune, ‘Bahrain: solving the housing problem in Kingdom’. September 12, 2008.

¹⁰⁴Construction Week Online, ‘AECOM hired as Diyar al Muharraq master planner’. March 14, 2010.

¹⁰⁵ Bahrain economic development board. <http://www.bahrainedb.com/real-estate-projects.aspx#link4>

¹⁰⁶ Atkins, ‘Atkins wins role to shape Bahrain’s economic growth’. June 25, 2010

¹⁰⁷ Business insider.Eric Goldschein. *Kuwait Is Building A \$132 Billion City Around A Skyscraper With An 'Arabian Nights' Theme*. Read more: <http://www.businessinsider.com/kuwait-madinat-al-hareer-skyscraper-2011-12?op=1#ixzz29YgzVRhB> accessed on 17/10/2012

development pole by supporting agriculture industry and tourism and generating new housing developments. The development of *Sabah Al-Ahmad Sea City* on the Gulf coastline, 85 kilometres into the south of Kuwait City, is expected to be delivered in up to 10 stages between 2002 and 2027.¹⁰⁸ In the west, the government plans to add residential areas and major road networks. The metropolitan area will also accommodate additional growth with new towns and settlements outside the area.¹⁰⁹ The aims of the city plan are to transform the capital into a major financial and commercial centre and to accommodate population expansion through 2030.¹¹⁰ The plan also includes transportation upgrades, further development of commercial and entertainment activities, the preservation of historic buildings and the improvement of the downtown area.¹¹¹

Saudi Arabia's latest National Development Plan (2010-14) has five themes: aimed at improving the quality of life, particularly through resource conservation and environmental protection. The National Development Plan other themes are to increase the national participation rates in the labour market, especially among the young to reduce the country's dependence on expatriate workers; creating a balanced regional development; promoting a diversified economic development through greater private sector involvement and the creation of a knowledge economy and increasing the competitiveness of the national economy in the global market.¹¹² One of the most important of the KSA development plane is the creation of King Abdullah Economic City (KAEC), 70 Km north Jeddah on the Red Sea, which is the first freehold city in

¹⁰⁸ Buro Happold. *sabah Al Ahmad sea city*: <http://www.burohappold.com/projects/project/sabah-al-ahmad-sea-city-71/>

¹⁰⁹ State of Kuwait and Kuwait Municipality. (2005). *Third Kuwait Master Plan Review: Executive Summary*. Kuwait: State of Kuwait.

¹¹⁰ Baxter, E., 'Kuwait signs deals for capital city expansion plan'. *Arabian Business*, August 4, 2010

¹¹¹ State of Kuwait and Kuwait Municipality. 2005. *Third Kuwait Master Plan Review: Executive Summary*. Kuwait: State of Kuwait.

¹¹² Ministry of Economy and Planning, *Brief Report on the Ninth Development Plan*.

Saudi Arabia, being built at the cost of \$27 billion with an expected completion date of 2025.¹¹³

If we look at other countries in the region, they are characterised with massive real estate projects dedicated to foreign buyers. For example, the 2030 vision of Abu Dhabi¹¹⁴ and Dubai 2015¹¹⁵ are similar, where all of the talks is about making these countries a major foreign investment centre. These strategies are intended to boost the local economy by encouraging people to come to Abu Dhabi or Dubai, whether as investors, tourists, attending events and conferences or for health and education purposes.

Qatar did not start to create its first development strategy until 2011.¹¹⁶ The government of Qatar has now listed about 176 new projects and the government has allocated \$125 billion to be spent on development over the next five years.¹¹⁷ The national plan allocates round \$27 billion for investment in residential and commercial construction projects two governmental companies called Barwa real estate and Diar will undertake most of these projects.¹¹⁸

If one takes a closer look at these development plans one will find most of these countries' visions and plans are focussed on establishing new economic cities and new luxurious real estate projects. The new economic cities were meant to be the an

¹¹³ There are also three cities under construction also known as Economic cities in Madina, Jazan Economic city and Prince Abdul Aziz bin Musaed Economic city in Hail. <http://www.arabianbusiness.com/property/article/589661-saudi-arabia-to-allow-foreign-ownership-in-kaec> <http://www.propertywire.com/news/middle-east/saudi-arabia-to-allow-foreigners-investors-201006044188.html>

¹¹⁴ AMEInfo, 'Abu Dhabi 2030: The blueprint'. March 24, 2008.

¹¹⁵ Dubai government *Highlights: Dubai Strategic Plan 2015*.

¹¹⁶ Setting the foundation for the world cup. <http://www.worldfinance.com/wealth-management/real-estate/setting-the-foundations-2>

¹¹⁷ Nasser elghanem.(2011) Alshorfa.com. Doha. 4/4/2011. http://al-shorfa.com/en_GB/articles/meii/features/business/2011/04/04/feature-03

¹¹⁸ Nasser elghanem.(2011) Alshorfa.com. Doha. 4/4/2011. http://al-shorfa.com/en_GB/articles/meii/features/business/2011/04/04/feature-03

adjust to new financial centres such as Dubai, Bahrain and Qatar with the new residential city aimed of the foreign expatriates who would work there

5. The size of the real estate sector in the Arabian Gulf countries:

The real estate sector has played a key role in the economies of the Gulf, to become the second largest sector after oil, especially in countries that have allowed foreigners to own real properties albeit in limited areas. In Bahrain, for example the real estate sector was around 9.8 percent of the total GDP in 2007. In Kuwait it was about 6.1 of GDP and in Oman, the ratio was 5.5 percent for the same year. In Qatar the ratio was 10.4 and in Saudi Arabia was 6.8 percent of the total GDP of these countries in 2007. It turns out that the real estate sector played a key role in the economies of Bahrain, Qatar, the United Arab Emirates and Oman, the countries that relied heavily on these massive real estate projects.¹¹⁹ Growth in the real estate sector in the Gulf has been significant in recent times. In Bahrain, the real estate sector grew at a cumulative annual rate of 7.1 percent between 2003 and 2007. In Kuwait, it grew by 8.7 percent and in Oman; it grew by 10.0 in the same period. In Qatar, the real estate sector grew 39.2 percent and in the United Arab Emirates was the growth in the real estate sector was 24.5 percent.¹²⁰ It is clear here that the rate of growth in the real estate and construction sectors has been the largest in the region. Since 2006, in the six Gulf states, there has been just over \$500bn worth of civil construction projects with the total of planned and un-awarded construction projects exceeds \$1.09 trillion. Most of these real estate and construction projects allowed foreign ownership property ownership in mega-projects such as Bahrain and the United Arab Emirates, Qatar and

¹¹⁹ *GCC Real estate sector: changing times!.*, Global investment house (February 2009)

¹²⁰ Shereef Ellaboudy, (2010). The global financial crises: Economic Impact on GCC countries and Implications, *International Research Journal of Finance and Economics*, no 41

Oman. The table below shows the top 10 real estate projects from 2011 to 2015 in the Gulf region;

| Project name | Country | Project owner | Price in US billion |
|------------------------------|----------------|--|----------------------------|
| King Abdullah economic city | KSA | Emmar UAE | 93 |
| Silk city | Kuwait | | 77 |
| Capital district | UAE | Urban Planning Council | 40 |
| Alreem island | UAE | Bunya (Sorouh Real Estate; Tamouh Investments; | 37 |
| Yas Island development | UAE | Aldar properties | 37 |
| Lusail Mixed-use Development | Qatar | Qatari Diar real estate investment company | 33 |
| Jizan Economic City | KSA | Saudi Binladen Group | 27 |
| Saadiyat island | UAE | Tourism Development & Investment Company | 27 |
| Kingdom city | KSA | Emaar Properties; Kingdom Holding | 26.6 |

Source: <http://www.meed.com/knowledge-bank/top-100-projects/>

The focal point of most of these real estate projects is that they are massive and luxurious residential projects. The announced value of these massive real estate projects is the equivalent of U.S. \$ 1.2 trillion of the total value of announced projects in the GCC States, which amounted to U.S. \$ 2.1 trillion U.S. dollars in the year 2007.¹²¹ The real estate projects in the region accounted for 57 percent of the total value of all types of projects in the Gulf States. It is important to note that the size and the number of real estate projects in the Gulf States were the highest in the world,

¹²¹ Adam Hanieh,. (2011). *Capitalism and class in the Gulf Arab states* (New York: Pgrave Macmillan). Pp. 117-118.

where the Gulf countries became the largest location for real estate projects financed in the world, where these projects accounted for one-third of the world's funding in 2006.¹²²

6. The real estate bubble in the Arabian Gulf countries:

Before the GCC real estate market crash in 2008, the largest contributor to the Gulf's economy was mostly in real estate, construction, and infrastructure. The contribution arose from many economic and demographic factors including strong liquidity, a large number of migrants, which caused a population growth, with a housing shortages, which resulted in real estate price expectations and inexpensive credit available to investors. These factors caused the GCC real estate sector to expand rapidly into a speculative market with a major surge in real estate prices and inflation.

123

The global financial crises in 2008 hit the Arabian Gulf markets very hard and resulted in a large number of real estate projects cancelled or delayed so that a number of real estate developers could not deliver the agreed property units to their end buyers. Many real estate experts believe that Gulf's real estate crash was caused by real estate developers using "off-plan sales," in the region,. But in 2008, projects that were bought before completion were scaled back, and in consequence investors could not get their money back. That resulted in property buyers suing the local developers. Since the financial crises, a number of new laws and regulations have been issued escrow account law to limit the real estate developers to use the money of property buyers'. Another Law being considered in a number of states aims to give investors partial refunds when projects fail to meet their deadlines. This was also a time when

¹²² Ibid. p.110

¹²³ ABBAS NAIN, "Assessment of Dubai Real Estate Trust Accounts Law and Issues of Business: Evidence from Ontario and Utah," *The Journal of Business Inquiry* 10,1, 2011.

many regulatory agencies were established to regulate the real estate sector in many Gulf countries.

This thesis will focus on the Laws and regulations that were issued before and after the real estate crash that hit the Gulf region as a reaction to preserve the rights of investors whether they are foreigners or locals. After the Dubai real estate bubble a number of Laws were issued by the government entity established to regulate the real estate sector, and which now regulates the relationship between the master developer or contractor with the end buyers to establish a transparent relationship between the parties.

7. The historical background of the legal system in the Arabian Peninsula:

After showing the historical urban development of the Arabian Peninsula, it is important to describe the general background of the legal system in the Arabian Peninsula. Over the centuries, the legal systems of the Arabian Peninsula have evolved through a number of stages that can be identified as the Islamic legal system, the Ottoman legal system, British influence and the modern civil legal system.

7.1. The Islamic country legal system

Historically, tribal leaders based on the tribal custom performed adjudicative functions as the tribe depended on the Sheikh (leader) for guidance and protection. Thus, the Sheikh was the centre of power, the political chief, and the supreme arbiter of tribal disputes.¹²⁴ After the spread of Islam, *Shari'a* Law (Islamic Law) became the source of ultimate authority in the Arabian Peninsula. The fact that the Prophet Mohammed, peace be upon him, was born in the Arabian Peninsula, coupled with the emergence of the first Islamic state in the region, led to the dominance of Islamic

¹²⁴ Nizar Hamzeh. (1994) *Qatar: The Duality of the Legal System* Author(s): *Middle Eastern Studies*, Vol. 30, No. 1 (Jan., 1994), pp. 79-90.

Law.¹²⁵ This laid the foundation for the great Arabic jurisprudence that developed in the seven or eight centuries following the death of the Prophet.

Shari'a is based primarily on the Qur'an and the Sunnah (the Prophet's traditions) as well as Ijma (the consensus of Muslim jurists) and Qiyas (judgment upon juristic analogy). Supplementary sources of Islamic Law include *Al-Istihsan*, *Al-Istislah* and *Al-Urf*. As a divine Law it is regarded by Muslims as the perfect, eternal and just Law, designed for all time and characterised by universal application to all mankind, just as natural Law is regarded in the West as the ideal legal order consisting of the general maxims of right and justice. Muslims believe that the divine Law is perfect and is designed for all time and universally applicable.¹²⁶

The commercial activity during the Islamic period was very simple and interested in the development of stable and well-established institutions. The simplicity of the commercial activity during that period did not require regulation by an advanced and fully developed legal system.¹²⁷

7.2. The legal system of the Ottoman Empire

At the beginning of the 16th century, the majority of the Arab world was subject to the Ottoman Empire. The region's legal development began when the Arabian Peninsula came under the sovereignty of the Ottoman Empire. The strong influence of Ottoman legal scholars and practice made some of the rulers of the Arabian Peninsula adopt the Ottoman legal system. The promulgation of the *Majalla Al-ahkam Al-adliyyah* in the

¹²⁵ Nicholas B Angell,(1987) "Impact of the GCC on the Developing Legal Systems of the Gulf Countries" in the Gulf Cooperation Council, *Moderation and Stability in an Independent World*, edited by John A. Sandwick (Colorado Westview Press) p.108.

¹²⁶ Ahmad, Alsuwaidi. (1993). Developments of the legal systems of the Gulf Arab States. *Arab Law Quarterly*, Vol.8, No.4 (1993), p. 289. Brill.

¹²⁷ Fahad Al-Zumai. (2006). *Protection of Investors in Gulf Cooperation Council Stock Markets: A Case Study of Kuwait, Bahrain and United Arab Emirates*. Department of Law. School of Oriental and African Studies. University of London.

1876 was the region's first codified Islamic legal system in the region.¹²⁸ The Law contained 1851 articles including the legitimacy of various civil transactions.

The aim of the promulgation of the *Majalla Al-ahkam Al-adliyyah* was to unify civil Law for all states and territories under the Ottoman Empire, especially after the emergence of French civil Law in 1804. The Majalla was applied in all of the courts of the territories under the Ottoman Empire but the most prominent application occurred in Syria, Lebanon, Palestine, Jordan and Iraq. The application of the *Majalla* continued in Iraq until 1936-1937, when they hired, Dr Abdul Razzaq Sanhoury, who replaced the *Majallah* with a new Iraqi civil Law. Kuwait is the only country in which the *Majallah* was applied without having been imposed by the Ottoman Empire. The application of the *Majallah* in Kuwait marked the transition to modern legislation, in terms of being a sign of a shift from customary Law to legislation as applied in the State of Kuwait.¹²⁹

The southern side of the Arabian Peninsula was practical independent from the Ottoman Empire due to the lack of importance of the Gulf region before the discovery of oil. During that time the Arabian rulers practice the Islamic *Shari'a* as the main legal system in the region. However, the *Majalla* was followed in the some parts in the region and in some places became an integral part of its legal infrastructure.¹³⁰

7.3. The legal system of the during the British Empire

In the late 18th century, the intrusion of British political influence in the coastal Gulf countries affected the legal system operating in the region today. Extra-territorial

¹²⁸ See Brian Russell, (1976). *An Introduction to Business Law in the Middle East*, (New York, Drake Publications), p. 7

¹²⁹ AlShehabi, O. (2014). *The Gulf Between The Constant and the Changing*. Beirut, Muntada Al Ma'aref. (Arabic)

¹³⁰ Nicholas B Angell, (1987) "*Impact of the GCC on the Developing Legal Systems of the Gulf Countries*" in *The Gulf Cooperation Council, Moderation and Stability in an Independent World*, edited by John A. Sandwick (Colorado Westview Press, 1987) p.108.

jurisdiction was given to the British in Bahrain, Qatar, Kuwait and the Trucial Coast (UAE) and was found in the various protection agreements from 1880.¹³¹ The protection and other treaties signed by the British the rulers in the region initiated this long and significant relationship, which was defined as “a special treaty relationship with Her Majesty’s government.”¹³² The British influence led to legal pluralism in that it did not replace local jurisdiction but was parallel to it.¹³³ The British legal system governed non-Muslim foreigners resident in the region who were under the jurisdiction of the British Crown. British jurisdiction extended to all British subjects, British-protected persons and foreigners in the Arabian Peninsula.¹³⁴ The involvement of a foreigner in any dispute automatically gave the British administration extra-territorial jurisdiction.¹³⁵

In contrast, local Muslims remained subject to the jurisdiction of the local authorities.¹³⁶ For example, in the Trucial States (UAE), the judicial jurisdiction of the local courts was restricted to local Muslim subjects. Everyone else, including citizens of other Arabian Gulf principalities fell under British jurisdiction. The situation was different in the other Gulf States. In Qatar, the local courts had jurisdiction over Qatari nationals as well as nationals of other Arabian countries such as Saudi Arabia, Yemen, Kuwait, Bahrain, Oman, and the Trucial States. Kuwait had the broadest local jurisdiction, which was the same as Qatari jurisdiction with the extra rule of

¹³¹ W. M. Ballantyne, (1986) *Commercial Law in the Arab Middle East, the Gulf States* (London Lloyds of London Press Ltd.), pp. 13-14.

¹³² Herbert J. Liebesny, (1956) Administration and legal development in Arabia: The Persian Gulf principalities, *Middle East Journal*, p. 33.

¹³³ See Baudouin Dupret, Maurits Berger, and Laila Al-Zwaini. (1999) *Legal Pluralism in the Arab World*, (London, Kluwer Law International), p 4.

¹³⁴ Herbert J. Liebesny, (1956) Administration and legal development in Arabia: The Persian Gulf principalities, *Middle East Journal*, p. 36.

¹³⁵ *Ibid.* p.35

¹³⁶ Ahmad, Alsuwaidi. (1993). Developments of the legal systems of the Gulf Arab States. *Arab Law Quarterly*, Vol.8, No.4 (1993), p. 289. Brill.

jurisdiction over nationals of Egypt, Lebanon, Syria, Iraq, Jordan, and Iran.¹³⁷ In addition, the courts of Kuwait exercised jurisdiction over stateless Muslims of Palestinian origin. In all of the Emirates, the local courts had jurisdiction over corporations incorporated under a Law enacted by the ruler.¹³⁸

The British legal influence was greater in some states than in others, but overall it was imposed for about 150 years. Bahrain, Qatar, Oman and the Oman Trucial coast (UAE) experienced the greater portion of this influence.¹³⁹ The British wanted to establish a single court or mixed courts presided over by English judges but these efforts were largely unsuccessful because of the opposition of local rulers and popular sentiment.¹⁴⁰ The biggest success of the British influence over the judiciary was in Bahrain, where the British Advisor Sir Charles Dalrymple Belgrave was heavily involved in the development of the Bahraini legal system and even sat as a Bahraini judge.¹⁴¹ Much of the legislation adopted by local authorities was borrowed from the common Law codes of India and the final appeal from decisions taken in the British courts lay to the Privy Council in England.¹⁴²

Prior to 1971, the British Crown still exercised extra-territorial jurisdiction over the Gulf region with the exception of Kuwait and Oman, which had gained their independence in 1961 and 1967 respectively. The regularisation of the commercial area in the area could have been based on a uniform legal system based on English

¹³⁷ Herbert J. Liebesny, (1956) Administration and legal development in Arabia: The Persian Gulf principalities, *Middle East Journal* 1956, p. 36.

¹³⁸ *Ibid.* p. 36.

¹³⁹ See William Ballantyne, (1980) *Legal Development in Arabia*, (London, Graham and Trotman.), p. 8.

¹⁴⁰ Nathan J. Brown, (1997) *The Rule of Law in the Arab World; Courts in Egypt and the Gulf*, (Cambridge, Cambridge Press), pp. 136–137.

¹⁴¹ *Ibid.*

¹⁴² Nicholas B. Angell, (1987) "Impact of the GCC on the Developing Legal Systems of the Gulf Countries", in *the Gulf Cooperation Council, Moderation and Stability in an Independent World*, edited by John A. Sandwick (Colorado: WestviewPress, p. 108.

legal principles. but, since becoming independent, all the Gulf States have developed their own codified legal systems.¹⁴³

Kuwait set a very important model following the withdrawal of British extra-territorial jurisdiction in 1961. After independence, Kuwait did not turn to English common Law but to an emerging body of the Arab civil Law as a source for new legislation. The government of Kuwait first indicated this new departure by commissioning the famous Egyptian jurist, Dr. Abdulrazzaq Al Sanhoury, to draft a commercial code and other items of major legislation.¹⁴⁴ This example was then followed by other Gulf States.¹⁴⁵

However, Saudi Arabia, unlike the other Gulf States, never fell under the extraterritorial jurisdiction or became a sphere of Britain or any other European power.¹⁴⁶ As a result, the Saudi government has been less willing to adopt legislation from the more Westernised and secularised Arab countries, and the influence of the *Shari'a* legal system still remains especially strong.¹⁴⁷

7.4. The French /Egyptian civil Law system

Historically, the Middle East has been favorable to the influence of legal systems emanating from Roman Law. French interest in the Ottoman Empire dates back to the 16th century, when Francis I signed capitulation treaties with Suleiman the Magnificent in 1535. French influence was extended as France carved out its colonial

¹⁴³ Ahmad, Alsuwaidi. (1993). Developments of the legal systems of the Gulf Arab States. *Arab Law Quarterly*, Vol. 8, No. 4 (1993), p. 289.

¹⁴⁴ Legal development, pp.11-12, 15, 23; W. M. Ballantyne, "the constitutions of the Gulf States: A comparative Study," 1 *Arab Law Quarterly*, Feb. 1980, p.58

¹⁴⁵ Ahmad, Alsuwaidi. (1993). Developments of the legal systems of the Gulf Arab States. *Arab Law Quarterly*, Vol. 8, No. 4 (1993), p. 290.

¹⁴⁶ Nicholas B. Angell, (1987) "*Impact of the GCC on the Developing Legal Systems of the Gulf Countries*", in *the Gulf Cooperation Council, Moderation and Stability in an Independent World*, edited by John A. Sandwick (Colorado: WestviewPress) p. 108.

¹⁴⁷ Nicholas B. Angell, (1987) "*Impact of the GCC on the Developing Legal Systems of the Gulf Countries*", in *the Gulf Cooperation Council, Moderation and Stability in an Independent World*, edited by John A. Sandwick (Colorado: WestviewPress,) p. 108.

empire in North Africa, Napoleon occupied Egypt, and French mandates were created in Syria and Lebanon. In the legal sphere, this influence was felt in the formation of indigenous legal institutions copied from the French. The French codified system of Law was easily adapted to Islamic Law and rapidly spread throughout the Middle East.¹⁴⁸

Egypt became a model for the Arabian Gulf states because it was a leading country in the Arab world, especially after the 1952 revolution, and it was one of the most developed states in the Middle East. The 1960s and the 1970s were remarkable periods in the history of the Arabian Gulf countries. In those years, the Gulf States achieved full independence from the British Empire.

The Gulf States had no experience with a modern legal system. Instead, they had, in the main, traditional Islamic courts staffed by *Sharia'h*-educated judges, who administered the Islamic *Shari'ah* Law or the *Majallah Alahkam Aladliah* (the Ottoman compilation of the code of obligations). With the Gulf countries' independence and with the increasing economic resources, the Gulf States considered the need for a new legal system of codified Law to regulate the country and to regulate the oil revenues and to keep pace with the major developments in the region. Except for Saudi Arabia, all of the Gulf countries turned to Egypt for assistance. At the time, Egypt had wide experience in the civil Law system based upon French Laws. The Egyptians furnished the Gulf States with a complete machinery of justice and codified Laws. In addition, some of the Arabian Gulf countries obtained the

¹⁴⁸ Maren Hanson, (1987) "The Influence of French Law on the Legal Development of Saudi Arabia", Arab Law Quarterly, Vol. 2, Part 3, p. 274.

services of the eminent jurist, Dr. Abdullrazzaq AlSanhuri,¹⁴⁹ who had drafted Laws and constitutions for many other Arab countries.¹⁵⁰

One of the main factors that smoothed the progress of the transplantation is the lack of a language barrier between Egypt and the Arabian Gulf States. In addition, the ability to import workforces from Egypt to fill the human-resources gap also significantly facilitated transplantation. One must understand that any transplantation process will fail if the needed institutions in the recipient country are undeveloped. This factor is highly prominent even when both the recipient and the donor countries have very advanced legal systems. This, the fact that no developed legal systems existed in the Gulf region ruled out the chance of a clash between the existing and the imported systems.¹⁵¹

7.5. The current constitutional system of the Gulf member state:

There are many variations between the Gulf countries' Constitutions. Some of these countries formed their Constitutions on the basis of a contract between the Ruler and the people. On the other hand, other Constitutions were formed as a grant from the Ruler to the people. The aim of this part is to show that the people of the Gulf States did not contribute the people in drafting their own constitution. The decision making power are concentrated in a way or another in the ruling family or influential people who are close to the ruling families.

The first Constitution formed in the Gulf was in Kuwait and dated 1962; this Constitution paved the way and formed the basic model for Qatar, and Bahrain and

¹⁴⁹ Dr. Abdullrazzaq AlSanhuri is Egypt's most distinguished scholar of modern jurisprudence.

¹⁵⁰ Isa A. Huneidi. (1986) Twenty-five years of the civil Law system in Kuwait. *Arab Law Quarterly*, Vol. 1, No. 2. pp. 216-219. Brill

¹⁵¹ Fahad Alzumai. (2006) *Protection of Investors in Gulf Cooperation Council Stock Markets: A Case Study of Kuwait, Bahrain and United Arab Emirates*. Unpublished PhD Thesis. School of Law. School of Oriental and African Studies. University of London

UAE to form similar constitutions. Thus, in Kuwait, Bahrain, Qatar and the UAE, have written Constitutions in a recognisable modern form.

The Constitution of the UAE provides for two types of government; the local government of each emirate and the central Federal government that contains all of the seven emirates. The organisation and administration of the local governments were left in the hands of those at the local level and dealt with by local written Laws or by customary Laws. Indeed, the legal institutions and methods applied before Federation concerning the organisation and administration of local governments are still in force today, with no major modification.¹⁵² Central Federal government, however, is comprehensively covered by the Constitution, according to the provisions of which government is based on a traditional Western approach in that state power is theoretically separated into three distinct authorities: executive, legislative and judicial.¹⁵³

The Kingdom of Saudi Arabia has no formal Constitution. The Saudi government draws its constitutional legitimacy from its adherence to the Islamic *Shari'a*, whose principles serve it in much the same way as the common Law serves the government in England.¹⁵⁴ The administrative structure of the kingdom initially was established by the "Organic Instructions of the Hijazi Kingdom" of 1926, as amended by the Statute of the Council of Deputies of 1932 and the Constitution of the Council of Ministers of 1958. A draft Constitution of 1960 remained a draft.¹⁵⁵ A Royal Decree in 1992, the King implemented the Basic Law of Governance. To the extent that the Basic Law

¹⁵² Buti Al-Muhairi, (1996) 'The Development of the U.A.E. Legal System and Unification with the Judicial System', 1996 (2), *Arab Law Quarterly*, p.119

¹⁵³ John Duke Anthony, *Arab States of the Lower Gulf: People, Politics, Petroleum* (Washington DC: The Middle East Institute, 1975), p. 99.

¹⁵⁴ *Ibid* p.113.

¹⁵⁵ W. M. Ballantyne.(1986).The Constitutions of the Gulf States a Comparative. *Arab Law Quarterly*, Vol. 1, No. 2 (Feb., 1986), pp. 158

can be considered an “informal” constitution, Article I establishes the *Qur’an* and the *Sunnah* of the Prophet Mohammed as the “formal” constitution. In Friday 19 February 1993 the Basic Law of Kingdom of Saudi Arabia was drafted and signed by the King of Saudi Arabia.

The situation in Oman is similar, Oman had no written Constitution. And Ballantyne described it as a benevolent autocracy under the Sultan. The government of Sultan Qaboos rests upon the legitimacy of the Al Said dynasty, which ruled Oman since 1741. In 1996 the government of Oman drafted the first constitution and signed by the Sultan.

It is important to know the role of Gulf people in creating a Constitution or amending its articles. A comparative study provides four ways to establish a Constitution. Firstly the ruler grants a Constitution to the people (usually practiced in the autocratic regimes). Secondly by means of a contract, there is a partnership between the people and the ruling family. The third method is through a Constituent Assembly and fourthly there may be a constitutional referendum.

The grant is exclusive to the Ruler and does not have the participation of people. A contract constitution is usually drafted by an elected council by the people and presented to the ruler for his approval. The Constitution does not take effect until the Ruler and council sign the final draft.

The third method to produce a constitution is by means of a Constituent Assembly. The Constitution becomes effective once an elected council approves it without the further approval of the Ruler or the people. Finally under a constitutional referendum an elected committee drafts a Constitution, but the Constitution does not become effective until the people vote on it in a referendum.

The following table applies the aforementioned ways of drafting a constitution to the GCC countries to understand the level of participation of the people in drafting their Constitution.

| Country | The name of the constitution | Date of constitution | Number of articles | Form of the constitution |
|----------------|--|---|---------------------------|--|
| Kuwait | Constitution | 11-11-1962 | 183 | Contract |
| Bahrain | Constitution | 14-2-2002 | 125 | Grant (Appointed Committee drafted the National Charter which had been accepted. in a referendum by the people) |
| Qatar | The permanent Constitution | Issued 8-6-2004 Work on it in 9-6-2005 | 150 | Appointed Committee to draft the constitution, that was accepted in a referendum |
| UAE | Constitution | 18-7-1971 | 152 | The Constitution was adopted by rulers of the United Arab Emirates, The people were not involved in forming the constitution |
| Oman | The Basic Law of the sultanate of Oman | 6-11-1996 | 81 | Grant |
| KSA | The Basic Law of Kingdom of Saudi Arabia | 27-Shaban 1413.h Friday 19 | 83 | Grant |

| | | | | |
|--|--|---------------|--|--|
| | | February 1993 | | |
|--|--|---------------|--|--|

Source: the Gulf countries constitutions.¹⁵⁶

Kuwait based its constitution on an agreement between the Ruler and the people (le Pacte).¹⁵⁷ At the beginning of the 1960s the former Emir, Sheikh Abdullah Al-Salem established a special committee elected by the people to draft the Constitution.¹⁵⁸ The elected committee drafted and discussed the explanatory note of the Constitution and then the Emir signed the Constitution without any amendment. Adoption of the Constitution of the elected council and ratification by the Kuwait Ruler has resulted from a partnership between the people and the Ruler. This was considered by a lot of Constitutional scholars as place the Kuwait constitution as a contract.¹⁵⁹ This was similar to the French Constitution of 1830 and the Magna Carta of England in 1215.¹⁶⁰

The Qatari Constitution was drafted and prepared by an appointed Committee formed by the Emiri Decree No. 11 of 1999.¹⁶¹ On March 15, 2003, the Emir issued another decree calling on the citizens to vote in a referendum on the draft Constitution and the vast majority of voters approved the draft Constitution.¹⁶² Many legal, constitutional and political scholars have criticized the way of drafting the constitution, where the Committee that drafted the Constitution was appointed by the ruler himself. Most of the Committee members were government ministers or men of the executive

¹⁵⁶ The legal information network of the Gulf cooperation countries <http://www.gcc-legal.org/MojPortalPublic/Home.aspx>

¹⁵⁷ According to Dr. Ibrahim Al-Sabah the Kuwait Constitution is compatible with the shari'a, see Ibrahim Al-Sabah, *Al-shari'yaa al-islamliya wa al-shariyya al-distoriyya*, (Kuwait, Dar Al-Shuroq Publications, 2000)

¹⁵⁸ See Dr. Adel Al-Tabtabaei, (1985). *constitutional order in Kuwait: A Comparative Study*, p 412-415

¹⁵⁹ See Dr. Adel Al-Tabtabaei, (1985). *constitutional order in Kuwait: A Comparative Study*, p 412-415

¹⁶⁰ See Professor Othman Al-Saleh, (1993). *Al-nitham al-dusturi wa al-mus'asat al-siyasiyyatah fi al-kuwait*, (Kuwait, Kuwait University Publications,) pp. 12–13.

¹⁶¹ The appointed Committee completed its work in three years.

¹⁶² The referendum passed with 96.64 percent of the total vote.

branch,¹⁶³ and the members did not include any representatives of the people. The referendum on the draft Constitution was preceded by promotional campaigns and seminars and program by the state media, press inquiries and media interviews in the interest of the vote (to agree on this project), without giving any real knowledge to the people on the substantive articles and its contents. That shows the fact the people of the states does not have any effect on drafting their own constitution.

Bahrain's 1973 constitution was similar to the Constitution of Kuwait. On November 20, 2000, a higher national committee was formed to prepare a draft National Action Charter, which completed its work within a month and presented a draft charter to the Emir, who called a referendum. The referendum passed with 98.4 percent of the vote. A referendum committee was formed under Decree No.5 of 2001 to amend certain provisions of the Constitution of 1973 in line with the National Action Charter. When the King approved the committee's work, these amendments took effect.

Dr. Hasan Abdul Raheem Al-Said¹⁶⁴ believes that the Constitution of Bahrain is a grant from the King to the people of Bahrain. The amendments conducted on the old constitution were made by a Committee appointed by the King, and then approved by the King himself. Even though the amendments were based on the National Action Charter. This is because the Charter only focuses on substantive issues. However the main amendments were made by the Committee appointed by the King. These are provisions pertaining to the competence of the National Assembly and the House of Representatives and the *Shura* council and the powers of the King and the reduction of the role of the National Council.¹⁶⁵ The Constitutions of the United Arab Emirates,

¹⁶³ The Committee comprises six members of the ruling family, including the Prime Minister and his deputy and other current ministers and ex ministers.

¹⁶⁴ Hassan Abdul Raheem Alsaid is a professor of Law in Qatar University.

¹⁶⁵ Ali Khalifa Alkawari. (2011). The people want reform in Qatar ... Also. Almaaref Forum. P46-50

Saudi Arabia, and Oman are all enacted by Royal Decrees without noticing the people participation.¹⁶⁶

Since most the people of these countries did not participate in drafting or approving the Constitution, these Constitutions are grants (l'octroi) from the Rulers.¹⁶⁷ With the exception of Kuwait, the people of the GCC member states did not play any role in drafting or approving their Constitutions, and the Ruler and his Committee had the right to draft and to amend the constitution. This shows that the power concentrated in the ruling families who have decision-making powers without reference to the people. This may provide an introduction on how the Laws pass in these countries without referencing the people, where the citizens' legislative role is almost nonexistent.¹⁶⁸

7.6. The citizens' legislative role in the Gulf member states

As already mentioned, the role that Gulf citizens play in the enactment of Laws is limited to the legislative functions awarded by the Constitutions to the Council of Representatives (Majlis Al-Nuwab), National Assembly and Consultative Council (Majlis Al-Shura) or what is called The Federal National Council in UAE.

The Bahraini Constitution states that the King has the right to seek a referendum of the people's opinion on Laws on important issues that relate to the interests of the country. This is similar to the Qatari Constitution, the ruler can use the referendum right whenever he wants, without obligation, and he can refuse to use this right.¹⁶⁹

Before turning to the role of Councils in the enactment of Laws, it is necessary to know the role of the people in the election of the members of these councils. For

¹⁶⁶Ali Khalifa Alkawari. (2011). The people want reform in Qatar ... Also. Almaaref Forum. P46-50

¹⁶⁷ For historical development in the U.A.E., see Buti Al-Muhairi, "The Development of the U.A.E. Legal System and Unification with the Judicial System", 1996 (2), *Arab Law Quarterly*, p.116

¹⁶⁸ Hassan alsayed. The legislative role of the GCC people. <http://dr-alkuwari.net/sites/akak/files/monday1-alsayedpaper.pdf>

¹⁶⁹ Ali Khalifa Alkawari. (2011). The people want reform in Qatar ... Also. Almaaref Forum. P46-50

example, a Council appointed by the Ruler himself cannot truly reflect the will of the people or represent them.

When we look at the Constitutions of the Gulf States, we find that the Kuwaiti National Assembly is made up of 50 members and all of them are elected directly by the people. In addition to the 12 ministers who are members of the National Assembly and are appointed by the Emir based on recommendation of the Prime Minister. The Constitution stipulates that these Ministers should not exceed a third of the elected members.¹⁷⁰

In Bahrain, the 2002 Constitution has adopted a bicameral council system, namely; the Council of Representatives (Majlis Al-Nuwwab), whose members are elected directly by the people, and a Consultative Council (Majlis Al-Shura) who are appointed by the King. Both councils have 40 members and each council have a legislative role.

In Qatar, the Consultative Council (Majlis Al-Shura) is composed of 45 members, 30 of who are elected directly by the people. The Emir appoints 15 members and he has the right to dismiss its members. According to the constitution of Qatar, the Consultative Council have the power to approve the national budget; the council members also have the power to monitor the performance of ministers and to draft, discuss, and vote on proposed legislation, which may become Law only with if a two-thirds majority voted in favour of the law and the Emir's endorsement.

In the UAE, the Federal National Council consists of 40 members with advisory tasks in the house of legislative council.¹⁷¹ Half of the council members are elected from

¹⁷⁰ Kuwait national assembly <http://www.kna.kw/clt/default.asp>

¹⁷¹The Federal National Council is composed of forty members, distributed on the UAE by the Constitution as follows: (8) seats for the Emirate of Abu Dhabi. (8) Seats for Dubai. (6) Seats for the

lists prepared by the ruler of each Emirate, and the other half of the council members are appointed by the rulers of these Emirates. And on the Emirates bases each Emirates has a National Consultative Council works on legislative body as a part of the Emir government.¹⁷² In Oman the members of the Consultative Council (Majlis AlShura) are appointed through a direct voting, except for the President of the Council, who is appointed by the Sultan. The number of members of the Council is determined by the proportion of the population in the states of the Sultanate. The competence of the Majlis AlShura is to revision the legislation, give opinions and provide recommendations only where in general it plays an advisory role.¹⁷³ In the Kingdom of Saudi Arabia, the Consultative Council (Majlis AlShura) consists of 150 members and the King appoints all of them for four years renewable term.¹⁷⁴

As it can be seen, most of the members of the national councils (parliaments or assemblies) of the Gulf member states are appointed (except for the Kuwaiti National Assembly), which doesn't really reflect the opinion of the people. Since the council members are appointed by the ruler or by a committee appointed by the ruler, this may affect the decision of these members and they may well show their loyalty to the ruler and support his decisions. This loyalty can be used to pass some Laws that are in the interests of some influential people or the royal family members.

7.7. The role of the councils in the enactment of Laws

The Constitution of Kuwait allows each member of the National Assembly to propose Laws; any bill is ratified only after discussion and voting on it by this Council. The Constitution requires the ruler to ratify the Law after 30 days, unless the ruler (Emir)

Emirate of Sharjah. (6) Seats for Ras Al Khaimah. (4) Seats for Ajman. (4) Seats Fujairah. (4) Seats Umm Al Quwain. <http://www.almajles.gov.ae/AboutTheFNC/UndertheFNC/Pages/AboutFNC.aspx>

¹⁷² Ali Khalifa Alkawari. (2011). The people want reform in Qatar ... Also. Almaaref Forum. P46-50

¹⁷³ http://www.shura.om/en/develop_shuranew.asp?

¹⁷⁴ http://www.saudiembassy.net/about/country-information/government/Majlis_al_shura.aspx

returns the bill back to the National Assembly during this period with reasons why he does not wish to ratify this bill. In this case the bill will not pass unless two-thirds of Parliament agrees to it once again.

In Bahrain, the Constitution differentiates between two types of Laws, namely ordinary Laws and Laws governing economic or financial issues. In the first type, the Law making procedures are very similar to the Kuwaiti Constitution, but what reduces the role of the Council of Representatives that elected by the people (Majlis Al-Nuwwab) is that the appointed Consultative Council (Majlis Al-Shura) cannot ratify a bill unless both councils agree on it.¹⁷⁵ The ruler (the King) has the right to approve or return the bill back to the two councils to redraft it or amendment it. Since there is a council appointed by the ruler or a King this will reduce the role of the people in the enactment of Laws in Bahrain. The second type is the Laws regulating economic or financial issues. The Bahraini Constitution gives the king a role in approving the bill where he has the strongest decision. If both council opinions are not compatible, the king has the authority to issue this Law.

In Qatar, the general rules of its Constitution are similar to the rules of the Kuwaiti Constitution, except that the role of the Consultative Council (Majlis Al-Shura) is closer to superficial in this regard.¹⁷⁶ For example, the Constitution stipulates that a majority of two-thirds of the members is needed to overturn the Emir's opinion in non-ratification of the bill, which was passed by the Council the first time and this is no different from what is stated in the Constitution of Kuwait. It is difficult to reach this majority as two-thirds of the council members appointed by the ruler.

¹⁷⁵ which both councils equals in the number of members (40) members

¹⁷⁶ Hassan Abdulraheem al-sayed in Ali alkawary book. 2011. Alshaab yoreed aleslah fee qatar ... aythaan.

In addition to the Qatari Constitution serving the interests of the ruler, the Constitution mentions that in the case of reaching this majority and forcing the ruler to pass any Law, the Constitution gives the ruler the right to stop enforcing this Law if he estimates that it is against or affects the public interest. The Constitution leaves the estimation of the public interest to the ruler and he also has the right to proceed with a Law or stop work on it entirely.

In the rest of the Gulf States,¹⁷⁷ the role of legislative councils in the Law-making process is limited to reviewing bills and raising non-compulsory recommendations to the ruler. Since the recommendations are not compulsory, the ruler (Emir) can accept these recommendations or ignore them.

It is clear from the above that the peoples of the Gulf do not have a real influential role in the enactment of legislation. Except for Kuwait, where the Constitution is set by a contract between the ruler and the people, and the National Assembly Council have some legislative powers, in enactment Law and regulation that reflect the people well. However the rest of the Gulf States the appointed legislative councils did not have the power that in Kuwait national council. Where the most of the Gulf councils are appointment by the ruler, and the decisions of these councils are not compulsory to the ruler, and in many cases, the councils find it difficult to pass their decisions and overturn the will of the ruler. There are a lots of members of the legislative councils and people are against the government policies to open the country for the foreign national which that affect the demographics of the country.

¹⁷⁷ United Arab Emirates, Saudi Arabia, Oman

7.8. The source of Law:

The sources of Law in the regional member countries are similar and include legislation, *Shari'a*, and finally custom. In the constitutions of the member states, the *Shari'a* mentioned as the main source for legislating.¹⁷⁸ This means that there can be sources of Law other than *Shari'a*. For instance, none of the commercial codes of these countries prohibits usury, which is prohibited as *riba* in the *Shari'a*. Therefore, one can infer flexibility in the legal systems of these countries when it comes to importing Laws of Western origin.¹⁷⁹

The influence of Islamic Law is manifested in the civil codes in the region. These codes usually -but not always- exclude rules that contradict Islamic Law. For example, in Kuwait, the civil Law has gone through a process of Islamicisation wherein it became fully compatible with Islamic Law. These codes explicitly state that judges must defer to Islamic Law if the disputed matter is not regulated under these codes. For example, UAE Law dictates in such cases that the judge must start with the *al-Maliki* and *al-Hanbali schools*. If the matter is not regulated in these two *schools*, then he should refer to the *Al-Hanafī* and *Al-Shafīi schools*. If the judge still cannot find a proper rule in Islamic Law, and then he must look to custom.¹⁸⁰

In Bahrain, Islamic Law is less influential than it is in Kuwait, Qatar, Oman and the UAE. The new civil code organises the source of Laws as follows: the first source is the code itself, then custom, then Islamic Law, and finally natural and equity Law.¹⁸¹

This source of Law can be linked to the British influence in the country, as Article 12,

¹⁷⁸ See Article 2 in the Kuwait Constitution and the Bahraini Constitution and Article 7 in the UAE Constitution.

¹⁷⁹ There has been a movement in Kuwait to amend Article 2 of the Constitution to make *Shari'a* the only principle of legislation. Under the current circumstances, this demand will not likely be successful.

¹⁸⁰ See Article 1 in Civil Transaction Law No. 5/1985 amended by Law No. 1/987.

¹⁸¹ Article 1 in Civil Code No. 19/2001.

Section 3 in the Bahrain Order states this source of Law. The commercial Laws are less observant of Islamic Law than the civil codes in that none of the three commercial codes¹⁸² stipulates that Islamic Law is a principal source of Law.¹⁸³ The main reason is that these Laws include many rules that contradict Islamic principles, such as the allowance of *riba*. There was a legal vacuum in commercial Law, which had to be filled by Western Laws.

8. Conclusion:

This chapter has highlighted the main elements in the urban and legal development in the Arabian Gulf countries. Modern technology and the impact of the oil industry have drawn some of the smaller states of the rim area of the Arabian Peninsula to the stream of steady and often extremely rapid modernisation.

The Gulf States have become modern countries since obtaining their independence in the middle of the 20th century. Before that, they had been tribes located in different parts of the Arabian Peninsula. The change came when the British became involved in the region as a Law-keeping mission and in the affairs of the Gulf Emirates that had led to settlements. Since the discovery of oil fields in the beginning of the 1930s, the Gulf Countries begin to draft their own develop plans to establish elements of modern state, starting with new urbanisation plans and with a new codified legal system.

The GCC states have historically exhibited very similar features in their social system in general and in their legal systems in particular, for they share a common heritage of

¹⁸² For more discussion on the U.A.E commercial code, see Mohamed El Saied, Aspects of Banking Law and Legal Practices in Light of the Draft of the Commercial Code of the U.A.E, PhD thesis submitted to Faculty of Law, University of Exeter, 1990.

¹⁸³ See Article 2 in Kuwaiti Commercial Law No. 68/1980, Article 2 in UAE Commercial Transaction Law No. 18/1993, and finally Article 1 in Bahraini Commercial Law No. 7/1987.

Islamic religion and *Shari'a* principles, the Arabic language and geographic and economic conditions. All six countries have reinstalled their own independent legal system and have generally also attempted to introduce a modern framework of written legislation influenced by each other's efforts and by the previous accomplishment of other Arab nation. Thus, prior to the formation of the GCC, the similarity of the legal systems among the Gulf States had both modern and deep historical roots. The current legal systems in the Arabian Gulf countries are all civil legal systems except for Saudi Arabia which based on Islamic *shari'a* Law. These systems were transplanted from the Egyptian model, which is influenced by French Law. The substantive Laws in these countries are more or less the same.

The legal codification process has been underway in the region since the days of the Ottoman Empire in the mid-1800s, when the Empire adopted the French Penal Code of 1810 and then the French Code du Commerce of 1807.¹⁸⁴ The reason that these Laws found their way into the region and the Islamic States, in general, is the fact that Islamic Law had ceased its evolutionary process in the tenth century. Since then, there were but minimal attempts to modernize Islamic Law, although scholars such as Al-Sanhouri have tried to revive the dynamism of Islamic Law in order to meet current challenges and developments, especially regarding commercial transactions. Current legal systems in the Arabian Gulf countries are all civil legal systems except in Saudi Arabia. These civil Law systems were transplanted from the Egyptian model, which is influenced by French Law.

¹⁸⁴ George N. Sfeir, (1998) *Modernisation of the Law in Arab States; An Investigation into Current Civil Criminal and Constitutional Law in the Arab World*, (San Francisco, Austin and Winfield Publications), p. 47.

The evolution of Law in the region has been delayed by obstacles that have prevented of the emergence of Laws that come as a natural result of development in these countries. The first obstacle is the lack of institutional research centres and Law schools in the Gulf region that are concerned with legal developments.¹⁸⁵ The importance of such centres or institutions is crucial; without them there is no systematic research effort that can investigate and analyses the situation in each country in order to come up with tailored legislation. Much of the legal research that is actually conducted is being done by legal advisors from abroad, that is why legal development depends on the legal transplantation from other jurisdictions, mainly Egypt.

The second obstacle can be seen in the civil Law system itself that is been incorporated in these states. The system restricts the judge's ability to participate in the legal development, unlike the situation in common Law jurisdictions. This is an important element in legal development as the judiciary is in daily contact with the locals and the problems that emerge in the society. Therefore, they are qualified and have the ability to participate in legal development in the region. Unfortunately such an opportunity is restricted due to the nature of the adopted civil legal system.

Without tackling these obstacles the countries in the region will continue to depend on legal transplantation as the major, if not the only source, of legal development. Therefore the possibility of having special substantive Laws that can evolve naturally in these cultures is limited.

¹⁸⁵ Most of the schools of Law in the Arabian Gulf region established during the late 1960s to late 1970s. For example: Kuwait 1967, Qatar 1977, Oman 1997, UAE 1978, and Bahrain 1971 while the Saudi Arabia has the *shari'a* schools.

Chapter 3: The historical background of the property ownership in the Arabian Peninsula

1. Introduction

As the previous chapter has outlined the new legal systems and the urban development in the Arabian Gulf countries, it also has shown that Gulf member states have beneficial GDP growth and excellent demographics with high population growth. These good elements encourage investors to invest in the region's real estate market. Since the beginning of the real estate boom in the Arabian Gulf countries in the late 1990s, most governments of the region have supported these real estate projects by offering incentives to attract investors to invest in the property market. The growth of the real estate sector in the Gulf region encouraged the local governments to establish regulatory bodies that would develop regulations and

policies to protect the interests of real estate investors. Thus, it is important for all investors today to know the level of protection for their property rights and to understand the legal framework of real estate ownership in the region.

This chapter will examine the recent evolution of land tenure in the Arabian Gulf countries and the development of the present legal framework of property ownership and the development of the concept of ownership in Islam and the development of the property right and the rules and regulations that regulate the ownership in the real estate sector. This chapter will focus on the development of the present legal framework of real estate ownership in the Arabian Gulf countries. This chapter will discuss the development of the concept of ownership in the Arabian Peninsula during the Islamic countries and during the Ottoman Empire, as well as the historical development of property ownership in the modern countries. This will include detailing the difference of ownership rights between citizens, GCC nationals and foreign nationals (both legal entities and natural persons). In addition, the way in which Gulf countries regulate their real estate sector and the role of land registration departments in regulating land ownership will be considered. The evaluating the level of legal protection of ownership and the states' right to expropriate private property on the grounds of public utility will be examined.

2. The conceptual background of land and property in the Islamic *shari'a* Law:

Before the advent of Islam, neither the concepts of land or property ownership were available in the Arabian world, the only concept was known as "*Himma*". The *himma* grazing system is probably the world's oldest effective range conservation programme. This system can be controlled for use by individuals, by tribes or by

governments. According to Nuzhat Iqbal and Zulfiqar Ahmad has defined “*Himma*” as “a land kept as a preserve in the collective interest of the community and they use share the benefits by some agreements”.¹⁸⁶ In case of the nomadic tribes in different parts of the Arabian region, the strong tribe used to impose such levies or taxes in kind on the weaker tribe to protecting them against any outer danger.¹⁸⁷ These types of levies established a sense of land ownership in the Arabian region.¹⁸⁸

With the advent of Islam, the concept of *himma* was been used by the prophet Mohammed, because it will preserve the strength of the Islamic nation. The concept of *Al-mall* has appear,¹⁸⁹ which is means whatever in effect a human may own and possess, whether it is tangible as corporeal (*‘ayn*) or intangible as usufruct (*manfa’ah*). The tangible can be gold, silver, animals, lands, plants and it could be usufruct benefit such as residing in house or riding of vehicles.¹⁹⁰ On the other hand, whatever a human cannot own cannot be considered as a *mal*.¹⁹¹

For an object to qualify as property (*mal*) in classical Islamic Law, it must satisfy two conditions: the first condition is the possibility of physical possession and the second condition is having potential beneficial uses. The first condition makes it impossible to define intangibles such as health and knowledge as property. Therefore, if one pays

¹⁸⁶ Draz, Omar. (1985). "The Hema system of range reserves in the Arabian Peninsula." *JA McNeely & D. Pitt, Culture & Conservation: The Human Dimension in Environmental Planning*. Croom Helm, London : 109-121.

¹⁸⁷ Gari, Lutfallah. (2006) "A history of the hima conservation system." *Environment and history* 12, no. 2 : 213-228.

¹⁸⁸ Nuzhat Iqbal and Zulfiqar Ahmad Gill.(2000) The Concept of Land Ownership in Islam and Poverty Alleviation in Pakistan. *The Pakistan Development Review*, Vol. 39, No. 4, Papers and Proceedings PART I Sixteenth Annual General Meeting and Conference of the Pakistan Society of Development Economists Islamabad, January 22-24, 2001, pp. 649-66

¹⁸⁹ The *mal* means all things which are capable of being owned. *Al-Qamus al-Muhit*, vol. 4, p. 50

¹⁹⁰ Muhammad Wohidul Islam.(1999). *Al-Mal: The Concept of Property in Islamic Legal Thought*. *Arab Law Quarterly*, BRILL. Vol. 14, No. 4 (1999), pp. 361-368.

¹⁹¹ Wahbah al-Zuhaili, Dr, *Al-Fiqh al-Islami wa Adillatuh* (Damascus: Dar al-Fikr, 1985), vol. 4, p. 40; 'Abd al-Salam Dawud al-'Ibadi, , *Al-Milkiyyah fi al-Shari'ah al-Islamiyyah, Tabi'atuha wa Wazifatuha wa Quyuduha* ('Amman: Maktabah al-Aqsa, 1974), p. 171.

a doctor or teacher, one would pay them for their time (as proxy for effort and service) rather than for the goods they provide. The second condition ensures the existence of considered value for objects deemed to constitute property. The two conditions were jointly crucial for determining legal status of various economic institutions and financial transactions.¹⁹²

The classical jurists further classified property (*mal*) according to a system of binary taxonomies, of which we list the most important three. First, they classified property as either (a) valued property (*mal mutagawwam*), if it is privately owned and has permissible uses for its legitimate possessor, or (b) unvalued property (*mal ghayr mutagawwam*). The second category includes two subcategories: the first is the properties that are not currently possessed, as the public property; the second subcategory is the properties with no permissible uses under normal circumstances, for example, wine and pork. Most of the contractual agreements for total or partial ownership transfer (e.g., sale or lease, respectively) are permissible for valued, but not for unvalued, properties.¹⁹³

The Islamic *Shari'ah* did not ignore the importance of the property ownership, were the word land has mentioned in the Holy Qur'an a number of times, that shows the significance of land and property under the Islamic Law. Generally recognised in Islam that Allah is the creator owner and Lord Sovereign of "all that is in the heavens and on the earth" And the whole earth is belonging to Allah. The Holy Qur'an clearly reflects that everything on the earth belongs to Allah¹⁹⁴ "*To him belongs whatever is*

¹⁹² Sait, Siraj, and Hilary Lim. (2006) "Land, Law and Islam." *Property and Human Rights in the Muslim*.

¹⁹³ Mohammed A. El gamal. (2006) *Islamic finance, Law, economics and practice*. Cambridge University Press. P.36

¹⁹⁴ S-An-Nisa (4):126 & 134)

in the heavens and on earth."¹⁹⁵ And in another Qur'anic ayat states "*His is the Kingdom of the heavens and the earth and all that lies between them.*"¹⁹⁶ Where in Islam the lands of the earth is meant for the common use and benefit of the public, God (Allah) has provided the human beings the ability and power to operate, benefit and exploit the resources He has kindly bestowed upon them.

3. The concept of land ownership in Islamic *Shari'ah* Law and the concept Trusteeship:

The fundamental principle in Islam relating to land or property ownership is the concept of land vests only in God "Allah". The principal envisaged that land, as a free and universal gift from Allah, must be utilised to the fullest. It was also given to men for their common use plus for the general welfare of the society. Kingdoms or emperies and another method of control by man over man and others are mainly trusts.¹⁹⁷ Where the Islamic principles emphasizing that land is a sacred trust for human beings and should be put to continuous productive use.¹⁹⁸ However, excessive exploitation and accumulate of land are prohibited, Islamic property right are conditional on the requirement that property not to used wastefully, or in way that will deprive others of their justly acquired property. In 2005, Guner stated that "Islam is against those who accumulate lands for the purpose of greed or oppression as well as those who gain through un Lawful business practice" Where the humans are just a

¹⁹⁵S-An-Nisa (4):126 & 134)

¹⁹⁶ (Surah al-Zukhruf(43): 85; Surah Al-Maidah (5) : 120)

¹⁹⁷ ¹⁹⁷ Sait, Siraj, and Hilary Lim. (2006)"Land, Law and Islam." *Property and Human Rights in the Muslim*.

trustee answerable by Allah for the manner in which he discharges and executes the role reposed on him.¹⁹⁹

The holy Quran categorically illustrate that absolute ownership of everything belongs to Allah alone and He has subjected it to humans to derive benefit from it. Based on that the people or the State Authority only a simple trustee and they must attempt to meet the role reposed upon them in accordance to Allah's will. The focal point of ownership in Islam is to delegation or trusteeship, where the people have only the right of access to the property they own and have the power only as much as they implement God's Law and will.²⁰⁰ Humans' are entrusted the role of being a vicegerent. Thus, he has to deliver and fulfil that trust with utmost care and in the manner outlined in the Shari'ah Law.²⁰¹

4. Right to Private Ownership under the Islamic Shari'ah:

The Islamic *Shari'ah* treated the concept of ownership in highest care and it specified and defined the properties that capable to be owned. Also, the ownership rights over such real property are protected and stipulated by laying down rules and guidelines for the people that would be guided them and will not abuse the power and authority thereby accorded to them by Allah.²⁰² The ownership under the Islamic *Shari'ah* Law

¹⁹⁸ Sait, Siraj, and Hilary Lim. (2006)"Land, Law and Islam." *Property and Human Rights in the Muslim* (2006).

¹⁹⁹ Al haj Adeleke Dirisu Ajijola, (1977)*The Islamic Concept of Social Justice*, Islamic Publications Ltd., Lahore, p.60.

²⁰⁰ Aidit Ghazali & Syed Omar bin Syed Agil,(1989) Readings in the Concept & Methodology of Islamic Economics, Pelanduk Publications Sdn. Bhd., Petaling Jaya, p. 76.

²⁰¹ Al Haj Adeleke D. Ajijola, supra n. 5, p. 161. It is to be noted that capitalism and socialism are alien and indeed very much condemned in Islam due to the fact that both are inimical to social wealth.

²⁰² Salasal, S. M. M. S., and Siti Mariam Malinumbay. (1998). "The concept of land ownership: Islamic perspective." *Buletin Geoinformasi* 2, no. 2 : 285-304.

gives the owner the rights and ability to exploit and utilize the wealth and resources and such right is transferable only through legitimate methods.²⁰³

Land right includes gives the owner the right to use and the right benefits from property, such as usufruct or rent and the right to prevent others. Many Philosophers, sociologists, Lawyer, economist and anthropologists' scholars have a differing perspective on the nature and the scope of property right, but they all agreed that the property right is a bundle of rights that includes an acquisition, the right to use and to management, control and transfer of the property. Despite the widespread assumption that property right originated in western philosophical and socio-political thought, they are evident also in Islam theory.²⁰⁴

Under the *Shari'ah* Law every human beings are entitled to the ownership, possession, enjoyment and transfer of property, a right which must be respected and safe guarded by his fellow men and the State.²⁰⁵ In other words, ownership of property is a right recognized in Islam and should to be enjoyed by the whole society. The Holy Prophet in his last haj when he said: "*Your lives and properties are forbidden to one another till you meet your Lord on the Day of Resurrection.*"²⁰⁶ This includes the right of enjoyment and compensation, investment in business, transfer and occupation of property.²⁰⁷

The right of private ownership is not prohibited under the Islamic *Shari'ah* Law; and no provision forbids an individual from owning property; the human has deemed

²⁰³ Salasal, S. M. M. S., and Siti Mariam Malinumbay.(1998). "The concept of land ownership: Islamic perspective." *Buletin Geoinformasi* 2, no. 2: 285-304.

²⁰⁴ Abd Al-Khader, A. (1959) 'land, property and land tenure in Islam', *Islamic quarterly*, 5.

²⁰⁵ Muhammad Hashim Kamali, (1989)"The Limits of Power in an Islamic State," *Islamic Studies Quarterly Journal*, Vol. 28, Islamic Research Institute, IIU-Pakistan, p. 344.

²⁰⁶ Sahih Muslim, Kitab al-Haj, Vol. 2, p. 615.

²⁰⁷ Salahuddin, Bunyadi Huquq, p.242 cited by Showkat Hussain, supra, p. 104.

rights and liabilities. In fact, Islam has much encouraged Muslims to own property and take advantage from the land as long as he uses it properly.²⁰⁸ However, even though such form of ownership is predicated in Islam, the State nevertheless reserves the right to take it from him for the need and the public benefit (*Maslahah*). Accordingly, property in Islam has a social function apart from fulfilling the needs of the owner proprietor.

The private ownership protection is also recognizes in Islam, where any person or landowner under the Islamic Law is authorized to protect and defense his property. Both the holy Quran ayat and the prophet Hadith have confirmed the protection of the private ownership. Where the holy Qur'an stated that *"And do not eat up your property among yourselves for vanities, nor use it as bait for the judges, with intent that you may eat up wrongfully and knowingly a little of (other) people's property."*²⁰⁹

Therefore, severe punishment is applicable upon those who dare transgress the limits and guidelines decreed by Allah²¹⁰. The stem punishment in Islam for theft is an indication and sign of the sanctity of the right of individual ownership or property; also a way in which it is guarded and prevented from being infringed. To afford further protection and abuse from any quarter of the community the Qur'an again said in Surah an-Nisa to the effect: *"O you who believe! Eat not up your property among yourselves in vanities; but let there be amongst you traffic and trade by mutual*

²⁰⁸ Sait, Siraj, and Hilary Lim. (2006) "Land, Law and Islam." *Property and Human Rights in the Muslim*

²⁰⁹ The holy Qur'an, Surah AlBaqarah (2): 118).26

²¹⁰ "As to thief, male or female, cut off his or her hands: A punishment by way of example, from Allah for their crime". The holy Qur'an, Surah AI-Maidah (5): 38

*goodwill.*²¹¹ Another prophet hadith that deals with the protection of private property or ownership is the hadith of the Prophet, which says that: *"No person's property is Lawful to be taken except by his consent."*²¹² This hadith advised men not to approach and take up somebody's property through un Lawful means. It also prohibits possession by all methods that lead to the destruction and loss to any individual or the society at large. Islam calls for the principle of Lawful permission for ownership and keeps conditions and limitations ensuring ownership without oppression and exploitation to others.²¹³ While Islam recognizes the right to use one's property it does not favour nor condone or grant the freedom to destroy, squander away or use one's property for illegitimate purposes.²¹⁴

5. Expropriation in Islamic shari'ah Law:

Under the *Shari'ah* Law, neither the individuals nor the State is authorized to interfere or expropriate private property on any basis not recognised by the Islamic *Shari'ah* Law.²¹⁵ The Qur'an clearly prohibits the humans to infringe on another's property unless it is for the public utility and it should be through legal means, Lawful trade and agreement by consent of the owner.²¹⁶ Relevant hadith on this point declare to the effect: *"What belongs to a Muslim is forbidden to others except by virtue of his consent,"*²¹⁷ and another hadith stated that *"Surely no man's property is Lawful for you, save only with the goodwill of the owner."*²¹⁸

²¹¹ The holy Qur'an, Surah An-Nisaa (4): 21).

²¹² Narrated by Muaz bn Jabal AI-Wahbah AI-Zuahaily, Figh AI-Islam Wa Adillahtuh, Vol V, (Damascus, Darul Fikr)(Arabic Text), (1989), p. 561.

²¹³ Ahmed AI-Maamiry, supra, p. 55.

²¹⁴ Muhammad Nejatullah Siddiqi, supra, p. 120.

²¹⁵ Muhammad Hashim Kamali, supra, p. 344. The Shari'ah Law recognised certain grounds for valid transfer of property such as sale, gift (hibah), inheritance etc.

²¹⁶ The holy Qur'an, Surah An-Nisaa (4): 29

²¹⁷ See Abu Bakr Ahmad AI-Bayhaqi, Sunnah AI-Kubra, Vol. 10, (Eeirut Dar Al Fikr) (n.d.) III, 10).

²¹⁸ Miskat AI-Masabih, Vol. I & II, p. 630 reported by Abu Hurrah Ar-Raqashi and Baihaqi transmitted it in Shu'ab AI-Imn & Daraqutni in Mujtaba.

Islam recognised and guarantees the security of property ownership, however in the private ownership interferes with the public benefit, the public interest will overcome the private ownership, but any acquisition for the public utility should be a Lawful means.²¹⁹ For example, the Holy Prophet had to acquire a number of private properties for a construction of a mosque for the public in the city of the *Madinah* with the owner's consent and with a fair compensation paid to the owners in accordance with the market price.²²⁰ Under the Islamic Law, the compensation amount should cover the loss of ownership of property, but it also includes indemnify the owner of his expenses incurred on the land. The owner of a property must bear in mind that what he own is only the right to use the land and what he owned is the benefit or usufruct from the land.²²¹

6. The land system in the Ottoman Empire:

Under the Ottoman Empire, land tenure systems were solidly anchored in *Shari'a* Law and reflected the evolution of Islamic jurisprudence over 1,500 years. In relation to the property, Article 125 of Ottoman codified Law (*Majallat al-ahkam Al-adliyya*) defined owned property, as “anything owned by human being, be it a special property or usufruct of a property”.²²² The Ottoman Land Code of 1858 established five categories of land tenure that still serves as the basis of modern land Laws: privately owned land (*mulk*); religious endowments (*waqf*) that retain such designation in perpetuity; communal land and pasture (*musha*); state land (*miri*) and “dead” or uncultivated land (*mewat*).²²³ The Ottoman practices of land registration entailed

²¹⁹ See Showkat Hussain, *supra*, p. 105.

²²⁰ Also in the Battle of Hunayn when the Holy Prophet acquired the kelmets of Safwan bn. Ummaiah, he compensated him, Amin Ahsan Islahi, *Islami Riyasat*, Volume 4, p. 13 cited by Showkat Hussain *supra*, p. 105.

²²¹ Salleh Buang, (1989). "Law of Real Property in Malaysia," *IID-Law Journal*, Vol. I No.!, p. 92

²²² Inalcik, Halil. *The Ottoman Empire: 1300-1600*. Hachette UK, 2013.

²²³ McGowan, Bruce. *Economic life in Ottoman Europe: taxation, trade, and the struggle for land, 1600-1800*. Vol. 5. Cambridge University Press, 1981.

either a court seal on a document demonstrating proof of ownership or the transfer of property or witnesses (*hujja*) affirming the transfer of property. The Ottomans issued the Law of the land in 1858, followed by a list of instructions and regulation of the taboo (land title) in 1859. The taboo Law has been issued in 1861 in order to regulate the taboo system, and extension system taboo in 1867, and the foreign ownership system in 1869, and under this Law.²²⁴

7. Land-related Laws from the Ottoman government (the Ottoman Land Law of 1858)

The purpose of issuance the Land Act 1858, to control on the land ownership, and make disposition of the land through specific Laws set by the State; the state began to divide land through specific Laws set by the state as explained previously, and made a special provisions and Laws for each part of these lands. The ottomans state has issued several complementary regulations to the Land Law to strengthen the state control on the land; on 1859 issued the land title (Taboo) regulation and the Land Registry Act 1861.²²⁵ This Law has regulated the dispose of land, and in some cases, the dispose right has to prove contractual documents (called arguments legitimacy) should be certified from the judiciary. In the event of a dispute or conflict between peasants on the land, the people of the village oral testimony will be determined the property, which led to disputes and the ongoing disputes between peasants.

Before discussing the legal framework of real estate ownership in Gulf civil legal systems, it is worth mentioning the existence of the concept of ownership in the Arabian Peninsula. For many centuries, the Arabian Gulf Peninsula was mostly made up of desert apart from a few cities such as the religious cities of Mecca and Medina

²²⁴ McGowan, Bruce. Economic life in Ottoman Europe: taxation, trade, and the struggle for land, 1600-1800. Vol. 5. Cambridge University Press, 1981.

²²⁵ Inalcik, Halil. (1955)"Land problems in Turkish history." The Muslim World 45, no. 3: p.221-228.

and the small coastal areas around the Arabian Peninsula where only tens of thousands of people lived in these cities, and the majority of the population were part of nomadic tribes.²²⁶

The Arabian Peninsula was an open area shared between the tribes and the people who were living in the cities. At the time, the concept of property and personal ownership in its current form existed only in the cities and in the agricultural areas surrounding these cities. This ownership was controlled, documented and registered by the Islamic *Shari'ah* scholars and the judges who appointed by the ruler based on their fairness and their probity. Most of the land related documents and transaction are based on the Ottoman land Law of 1859 issued the land title (Taboo) regulation and the Land Registry Act 1861. The Ottoman land registration Law is also been used in different part of the Arabian Peninsula; For example, in the western side of Saudi Arabia there is a number of lands are still registered under the Ottoman land Law. Another example, on the existence of the Ottoman land Law was used in Kuwait during the 1800s the legal documentation was called the *AlAdsaniat*, which was drafted by famous judges from *Al-Adsani* family. These documentations spanned for nearly three centuries, and it was a part of Kuwait's modern legal history. This document considered the legal instrument to property ownership of any house in Kuwait.²²⁷ However, these documents are not limited to property houses, but it was also to documenting the endowment, charity and donations. In contrast, ownership in the tribal areas was characterised by common ownership or collectivism where all the

²²⁶ Khaldoun Alnaqeeb, (1989). 'Society and the state in the Gulf and the Arabian Peninsula from a different perspective.' Center for Arab unity. P.13

²²⁷ <http://www.kuwait-history.net/vb/showthread.php?t=4829>

individuals of a tribe shared everything owned by the tribe such as land, weapons, cattle and any other movables.²²⁸

The British colonialists who entered the region brought with them the legal concept of political organisation in the Gulf countries. This considers as the beginning of the legal and political divisions which began to demarcate the borders of these lands at an international level, and which consequently affected the tribes in their movements from one place to another. This resulted in the emergence of the concept of land ownership at an international level.²²⁹

The role of the British to work on the land title registration, where in the past the only way to register a land was by tracking back the chain of ownership of the previous titleholders. In the Arabian Gulf, there were no chain of ownership in the old days, due to the specific number of people living in the city and most of the people know each other's. If there any sale purchase contract in relation to a land or house, usually the contractors go to the judge to draft the contract and they have to bring with them two wetness (based on the Islamic Shari'ah Law)

Most of the residents of these areas were nomadic tribes and they did not used to the concept of citizenship or belonging to the land or the homeland. The tribe, in general, do not operate through the concept of belonging to a particular country or anywhere in the region, but instead, they have an affiliation to the tribe's blood, as well as an affiliation to the area where their tribe lived. The movement of these tribes ware

²²⁸ Ibrahim Al-Dosoki Abou Al-Leel. *Sharh ahkam Alganoon almadani: alhoquq Al-aynyah al-asliyah*. Publisher, Dar Alkutob P.34 (Arabic Book)

²²⁹ Khaldoun Alnaqeeb, (1989). 'Society and the state in the Gulf and the Arabian Peninsula from a different perspective.' Center for Arab unity. p.11

affected due to the presence of resources such as water and grass for grazing as shown in the previous chapter.²³⁰

This situation continued until the beginning of the development process of the Gulf region, which occurred after the discovery of oil and after the division of the international borders between the Arabian Gulf countries in 1922. This was the beginning of the concept of affiliation or citizenship and loyalty of these tribes to the state.²³¹

The beginning of the economic and social development in these countries grew with the discovery of oil, especially in the late 1940s and 1950s. The settlement of the Gulf cities began with urban growth and the influx of foreign labour into the region.²³² In the case of Saudi Arabia there was also a political factor, where the King of Saudi Arabia attempted to establish the concept of affiliation to the land and to settle these tribes in one place. Since the tribes did not have a particular place in the area, a foreign political force against the King and the ruling authority could exploit them against the king. The King of Saudi Arabia attempted to control these tribes by building hundreds of new houses and new villages (*al-hejjar*) for these tribes to settle in.²³³

The development resulting from oil revenues during the 50s-60s marked the beginning of the affiliation of the people with the state, where the process of employment, education, and health treatment that began resulted in the establishment of new villages, cities and residential areas around the main capital cities which

²³⁰ Khaldoun Alnaqeeb, (1989). 'Society and the state in the Gulf and the Arabian Peninsula from a different perspective.' Center for Arab unity. p.13

²³¹ Ibid. p.15

²³² Ibid. p.15

²³³ Dhonte, Pierre, Rina Bhattacharya, and Tarik Yousef. (2000). Demographic Transition in the Middle East-Implications for Growth, Employment, and Housing. No. 2000-2041. International Monetary Fund, 2000.

helped the process of settlement in these countries.²³⁴ The movement from one place to another by the tribes began to decrease and the concept of citizenship and the importance of private property began to grow. In addition to that, the sharp increase in the oil prices during 1970 is a major factor behind the large influx of foreign labour in the region; this was the beginning of regulating properties and land registration in these countries.

The Gulf States passed through a social, economic and political transformation period never witnessed before. The most important of these transformations was the transition from nomadic, tribal and rural life to urban life that was characterised by many of the characteristics of civilisation, which have assisted the process of building the modern Gulf societies. This short background indicates that property ownership is a new phenomenon in the region, which began in the 1950s.²³⁵

8. Regulating property ownership in the modern state

The development of the Law of real property in the Gulf region is essentially a development from a traditional Law, mostly Islamic in charter, to a modern Law, with some characteristics of the traditional system that reflect many aspects of contemporary Gulf regional life.

The legal framework of property ownership began to grow in the region, as did the need to establish governmental institutions to organise the real estate ownership in these cities. With the establishment of the Gulf countries (depend on the Gulf states) the Gulf legislatures began to issue the main legislation that the country can stand on such as the constitution, the civil Law, the commercial and company Law, the

²³⁴ Bashar M. Zeitoun.(2012). Population, Consumption, and Sustainability Options, The Case of the GCC Countries. <http://www.afedonline.org/report2012/PDF/English/6.pdf>

²³⁵ An interview with the former manager of Kuwait municipality Mr Almoasherji Dated 21-11- 2012.

criminal Law, and land registration Law and other Law that is important to establish the modern country. During the period from 1940 to 1970, most of the Gulf countries started to create housing projects and establish new cities and villages near the main cities to accommodate these nomadic people and to settle them in these new cities. This was done in addition to the governments providing them with the necessities of life to encourage people to live in these new cities.²³⁶

The governments of the Gulf countries began to establish new cities, villages and housing projects and to distribute the title deeds of these properties to the new citizens as a grant.²³⁷ With increased development and with liquidity resulting from oil, some of the Gulf States began trying to organise the historic cities which had been built up in a disorganised way.²³⁸ They aimed to build a new capital city that befitted the level of development of these countries by restructuring the infrastructure and reorganising these old cities in a modern way.²³⁹ Most of the properties of the old cities had been built up in a disorganised way and were owned by the citizens who already lived there. There was also no clear difference between public and private property at that time and the construction and the organisation of these cities was random.²⁴⁰

²³⁶ In the case of Kuwait the development begins in 1950. The development in Bahrain occurred in the same period. Dubai in beginning of 1970s. Qatar 1970s . see Ishaq ,y Qutob. Abdul Elah Abu Ayash, (1979), *Alnemow Al-hadary fee Dowal Al-Khalej Al-Arabi*. Kuwait University. Wekalat Almakbtat Kuwait. P. 79

²³⁷ Khaldoun Alnaqeeb, 1989. 'Society and the state in the Gulf and the Arabian Peninsula from a different perspective.' Center for Arab unity. P.11

²³⁸ For example, the government of Kuwait has expropriated the whole old city to restructure and organised the capital city.

²³⁹ For Example the city of Abu Dhabi has organised three times during the 70s.

²⁴⁰ Fadel Albuainain. Urbanisation in Qatar: a study of the residential and commercial land development in Doha City, 1970-1997. Unpublished PhD Thesis. E. S. R. I. European Studies Research Institute. Department of Geography. University of Salford, Salford, UK. P70.

9. Regulation property ownership in the Gulf countries: and the constitutional protection of property rights

The right of property ownership is recognised in Islam, and every Muslim and non-Muslim is entitled to the ownership, possession, enjoyment and transfer of property²⁴¹ and provides protection of private ownership. This is confirmed in both the Qur'an and the Hadith of the Prophet. Accordingly, severe punishment is enjoined upon those who dare to transgress the limits and directions decreed by Allah. The Qur'an categorically states "Your lives and properties are forbidden to one another till you meet your Lord on the Day of Resurrection."²⁴² Similarly, the Hadith states: "*No person's property is Lawful to be taken except by his consent*".²⁴³ Islam recognises the security of ownership, and not even the state can take a property from someone without his consent and without fair compensation.²⁴⁴

With the independence of the Gulf countries from British colonialism, and with the beginning of the establishment of the new states, the constitutions of the Arabian Gulf countries sought to ensure the protection of private property. All the constitution of the Arabian Gulf states has recognise the private property and adds provisions to protect it, for example, Article 27 of the Qatari Constitution states that "*Private ownership of property shall be protected. No one shall be deprived of such ownership, unless because of public interest in circumstances stipulated by the Law, in a way that the Law stipulates, provided it is with a fair compensation*".²⁴⁵ Similarly, the Kuwaiti

²⁴¹ Siti M. Malinumbay and others, (1998). *The concept of land ownership: Islamic perspective*. University Teknologi Malaysia. Buletin Geoinformasi , Jld. 2 No.2, p. 285 - 304,

²⁴² Muhammad Hashim Kamali, (1989). "The Limits of Power in an Islamic State," *Islamic Studies Quarterly Journal*, Vol. 28, Islamic Research Institute, IIU-Pakistan, p. 344.

²⁴³ Narrated by Muaz bn Jabal AI-Wahbah AI-Zuahaily, *Figh AI-Islam Wa Adillahtuh*, Vol V, (Damascus, Darul Fikr)(Arabic Text), (1989), p. 561.

²⁴⁴ Malinumbay, (1998). *The concept of land ownership: Islamic perspective*. University Teknologi Malaysia. Buletin Geoinformasi , Jld. 2 No.2, ms. 285 - 304,

²⁴⁵ Qatar Constitution Article 26

Constitution states that: *“Private property is inviolable. No one shall be prevented from disposing of his property except within the limits of the Law. No property shall be expropriated except for the public benefit under the circumstances and in the manner specified by Law, and on condition that just compensation is paid.”*²⁴⁶

Procedures have been adopted by the legislature to eliminate assaults on this protection and to maintain public order, and this protection is stated in several Laws such as in civil, administrative, criminal and judicial Laws.

10. The regulation of ownership (public-private ownership)

Land ownership is a big legal and political issue in Gulf member states because regulation has struggled to keep up with the growth of the cities and the number of people living there. The constitutions of the Gulf member states have general rules of property ownership and enforce the regulation of ownership through their civil codes. For example, the constitution of Kuwait and Qatar enjoins the legislature to clarify the provision of state property management and the disposal of the state’s property.²⁴⁷

The civil codes of the Gulf States codify and regulate the property ownership and differentiate between real property and personal property as well as state property and private property.²⁴⁸ Gulf legislators define property as anything that is owned by a person or entity and it is divided into two types: the first type is real property which includes interests in land, real estate or improvements on them, and the other type is personal property. The civil codes give owners the right of possession, enjoyment, exploitation and disposition of something tangible within the Law.²⁴⁹ However, the ownership protection is not absolute; it is subject to regulation and to certain

²⁴⁶ Kuwait Constitution Article 18

²⁴⁷ Kuwait constitution article 138. Qatar constitution Article 98

²⁴⁸ See Qatar Law No. 10 of 1987 the sates public and private property. Also see Kuwait Law No 105 of 1980 regulating the state’s property.

²⁴⁹ Article 810 of the Kuwaiti civil code

considerations consistent with “the social function” of the right of ownership.²⁵⁰ This includes cases where there is a conflict of private interest with public interest; the legislature usually will give priority to the public interests over private interests. In these cases, the legislature can expropriate private property for public utility as long as there is fair compensation. The civil codes of the Gulf States provide that the ownership of land include the ownership of all that which lies above and under the surface of the land, to the extent that it can be beneficially used by the owner. In this case however public interest takes precedence over the owner’s right: the state may utilise the air space or the land below for any purpose if such utilising is not detrimental to the property.²⁵¹

The Gulf countries do not have a single specific, codified, source of property Law to regulate all real estate transactions.²⁵² In other words, there is no clear legal framework for real estate transactions in the region. However, there are number of Laws, ministerial decrees and regulations that aimed to regulate real estate transactions, such as the Land Registration and Expropriation Law. The GCC national and foreign Real Estate Ownership Laws, the Tenancy Law that regulates the relationship between the landlord and the tenant, and the Commercial Company Law that regulates land and property ownership by companies – whether this is for commercial, agricultural or investment purposes.

²⁵⁰ Kuwaiti civil code Article 802 stated that the right of ownership “*the owner of the thing alone in the limits of the Law the right to use it and exploit and dispose of it*”

²⁵¹ Article 810 – 830 of the Kuwaiti civil code

²⁵² Similar to Land Law in the UK. Where a single codified Law that regulates most of the land related transaction

11. The regulatory framework of property ownership in the Arabian Gulf countries

The land is a fundamental resource of the nation-states. Without land, without territory, there can be no nation-state. The legal framework of property or land ownership in the Gulf states has passed through three different stages: the first stage limited property ownership to nationals; the second stage occurred during the rise of Arab nationalism; and the final stage has coincided with globalisation and the liberalisation of international markets, this stage has allowed foreigners to own real estate.

11.1. The first period: ownership by state nationals

The first stage took place between the 1950s and 1970s, after the discovery of oil and after the Gulf countries became independent. Most of the Gulf countries adopted policies called the Foreign Ownership Restrictions (FORs) that aimed to restrict foreign ownership and to control foreign investors in the region.²⁵³ Each country has the right to regulate its natural resources, as well as to establish rules, regulations and restrictions on foreign ownership in its territory according to its economic, political and social interests without violating international Law. These policies also came about due to the link between land ownership and the sovereignty of the state.

The Kuwaiti legislature clearly stated that property title is restricted to Kuwaiti nationals “in relation to the real estate registration Property ownership in

²⁵³ Mohammed Haitham Salman. (2004). The UAE's statutory foreign ownership restrictions: rationales, impacts and alternatives. A Thesis Submitted In Partial Fulfilment of the Requirements for the Degree of Doctor of Philosophy. University of Portsmouth.

Kuwait is restricted to Kuwaitis”.²⁵⁴ Similar legislation was also passed by legislators in Bahrain,²⁵⁵ Qatar,²⁵⁶ Oman,²⁵⁷ UAE, Abu Dhabi,²⁵⁸ and Dubai.²⁵⁹ During that period, most of the Gulf legislators prohibited foreigners from owning property in their country and confined property ownership to its citizens. The foreign ownership restriction was not only of properties, but also included the ownership of national commercial companies in the region.²⁶⁰ Most Gulf legislators have limited the foreign shares in commercial companies to no more than 49%.²⁶¹

It is worth mentioning that during the British colonial period foreigners were allowed to own property in some Gulf countries, such as Bahrain. With this ownership came the automatic right to vote in municipal elections.²⁶² After independence restricting foreigners from buying properties and restricting nationals from selling property to non-Bahrainis.

²⁵⁴ Kuwait Land Registration Law Decree No. 5 of 1959 Article (5).

²⁵⁵ According to the **Bahrain** land registration Law No 15 of 1979 Article 9 stated that “the ownership of lands and a property was restricted to nationals only, and restricts national to sell any property to any foreigner”.

²⁵⁶ The **Qatar** legislator adopt the same policy of Kuwait, as article 3 of Qatar’s land registration Law No 14 of 1964 clearly stated that “the right to own property is limited to the Qataris”. Exception may be granted to this right for the Arab nationals on a condition of reciprocity and under the conditions laid down by the government.

²⁵⁷ **Oman** regulates real estate sector by the Land Law Royal Decree 5 of 1980 which states that “all land in the country is the property of the state, unless specified otherwise”. The Law permits Omani nationals to enjoy the benefits of owning land on freehold and leasehold bases.

²⁵⁸ **UAE, Abu Dhabi**, Law No 19 of 2005 concerning Real Estate Property

²⁵⁹ **UAE, Dubai**, Law No 7 of 2006 Law NO (7) of 2006 concerning real property registration

²⁶⁰ Mohammed Haitham Salman. (2005) *The UAE's Statutory Foreign Ownership Rationales, Impacts and Alternatives*. A Thesis Submitted In Partial Fulfillment of the Requirements for the Degree of Doctor. University of Portsmouth.

²⁶¹ Kuwait commercial Law No 68 of 1980. UAE commercial companies Law No. 8 of 1984.

²⁶² Omar, h alShahaby. (2011). Pulling the Roots, *Real estate projects and Understanding the Population anomaly in the GCC*. Center for Arab unity. P.13

11.2. The second period: 1970s Arab nationalism

During the 1950s and 1980s, the idea of Arab nationalism (*al-Qawmiyya al-arabiyya*) brought with it the belief that the Arab people were one nation linked by language, religion, culture, history, geography and interests and that there should be a single Arab state stretching from the Atlantic Ocean to the Arabian Sea.²⁶³

Based on this belief, some of the Gulf countries changed their policies in relation to property ownership allowing all Arabs to own real estate.²⁶⁴ However, there were still some restrictions on Arabs (non-Gulf nationals and foreign nationals) property ownership whether for residential or commercial purposes. In Kuwait, for example, foreign national ownership was regulated under the Law Decree No. 74 of 1979 which provided the general framework for foreign ownership in Kuwait. This Law allowed only Arabs who were permanently resident in Kuwait to own one piece of real estate in Kuwait for residential purposes only, and this decision needed to be decreed by the Council of Ministers, which could be quite a drawn-out process.

Foreigner nationals other than Gulf citizens or Arabs were not permitted to acquire real property. The Arab applicant should be legally resident in Kuwait, his income should allow him to purchase a property but there are some conditions that should be met by the applicant, for example, there should be no judgment should have been issued against him concerning moral turpitude or dishonesty during his time in Kuwait. The property should only be for residential purposes, and the property size should not exceed 1000 square metres. The applicant should not own other property in Kuwait and the country that the applicant belonged to should treat Kuwaitis in a

²⁶³ Ghazal, Amal N. (2010). *Islamic reform and Arab nationalism: expanding the crescent from the Mediterranean to the Indian Oc.* New York, NY : Routledge, 2010

²⁶⁴ Adeed Dawisha. (2003) "Requiem for Arab Nationalism" by, Middle East Quarterly,

similar way. Non-Arab citizens, however, were not permitted to own property in Kuwait.²⁶⁵

Other Gulf states allow Arab nationals to own a property in their territory under certain conditions, these conditions usually has been set by the council of ministers or by the ruler himself. If the applicant met these conditions, the ownership permissions decree will be issued under the council of minister allowing that Arab national to own a property in designated areas.

11.3. Ownership during the globalisation period

Historically, many foreign nationals have hesitated to invest in the Arabian Gulf's real estate sector due to the uncertainty of what type of ownership they could actually hold in the country they invest in.²⁶⁶ At the beginning of the new millennium, the Foreign Ownership Restrictions (FORs) were being re-evaluated and deregulated. Some of the Gulf countries issued new legislation that reflected the vision and strategies of the region in opening up markets to foreign investors by offering many incentives to invest in the region, such as through real estate ownership and linking the ownership of property to a life time residential visa.²⁶⁷

These policies aimed to channel foreign investment into major real estate projects and in some GCC countries.²⁶⁸ Some Gulf States have even divided their territories into two types of geographic zones, the first type called the investment zone where

²⁶⁵ Kuwait. Law Decree No. 74 of 1979 which provided the general framework for foreign ownership in Kuwait

²⁶⁶ Jimmy Haoula., Rima Mrad., and Mamoon Ashraf. (2013). 'United Arab Emirates. GTDT Real estate 2013'. Bin Shabeeb and associates. [Getting the Deal Through](#)

²⁶⁷ Mohammed Haitham Salman (2005) *The UAE's Statutory Foreign Ownership Rationales, Impacts and Alternatives*. A Thesis Submitted In Partial Fulfillment of the Requirements for the Degree of Doctor. University of Portsmouth.

²⁶⁸ Omar, h alShahaby. (2011). *Pulling the Roots, Real estate projects and Understanding the Population anomaly in the GCC*. Center for Arab unity. p.99

foreigners are allowed to own property and the other type restricted to local citizens only.²⁶⁹ The open economic policies of some Gulf States have given the right of permanent residence to foreigners who own property in their territories.²⁷⁰ The Economic Freedom Index (2009), published by the Heritage Foundation and the Wall Street Journal, ranked Bahrain as the most liberal economy in the MENA region and overall ranked it 16th in the world.²⁷¹

Bahrain

Bahrain was the first Gulf state to issue a decree allowing Gulf nationals or legal entities (owned by Gulf nationals) to own real estate in some areas as long as the land did not exceed two properties and three thousand square metres.²⁷² However, for many years non-Gulf citizens were not entitled to buy property in Bahrain. Following the relaxation of that rule, foreign buyers are now permitted to buy certain types of properties in certain areas within the kingdom of Bahrain.²⁷³ In 2001, new Law No 2 of 2001 has been issued to set the designated areas that permissible for foreigners to own property in these designated areas.²⁷⁴ This allows natural persons and commercial, industrial and tourism companies, banks and financial institutions partly

²⁶⁹ Such as Qatar, Bahrain, Oman, KSA, Abu Dhabi and Dubai in the UAE. All of these countries has set a designated area that foreigners can own a property in it.

²⁷⁰ AlShahabi.2011. p.99

²⁷¹ Prnewswire. *Bahrain Leads MENA Region on Economic Freedom* <http://www.prnewswire.com/news-releases/bahrain-leads-mena-region-on-economic-freedom-60897372.html> , (accessed 23-3-2015).

²⁷² Bahrain was the first country in the Gulf to regulate GCC national's ownership. See Decree Law No.1 of 1995 to organise the real estate ownership of GCC nationals

²⁷³ <http://www.moic.gov.bh/MoIC/En/MoIC+Centers/BahrainInvestorsCenter/BusinessEnv/LandandProperty/Land+Ownership.htm> , (accessed 23-3-2015).

²⁷⁴ Council of ministers decree no. 5 of 2001 to set the designated of residential and commercial buildings category 10 floors or more in the area of Manama, namely: suburb of Ahmed Al Fateh (Juffair previously)-Hooraa suburb-Bugzala area-Seef (Buildings category 10, 5 and 3 floors- A northern suburb of Manama, including the diplomatic area- tourist areas following: Durrat Al Bahrain Bay area-Dannatt dialogue area-Amwaj Islands area-And in the lands of investment projects carried out by commercial and industrial companies, tourism and banking and financial institutions, health and education and training

or wholly owned by foreigners, which are licenced in Bahrain, to own a property and land for the purpose of establishing permitted economic projects.²⁷⁵

United Arab Emirates

In UAE, non-Gulf nationals living in the UAE were previously only permitted to rent or own property on a 99-year leasehold basis. This changed in 2002, when the government of Dubai permitted foreigners to own the freehold of a property and this transformed the real estate industry in the region. It is worth mentioning that there is no such federal Law regulating foreign ownership across the whole of the UAE, currently each Emirate regulates its own approach.²⁷⁶

Dubai

Dubai followed suit by allowing foreign nationals to own property in its territory. As a result of the soaring global property market on the back of the US interest rate cuts after the dotcom crash and the 9/11 attacks, oil prices rose and many Arabs were able to return their money back into the Middle East. The real estate boom began in 2002 when the Crown Prince of Dubai announced that expatriates would be able to own property in Dubai. At the time, there was no new Law as such, just a promise by the Dubai government to guarantee these purchases.²⁷⁷ This process was codified by the provisions of Law No 7 of 2006 “Concerning Real Property Registration in the Emirate of Dubai”,²⁷⁸ which limited the formal right of freehold ownership of real property to UAE nationals and Gulf nationals (individuals or companies owned by citizens or owned by Gulf nationals) anywhere in Dubai as well as short and long time

²⁷⁵ Bahrain Law No. 2 of 2001 in relation to the non-Bahraini real estate and land ownership. Article 2.

²⁷⁶ Patton Boggs LLP Attorney at Law.(2007) http://www.pattonboggs.com/files/News/290b522b-c728-400a-ac39-11ff72715596/Presentation/NewsAttachment/d960ecc0-907e-4df4-bfe2-40adb3f6c7e9/AmericanLawyer_PropertyLawintheUAE_Vogel.Termni.10.07.pdf , (accessed 23-3-2015).

²⁷⁷ Peter Cooper. (2008) *OpportunityDubai: making a fortune in the Middle East*. Harriman House Ltd.

²⁷⁸ UAE, Dubai, Law No. 7 of 2006 Concerning Real Property Registration.

leases up to 99 years, or usufruct right and *musataha* right. Subject to the ruler's approval, however, non-Gulf nationals could own properties as freehold not limited by time or usufruct right or *musataha* right or long lease right for a period not exceeding 99 years. The Law No 3 of 2006 regarding specific areas where foreign nationals could own property in the Emirate of Dubai, and identified 23 areas where foreigners could purchase property. The Law no 7 of 2006 concerning real property registration give the property owner a free hold title, which is conceders as the most superior type of real property, rights. This type of ownership is evidenced by a title deed issued by the Dubai Land Department, which gives the property owner the right to enjoy and occupy or dispose the land or property in perpetuity.²⁷⁹

Abu Dhabi

The Executive Council of Abu Dhabi issued Resolution No. 64 of 2010 concerning real estate ownership in Abu Dhabi. This resolution gives UAE national and legal entities wholly owned by UAE nationals the right to own freehold property in Abu Dhabi. The government of Abu Dhabi has also issued Law No. 19 of 2005 concerning property ownership. This Law restricts property ownership to UAE nationals and GCC nationals. Corporate bodies wholly-owned by GCC citizens may own real estate properties provided that they are located inside specific investment areas.²⁸⁰ Gulf nationals have the right to hold freehold title to land only within certain designated investment areas such as Sowwah Island, Lulu Island and Masdar City among several others.²⁸¹

Natural or corporate persons, who are not UAE citizens, allowed owning, buying, selling, leasing, mortgage, and investing in floors, apartments and units of buildings,

²⁷⁹ UAE. Dubai Law no 7 of 2006 concerning real property registration

²⁸⁰ UAE Abu Dhabi, Law No 19-2005 concerning property ownership

²⁸¹ *ibid*

excluding land ownership, inside the investment areas. There are no general ownership exemptions for public joint stock companies in Abu Dhabi; this means that Abu Dhabi listed companies owning freehold property title or land parcel in the UAE have had to obtain bespoke exemptions.

After buying a property, the parties (natural or corporate persons) need to register it at the Abu Dhabi Real Estate Registry by presenting official documents.²⁸² It is also stipulated that non-UAE nationals, either natural or corporate persons, should obtain long-term leasehold interests by either by right of surface (called *Musatah*²⁸³). This leasehold renewable for up to 50 years upon approval by both parties; or by the right of usufruct through usufruct contracts up to 99 years,²⁸⁴ and those long-term leases of properties should be located within the investment areas. These natural or corporate persons need to be registered in the registry office as owners of these rights after they submit the official documents specified by Law or resolutions issued by the head of the Department of Municipal Affairs.²⁸⁵

The other emirates

In 2008, the Emirate of Ajman passed a number of Laws in relation real estate regulation in the emirate of Ajman. The most important decree is the Amiri Decree No. 11 of 2008, to establish a state-run Authority called the Ajman Real Estate

²⁸² UAE, Abu Dhabi resolution No. 64-2010 concerns the real estate ownership in the emirate of Abu Dhabi.

²⁸³ According to the Law No 19 of 2005 Concerning Real Estate Property defines the **Right of surface as:** Gives the right to erect a building or plants on other's land for a maximum period of 50 years.

²⁸⁴ According to the Law No 19 of 2005 Concerning Real Estate Property defines the **Right of usufruct as the** right in rem to the person to use real estate of another party and utilize as long as it exists in its same condition. Assignment of utilization is possible to a third party.
<http://dma.abudhabi.ae/en/articles/Law.no.nintin.of.twothousandfive.concerning.real.estate.property.aspx> , (accessed 23-3-2015).

²⁸⁵ Emirate of Abu Dhabi. Executive council, General Secretary
<http://gsec.abudhabi.ae/Sites/Shared/EN/PressReleases/PDF/mbz-8-12-2010,property=pdf.pdf>
(accessed 23-3-2015).

Regulatory Agency (ARRA).²⁸⁶ The second Law is the Law that regulates the property registration which gives citizens and GCC nationals (persons and legal entities) the right to own properties anywhere in the Emirate.²⁸⁷ Based on permission granted by the Ruler, foreigners (persons and legal entities) have the right to own a property in certain designated areas. This also applies for the long leases which can be for 50 years, renewable with the Ruler's permission.

Buyer protection measures include a requirement on developers to register the projects with the authorities and accept certain responsibilities in relation to commencing and completing the project. Among other things, the new Law requires developers to open an escrow account to put in moneys from off-plan sales. The Ajman Real Estate Regulatory Establishment was also set up to regulate the real estate market in Ajman.²⁸⁸

In 2003, the Emirate of Ras Al Khaimah passed a decree that regulates co-ownership and investor protection legislation was introduced to regulate the large amount of development of mixed-use projects where off-plan sales to real estate investors have occurred. This Law allows UAE nationals and GCC nationals to own property anywhere in its territory.²⁸⁹ The decision No.20 of 2005 decree also gives foreign nationals the right to own a property in a designated investment areas provided the

²⁸⁶ It has been established in Dec. 2008, according to the provisions of the as amended by the Amiri Decree Number (13) of 2012

²⁸⁷ UAE, Ajman . Amiri Decree No, 7 of 2008 to regulate Ajman's reality sector. permits UAE nationals and the nationals of the GCC member states (and companies owned wholly by them) to own a freehold right over land in Ajman. Amiri Decree No. 8 of 2008 regulating the provisions of jointly owned property and common areas within such property.

²⁸⁸ See Ajman real estate regulatory authority at <http://www.arra.ae/Our-Organisation/-Organisation-History>

²⁸⁹ GCC nationals are not specifically provided for in this decision, but in practice they are treated in the same way as UAE nationals

property is owned through a Ras Al Khaimah free zone company.²⁹⁰ Another amiri decree No. 15 of 2006 in the emirate of Ras Al Khaima have permit registration of mortgages (in the Land Department) by security over long term leases (over 20 years leases) over properties in the investment areas.

Umm Al Quwain followed the other emirates by allowing UAE nationals and GCC nationals the right to own property throughout the Emirate. It followed Abu Dhabi in granting foreigners floors and *Musataha* or usufruct rights in designated areas over 50 or 99 years respectively.

In 1972, the Emirates of Sharjah has introduced the property registration Law number 10 of 1972 to establish the Sharjah real estate registration office. This Law only allowed UAE nationals to own a property in Sharjah; however, the ruler of Sharjah can permit some exception allowing GCC and foreign national to own a property. In 2005 a council decision was issued under number 32 and No. 38, which regulate the sale of properties, this decision gives the Gulf nationals the right to own a property in the emirate of Sharjah. In 2010 a new Law that has been issued that concerning real estate registration and regulates the sale of properties in investment and residential areas.²⁹¹ In relation to foreign ownership of property, the emirates of Sharjah will allow foreign residents to buy real estate on long-term leases, *musataha* and usufruct right. This Law will not give the foreign nationals the right to own the land that the property stands upon and this right is only in certain designated areas.

²⁹⁰ Ras Al Khaimah Decision No. 20 of 2005 all foreign nationalities (non UAE and GCC national;s) are able to own property in designated investment areas by established a company in the Ras Al Khaimah Free Zone or Al Hamra Free Zone, and the foreign nationals purchased the property in the name of the company, i.e. foreign nationals could not buy directly in their individual capacity.

²⁹¹ UAE, Sharjah. Law No. 5 of 2010 concerning real estate registration.

The emirate of Fujairah have no specific Laws that meant to regulate the real estate sector in the emirate of Fujairah, where there is no Laws regarding property registration and ownership. The Fujairah real estate sector is regulated by the UAE civil Law, the instruction of the ruler. Based on that the where no Laws permitting foreign ownership and only allow UAE and GCC nationals to own property. Non-GCC nationals can only own property subject to the Rulers' approval. However, foreigners can obtain and register a leasehold right in property for a term of up to 25 years, some exceptions in certain free zones may apply for non-GCC nationals.

QATAR

The government of Qatar was the first country among the Gulf States to issue a Law (No. 2 of 2002) giving Arabian Gulf nationals the right to own up to three properties for residential purposes in any area as long as the properties did not exceed 3,000 square metres. All transactions in relation to any properties in these areas (*alwosail-alkharayej- jabal thaabileb*) should be done through the Qatari Diar Real Estate Company, a real estate investment company that is owned by the government of Qatar.²⁹²

In Qatar, the Council of Ministers issued Decree No. 17 of 2004 that meant to regulate and organise the foreign nationals' property ownership. In the same decree, the government defined the areas of investment and clearly stated that "non-Qataris may own real estate in the Pearl of the Gulf Island, the West Bay Lagoon Project, and Al Khor Resort Project. The identification, terms and conditions, and ownership

²⁹² Qatar Law No.2 of 2002. And see the Council of Ministers Resolution No. (5) for the year 2006 requirements and procedures of the ownership of the citizens of the Gulf Cooperation Council countries

procedures of these should follow from a Council of Ministers Decision”.²⁹³ In the same decree, the legislator gave non-Qataris the right of usufruct over real estate for a term of 99 years with the possibility of renewal in the investment areas. A non-Qatari may have the right of usufruct in respect of one residential unit or more in residential areas for a term not exceeding 99 years renewable for a further similar term, in accordance with the conditions and procedures determined pursuant to a Council of Ministers’ Decision.²⁹⁴ This Law makes freehold and long-term leases available for foreigners in certain areas that have been designated by the government.

OMAN

In Oman, Royal Decree No. 21 of 2004 states that Arabian Gulf natural or legal persons should be treated as nationals and that an Arabian Gulf national may own property throughout Oman. Previously, Royal Decree No. 20 of 2000 restricted a Gulf entity from owning land to no more than 3,000 square metres. The newer Law enables Gulf nationals and Gulf legal entities (owned by Gulf nationals) to own land or construct property for residential or investment purposes. This is subject to the condition that the investor cannot sell the land unless it is built on, or four years have elapsed after registration of the plot in his name, and it is for the purpose of construction, reclamation and the establishment of specified activities, including in particular, tourism.²⁹⁵

In 2006, the government of Oman followed the same path as the other Gulf countries and allowed freehold ownership for foreigners (whether natural or legal person) under

²⁹³ Qatar Law no. (17) for the year 2004 Regarding Organisation of Ownership and Use of Real Estate and Residential Units by non-Qataris.

²⁹⁴ Ibid.

²⁹⁵ Oman royal decree No 21 of 2004 real estate ownership by the Gulf nationals

Law No. 12 of 2006.²⁹⁶ This decree enables all foreigners to hold a freehold title property in specific real estate projects in investment areas.²⁹⁷ Foreigners have the right to use the property for investment or for residential purposes. However, land ownership is initially granted to locals and Gulf nationals only on an individual basis or if the companies are wholly owned by GCC nationals. If undeveloped land is acquired, the property owner is required to construct buildings on the land within a period of four years of its acquisition, and the owner cannot dispose of it until the project is complete or the four-year period expires, whichever occurs sooner. If the land owner fails to develop the land within four years, the Ministry of Tourism then has the authority to dispose of the land.²⁹⁸ Oman has also prevented investment companies that were not development companies from owning private residential real estate and houses for investment purposes.²⁹⁹

SAUDI ARABIA

In Saudi Arabia, the Law of Non-Saudi proprietorship and Investment of Real Estate permits foreign nationals legally resident in the Kingdom can purchase property for use as their principal residence. Foreign business investors are able to purchase property as part of their business objectives, including as housing for their employees subject to obtaining approval from the licensing authority.³⁰⁰ The Royal Decree No M5 dated 11/2/1423 H (11 Oct 2000) gives the title holder all rights, including but not limited to buying, constructing, selling, leasing as well as offering legal protection to

²⁹⁶ See "System of ownership by non-Omanis", Ministry of Tourism - Sultanate of Oman http://www.omantourism.gov.om/wps/portal/mot!/ut/p/c4/04_SB8K8xLLM9MSSzPy8xBz9CP0os3j_oMBgNz9XEwMDO28TA09PH0tLdzcvYwNfQ_3gxCL9gmxHRQCm_KIU/ (accessed 23-3-2015).

²⁹⁷ which have been designated by the Ministry of Tourism as Integrated Tourist Complexes area.

²⁹⁸ James R. England. (2012). Real estate investing in the Middle East: foreign ownership restrictions in the GCC. *The metropolitan corporate counsel*.. PP.42- 43.

²⁹⁹ Oman Law No. 5/2008 prohibits banks and companies dealing with private housing by buying and selling mortgages.

³⁰⁰ Saudi Arabia, Regulations of Ownership and Investment in Real Estate by Non-Saudis. Royal Decree No.: M / 15 Date: 17/4/1421 AH

the individual. The Law provides just one geographic limitation: only Saudi citizens may purchase property in the holy cities of Mecca and Medina.³⁰¹ The Law permits property leasing to non-Saudis in these holy cities where the lease does not exceed two years. This Law appears to be the most liberal of the Gulf state Laws regarding foreign ownership of property.

Recently, Saudi Arabia has issued a new regulation that allows foreign nationals to own properties or homes for investment as long as they pay a fee of 10% of the property's value. However, this Law only for expatriates who licenced to practice a business or a profession is entitled to own a property for his business and for his employees. But expatriates are not allowed to own a property if they don't ha a licence to do a business in Saudi Arabia, and they (expatriates are not allowed to buy a property in Makkah and Al-Madinah. Where many property investors claim that the new Law is not clear about the rights and obligations of foreigner nationals who want to buy homes in the Kingdom. Foreigners should be given more guarantees to boost their confidence in the Saudi Arabia real estate market.³⁰² As consequences of that many expatriates who buy, properties in Saudi Arabia register them in the name of Saudi nationals.³⁰³ The King Abdullah Economic City (KAEC), 70 Km north Jeddah on the Red Sea, is the first freehold city in Saudi Arabia, being built at a cost of \$27 billion with an expected completion date of 2025.³⁰⁴ Foreign investors will be able to buy properties under the upcoming Economic City Act.³⁰⁵

³⁰¹ Except the cases in which the title has been transferred to the owner by heritage.

³⁰² Diana Al jassen 2013. Shoura urged to revise expat home ownership Law. Arab News, Sunday 17 March 2013 <http://www.arabnews.com/news/445152> , (accessed 23-3-2015).

³⁰³ Ibrahim Nafee, (2012), *Some expats buy houses in citizens' names*. Arab news, Friday 29 June 2012 <http://www.arabnews.com/some-expats-buy-houses-citizens%E2%80%99-names> , (accessed 23-3-2015).

³⁰⁴ There are also three cities under construction also known as Economic cities in Madina, Jazan Economic city and Prince Abdul Aziz bin Musa'ed Economic city in Hail. <http://www.arabianbusiness.com/property/article/589661-saudi-arabia-to-allow-foreign-ownership-in->

In relation to property ownership by the Gulf nationals, a Royal Decree No. M/22 of 1432 H (2010) allows Gulf nationals to own a freehold title on up to three private residences in residential areas except in the two holy cities of Makkah and Madinah. The ownership should not exceed 3,000 square metres in residential areas, and the property cannot be disposed of until four years after it has been acquired and registered in the new owner's name.³⁰⁶

KUWAIT

Kuwait has the strictest foreign ownership restrictions in the Gulf region even though GCC and Arab nationals are permitted to own freehold title in any area in Kuwait.³⁰⁷ Foreign nationals are not allowed to hold any interest in real estate in excess of a contractual lease.³⁰⁸ In addition, it is also prohibited for any legal entity wholly owned by foreign nationals or owned with Gulf nationals or with local partners to hold a freehold title or long-term lease.³⁰⁹ In addition, Law No 8/2008 prohibits banks and companies local or foreign (except development companies) dealing with private housing by buying or selling mortgages. Notwithstanding this, the Foreign Direct Investment Law provides foreigners with the right to an "allotment of lands and real estate required for investment purposes in accordance with the Laws and regulation in the state of Kuwait"³¹⁰ this Law does not clearly set out the type of real estate interests meant by "allotment". It is supposed that such allotment merely provides a guaranteed

[kaec](http://www.kaec.gov.kw), (accessed 23-3-2015). also see. <http://www.propertywire.com/news/middle-east/saudi-arabia-to-allow-foreigners-investors-201006044188.html> , (accessed 23-3-2015).

³⁰⁵ <http://www.ft.com/cms/s/0/f4246a58-c50f-11df-b785-00144feab49a.html#axzz2JYrsVwyx> , (accessed 23-3-2015).

³⁰⁶ KSA royal decree No. M/22 - 3/4/1432 H concerning real estate ownership by the Gulf nationals

³⁰⁷ The Kuwaiti Law No. 1 of 2004 allows GCC nationals to own a property in Kuwait whether they are natural persons or legal entities of public and private entities, as long as the members or shareholders of these companies are natural persons enjoying the nationality of these countries

³⁰⁸ Kuwait Law No. 74 of 1979 concerning the ownership of real estate by non-Kuwaitis

³⁰⁹ That's only for residential properties. However the industrial land or commercial land are allowed for foreign companies to own it

³¹⁰ Kuwait Law No 8 of 2001 in relation to the foreign direct investment in Kuwait. Article 13.

right for the foreign nationals to use the land or the property for as long as the business operates in Kuwait, rather than an ‘in rem’ ownership interest such as a long term leasehold or freehold title.³¹¹

The following table summarises the property ownership in all GCC countries:

| Country | Local citizens | GCC nationals | Foreign nationals |
|---------|---|--|--|
| Bahrain | They can own a property in any place in the country | The Law allows GCC nationals to own real estate in some areas as long as the land did not exceed two properties and three thousand square meters | In 2001, new Law No 2 of 2001 has been issued to set the designated areas that permissible for foreigners to own property in these designated areas |
| Qatar | They can own a property in any place in the country | No. 2 of 2002 allows GCC nationals the right to own up to three properties for residential purposes in any area as long as the properties did not exceed 3,000 square meters | The Council of Ministers issued Decree No 17 of 2004 regarding the organisation of ownership and use of real estate and residential units by non-Qataris. In the same decree, the government defined the areas of investment |
| Oman | They can own a property in any place in the country | Royal Decree No. 21 of 2004 states that GCC natural or legal persons should be treated as nationals and that a Arabian Gulf national may own property throughout Oman | Law No. 12 of 2006. This decree allows all foreigners to hold a freehold title property in specific real estate projects in investment areas. Foreigners have the right to use the property for investment or for residential purposes. |
| KSA | They can own a property in any place in the country | The Royal Decree No. M/22 of 1432 H (2010) allows GCC nationals to own a freehold title on up to three private residences in residential areas except in the two holy cities of Makkah and Madinah. The ownership should not exceed 3,000 square metres in residential areas, and the property cannot be disposed of until four years after it has been acquired and registered in the new owner’s name. | Regulations in Saudi Arabia allow expatriates to own homes or other properties for investment as long as they pay a fee of 10 percent of the property’s value. However this Law only for expatriates who licenced to practice a business or a profession is entitled to own a property for his business and for his employees. (Expatriates are not allowed to buy a property in Makkah and Al-Madinah). |
| Kuwait | They can own | The Gulf region even though | Expatriates are not allowed to buy a |

³¹¹ James R. England. (2012). Real estate investing in the Middle East: foreign ownership restrictions in the GCC. *The metropolitan corporate counsel.*, pp.42- 43

| | | | |
|-----|---|---|--|
| | a property in any place in the country | GCC are permitted to own freehold title in any area in Kuwait | <p>property in Kuwait whether for residential or investment purposes. However the Foreign Direct Investment Law provides foreigners with the right to an “allotment of lands and real estate required for investment purposes in accordance with the Laws and regulation in the state of Kuwait”</p> <p>Arab nationals (non-GCC citizens) may allow to own one property this is regulated under the Law Decree No. 74 of 1979. This Law allowed only Arabs who were permanently resident in Kuwait to own one piece of real estate in Kuwait for residential purposes only, and this decision needed to be decreed by the Council of Ministers.</p> |
| UAE | They can own a property in any place in the country | GCC nationals the right to own property throughout the Emirate (in Abu Dhabi GCC citizens may own real estate properties provided that they are located inside specific investment areas) | <p>Abu Dhabi: foreign nationals have the right of long term leasehold interests by either by right of surface (called <i>Musatah</i>)</p> <p>Dubai: foreign nationals could own properties as freehold not limited by time or usufruct right or <i>musataha</i> right or long lease right for a period not exceeding 99 years</p> <p>Ajman: Based on permission granted by the Ruler, foreigners (persons and legal entities) have the right to own a property in certain designated areas.</p> <p>Ras Al Khaimah: The decision No.20 of 2005 decree also gives foreign nationals the right to own a property in a designated investment areas provided the property is owned through a Ras Al Khaimah free zone company</p> <p>Umm Alquwain: foreigner nationals have the Musataha or usufruct rights in designated areas over 50 or 99 years respectively.</p> <p>Sharjah: foreign nationals have the right of long term leasehold interests by either by right of surface (called <i>Musatah</i>)</p> |

It worth to mention that the local citizen of each Gulf country have the highest property ownership privileges, followed by the citizens of other Gulf countries, and the lowest property ownership privileges being afforded to Foreigners.

Local citizens can generally hold Freehold Title to property that is not reserved by the state. Additionally, it is generally permissible for Gulf citizens to own real property interests anywhere within another Gulf country. However, a number of Gulf Countries restrict Gulf's citizen land ownership rights by restricting land ownership only in designated areas (Investment Zones); other Gulf countries limiting Gulf citizen ownership of only a small number of properties in designated areas; restricting ownership to properties with specific uses (such as commercial, residential manufacturers lands) ; and/or a combination of the above restrictions.

In relation to foreign property ownership restrictions are considers as the most cumbersome restrictions. Although there is a variation between one country to another but there is a few common restrictions that been used in most of the Gulf countries which is include: prohibiting foreign nationals from owning real property interests anywhere within the countries except in in designated areas (Investment Zones); other type of restriction is the prohibition of freehold title ownership and restricting Foreign nationals only to owning Long-Term Leaseholds; the other common type of restriction is by imposing significant use restrictions on all Foreign national owned properties.

Based on these policies, Gulf countries have succeeded in creating inflows of local and foreign investment into the real estate sector. This has resulted in an unprecedented increase in residential real estate projects in the region. Most of these

projects are new and have been characterised by their luxurious and the size of the project, such as the Palm Island in Dubai, the Blue City in Oman and the Amwaj Island in northern Bahrain.³¹² There have been more than 20 residential real estate projects and these have cost more than \$6.8 billion.³¹³ It is expected that these mega-projects will provide around 600 thousand new freehold properties.³¹⁴

Dubai was the first to venture into this kind of real estate project and it has become the centre of the biggest and most impressive real estate projects in the world. Statistics show that there have been about 343,000 units built up to 2011.³¹⁵ If we assume that 3 persons live in each unit, this puts the figure at more than a million people living in Dubai, which is more than four times the number of nationals.³¹⁶ An increasingly local number of parliament members, scholars and journalists argue against governmental policies which are causing demographic imbalance in the region, where in Kuwait, Bahrain, UAE, Qatar the majority of the population are now foreigners.³¹⁷

12. Linking the ownership of property to long term residency

The new policies of some of the Arabian Gulf states are to boost their real estate sector. Some of the Gulf States have not only given foreigners the right to own

³¹² alShahaby. 2011. p.93

³¹³ Bahrain income Generation Properties, *Quarterly market review*.(July 2009). In Omar, h alShahaby. (2011). *Pulling the Roots, Real estate projects and Understanding the Population anomaly in the GCC*. Center for Arab unity. p.94

³¹⁴ Bahrain September 2008, *Middle East Market Update Series* (2008), p. 11. In Omar, h alShahaby. (2011). *Pulling the Roots, Real estate projects and Understanding the Population anomaly in the GCC*. Center for Arab unity. p.93

³¹⁵ Dubai real estate market overview Q2 2011,) Jones lang Lasalle (2011), p.11.

³¹⁶ Omar, h alShahaby. (2011). *Pulling the Roots, Real estate projects and Understanding the Population anomaly in the GCC*. Center for Arab unity. p.95

³¹⁷ Ali, Al-khouri. Population Growth and Government Modernisation Efforts: The Case of GCC countries *International Journal of Research in Management & Technology* <http://www.emiratesid.gov.ae/userfiles/Population%20Growth%20and%20Government%20Modernisation%20Efforts.pdf>, (accessed 23-3-2015).

also see Omar, h alShahaby. (2011). *Pulling the Roots, Real estate projects and Understanding the Population anomaly in the GCC*. Center for Arab unity. p.95

properties in their territory, but have also given property buyers the right to obtain long-term residency visa for themselves and their families if they own a property. This has become a necessary policy to attract foreign buyers to buy properties in the new real estate projects.

12.1. The case of Bahrain, Qatar and Oman

In Bahrain, the ownership of property gives the owner and his family the right to obtain a residence visa for five years, renewed automatically based on ownership of the property.³¹⁸ The same Law applies in Qatar.³¹⁹ In Oman, property ownership gives the owner and his family the right to a residence visa and this is renewed for two years subject to the continued ownership of the property.

12.2. The case of the United Arab Emirates

In the United Arab Emirates, there is two type of government: the first type is the local government of each emirate; the other type is the federal government, which contain all seven emirates. Each local Emirate is free to regulate property ownership in its territory; however, the Federal Law regulates the foreign residency. For example, Dubai allows foreigners to buy and own a property in its territory. In contrast, Abu Dhabi only allows foreigners to have a long lease or usufruct right. These differences between the emirates ownership regulations have been an obstacle in finding a clear solution to the issue of residency in the UAE.

³¹⁸ Bahrain . Legislative Decree No 2 of 2001 and Edict No. 43 of 2003 (as amended by Edict No. 67 of 2006)

³¹⁹ In accordance with the Law no. (17) of 2004 Regarding Organisation of Ownership and Use of Real Estate and Residential Units by non-Qataris. And Law no. 4 of 2009 Regarding Regulation of the Expatriates Entry, Departure, Residence and Sponsorship

In 2002 and during the beginning of the real estate boom in Dubai, the ownership of a property did not give the right to residency which was an obstacle to attract real estate investors to invest in Dubai's real estate market. This was also an obstacle to real estate developers who had promised foreign property buyers a long-term residency visas. The absence of formal Laws on this subject has caused problems and confusion for foreign property buyers and there has been a delay in obtaining visas for some visitors to Dubai.³²⁰

The objective of each Emirate (Dubai, Ras Al-Khaimah and Ajman) is to find a solution that would link residency to property ownership. On 1 June 2009, the first federal Law was issued giving residency based on property ownership.³²¹ This Law gave property buyers a residency visa for six months and the visa had to be renewed every six months. The Law contains a variety of requirements, such as that the value of the property should not be less than one million AED at the time of purchase, and that the monthly income of the owner must be at least AED10, 000.³²²

Investors and real estate experts welcomed the new Laws even though a visa needed to be sought every six months and the visa did not allow the holder to work in the UAE. In a survey conducted in 2010 of 500 people in the UAE, 88% of respondents said that the most important improvement to the real estate market should be by way of more flexible residence visas.³²³ In 2011, the Federal government announced the

³²⁰ Suzanne Fenton, (2008) 'Freehold residence visa confusion rages', *Gulf News*, 27 May 2008. <http://Gulfnews.com/business/property/freehold-residence-visa-confusion-rages-1.107060> , , (accessed 23-3-2015).

³²¹ Courtney Radsch, 'UAE grants foreign owners multi-entry visas', *Al Arabiya News Channel*, 3 May 2009. <http://www.alarabiya.net/articles/2009/05/03/71907.html> , , (accessed 23-3-2015).

³²² Jummah Akash, (2009) "UAE: new visa decision to cancel the promises of drug companies, the establishment of long-term", *Markets*, May 4, 2009. <http://www.alaswaq.net/articles/2009/05/04/23335.html> , (accessed 23-3-2015).

³²³ Kevin Brass, (2011) 'Qatar relaxes residency rules for ex-pat property buyers', *The National*, 11 April 2011. <http://www.thenational.ae/business/property/qatar-relaxes-residency-rules-for-ex-pat-property-buyers> , (accessed 23-3-2015).

extension of the residence visa to three years and this has re-ignited investor confidence and provided support to the real estate sector.³²⁴ The Deputy Director of the General Directorate of Residency and Foreigners Affairs in Dubai commented that this step aims to facilitate the procedures of residence and to encourage investors to buy the greatest amount of properties.³²⁵ Real estate companies, developers and investors have welcomed this move.

It is worth noting that in other countries around the world property ownership does not entitle foreign buyers to long-term residency. This is the case in the UK where any foreign property owner has to obtain a visa just like any other visitor to the country. The same system is followed in most of the European Union, America and Canada. Even in Australia, the most open country to immigrants and foreign investors, owning a property does not give the buyer an automatic right to have a residence visa.³²⁶

13. The expropriation process for public utility projects in the Gulf countries:

The Islamic *Shari'ah* Law did not overlook the expropriation process. However, it has recognised and regulates the expropriation of private property for the public utility, where the right of the community takes precedence over the right of individuals. During the Islamic countries, there were a number of expropriation processes for the public utility by expropriation of private houses in order to build or expansion the prophet's Mosque. However, the Islamic *shari'ah* Law has set the foundation of the expropriation where it should aim for the public utility and it will not be affected

³²⁴ Ibid.

³²⁵ Issac John, (2011) 'Property visa for 3 years', *Khaleej Times*, 29 June 2011.

http://www.khaleejtimes.com/DisplayArticle09.aspx?xfile=data/theuae/2011/June/theuae_June819.xml§ion=theuae , (accessed 23-3-2015).

³²⁶ 'Foreign Investors – Buying property as a foreigner or temporary resident in Australia', *ASA Group*. http://www.australia-migration.com/page/Foreign_Investors_Buying_property_as_a_foreigner_or_Temporary_Resident_in_Australia/178 , accessed 19/11/ 2011.

without the acceptance of the expropriated property along with a fair compensation paid from the house of money “Bait Almal”.³²⁷

The constitutions of all the Gulf countries protect private property rights. This consensus can be exemplified by part of the Qatari Constitution states that, “private ownership of property shall be protected. No one shall be deprived of such ownership, unless it is in the public interest in circumstances stipulated by the Law, in a way that the Law stipulates, provided there is fair compensation”.³²⁸ The general rule is not permissible to expropriation any one property by forcibly unless there is certain conditions.

Accordingly, it is not permissible to expropriate private property unless there are three conditions must be met, the first one is the expropriation should be based on provisions in Laws, where it is not adequate that the administrative to issue a decision to expropriate individual property, however, they need an intervention from the legislator. The second condition is the expropriation decision must follow the procedures drawn by the Law, by not following these procedures stipulated by the Law makes expropriation decision void. The third condition is that the owner should take a fair compensation and the condition of the public utility should be available.

These conditions determined by a legislator because individual ownership is one of the basic principles provided in Gulf constitutions. In fact, most constitutions around the world emphasise the importance of private property and only allow expropriation

³²⁷ Kaled Tea'ma (2009) *Altajreba Alkuwaitiyah fe naze'a almilkiyah: Derasa shariyah qanonyah aan naze'a almolkeyah lelmanfa'a al'amah fee dawlait alkuwait*.p 18

³²⁸ Qatar constitution Article 27

for public utility projects.³²⁹ It summarises that property right has immunity to prevent abuse intended, whether it comes from the state or individuals.

13.1. The legal foundation of expropriation in the Arabian Gulf countries.

The legislatures of the Gulf countries issued land expropriation Laws to regulate expropriation processes that are in line with major development projects.³³⁰ Most legislators prohibit land and real estate expropriation and acquisition in general, but there is an exception when the expropriation is connected to the public benefit, where the expropriation will not be effective unless it is with fair amount compensation and in accordance with the provisions of the expropriation Law.

The first experience of expropriation activities in the Gulf region was in Kuwait, the legislature has issued several Laws in this area: Law No 33 of 1964 to regulate the expropriation; Law No 41-1965 regarding real estate valuation and acquisition. Law No 4-1968 concerning the valuation of private homes; and Law No 18-1968 which identifies between the state and private property. All of these Laws have aimed to regulate the expropriation process offering fair compensation to achieve public benefits. The legislators have tried to provide maximum transparency in the expropriation process by preventing the expropriation committee members from participating in the assessment of compensation in any transaction, thus preventing the interests of a member, or one of his relatives playing a part in decisions.

³²⁹ see the Syrian civil Law Article 722- and the Libyan civil Law Article 814- the Iraqi civil Law Article 1050

³³⁰ Bahrain land expropriation Law No 8-1970- Qatar land expropriation Laws No 13-1988. Kuwait land expropriation Law No 33-1964. Oman land expropriation Laws No 87-1964 and KSA royal decree No M/15 11/3/1424

In Oman the Law No 87 of 1964 entitled ‘Expropriation of Property for a Public Utility’ is similar to the Kuwaiti one. The legislator empowers the government to acquire land from owners for public utility projects. According to this Law, a Royal Decree must make the determination of a project as a public utility project and the Decree must contain a declaration about the project and a survey map of the area likely to be acquired for the public utility project. Apart from publication of the Royal Decree in the national Official Gazette, notice of the declaration must also be affixed to the notice board of the relevant *wilayat* (district), police station and *Shari’ah* court. The Law of Expropriation of Property for a Public Utility also mandates adequate compensation for the owner of the expropriated immovable property.

The expropriation should be done with a fair compensation paid at one set time, for example, Article 2 of the Qatari Expropriation Law states that “the government, or any branch thereof, may divest an owner of title to a private property and redistribute it for public use only if the owner receives fair compensation in return”.³³¹ Most of the Gulf’s legislatures have stated that the expropriation should not be effective without fair compensation to the land or real estate owner for the public utility project. It is not permitted to expropriate a private property for a public utility except in the cases prescribed by Law and in the manner and procedures set by the Law with a fair amount of compensation estimated in accordance with the rates prevailing at the time of the expropriation decision. If the compensation is not based fairly on the real property price, the owner has the right to appeal to an Appeal Committee. If the Committee upholds the appeal they have the power to increase the compensation 15% on the original compensation price.

³³¹ Qatar Law No 13 of 1988 in relation to expropriation for the public benefit.

All legislators of Gulf countries have stated that the expropriation should only be of a real asset, whether that is empty land or land that is built on and owned as private property. The expropriation should be for the public benefit and the public benefit condition is the cornerstone of the expropriation decision, if this is absent, the decision does not have any legal basis. In all of the Gulf countries Laws on expropriation always state that the aim is to create a public utility, as this is the main purpose of the expropriation of private property. Some of the Gulf legislatures set a number of development projects that allows the governmental body to expropriate the private property for the public utility. Where the governmental body should show, prove and demonstrate the public utility of the expropriation of the private property, and the urgency of the expropriation in a specific land not another. For example in Saudi Arabia the legislature clearly stated that if there is no another place to set and build the public project it is permissible for the legislature to expropriate a private property for the public benefit.³³² The Qatari legislature has set the projects that are meant to be a public benefits projects, such as the public roads, bridges, public parks, public markets, residential areas, investment areas and so many more projects meant to be for the public utility.³³³

Most of the Gulf legislatures have identified development projects that are for the public interest and allow those affected to appeal against the expropriation order. The decisions of public benefit are issued from the municipal council and approved by the Council of Ministers. However, there remains a lack of transparency in these expropriation decisions.

³³² Saudi Arabia. royal decree No M/15 11/3/1424

³³³ Qatar land expropriation Laws No 13-1988 See article 3

13.2. The process followed by the Expropriation Department for the public benefit under the principles of transparency.

There is no doubt that the government or the administrative body has a major role to play and enjoys wide discretion in determining the necessity for a project created or developed for the public benefit. Government projects, such as infrastructure, energy, and transportation projects aim to achieve a sustainable development and the common benefit for the community. And in many cases the Gulf's government restoring to expropriation Law in order to completing these development projects, this has enabled governments to build new capital cities and infrastructure projects.

The expropriation process for the public benefit in the Gulf States has led to economic and class disparities between residents of these communities and this can still be seen to this day.³³⁴ The economic differences have come about because of the benefits or compensation received by those living in the old cities (the capital cities). They received physical compensation and a new house. In some cases the compensation amounts were very large. A good example of this was Kuwait during the 1950s to the 1970s; the compensation reaches the double or even treble the actual price of the house.³³⁵ Meanwhile, the new citizens (i.e. the tribes who settled later) did not get these financial compensations since they have their new house.³³⁶

The process of expropriation in the Arabian Gulf region led to other legal and political phenomena and the effects of these phenomena are still present today, as many corrupt activities happened during the expropriation process. These were mainly

³³⁴ The level of compensation depended on each country's capabilities based on the oil returns.

³³⁵ An informal interview with the former manager of Kuwait municipality Mr. Mohammed Al Maousherji

³³⁶ For more information about the disparity in civil and economic classes between residents of these communities in these countries. See Khaldoun Alnaqeeb. 1989. Society and the state in the Gulf and the Arabian Peninsula from a different perspective. And see Ali Khalifa Alkawari. (2011). The people want reform in Qatar. Almaaref Forum. P46-50

perpetrated by influential people and by some members of the ruling families in these countries. This kind of activity began in Kuwait, as it was the first country in the Gulf to expropriate private property in order to rebuild its capital city. For example, the Kuwaiti government has expropriated the old city in order to restructure and to rebuild the city in a modern way³³⁷, similarly the city of Abu Dhabi the capital of UAE has been restructured three times during the 1970s.³³⁸

The 1970s marked the beginning of infrastructure development projects and the beginning of construction activities in the region. Many influential people established their own construction companies to apply for the government tenders to acquire the government development projects. The governments at the time had sufficient funds from oil revenue and wanted to distribute this wealth and make use of it in infrastructure projects to support and develop the national economy, the result of that the economic activities in different sectors has been controlled by the ruling families and some long established merchant families in the Arabian Gulf countries.

The influential people during that time had inside access to the governmental development plans and the locations of these development projects. Based on this information, they began to occupy vast tracts of land and claim ownership, or they purchased lands or houses on a very low price in order the government came to expropriate these lands in a high price. Or by buying residential land at the market price and after a period of time the government transferred these land title from residential to investment titles (in some cases called commercial titles), which enables

³³⁷ During the 1950s- 1965s the government want to expand the and restructure the capital city, where before that the Kuwait city was surrounded by a wall fence, to protect the city from any foreign attack

³³⁸ Davidson , Christopher. (2012). *After the sheikhs: the Coming Collapse of the Gulf Monarchies*. Hurst & company, London. P. 53

the owners to build towers and shopping malls which increase in the price of these lands to more than triple.³³⁹

At that time, traditional family and tribal ties to ruling families guaranteed access to wealth and economic opportunities.³⁴⁰ Those who established construction or development companies at the time had the greatest opportunity for monopolising the construction sector up to the present day, and it is the case that in each Gulf state there are two or three development and construction companies that have monopolised the construction sector. These are always owned by families with ties to the ruling families or in some cases that represent a member of a ruling family.

13.3. The grey area between private and public property

As mentioned in the previous chapter, some Gulf legislative councils have limited powers and cannot interfere with the rulers' decisions. In some Gulf States, the influential people still enjoy the right to occupy vast tracts of land and claim ownership over them, or transfer state property into private property. It is true that the citizen has certain rights of ownership, but the influential people still have the strongest control on the territory since they influence members of parliament.³⁴¹

The claiming lands activity has started to decrease even though it is still practised; either through a decision by the ruler to expropriate some residential lands; by using the Build, Operate, Transfer (BOT) system; or through public tenders that are usually

³³⁹ Since these influential people ties to the ruling family

³⁴⁰ Davidson , Christopher. (2012). *After the sheikhs: the Coming Collapse of the Gulf Monarchies*. Hurst & company, London. P. 53

³⁴¹ Go to the second chapter to see the how the parliament functioning in the GCC and how the parliament members have been elected.

won by companies owned by influential people or merchant families who have ties to the authority.³⁴²

In some Gulf countries, what constitutes public property is still in question even though the Law of these countries clearly differentiate between public and private ownership. In practice, some members of the influential people use public property for their own gain since they have the power over the parliament to regulate and issue decrees for their own interests. This is especially the case with lands that have been expropriated according to the expropriation Law for the public interest. But in many cases the end result of the expropriation process is the expropriated land has been transferred into private ownership without achieving the public benefit.

In fact, many of these lands are sold as private property at nominal prices, or are given as gifts or grants from the ruler to the influential people to build their own projects such as hotels or residential and/or commercial complexes. Dr. Alkawary has stated that in Qatar there are a number of expropriation phases ending with private ownership, such as the old market in the heart of Doha called *Souq Waqif*, the territory of the Jasra, Musheireb, old Doha and the electricity street all of these projects ends with private ownership. In addition, the Education City which is an area of 15 million square metres, the Cultural District (*Katara*), and the Aspire sports academy and its facilities were all public property worth hundreds of billions of dollars, before their operation was transferred over to the special engineering office³⁴³ of the ruler of Qatar for a minimal sum.³⁴⁴ In other words, the government has expropriated these areas, compensated the owners and then transferred them into

³⁴² AlShahaby. (2011). p.93

³⁴³ The private engineering office in Qatar established under the Emiri decree No. 64 of 2005. This office followed the ruler of Qatar and the budget of the this office followed the budget of the state

³⁴⁴ Ali Khalifa Alkawari. 2011. The people want reform in Qatar ... Also. Almaaref Forum. P.16.

private ownership for a member of the ruling family or for an influential person who is tied to the authority.³⁴⁵

In Saudi Arabia, there is a new type of land reclamation being practised that is a little similar to one practised in Kuwait during the 1960s. The practice involves a number of influential people fencing off a vast tract of land and claiming ownership (called *Tashbeek*, which means *fencing*).³⁴⁶ After fencing off the land, they wait for a period based on the location of the fenced land, and if there is no objection to the fencing, they claim ownership of it by bribing officials or members of the Notary Public to register the title of the land under their names. The government has established an Encroachment and Land Monitoring Committee to monitor the government's land and the Committee has declared that 2237 pieces of land have been encroached and that 900 are located in different parts around the airport expansion area.³⁴⁷ The Court of Appeal in Mecca ruled against a real estate investor and a member of the notary public as they had forged a title deed of land in the south of Jeddah of one million square metres with an estimated price of one billion Saudi Riyal. The judgment order was to return the land to the state property. The Emir of Mecca has explained that the government has been able to secure the return of 220 million square meters of land in the territory of Jeddah, which is worth more than 86 billion Saudi riyals.³⁴⁸ It is worth mentioning that the forgery of a title deed is very easy to perform as the title deeds are still written by hand by the notary officers.³⁴⁹

³⁴⁵ *Ibid*

³⁴⁶ Abdulhai Yousef (2012) acquisition of government land in Saudi Arabia. Alqabbas newspaper. issued on 6/4/2012 <http://www.alqabas.com.kw/node/64312> (Arabic news)

³⁴⁷ *Ibid*

³⁴⁸ Eid Al-Harhi. 220-million-sq. meter land encroachments demolished in Jeddah. *Saudi Gazette.com.as*.

<http://www.saudigazette.com.sa/index.cfm?method=home.PrintContent&action=Print&contentID=00000072191> Accessed on 19, Feb 2013.

³⁴⁹ AKHBAAR24.com <http://akhbaar24.argaam.com/article/detail/116650>

The situation in Kuwait is quite different. There are a number of on-going projects based on the Build Operate Transfer (BOT) system such as the Al Waseela project, the Seleel project and Al Salmiah market and all of these projects have been built on high value lands and sold at minimal prices.³⁵⁰

A number of Kuwaiti Parliament Members have objected about a real estate project called the Sabah Al-Ahmad Sea City project (Also called the Al-Khiran Pearl) that will be built on an area of 70 million square meters. The project includes residential and commercial areas as well as facilities such as schools and health care. The land is unsuitable to be built on and needs to be reclaimed from the sea. The project has been divided into more than three phases, and the total cost of the project is estimated to be \$5 billion.³⁵¹

The Members of the Kuwaiti Parliament objected about the price of the land which was only sold for about 600 thousand Kuwaiti dinars to the project initiator without any competition.³⁵² The Kuwaiti legislature states that any auction of the state's property should be published in the national gazette and local newspaper with open competition for bidders.³⁵³ The Kuwaiti legislator gives the right to the Ministers of Finance to dispose of the state property. However, there are only two ways of exploiting or disposing of state property - either by leasing it for temporary exploitation period such as the waterfront development project which is within the terms of the open competition between qualified applicants, or by selling through auction such as the Raqa'i area. Where the entrepreneur should explain the idea of the

³⁵⁰ Al taleea newspaper, qera'a fee aagd bai'a la'ale'a alkheran, Awdat Aser albaremeel fee A'hd alqawanen wa alragaba alshuibayah.(arabic text).

<http://local.taleea.com/archive/newsdetails.php?id=11461&ISSUENO=1407>

³⁵¹ <http://www.k-almazouq.com/la-ala.htm>

³⁵² Al taleea newspaper, qera'a fee aagd bai'a la'ale'a alkheran, Awdat Aser albaremeel fee A'hd alqawanen wa alragaba alshuibayah.(arabic text).

<http://local.taleea.com/archive/newsdetails.php?id=11461&ISSUENO=1407>

³⁵³ Kuwait, Law No 105 of 1980 of state property article 6

project to the government and the government should publish the project in the national gazette for an open competition for bidders. And the higher bidder will take the project and compensate the entrepreneur of his idea. Ministers are not allowed to dispose of state property under any other circumstances.³⁵⁴

A similar situation occurred in Bahrain, a country that has limited land and the largest part of it is owned either by the state or by members of the upper classes. The government of Bahrain has tried to stop the corrupt activity of gaining state land by issuing Law No. 24 of 2001 about the disposition of land, (repealed by Law No 19 of 2002), which clarified more precisely the right of disposal of state lands and only the King has right to grant lands as gifts.³⁵⁵ Even with the issuance of this Law there were moves by influential people to gain control of vast tracts of land to implement real estate projects. A further issue has been that the sea is deemed public property and the Arabian Gulf waters are shallow. The cost of land reclamation is also low. It is therefore easy and inexpensive for influential people to convert the land into private real estate assets through land reclamation from the sea-bed. This reformed land will then become very high value in the near future. Land reclamation work in Bahrain increased by 90 per cent from 2002 to 2007 and this caused economic and social problems.³⁵⁶ In fact, encroachment on state land took several forms, but most of them were based on the absolute power of the King to distribute land to the ruling family,

³⁵⁴ Kuwait, Law No 105 of 1980 of state property article 4-6

³⁵⁵ Bahrain Law No. 19 Of 2002 in relation to the right of disposal of state private property. And also see Ali Khalifa Al-Kawari(ed). 2009. *The third oil boom and Repercussion of the global financial Crisis: the case of the Countries of the Gulf Cooperation Council (GCC)*. The centre of the Arab unity. P. 196

³⁵⁶ Habib Toumi. 2010. *Bahrain parliament wants solution to land reclamation issue*. Gulf news. <http://Gulfnews.com/news/Gulf/bahrain/bahrain-parliament-wants-solution-to-land-reclamation-issue-1.567052>

ministers and other influential people.³⁵⁷ This is in spite of Decree Law No 19 of 2002 mentioned above and to the principles of justice provided in Article 11 of the Constitution of Bahrain which states that: “All natural resources shall be the property of the State. It shall ensure their preservation and proper utilisation, due regard being given to the requirements of the State's security and national economy”.³⁵⁸

Likewise, in Dubai, most of the major real estate projects are built by government developers, which are usually owned by the rulers of Dubai and other selected people. These real estate projects such as Burj Al Arab, the Palms Islands (there are three palm projects in Dubai) and the World Map project are built on artificial islands. The process of land reclamation began in 2001 and more than 1,500km of coastline has been added to Dubai's original 67km coastline.³⁵⁹ The coast is state property and no one can dispose of it without the approval of Parliament, but since the Ruler of Dubai mainly appoints the Dubai's executive council members no one can object to his decisions. In addition the coastal of Dubai was contain a small houses built in front of the sea, the government of Dubai began to expropriate these houses with a fair compensation in order to build there luxurious projects, which transfers these small houses into luxurious hotels, shopping malls and entertainment projects .

This phenomenon can be associated with what Marx called ‘the primitive accumulation of capital’. This is based on the acquisition of assets that are often either part of public property or not owned by anyone, and these are then converted to private property and capital that can be used for making profits.³⁶⁰ Given that

³⁵⁷ Ibrhem Alsayed in Ali Khalifa Al-Kawari(ed). 2009. *The third oil boom and Repercussion of the global financial Crisis: the case of the Countries of the Gulf Cooperation Council (GCC)*. The centre of the Arab unity. P. 195

³⁵⁸ Bahrain constitution Article 11

³⁵⁹ Yasser Elsheshtawy. (2010) *Dubai: behind an urban spectacle*. Routledge p.143

³⁶⁰ David Harvey, (2007) *The New Imperialism* (Oxford: Oxford University Press). pp. 145-149.

influential people of the region have the power to enact Laws and have access to the enormous resources of the state produced from oil, it is not difficult for them to privatise these lands in order to carry out their projects.

The Heritage Foundation and the Wall Street Journal published the Annual Index of Economic Freedoms, covering 161 countries, in 2005. The Index is primarily concerned with the extent to which private property is recognised by the state and protected from expropriation. The Index included a large number of Gulf countries, such as Qatar, Oman, KSA, and the UAE, and they were all assessed at Level 3 for property protection. This classification indicates ‘a moderate court system, inefficient and subject to delays; corruption may be present; judiciary may be influenced by other branches of government; expropriation possible but rare in these countries’.³⁶¹

Kuwait was placed at level 4 as it was found to have low property ownership which was weakly protected, court system inefficient, corruption present, judiciary influenced by other branches of government; expropriation possible. No Arab country figures in the top lists where protection of property is described as very high or high and an independent uncorrupt judiciary enforces those rights.³⁶²

14. Conclusion

In this chapter an attempt has been made to explore the legal framework of ownership and the development of property ownership in the Gulf region, including the types of ownership that are on offer to foreign property buyers. It has been shown that most of the Gulf States have an economic policy that wishes to encourage the real estate sector by allowing foreigners to own property and linking property ownership with a

³⁶¹

³⁶² Siraj Sait and Hilary Lim. *Land, Law and Islam: Property and Human Rights in the Muslim World*. Un Habitat. Zed Books, London & new your

long residency stay in the country. With the influx of foreign buyers, Gulf legislators have reconsidered real estate regulation and how to develop these regulations to reach a high level of protection for real estate investors that will encourage further investment. Even with the legal development in the real estate sector there is some shortage in these regulations, where many Gulf States did not developed dilemma of the common ownership (Strata regulation) or even the foreign ownership as the case of Kuwait. Also there is a shortage in the governmental regulatory agencies that regulate and developed the governmental branches to ease the governmental proses in relation to real estate transaction.

Furthermore, it is noticeable that there are some discrepancies between public and private ownership in some Gulf States. There are three types of ownership. The first two types are the state or public ownership and the private ownership, which has been well regulated and protected by the constitution and conventional Laws and ministerial decrees. However, the third type is ownership by the ruling family and the influential people is not regulated yet and is still conceders as a grey area. In some Gulf countries, the ruler still has an extraordinary amount of power and he can occupy vast tracks of land and claim ownership, or transfer public land into private property using his influence on the parliament of the country. He can also change or amends the Laws and regulations to give himself the sole right to dispose of public property by granting it to close associates or to other members of the Royal family. This kind of corrupt activity should be well regulated and Parliament should be given greater powers to question these people about their actions.

Chapter 4: The regulatory framework of the Gulf's real estate sector

1. Introduction:

Since the real estate sector has become one of the biggest sectors for investment in the Gulf region, it is important to consider the regulatory framework of the Gulf's real estate market by comparing it with developed countries to see whether the Gulf's real estate regulatory system complies with the best practice that is issued by the United Nation Land Administration Guidelines.

Since the beginning of the real estate boom in the Arabian Gulf countries, most governments of the region have supported real estate projects by issuing a number of Laws and regulations to increase investors' confidence in the real estate sector. Many incentives have also been introduced to attract investors to the Gulf's property market. The growth of the real estate sector in this region has encouraged local governments to establish regulatory bodies that would develop regulations and policies to protect the interests of real estate investors. Thus, it is important for all investors today to understand the level of protection to their property rights and the legal framework of real estate ownership in the region.

This chapter will aim to evaluate the level of protection offered by the Gulf's regulations to both property buyers and property investors, whether they are developers, banks or brokers.

Currently there are no universally accepted practices to evaluate the performance of land administration systems. This is partly because land administration systems are in constant reform,³⁶³ the most accepted land administration guidelines are issued by the

363 Daniel Steudler, Abbas Rajabifard, and Ian P. Williamson. (2004) *Evaluation of Land Administration Systems*. Department of Geomatics, The University of Melbourne, Australia.

United Nations (UN) Economic Commission for Europe (1996).³⁶⁴ This chapter will evaluate the regulatory framework of the land administration system and real estate administration registration in the Gulf region to see whether the Gulf's Land Administration Regulations comply with the main elements of the UN land administration guidelines or not. The real estate broker's regulations will be explored in this chapter in order to see how the Gulf's legislators regulate their activities and what their rights and obligations are in regards to real estate transaction parties. Furthermore, this chapter will explain and clarify the usufruct and surface (*Musataha*) regulations, the jointly owned properties regulations and the off-plan properties regulation, and it will comment on the current practice of these regulations. An analysis of the escrow account legislation will also be incorporated in this chapter.

2. The significance of the Land Administration System in the Arabian Gulf

Countries

In recent times there has been a revival of interest in the role and operation of the land administration system; where the primary objective of this is to secure titles to land and facilitate land transactions.³⁶⁵ The land administration system identifies each individual land parcel and provides confirmation by the state that the person named in a state register has specific property rights in that parcel. In addition, the system

364 There are a number of documents that introduce the best practice of the land administration systems such as: The International Federation of Surveyors (FIG) Statement on the Cadastre (1995), the UN-FIG Bogor Declaration on Cadastral Reform (1996), the FIG Cadastre 2014 publication (1998) and the UN-FIG Bathurst Declaration on Land Administration for Sustainable Development (1999).

365 Peter Dale. (2000) *The Importance of Land Administration in the Development of Land Market- A Global Prospective*. Department of Geomatic Engineering, University College London. England

facilitates land transactions and enables land or property to be used efficiently as collateral for a loan.³⁶⁶

Based on the experience of a number of countries who have successful and effective land administration systems, the land administration system should be reliable, affordable, simple and well suited to the local society.³⁶⁷ In order to have a successful and effective land administration system this system should be supported by appropriate legislation and institutions (such as a cadastral survey) and land adjudication.³⁶⁸ The following part of the thesis will focus on the legislation that regulates the land administration system in Gulf countries. In order to establish the deficiencies of the Gulf's land administration system the thesis will use the most internationally accepted guidelines that were produced by the Economic Commission for Europe under the umbrella of the United Nations,³⁶⁹ to show the significance of the land administration system and what it can offer to individuals, governments and society.³⁷⁰

2.1. The benefits for individuals

Land registration provides a degree of certainty and security to the owner as well as to others who have rights to land. Such secure rights are particularly important for agricultural land. Economists and others have long argued that increasing the security of individual property rights in land stimulates private investment and agricultural development because the individual is more willing to make long-term

³⁶⁶ Ian Williamson and others. (2009). *Land Administration for sustainable development*. ESRI press academic, Redlands, California.p.9

³⁶⁷ Glenn, P. (2004) *Legal tradition of the world: sustainable diversity in Law*, 2nd ed. New York: Oxford University Press

³⁶⁸ Ian Williamson others. (2009). *Land Administration for sustainable development*. ESRI press academic, Redlands, California. P.11

³⁶⁹ See footnote number 368

³⁷⁰ Auzins, A. (2004). Institutional Arrangements: A gateway towards sustainable land use. *Nordic journal of surveying and real estate research*.1:57-71.

improvements.³⁷¹ To the extent that land registration improves security of tenure, one would expect it to increase productivity-enhancing investment.

It permits greater access to credit because the registration of rights to land establishes those rights in the eyes of the Law and provides documentary evidence which is necessary to prove land rights. The holder of the land rights thereby becomes "credit-worthy" and can pledge their land rights as security for a loan.³⁷² Development of land and efficient agriculture typically requires more resources than the owners command on the market or can borrow from friends or relatives.³⁷³ Mortgagees may rely on the register and thus their risk is reduced, lowering the interest rate they charge for the loan.

A land administration system makes dealings in land more expeditious, reliable and inexpensive. Without reliable land registers, land transactions may be expensive, time consuming and ineffective.³⁷⁴ It is normally necessary to establish that the reputed owner actually has the legal right to alienate the property. This process may be complicated and confusing for the layperson. In many countries that lack a land register, property owners use legal experts to conduct title searches and to establish ownership.³⁷⁵ A land registry not only makes extended searches of land rights unnecessary, but also makes it possible to use simpler, standard forms of conveyance.

371 Peter Dale. (2000) *The Importance of Land Administration in the Development of Land Market- A Global Prospective*. Department of Geomatic Engineering, University College London.

372 Rockson, Georgina, Rohan Bennett, and Liza Groenendijk. (2013)"Land administration for food security: A research synthesis." *Land Use Policy* 32: 337-342.

373 The Economic Commission for Europe. (1996). *Land Administration Guidelines, with special reference to countries in transitions*. United Nations, New York and Geneva.

374 Bennett, R., J. Wallace, and I.P. Williamson.(2008) Organizing property information for sustainable land information. *Land use policy* 25:126-38.

375 See Simpson, Stanhope Rowton. (1976) *Land Law and registration*: Cambridge University Press. p.53 (noting that landowners often require professional assistance to prove valid title). A land registration system does not necessarily preclude the need for legal experts to carry out functions related to land conveyances. In England, despite the existence of a land registry, solicitors are necessary for land conveyances. This is partially due to the unnecessarily complicated nature of England's land registry and because the registry is not accessible to the general public.

A formal land registry aids small rural landholders, who often cannot bear the cost of professional conveyance assistance.³⁷⁶

2.2. The benefits for the government

A land administration system represents a major component of a land information system, and it assists and improves the planning and infrastructure development of the land, where in many countries the local municipal authority controls the development and issuing of building permits. A good land administration system should permit the integration of records of land ownership, land value and land use with economic and environmental data in support of physical planning. The availability of up-to-date large-scale cadastral plans of urban areas provides the basic structure within which development schemes can be planned, evaluated, and acceptable designs implemented.³⁷⁷

A land administration system can also improve the basis for land tax.³⁷⁸ A good land registration system based on maps and which embodies the unique identification of each land unit provides the information necessary for an efficient tax system.³⁷⁹ An improved land taxation system provides several benefits, such as increasing revenues by making tax coverage complete, producing a fairer system because boundaries and land areas are more specifically identified, and providing information necessary to identify and punish tax evaders.³⁸⁰ A good land taxation system has other benefits. For example, to the extent that land tax revenues are kept at the local level, an

376 Simpson, Stanhope Rowton.(1976) *Land Law and registration*. Cambridge: Cambridge University Press. p.53

377 Rockson, Georgina, Rohan Bennett, and Liza Groenendijk. (2013)"Land administration for food security: A research synthesis." *Land Use Policy* 32: 337-342.

378 Economic Commission for Europe. *Land Administration Guidelines*. United Nations. New York and Geneva, 1996

379 Tim, Hanstad.(1998) Designing Land registration System for Developing Countries. *American University international Law review*, volume 13, issue 3.p.663

380 Tim, Hanstad.(1998) *Designing Land Registration System for Developing Countries*. American University international Law review, volume 13, issue 3.p.663

improved taxation system will augment the effectiveness of local authorities and institutions and become a powerful instrument in decentralising administration.³⁸¹

A land administration system will also protect state land and improve public administration. As land is an important resource for every country and community, land administration thus plays a very important function. It is almost self-evident that to plan land development, one must know the basic facts concerning the land. Better land use is encouraged through planning regulations. Such improved land use can occur through direct action like zoning, protection of ecologically sensitive areas, public urban development, land consolidation, irrigation projects, etc. This can also be achieved indirectly though, by establishing suitable conditions for private development as mentioned above, such as tenure security and access to credit. Land records based on well-defined land parcels are essential for all these purposes.³⁸²

Other land policy measures, such as control of excessive fragmentation, control of foreign ownership, and prohibitions on excessive land ownership, even in the absence of an agrarian reform program, will be very difficult or impossible to implement without the type of organised information provided by a land registration system.³⁸³

2.3. The benefits for society

The system of land administration can help to promote the peaceful, orderly and wise utilisation of national land resources as it reduces the likelihood of ownership disputes and land litigation. A well-designed and efficiently operated land registration system can greatly reduce disputes and litigation over land, resulting in better social

381 Economic Commission for Europe. *Land Administration Guidelines*. United Nations. New York and Geneva, 1996

³⁸² Enemark, Stig. (2010). "The Evolving Role of Cadastral Systems in Support of Good Land Governance." In *Open Symposium FIG*, vol. 7.

³⁸³ Enemark, Stig. (2010). "The Evolving Role of Cadastral Systems in Support of Good Land Governance." In *Open Symposium FIG*, vol. 7.

relationships, less work for overworked courts, and fewer expenses for the individual. Land disputes can overwhelm the courts, which often do not have the capacity to handle increased litigation.³⁸⁴ In developing countries, as in most other countries, it is more difficult for a poor person to defend their property interests than for a wealthy landowner. Hence, in an environment of unclarified and undocumented land rights, the wealthy, large landowners often benefit at the expense of others.³⁸⁵

3. The legal framework of the land administration system

The Economic Commission for Europe set the land administration guidelines for countries in transition these guidelines define land administration as the process whereby land and the information about land may be effectively managed.³⁸⁶ The land administration guidelines of the Economic Commission for Europe address the social, legal, economic and technical framework of land administration systems. This chapter will focus only on the legal guidelines that affect land administration matters, such as the legislation that affects dealing in land and properties, the Laws of land reform and reorganisation- and the Laws that govern land administration systems. The following section will discuss the aspect of the Law that affects land administration; the focus will be on the legal status of land, real estate property and title registration.

4. The legal status of land and real estate property

Generally there are three main areas of the Law that affect land and real estate property. The first is the Law of real estate property that affects dealing in land and

384 Economic Commission for Europe. *Land Administration Guidelines*. United Nations. New York and Geneva, 1996

385 H.W. West, (1969) *The Role of Land Registration in Developing Countries*, Chartered Surveyor, Nov. 1969, p. 216 (discussing the reduction in litigation rates when land registration is properly conducted and adjudicated)

386 Economic Commission for Europe. *Land Administration Guidelines*. United Nations. New York and Geneva, 1996

properties.³⁸⁷ The second is the Law of land reform, including the privatisation of state-owned land, the restitution of former private land, land consolidation and the Law of expropriation for public benefit and other legislation that is related to land reform.³⁸⁸ The third is the Law that governs the conduct of land administration, including the regulations that control the operation of the cadastre and Laws affecting dealing in land and properties, as well as the Laws that govern land administration such as the land registration departments.³⁸⁹ Although there are other areas of Laws that relate to real property such as those relating to bankruptcy, inheritance and marriage, these regulations will not be discussed in this thesis due to them not being connected with the heart of the subject.³⁹⁰

4.1. Legislation that affects dealing in land and properties

In many countries around the world there is a basic land code that includes special legislation governing the operation of land administration systems. This includes cadastral regulation and any land registration system.³⁹¹ In particular the land code will define the nature of land and real property. A good example of this is the land Law in England, which has consolidated in the Law of property act 1925.³⁹²

In the case of the Arabian Gulf countries there is no single piece of legislation that regulates all land matters; land or property regulations are legislated under several Laws including civil Law, commercial, criminal and other relevant Laws. The Law of

³⁸⁷ Enemark, Stig. (2010). "The Evolving Role of Cadastral Systems in Support of Good Land Governance." In *Open Symposium FIG*, vol. 7.

³⁸⁸ Bennett, R., J. Wallace, and I.P. Williamson. (2008) *Organising property information for sustainable land information*. Land use policy 25: pp126-38.

³⁸⁹ AlShehabi, O., Hanieh, A., Khalaf, A. (2014). *ransit States: Labour, Migration and Citizenship in the Gulf*. Pluto Press. P.22

³⁹⁰ Byamugisha, F.K. 1999. *The effects of land registration on financial development and economic growth: A theoretical and conceptual framework*. Policy Research working paper, No. 2240. Washington, D.C.: World Bank

³⁹¹ Binns, Sir B.O. (1953). *Cadastral surveys and records of rights in land*. FAO. ROME

³⁹² Dale, P.F., And J.D. McLaughlin. (1999) *Land administration*. Oxford: Oxford University Press. P45

real property that affects dealing in land is regulated by civil Law, where the different types of land tenure are regulated and well identified. The civil Law of the Gulf States recognises different types of interests and rights connected to property, such as usufruct and surface rights and other rights that relate to property ownership, in addition to regulations to stop the illegal occupation of land. Oman is the only country among the Gulf States that has specific legislation in place, called a Land Law,³⁹³ which sets general guidelines for land ownership and determines differences between state and private land. The Omani Land Law also regulates the process of endowment of lands (by *wagf*) as well as regulation of the industrial and agricultural lands and the way to resolve disputes relating to land.³⁹⁴

The land registration Law in other Gulf member states is considered to be the main Law that regulates land and property ownership. However, the land registration Law does not define property types or cover all land and property matters. There are therefore other legislative and ministerial decrees that cover the missing parts in the various land property legislations.

4.2. The Laws of land reform and reorganisation

With the independence of the Gulf countries in the early 1970s, and with the beginning of development plans in these countries, a chain of legislation and regulations was put in place to control, regulate and reorganise land reform. These sets of Laws regulated the right of the states to reform the land, whether for development or infrastructure purposes. These types of legislation gave the government the right to use state land for many purposes.

393 Oman Land Law No 5 of 1980

394 Oman Land Law No 5 of 1980

Some of the Gulf countries issued legislation that regulated the privatisation of state-owned land,³⁹⁵ such as Kuwaiti Law No.8 of 2010 which aimed at regulating privatisation and Law No 7 of 2008 which regulated the build-operate-transfer (BOT) contract between the government and the private sector to enable them to use state lands for a specific period. In other Gulf countries where there is no such specific legislation that regulates BOT or privatisation activities, then the BOT or the privatisation system is based on a contract between a government department or ministry (usually ratified by the Council of Ministers) and the private sector to use state land for the interest of private entities. On the other hand, there are some governmental decrees which set out the policies and objectives of these types of contracts. For example in Saudi Arabia, the Supreme Economic Council approves the privatisation strategy of the Kingdom and the Council of Ministers decree No 60 of 1/4/1418 (August 6, 1997). In 2001, another Council of Minister's decree made the Supreme Economic Council responsible for supervising the privatisation programme in Saudi Arabia.³⁹⁶

The Law of expropriation for public benefit is meant to be the main tool for land reformation. This type of Law was usually issued during the establishment era of the Gulf States when most were trying to restructure their cities.³⁹⁷ For example, the Kuwaiti legislature issued a number of Laws to regulate the expropriation process under the principle of transparency, putting in place a number of complementary

395 Definition of privatisation is the process of transferring the ownership or management of public establishments, projects, and services from the government sector to the private sector, relying on market mechanisms and competition, through a number of methods including contracts for managing, operating, financing, or selling all or part of the government's assets to the private sector

396 U.S. Saudi Arabia Business Council. Privatisation Strategy for Saudi Arabia

<http://www.mafhoum.com/press3/112E15.htm>

397 Qatar Law No 13 of 1988 in relation to expropriate for the public utility

Laws that were issued to regulate expropriation.³⁹⁸ In the other Gulf States, the Law of expropriation is regulated and the Laws have sets out the types of cases where the public interest overcomes private interests so as to promote expropriation activities. These types of regulations give the government branches the authority to reorganise, reform and dispose of state land in order to achieve public benefit.³⁹⁹ There are a number of large infrastructure projects in the Gulf that were set up on private land that needed to be expropriated in their way in order to be accomplished.

The expropriation Law is a tool that gives the government the authority to take private property with a fair compensation in order to carry out a public project with the aim of benefitting society. This Law was used as a tool during the development process of most Gulf countries, and was heavily used in Kuwait during the establishment of the country during the 1950s and 60s. For example, the Kuwaiti government expropriated land for the whole capital city and the areas surrounding it in order to re-organise and restructure the old city.⁴⁰⁰ Another example is Qatar where expropriation has been used in order to complete development projects. In 2011 there were more than 21,000 properties that had been expropriated in the territories of Jesra, Alkahrab Street and other areas, in order to conduct government projects.

4.3. The Laws that govern land administration

An efficient land administration system should include a land registration system.⁴⁰¹

This system should provide order and stability to society by creating security for

398 Kuwait, No 33 of 1964 to regulate expropriation. Law No 41 of 1965 regarding real estate valuation and acquisition. Law No 4 of 1968 concerning the valuation of private homes. Law No 18 of 1968 which identifies the differences between the state and private property

399 Although there are some observations from some legal, political, economic scholars on the disposal right that given to the decision makers (ministers, and high ranked people in the government) that may end wither for themselves or for related parties.

400 See chapter two for more information about the expropriation process in the Gulf countries

⁴⁰¹ Dale, P.F., And J.D. McLaughlin. (1999) *Land administration*. Oxford University Press. p12

individual landowners, traders, dealers and nationals and international investors and moneylenders.⁴⁰² There are a number of Laws that are meant to regulate the activity of the land administration system. These types of Laws set the guidelines and distribute the authority to governmental branches to regulate the land administration system. These types of Laws include the legislation that regulates municipality activity and the legislation that regulates the land registry office as well as the Law that regulates cadastral surveys.

Upon the establishment of the Gulf countries, they began to regulate land and real estate ownership in their territory. The first official legislation on land ownership in the Gulf region was in Kuwait and is still in use to this day.⁴⁰³ During the reign of Sheikh Abdullah Al-Salem Al-Sabah, there was an enactment, Law No. 5 of 1959, to establish the land registration department and to oblige people who had a title deed to register their properties in the new land registration department. After a while, Law 18 of 1969 was issued to separate and regulate state land and private lands: this Law set an imaginary line to differentiate between state lands and private lands that were not registered in the governmental registry.⁴⁰⁴ There are those who believe that this Law was issued by the former Emir of Kuwait to stop the encroachment on state land and the claims to ownership by influential people.⁴⁰⁵

All the Gulf member states have issued special legislation that regulate property registration in their territory based on the Kuwaiti land registration system.⁴⁰⁶ In Saudi

⁴⁰² Galal, A., And O. Razzaz. (2001) *Reforming real estate markets*. Policy Research Working paper 2616. Washington ,D.C.: World Bank

⁴⁰³The ownership data in Bahrain date back to 1920 when they established the endowment office in Bahrain

⁴⁰⁴ Kuwaiti Law No 105 of 1980 in relation to regulating the state property

⁴⁰⁵ An informal interview with the former minister of the planning and development in Kuwait Dr Ali AlZumai

⁴⁰⁶ See the Qatari land registration Law issued No 14 of 1964 and Law No 10 of 1987 in relation to the property of the state: Bahrain land registration Law No.15 of 1979; And in the UAE, each emirate

Arabia, the first land administration system was established in 1392 H (1971 Gregorian calendar) and based on the comments of many investors and legal scholars this system was not sufficient, as the title deed to property was written by hand and could be easily forged. In 2004, the government of Saudi Arabia modernised the real estate registration by issuing Royal Decree No 6 of 9/1423H (2004) along with the previously enacted Law of General Survey Authority and the System of Ownership of Units,⁴⁰⁷ Laws which became the main real estate regulation in Saudi Arabia designed to facilitate a comprehensive framework for Saudi real estate titles.⁴⁰⁸

Although these Laws that govern land administration have been issued in different time periods in the various Gulf countries, most have set out the general regulatory framework of the land property administration system in their territory. In addition, these Laws have set out the rights and obligations of the property owner.⁴⁰⁹ Generally, these Laws ordered the establishment of the registry office or the cadastral survey and set out the regulatory framework of the land administration system in addition to the internal management scheme of these government branches. They also set out which activities and documents should be registered in the registry office, as well as regulations for the land registry department themselves and what type of information should be registered in these books. In addition, the registration fees that should be paid to the registry office to register a parcel of land or a property were also outlined.

has their own land registration Law, for example the Abu Dhabi Land Registration Law No. 11 of 1979 amended by Law 5 of 1980 and the last amendment was by Law No 3 of 2005: Ajman Amiri Decree No 7 and 8 of 2008, regulates the Emirate's land and properties sector; See also Oman Land Law No 5 of 1980.

407 Saudi Arabia, Royal Decree No. 5 on 11/2/1423H, corresponding to 24/4/2002

408 Jeremy Scott. (2012). *Real Estate Update – Kingdom of Saudi Arabia – Greenfields projects create opportunities*. Al Tamimi & Company. <http://www.legal500.com/c/saudi-arabia/developments/17453> (accessed in 13/11/2013)

409 The Qatari Land Registration Law No 14 of 1964, Bahrain Land Registration Law No.15 of 1979. The UAE, Abu Dhabi Land Registration Law No. 11 of 1979 amended by Law 5 of 1980 by Law No 3 of 2005., Oman land Law 5 of 1980 and land registration.

5. Real estate types in the Arabian Gulf countries and the Land registration system and the cadastre system

After issuing land administration legislation, it is the role of the governmental branches to regulate and divide property types. Generally, in the Arabian Gulf the real estate sector is made up of five types of properties and each type is divided into different sections. The first type contains residential properties; these are usually villas and represent over 70% of real estate transactions in the Gulf region. They are defined as private residences and are made up of individual families organised by the public authority for housing welfare.⁴¹⁰

The second types of property that make up the real estate sector are investment properties, specifically residential, income-producing properties, such as residential apartment buildings. These makeups about 20-25% of real estate transactions in the region. Most of the Gulf States have designated some areas for investment purposes. In these areas, foreigners are allowed to own property or invest in real estate projects.

Commercial properties constitute the third type, and these are further divided into typical commercial properties utilised for purely commercial use, such as office buildings, shopping centres and multifunctional commercial properties, which permit the owner to lease space for commercial purposes. Commercial properties represent 15% of the real estate sector. Multifunctional commercial properties are also called 'investment buildings with commercial fronts'.

410 Almutairy, Humoud (2010) *A comparison between Islamic and conventional home financing in Kuwait: client perceptions of the facilities offered by the national bank of Kuwait and Kuwait finance house*. Doctoral thesis, Durham University. Available at Durham e-theses online: <http://etheses.dur.ac.uk/543/>

The fourth type is land which is used for storage or as warehouses, whereby these properties have a title deed and are owned by a person or are properties borrowed or rented from the government with minimal rent as support for local companies.

The final type of property is made up of industrial land and agricultural lands which are permitted for use as factories and other industrial activities. The Public Authority for Industry and the Public Authority of Agriculture Affairs provides industrial and agricultural parcels of land to conduct industrial or agricultural activities in order to support the national economy. Some of the Gulf States have set out their policies to allow nationals only (persons or legal entities) to obtain a land parcel for industrial or agricultural activity. However, foreign investors (persons or legal entity) who want to invest in the industrial or agricultural sector have to resort to the foreign investment Law in order to obtain a parcel of land to conduct their activity⁴¹¹.

6. The significance of the Land Registration System and the Cadastre System:

Each Gulf country sets out policies to achieve its land policy aims by using a range of methods, techniques tools to manage state land and the resources of the state. The land administration system can be defined within these management techniques such as cadastres or parcel maps while the title deed registration system remains the foundation of the land administration system.⁴¹² The main task of the cadastre is the documentation of individual ownership in a specific land parcel. Documentation of individuals' ownership gives owners access to mortgage loans which is a fundamental requirement for economic development. The cadastre system is also important for governments' interest in establishing an efficient and equitable system for land or

411 The next chapter will focus on the regulatory framework of foreign investment in the Gulf's real estate sector.

412 Dale, P.F., And J.D. McLaughlin.(1999) *Land administration*. Oxford: oxford University Press

property taxation.⁴¹³ Another tool which is considered as one of the main tools of the land administration system is the computerised data system of land registration and cadastral information. This is due to the difficulties faced in maintaining paper documentation, which often dates back three or four decades, without damage.⁴¹⁴

6.1. The land registration system

With the establishment of the Gulf countries, the Gulf's legislators obliged people who had a paper title deed to register their properties in real estate or land registration departments in order to protect their ownership.⁴¹⁵ The system of land or property registration is thus in place to identify each individual land parcel or property, and it also provides proof and confirmation by the government that the citizen named in the registry has specific property rights in that parcel.⁴¹⁶ If the property unit has certain conditions, inheritance or any other liabilities related to real property rights it should be registered in the title deed of the real estate property unit.⁴¹⁷

In all Gulf countries, any transactions in relation to real property should be registered in land registration departments. These changes include transfers or changes of ownership, encumbrances on the land, lease agreements, mortgages and the establishment of endowments (*waqfs*), and gifts or grants and bequests of real property or mortgages. All other kinds of real estate transactions they should be recorded in the registry office in order to have legal effect and so that private

⁴¹³ Enemark, Stig. (2010). "The Evolving Role of Cadastral Systems in Support of Good Land Governance." In *Open Symposium FIG*, vol. 7.

⁴¹⁴ Williamson, Enemark, Wallace, rajabifard. (2009). *Land administration for sustainable development*. Redlands, CA: ESRI Press Academic. p.127.

⁴¹⁵ Not registering property does not mean the right of ownership was lost; an owner can register it afterwards if he has the documents that proves their ownership.

⁴¹⁶ Alec McEwen. (2010) *The significance of land title registration: a global perspective*. Land administration consultant. University of Calgary, Colombo, Sri Lanka 2011

⁴¹⁷ Patton Boggs LLP Attorney at Law. (2007) <http://www.pattonboggs.com/>

ownership is protected. There is usually no legislative compulsion for parties to record their transactional documents, but it is crucial for them to do so, because it will be legally ineffective against any subsequent bona fide purchaser or mortgagee who first registers an interest in the property. The idea of registering property transactions was developed decades ago in several European countries to prevent double selling of land. With registration, or upon recording of the title deeds at the governmental land registration department, the priority of claims could be established in the event of double selling.⁴¹⁸

Any third party such as a bank or a financial institution has the right to claim an interest in the property for many reasons. When third parties register their rights on a property in the government registry office, the third party becomes bound to the property itself and anyone to whom the property is transferred will be subject to the third party interest if it is registered. Without registration, the third party interest is only enforceable against the original owner through a claim of breach of contract.

The legislators of the Gulf countries have selected the information that should be registered in the property title: the title must identify the real estate unit and the ownership details, liens, inheritance, mortgage and other similar rights, and easement rights should also be addressed. Covenants that include complying with a master community declaration and the obligation to maintain a boundary wall and any leases should be registered as well.

6.2. The cadastral system

The cadastral system is similar to the land registry system, which consists of systematically organised records concerning land or property records within a certain

418 See Oman Register Law No 2 of 1998. Kuwait Registry Law No 5 of 1959. Bahrain Registration Law No 13 of 1977 and Qatar Land Registration Law No 14 of 1964.

jurisdiction and which contain a record of interests in land (in other words rights, restrictions and responsibilities). The cadastral system usually includes a geometric description of land parcels (usually as a map) linked to other records or registers describing the nature of the property, and the ownership of these properties, and often the value of the parcel and its improvements. In relation to the cadastral system, there are terms such as the "cadastral survey", which is a survey of borders of land parcels, and other term such as the "cadastral map", which refers to a map indicating the boundaries of land parcels. When the cadastre is employed for land, registration purposes it may known as a "legal cadastre".⁴¹⁹

There is a third type of cadastre; the "multi-purpose cadastre". This type is increasingly common in more developed countries.⁴²⁰ This type of cadastre contains both fiscal and legal information. It also includes information on pertinent characteristics of the land such as the housing and buildings, administrative boundaries, geological and geophysical data, demographic data, and underground utility services.

Most of the Gulf countries only rely on the cadastral survey that consists of the cadastre and the land registration as the main land registration tool. There have been some attempts to adopt multi-purpose cadastre systems in the region but until this time nothing has been put into practice.

419 Dale, Peter F., and John D. McLaughlin. (1988) *Land information management. An introduction with special reference to cadastral problems in developing countries*. Oup , 1988.

420 Currently Germany is implementing the so called "3A model" as an integrative approach for all spatial information systems.

6.3. Technology in the land administration system

The use of technology in the land administration system is a significant tool that allows for the establishment or development of a good land administration system. Initiatives undertaken by land administration organisations to deliver information and services to the public over the internet and to facilitate inter organisational workflows are common. Analysis of the experience can help determine good practice, and effective and innovative ways to re-engineer existing services. As part of the evolution of technology in a land administration system, the first attempt should be to build a comprehensive, interactive framework involving the introduction of an internet based e-land administration in order to establish a truly integrated digital land information system. In general, e-land administration means utilisation of technology to deliver land administration functions and services online. For example, Australia, which is the leading country in e-land administration, provides ten online land information services.⁴²¹ New Zealand introduced a land online system in 1996 with two government departments being made responsible for the cadastral survey and land title registration. In the Netherlands, all property deeds since 1999 have been scanned as a first step in utilising information technology in the land administration system.⁴²²

IT in land administration has evolved from the manual systems of the 1970s through to the computerised and web-enabled land administration of the 1980s and 1990s to interoperable and e-land systems.⁴²³ The year 2000 saw the beginning of the

421 Kalantari, M (2008). *Cadastral data modelling: a tool for e-land administration*. Doctoral thesis, University of Melbourne Australia.

422 Grant, D .2004. *Cadastral automation and related e-government initiatives in New Zealand*. Proceeding of international FIG seminar (june2-4). Innsbruck. Austria.

423 Williamson, Enemark, Wallace, rajabifard. *Land administration for sustainable development*. 2009 p.23

technological data system of the cadastre and land registration information being implemented in the Gulf region. Most of the governments of the Gulf have introduced technology in their government branches. The cadastral and land registration departments have been computerised and all the data/information has been saved in their data systems. Before this, many systems of registration or cadastre were based on written papers, which could be destroyed, lost, or forged.

If we take a closer look at the land administration systems of the Arabian Gulf countries and compare them with land administration guidelines issued by the United Nations European Economic Commission, we will find that the current land administration systems are established and issued on a good basis and are in line with the guidelines that have been issued by this Commission.

Although the land administration system of the Gulf countries is in line with the guidelines issued by the United Nations European Economic Commission, there are, however, some shortfalls in the implementation of these regulations. In many cases, the cadastre survey database in the Gulf countries does not reflect the latest land registration records because subsequent registrations have been conducted in the land registration office without the referral to land cadastre surveys. Land parcels have also been surveyed and have shown up on the cadastre database, but these have not been registered in the registration office. In certain areas in the Gulf, there have been properties that had been under re-planning projects, without any records within the land survey.⁴²⁴

where in many cases the cadastre survey is not reliable for the owner's names, the cadastral database (within the Land Survey) office does not reflect the latest land

424 Manaf Hamza. Automation of Land Registration in Bahrain
<http://downloads2.esri.com/campus/uploads/library/pdfs/19992.pdf>

registration records, become in many cases the subsequent land or property registrations are have been done in land registration departments without referral to land surveys. In other cases in the Arabian Gulf region the plots have been surveyed and shown on the cadastral database, but registration had not been processed, such as proposed grants, proposed subdivisions, and court surveys for declined cases. There is often a mismatch between the cadastral database and the database of the land registration department, where the cadastral database shows most of the land possessions in 1920s, although most of them are not registered. In many cases the cadastral databases in some of the countries of the Arabian Gulf do not maintain any provision for other land rights and easements and the cadastral database is not designed to reflect the status of a number of shareholders and their names in multi-ownership or common properties.

7. Regulating the real estate sector in the Gulf region

Upon issuing the statutory regulatory framework for the Gulf real estate sector and with the growth of the real estate sector, the idea of a real estate regulatory department was introduced. This department would regulate and control all the real estate sector activities. Some of the Gulf countries established such regulatory bodies in order to develop regulations and policies to protect the interests of participants in the real estate sector.

The idea of establishing a real estate regulatory authority was first introduced in Dubai. It was the first city in the Gulf region to create a special governmental entity, called the Dubai Land Department (DLD) established in 1960, to regulate all real estate activities. The DLD was set up as a real estate registry to record ownership and

disposal of property.⁴²⁵ In 2007, the DLD established a regulatory arm called the Real Estate Regulatory Agency (RERA). This agency has full legal authority to develop strategies and to regulate all real estate activities in the Emirate of Dubai. RERA also has the right to act on its own recommendations to issue circulars interpreting real estate Laws, such as the regulation of property management organisations, broker regulations, regulating real estate development. RERA also regulates consultants, real estate advertising companies, and any companies that are taking part in Dubai's real estate whether by selling, renting or purchasing residential or commercial assets in Dubai.⁴²⁶ In addition, RERA has the authority to issue new Laws and procedures to govern property development and property transactions. The primary aim of establishing this regulatory agency was to provide a strong legal framework for real estate parties, and to enable the parties to conduct all kinds of asset deals in an effective and transparent manner, with a view to eliminating property fraud, which has deterred potential investors.⁴²⁷

The Dubai Land Department (DLD) has put in place Laws that regulate all transactions relating to real estate in a transparent way. One of the most important Laws is Law No 3 of 2006 which specifies permissible areas where foreign nationals may own properties in Dubai. Another is regulation No 85 of 2006 which regulates real estate brokers' register transactions; while Law No 26 of 2007 regulates the relationship between landlords and tenants. All of these Laws were issued by the Dubai Land Department.

425 The Dubai Land Department was established in 1960 to safeguard the property rights in the city. Before its establishment, issues related to property were resolved through reconciliation councils. Under the DLD there are a number of departments such as the Real Estate Regulatory Agencies, the real estate registration, real estate evaluating department, real estate investment promotion and other departments. http://www.dubailand.gov.ae/English/about_us/about_ld.aspx

426 Abbas Naini. 2011. Assessment of Dubai Real estate Trust account Law and issues of Business: evidence from Ontario Utah. *The Journal of Business Inquiry*.2011, p.123.

427 Property finder. Dubai property Law - Part 1 (Escrow / Trust Accounts). 2011. <http://www.propertyfinder.ae/en/news-and-advice/buying-selling/dubai-property-Law-81.html>

The other Emirates have followed Dubai's lead by creating similar regulatory bodies that regulate the real estate sector. For example the Emirate of Ajman established the Ajman Real Estate Regulatory Agency by Emiri Decree No 8 of 2008 (as amended by Emiri decree No 11-12 of 2008) to handle all the regulations relating to the real estate sector in Ajman.⁴²⁸ The Emirate of Sharjah has established the Real Estate Registration Department by an Emiri Decree No 28 of 2008.⁴²⁹ The Ras Al-Khaimah Investment Authority (RAKIA) also established a real estate regulatory authority.⁴³⁰ The creation of these types of bodies means that it is the only regulatory body dedicated to issuing real estate regulations in their territory. Thus, real estate developers, brokers, owners and investors only need to visit one department (a one stop shop) to conduct any type of transaction in relation to real estate. This regulatory body is the one in charge of legislating and regulating the real estate sector in their territory and is the only regulatory body that real estate parties refer to conduct any transaction.

In the other Gulf States (Qatar, Bahrain, Oman, Kuwait and Saudi Arabia) there is no such governmental entity that regulates all types of real estate transactions. Instead, the regulatory framework of the real estate sector has been distributed between different governmental branches to regulate the real estate sector, where each governmental branch regulates specifically what it has been authorized to. The contractual parties that are involved in any real estate transaction have to go back and forth between different government branches in order to conduct a property transaction. For example, to register a property in Kuwait, the parties need to visit the

428 Ajman Real Estate Regulatory Agency. <http://www.arra.ae/?index.php>

429 Sharjah Government. Department of Real Estate Registration.
http://imap.sharjahtourism.ae/en/Department_of_Real_Estate_Registration

430 Andy Sambidge, 2009. Ras Al Khaimah launches real estate regulator. Arabian Business .com
<http://www.arabianbusiness.com/ras-al-khaimah-launches-real-estate-regulator-16596.html>

municipality department, the Ministry of Electricity, the Ministry of Commerce and Industry (if the transaction pertains to commercial land), the Real Estate Registry Office in the Ministry of Justice, the Notary Public of the Ministry of Justice and finally the contract control department in the same ministry, to accomplish a real estate transaction.⁴³¹ This may take a long time and may harm the transaction in which parties are involved.⁴³² In addition, the regulations that regulate real estate are issued by different governmental entities and they need to be ratified by the Council of Ministers and published in the National Gazette. This process can also take a long time and may hinder the progress of development. The real estate investor's parties need to check the many government branches' regulations or decrees to determine the latest regulatory framework so as to conduct any real estate transaction.

The Gulf governments that do not have a specialised real estate regulatory authority need to follow the path taken by the Emirate of Dubai by establishing an independent real estate regulatory authority and employing the experience of the Dubai's real estate market. By establishing one independent regulatory authority that handles all transactions related to real estate, including real estate broker regulations, real estate property registration, off-plan selling and any other related transaction, the investor's confidence will be boosted, and it enhances the regulatory framework of the real estate sector and gives transparency to it.

7.1. Real estate brokers' regulations

With the real estate boom that took place in the region during the 2000s, some of the Gulf governments issued and redrafted real estate brokerage Laws to create a greater

431 For more information see

<http://www.doingbusiness.org/data/exploreeconomies/kuwait/registering-property/>

432 Another example is the central registry office in KSA which is under the joint control of the Ministry of Justice and the Ministry of Municipalities and Rural Affairs.

degree of protection for real estate investors in the most transparent way. Gulf legislators prohibited real estate brokerage without a licence from the authority, with strict sanctions being in place for non-compliance.⁴³³ The brokerage licence can be issued to individuals or brokerage companies, and some of the brokerage Laws in the Gulf region require those working in real estate brokerage to pass a specialised training course in order to gain their brokerage licence to practise.⁴³⁴ In some Gulf Laws, the brokerage has been divided into two categories. For example in Dubai, Article 5 of Law No 85 of 2006 regulates real estate brokers, which divided brokerage into two categories. The first category concerns people with brokerage experience, and this clause applies only for UAE citizens who have practised real estate brokerage business for more than twenty years. The second category concerns those individuals who wish to engage in real estate brokerage and who work for a registered and licenced real estate company.⁴³⁵ The Dubai Brokerage Law does not specify which nationality the brokers need to have, so any nationality (whether they are GCC nationals or any other nationalities) that live in Dubai can practice real estate brokerage.⁴³⁶ The Law requires real estate brokerage companies to register employees who are directly involved in brokerage activity, whether they are local or foreign. This has resulted in many foreign brokerage companies establishing their branches in the Emirate of Dubai. Shareholders and other support staff, such as accountants and receptionists of the brokerage company, are exempted from registration.

433 According to the Qatari Brokerage Law No 13 of 2011 the fine for individuals who practice brokerage without a licence ranges from between QR 20,000 to 50,000.

434 Oman. Royal Decree No. 91/2010 amending the provisions of the Law regulating real estate brokerage in the real estate fields. This Law states that individuals should pass a training course in order to practice brokerage in Oman.

435 UAE, Dubai, Article 5 of Law No 85 of 2006 that regulates the real estate brokers in Dubai

436 Dubai Law No. 85 of 2006 regarding the regulation of real estate brokers registering in Dubai

Unlike in Dubai, Qatar has taken a different path to regulating brokerage activity. The Qatari legislation prohibits foreign nationals from working as real estate brokers.⁴³⁷ Any brokerage company established in Qatar should have no less than 51% of Qatari partners and one of the purposes of the company should be to practice real estate brokerage.⁴³⁸ Foreign employees of brokerage companies are not permitted to carry out these duties.

The Qatari and Dubai brokerage Laws do not provide a clear statement as to whether other Gulf nationals are permitted to practise brokerage activities in their territory or not, but according to Chapter 2, Article 3 of the GCC Economic Agreement (GCC Common Market): “all GCC members shall extend to GCC citizens the same treatment accorded to its own citizens without differentiation or discrimination, in all economic activities”.⁴³⁹ Therefore, it is implicitly agreed by all members that Gulf nationals should be allowed to carry out brokerage activities throughout the Gulf region.

The brokerage regulations in the Gulf require brokers to hold a private register to record all brokerage transactions undertaken by them. The brokerage regulations requires the broker to draft brokerage contracts that include the full name of the parties, the property specification, the brokerage fee and any other necessary data, and these contracts should be saved for a period of five years from the date of the contract.⁴⁴⁰ The brokers are prohibited from violating their obligations to the

437 Online Qatar. (2011). Qatar bans expatriates from working as real estate brokers <http://www.onlineqatar.com/936-Qatar-bans-expatriates-from-working-as-real-estate-brokers.html> accessed in (11/2/2013)

438 Qatar Law No 13 of 2011 organising the practice of real estate brokerage in Qatar

439 The Unified Economic Agreement between the GCC, 2001(chapter 2 article 3) <http://library.gcc-sg.org/English/Books/econagree2004.htm> accessed in (11/2/2013)

440 Kuwait ministerial decree No. 477 of 2011 in relation to regulation of the real estate brokers

representative,⁴⁴¹ and the broker or their deputy acts as a custodian of the amounts, securities or bonds handed to him by any of the parties. The broker must return any document received from the parties, and in a case of default, will be charged with breach of trust. Moreover, brokers are responsible for any loss or damage incurred by any of the parties as a result of the broker's work or through fraud or deception.⁴⁴² The brokers cannot hold two attributes at the same time, and if the broker becomes a party in the property transaction whether by sale or purchase, they will not be entitled to brokerage fees.

In practice, under the regulations of the GCC brokerage Law, the broker has the right to charge a brokerage fee upon finalising the sale and purchase agreement of the property. If the brokerage fee is not specified in the contract, the brokerage fees should be in line with the custom applied to the brokerage profession. Commission in brokerage custom charges, is usually one percent of the total price of the property. In a rental transaction the brokerage commission is usually one month's rent on the rented property.⁴⁴³ In many cases there are multiple brokers involved in one transaction, such as in the case of selling a shopping mall or a big building. In these instances, the brokerage fees will usually be divided equally between them.⁴⁴⁴

7.2. The regulations of usufruct and surface (*musataha*) rights in the Arabian Gulf countries

Like many other Laws that have been issued in the Arabian Gulf, the surface and usufruct rights have been regulated under the civil Laws of the Arabian Gulf

441 UAE. Dubai, Law 85 of 2006 regarding the Regulation of Real Estate Brokers' Register in the Emirate of Dubai

442 Kuwait ministerial decree No. 477 of 2011 in relation to regulation of the real estate brokers

443 An informal meeting with Mr Bandar Alhumaidi as one of the well known real estate brokers in Kuwait.

444 An informal meeting with Mr Bandar Alhumaidi as one of the well known a real estate brokers in Kuwait.

countries. The civil Laws have clarified and explained the usufruct and surface (*Musataha*) rights, but in line with real estate development in the region, many legislators have regulated usufruct and surface (*Musataha*) rights in more detail, in order to clarify these rights so as to allow foreigners to use these rights in their properties market. Such a measure is put in place in order to boost and to drive the real estate market forward. Most Gulf legislators have divided ownership into two types: the first type is restricted to nationals and GCC nationals; and the second type enables foreign nationals to buy or have the right to usufruct or surface rights (*Musataha*) in a particular area, such as an investment zone.

The UAE legislators have defined the right of usufruct as a “right in rem” of a person to use the real estate of another party and utilise it as long as it exists in its same condition. Assignment for utilisation to a third party is possible.⁴⁴⁵ The UAE also defines surface rights (*Musataha*) as those that give the right to erect a building or to grow plants on another's land.⁴⁴⁶

7.3. The regulations of usufruct rights

Usufruct is different from a surface right (*Musataha*). The usufruct right may apply to the use of anything movable, or immovable which authorises the owner of the usufruct to use and exploit things owned by others. The most common form of the usufruct is the lease. Usufruct of land is commonly referred to in the UAE and other Gulf states as a real property right to use and occupy the real property for an extended period of time which should be stated in the leasehold agreement. Upon termination or the end of the lease period, the property and any related rights will return to the

445 UAE. Abu Dhabi. Law No 19 of 2005 Concerning Real Estate Property

446 UAE Civil Transaction Law No 5 of 1985 Article 1353

registered property owner.⁴⁴⁷

In the UAE, the Civil transaction Law has defined the Usufruct Rights as a “a property right in favour of the usufructuary to use the property of another and to exploit it provided that it remains in its original condition”.⁴⁴⁸ As a result, owner of a property unit is entitled to enter into a usufruct agreement with (lease) a tenant permitting the tenant to use the leased property provided such property remains in its original condition subject to fair wear and tear.

Under the UAE Civil Transaction Law the articles 1337 to 1348 have set and regulate the main rights and obligations of the usufructuary. Most of the rights are standard to lease agreements,⁴⁴⁹ and the contractual parties are permitted to change certain provisions laid down in the Civil Code provided it is not against public policy.

The **Omani** legislator has regulated usufruct rights under the Royal Decree No 5 of 1980 pursuant to the Usufruct Law. Usufructs rights over land are granted by the land owner to a third party for the consideration of use, occupation and development of the land based on a written agreement between the owner and the grantee. The Law allows foreign nationals, whether they are individuals or companies, to be eligible for the granting of a usufruct rights. The usufruct right is the closest right to the freehold right over land that is not designated for tourism purposes that a non-Omani can enjoy in Oman.⁴⁵⁰ The usufruct right in Oman can be on government land or on an individual's land, which is usually held for a maximum of 50 years.⁴⁵¹ Upon

447 Walter Robinson. 2010. *Registration of real property rights and the Abu Dhabi strata dilemma*. <http://www.hadefpartners.com/News/pageid/120-137/default.aspx?mediaid=153>

448 UAE Civil Transaction Law Article 1333 of the said Law has defines Usufruct

449 Including right of enjoyment during the lease period, regular maintenance responsibility upon usufructuary and major works to be performed by the land owner etc.

450 Subha Mohan. 2008. *Oman real estate Law*. Curtis Mallet-Prevost

<http://www.curtis.com/sitecontent.cfm?pageid=15&itemid=124>

451 The usufruct can be extended for similar additional terms

termination or expiry of the usufruct right agreement, the land plot returns to the registered owner.⁴⁵²

In Saudi Arabia the sale of usufruct, and its possible resale through subleasing, has given rise to time sharing arrangements, primarily for housing units near the two holy mosques in Makka and Madina. The time sharing arrangement structure gives individuals the right to own a multi-year right, one week each year. The Saudi Government did not contemplate the problematic prospect of selling land adjacent to the mosque. Instead, the government leased the land long-term to a company that in turn issued certificates of usufruct rights that entitled their owners to extract usufruct during certain periods. This structure, tradable usufruct extraction rights, was possible since all certificate holders would use the property in the same manner. This is a positive example of using partial ownership provisions to develop a useful financial vehicle.⁴⁵³

7.4. **The regulation of surface right (*Musataha*):**

The surface right is recognised in some of the Gulf countries. For example, Dubai legislators have regulated the surface right (*Musataha*) under *Law No.27 of 2007* and with a maximum term of 50 years, renewable with the consent of both parties,⁴⁵⁴ with similar terms and term periods, in investment areas only. Based on the said Law, any person who has a usufruct or surface (*Musataha*) right must have it registered under the names of the user in the registry office to register the right of ownership, to use,

452 Subha Mohan. 2008. *Oman real estate Law*. Curtis Mallet-Prevost
<http://www.curtis.com/sitecontent.cfm?pageid=15&itemid=124>

453 Mohmoud a. El-Gamal. (2006) *Islamic finance Law, economics, and practice*. Cambridge University Press. p. 40

⁴⁵⁴ In accordance with Article 1356 of the Civil Transaction Law

exploit and dispose of the legal right.⁴⁵⁵ These rights are not absolute; usufruct, *Musataha* or any other rights in rem on real estate may be expropriated for the public interest with fair compensation and according to the Law.⁴⁵⁶

The civil Law has defined *Musataha* contract as “a right in rem conferring upon the owner thereof the right to build a building or to plant on the land of another.”⁴⁵⁷ Consequently, the *Musataha* contract is very similar to the usufruct contract with an additional development right to the holder of the *Musataha* contract. The *Musataha* contract terminates with the expiry of the contract period as agreed between the contractual parties.

7.5. Jointly owned properties regulations (Strata)

The core principle of the jointly owned properties (Strata) system is to enable the subdivision of a multi-level apartment building that has joint ownership into clearly defined "units" and "common areas." The property units are owned only by the registered owners, and the common areas of the building are owned jointly by all property owners within the multiple ownership buildings and managed by an owner association.⁴⁵⁸

It is important to implement an operational strata regime in the Gulf's property market. There are some of reasons to introduce the strata Law in the region; one of these is to provide a legal structure that enables the owners of a multiple ownership

⁴⁵⁵ Article 1357 of the Civil Civil Transaction Law permits the musataha holder to assign or transfer his musataha right along with any improvements (such as a building built over the leased land) to a third party.

⁴⁵⁶ UAE. Abu Dhabi. Article 8 of Law No 19 of 2005 Concerning Real Estate Property

⁴⁵⁷ UAE Civil transaction Law 1353

⁴⁵⁸ Under the traditional method of subdivision, it is not possible to subdivide land into different "layers" to allow for parcels to sit above or below other parcels, such as in an apartment building. The traditional form of subdivision also does not allow for a portion of the land to remain collectively owned, such as shared lobbies, hallways, swimming pools and gyms. A strata title system overcomes these inadequacies

building to register their unit ownership of the subdivided units and common areas in land registry departments.⁴⁵⁹

7.5.1. The pre-Strata Law registration

The legislators of the Gulf States have regulated what they refer to as common ownership or common property (*Al-Mulkyah Alsha'iaa*) in the civil codes and civil transaction Laws. These codes and Laws have recognised certain rights and obligations concerning the co-ownership of buildings. The codes and Laws have regulated the management and the disposal rights of common ownership or multiple-ownership and the obligations of the common owners.⁴⁶⁰ Multiple-ownership is generally considered where an owner's right to his unit of the building, is only a contractual right. This right arises from the sale and purchase agreement between the property unit buyer and the developer. Provided the property unit buyer has satisfied their obligations under the agreement, the owner is considered the owner of the unit based on such contractual relationship.⁴⁶¹

The Civil Codes of the Gulf countries have not been sufficient to deal with the nature and sophistication of the real estate and construction development which has occurred in the region. Most importantly, the Civil Code of the Arabian Gulf states does not provide any significant framework or direction as to how a multiple ownership building subdivided or managed. The introduction of a Strata Law in the Arabian Gulf region is aimed to provide a clear framework and clear method for subdividing a multiple-ownership building.

459 Basically strata Law is all about transferring control of buildings from developers to owners through an owners' association.

460 Kuwait civil Law from article 818 to 874. Bahrain Civil Law No 19 of 2001 from 67 of 1980 article 777 to 789. UAE federal Law. Civil code No. 5 of 1985

461 Stephen Kelly.2010. *Dubai real estate update: Strata Law - the transitional*. Clyde&CO <http://www.clydeco.com/insight/articles/dubai-real-estate-update-strata-Law-the-transitional-period>

7.5.2. The beginning of regulation: the Strata Law in the Gulf region

The Kingdom of Bahrain was the first among the Gulf States to issue a Law on joint property ownership in 1987 to allow building to occur with multi-divided ownership. This Law sets out and defines the multi-ownership building and the common areas.⁴⁶² The Bahraini Strata Law has set out the path for the rest of the Gulf government to implement similar Laws in their countries. With the growth of the Gulf's real estate industry during the 2000s, regulations and guidelines have recently been implemented in the Gulf region. In 2004, Saudi Arabia issued the Law of ownership of real property units and plotting thereof.⁴⁶³ This Law regulates joint ownership and the rules and regulations of the owners' associations in the kingdom. It defines joint property ownership as well as the common areas in the building, sets out the guidelines for owners' participation in the maintenance costs of the common areas, and the management of the building's owners association (its resources, election of the chairman, functions and decisions).

In the UAE, the Emirate of Sharjah was the first to regulate joint property ownership by issuing Law No 4 of 1980, which regulates the ownership of multi-storied buildings and provides an early concept of jointly owned property. The Law was amended in 1981 by Emiri Decree No. 1 and set out additional regulations to the rights and obligations of each owner in multi-owned buildings, together with the management of the building, and provided for the formation of a co-owners' association.⁴⁶⁴

462 Bahrain Law No 8 of 1987 to regulate joint property ownership.

463 Saudi Arabia, Royal Decree No. M/5 dated 11 / 2 / 1423 H Council of Ministers Resolution No. 40 dated 9 / 2 / 1423 H.

464 Tara Marlow. 2010. *Real Estate within the UAE: A summary of legislative development*. Altamimi & Co. <http://www.tamimi.com/en/magazine/Law-update/section-6/june-4/real-estate-within-the-uae-a-summary-of-legislative-development.html>

The Jointly owned properties in the Emirate of Ajman are regulated under the Emiri Decree No. 8 of 2008. This decree regulates the provisions of joint property ownership and common areas within a multi-owned building. This Law requires any developer running development projects in Ajman to register in the Ajman Land Department and be obliged to open an escrow account for each development project.⁴⁶⁵

The Emirate of Ras Alkhaima has issued several Laws to support the large amount of real estate development in the Emirate. In 2003, the Law of regulating property ownership in multi-owned buildings was introduced. The Law introduced greater guidance on the concept of ownership of flats and floors in multi-owned buildings, than the concept of a multi-owned building exists under the UAE Civil Transactional Law. The new Law provides a system of registration of flat ownership in a subdivided building along with identification of the flats, floors and common areas of a building.⁴⁶⁶

On the other hand, in the Emirate of Fujairah, there remains to date no specific Laws regarding property registration and ownership, other than the provisions of the UAE Civil transactional Law, and the decrees issued by the Ruler of Fujaira in relation to real estate.

465 Tara Marlow. 2010. *Real Estate within the UAE: A summary of legislative development*. Altamimi & Co. <http://www.tamimi.com/en/magazine/Law-update/section-6/june-4/real-estate-within-the-uae-a-summary-of-legislative-development.html>

466 The new Law also mention the pre-emption right in favour of other owners in the building if one of the owners in the building decides to sell his apartment and a simplified procedure regarding reconstruction of a building in the case of a building being destroyed. The Law however, did not clarify who had the right of ownership, and so this was subsequently clarified by Decision No. 20 of 2005.

In 2007, the Dubai legislator issued a special legislation to regulate jointly owned properties.⁴⁶⁷ The Dubai Land Department (DLD) and the Real Estate Regulatory Agency (RERA) issued this Law concerning jointly owned properties. This Law laid the foundations for a joint form of real estate ownership in the Emirate of Dubai. This Law seeks to include information about internal floor space and joint ownership of a building's common areas in order to balance the rights of all members in relation to the management and operation of a multi-owned building and the framework for establishing owner associations.⁴⁶⁸ This Law gives each unit owner and/or occupier certain obligations in favour of other unit owners/occupiers to comply with the master community declaration and the association's constitution.⁴⁶⁹ The Law also gives the owners' association the legal right to sue unit owners or tenants and any other person occupying the jointly owned property for breach of the Law of common ownership of properties or the owners' association's constitution.⁴⁷⁰

In general, the abovementioned jointly owned property Laws comprise four main parts. The first part is comprised of the general regulation, which covers consumer protection, developer disclosure, financial disclosures, apportionment of costs between developers and owner associations' regulations. These also cover collections of service charges; the requirement for lodging of jointly owned building declarations and setting up of owners' associations, the form and content of building management statements, the form and content of supply agreements, the appointment of administrators and interim measures. The second part of the jointly owned property Laws concentrates on the jointly owned property declaration, which sets out the

467 UAE. Dubai Law No 27 of 2007 jointly owned properties in Dubai.

468 UAE. Dubai. Article 7 of Law 27 of 2007 of jointly owned properties in Dubai. This article set the common areas of jointly owned property.

469 UAE. Dubai. Article 6 of Law 27 of 2007 of jointly owned properties in Dubai

470 UAE. Dubai. Article 31 of Law 27 of 2007 of jointly owned properties in Dubai

requirements for setting up a jointly owned property scheme and registering an owners' association. The third part of these jointly owned property Laws concentrates on the preparation of survey plans, which provide the accreditation and registration of surveyors, as well as the suspensions and termination of surveyors and the ability for the land department to issue binding directions. The transitional provisions relating to the preparation of plans are also specified. The fourth part of these jointly owned property Laws focuses on the owners' associations' constitution where it specifies the form of constitution for each owner's association. In addition, it includes the procedures for appointing the owners' association members, outlining the roles of the managers, passing resolutions and approving budgets.⁴⁷¹ The purpose of an owners' association is to clarify each participant's rights and obligations so that physical boundaries and ownership responsibilities are clearly set out.

Issuance of Strata Title in Qatar commenced in late 2014. The local registered developer is required to submit an application to the land department in order to create a strata title for the real estate project being developed before selling the property units on an off-plan basis. The developers application should contain all the relevant architectural plans, engineering drawings etc. in addition to the strata title which will be issued in association with the Ministry of Municipality and Urban Planning.⁴⁷²

The Ministry of Justice of Qatar has established the Real Estate Department, which maintains the interim register for recording details of any strata contract. The details of each off-plan property unit will be recorded in the Interim Register that includes all the details of any transaction in relation to that off-plan property unit.⁴⁷³ Any

471 UAE. Dubai Law No27 of 2007 jointly owned properties in Dubai.

472 Qatar Law No. No. 28 of 2014 regulating real estate development Law

473 Rafiq Jaffar and Dina al wahabi.(2015). *Regulating real estate development in Qatar*. Tamimi and partners.

unregistered transaction relating to an off-plan property unit, shall be considered as invalid transaction. The said department is required to issue an Interim Title Deed for every off-plan property unit. Once the real estate project is completed, the Interim Title Deed is converted into a regular title deed.

Other Gulf States (Kuwait and Oman) have not yet committed to regulating strata ownership and have kept it under the Civil Law. The Gulf's civil Laws however have only set out the general outline of common ownership and do not regulate joint ownership in a meticulous manner for commercial or residential buildings. Most of the Gulf's Civil Codes have not been sufficient in dealing with the nature and sophistication of the developments that have taken place in the Gulf region. Most importantly, the Civil Codes do not provide any significant framework or direction of how to managed and subdivide a building with multiple-ownership.⁴⁷⁴ Many real estate experts have stated that, with the growth of the property sector in the Gulf region, jointly owned property regulations are a necessity in order to ensure transparency and protection of the property buyers as well as to boost investors' confidence.⁴⁷⁵

7.6. Regulations of real estate developers:

The Gulf's civil Laws only set out the general outline of construction regulation and do not regulate real estate development in a meticulous manner for commercial or residential buildings. Most of the Gulf's Civil Codes have not been sufficient in dealing with the nature and sophistication of the developments that have taken place in the Gulf region. Based on that the legislators of some of the Gulf countries (Qatar,

474 Stephen Kelly(2010). *Dubai real estate update: Strata Law - the transitional period*. Clyde co.

<http://www.clydeco.com/insight/articles/dubai-real-estate-update-strata-Law-the-transitional-period>

475 ERA real estates <http://www.era-saudi.com/Pages/NewsDetails.aspx?NewsID=2200>

Bahrain, UAE Dubai and Saudi Arabia) have introduced new Laws to regulate real estate developers in these countries.⁴⁷⁶

Some of the Gulf countries have issued Laws and regulations to control and supervise the real estate developers to balance the interests between the developer and the end user. The legislator of Bahrain has defined the real estate developments as *“property development works or projects which are licenced in accordance with the provisions of the New Law irrelevant of its nature (infrastructure or construction of buildings) or objects thereof (commercial, industrial, residential private or public) or method of financing (off-plan sales, lease to own, Musataha arrangements, or BOT (“Build, Operate and Transfer) or the person undertaking them (natural or corporate)”*.⁴⁷⁷

The aim of these types of Law is to strengthen the real estate sector and to protect both consumers and sophisticated buyers, but it also is meant to promote investors’ confidence in the real estate market. These laws also allow developers to finance projects with draw-downs from payments the property buyers. also, these Laws aim to raise the level of transparency of quantities of supply and demand and so aim to reduce property speculation.

Bahrain

The Bahraini Real Estate Development Law No. 28 of 2014 has been issued to regulate the real estate construction, and it is considered as the first Law of its kind in the country. This Law has been effective from August 2014and, real estate developers

⁴⁷⁶ Kuwait and Oman have not yet issued a regulation to regulate real estate development in their country. They have kept the regulation of such construction activities under the municipality decrees and other ministerial orders.

⁴⁷⁷ Article 1 (5) of the Bahrain Law No 28 of 2014 to regulate real estate developers Law. Also see Reem Al Mahroos. (2014) A first look at the new bahrain Law governing real estate development . Charles Russell Speechly Law firm. <http://www.charlesrussellspeechlys.com/updates/publications/real-estate-construction/a-first-look-at-the-new-bahrain-Law-governing-real-estate-development/>

have six months to modify their activities so as to comply with this Law. This Law will be applied to any real estate developer (individual or entity) undertaking development activities or selling off plan properties and receiving payments from property purchasers. Based on this Law a regulatory authority will be established to regulate real estate developers and property buyers.⁴⁷⁸ Real estate developers are required under this Law to obtain a licence from the designated authority in order to conduct construction activities. The real estate development licence is subject to the developer submitting the completed master plan to the authority with other documents.⁴⁷⁹ This Law also has set a template for off plan sale agreements which include provisions relating to the property details and it give the property unit buyers the right to have the unit's plan. The template sale agreements also includes the buyers' payment schedule linked to the construction milestone. Under this Law the real estate developers are required to open an escrow account in a bank or a financial institution (licensed by the Bahrain central bank) for each project it undertakes. The escrow account will be used to hold any financial proceeds from property buyers and any finance obtained for the real estate project. Based on that Law, real estate developers no longer can conduct work on a development unless they have a licence from the authority

The said Law establishes a committee (real estate development disputes committee) for a three-year term to adjudicate on any disputes arising from property developments. This committee shall be made of two high court judges to be set with an expert in construction and real estate affairs.⁴⁸⁰ The establishment of this committee is an attempt to shift the responsibility from the ordinary courts to a

⁴⁷⁸ The concerned authority has not been nominated, and it is expected to be established by a royal decree pursuant to the enactment of the new Law.

⁴⁷⁹ See Bahrain No. 28 of 2014 in relation to governing real estate developments in Bahrain.

⁴⁸⁰ The real estate expert shall be nominated by the minister.

specialised panel of judicial and real estate experts in order to resolve disputes in a more accurate and faster way.

The Bahraini real estate development Law has imposed heavy penalties on developers depending on the type of breach of the said Law. The said Law has set different types of offences on real estate developers if they sell properties off plan without a licence from the authority or if the developer delays in handing over the project beyond the period agreed in the contract. This type of offences may be subject to a custody sentence of 1 year or a penalty fine not exceeding 10,000 Bahraini Dinars. There are other types of offences which are punishable by a custody sentence of 1 to 5 years in addition a fine of 10,000 to 30,000 Bahraini Dinars for misrepresentation or providing false information to the authority or fraud in relation to the sale of an off plan properties.

Qatar

Qatar has issued a new Law No. 6 of 2014 that is meant to regulate the real estate development boom in the country. The said Law has defined the real estate development as “the construction of multi-story buildings or complexes for residential or commercial purposes with the intention of selling the property units off plan”. The Law has stated that real estate developers are required to obtain a licence from the Ministry of Commerce that will be valid for 3 years. This Law differentiates between Qatari real estate developers and non-Qatari real estate developers.

Based on the said Law Qatari real estate developers must be a Qatari company duly incorporated under the Laws of the country and its commercial activities must include the development of real estate. The Qatari real estate developer must have at least 3 years of development and construction experience, with no declaration of insolvency

by virtue of a final court order. Non-Qatari real estate developers are quite similar to the Qatari ones but with some notable additions. The non-Qatari real estate developers must be a company that is established in a foreign jurisdiction and the object of its commercial activities must include real estate development or construction. The foreign Developer must provide legalised evidence of its incorporation in its home country and must also establish a commercial presence in Qatar or in any other Arabian Gulf country. The foreign developer also must have at least 10 years' of experience in development and construction with a good reputation in the market for similar developments. The said Law has restricted the foreign developer to conduct development in designated areas where foreign ownership of land interests is permitted.

The Qatari real estate development Law also has imposed some strict financial and criminal penalties on real estate developers for non-compliance with the Law. The penalties will be applied on real estate developers if they operate without a licence from the authority or in default in misrepresentation or fraud in relation to the sale of an off plan properties. The penalties will be applied if the developer uses the funds of the escrow accounts for other purposes other than the ones mentioned in the Law. The penalties will be applied if the developer obtains financing and use the real estate project as collateral for any third party without permission from the Ministry of commerce and industry; or if the developer fails to handover the property units on the contractual date without an acceptable reason, or if the developer fails to meet the contractual standards and specifications for the property units.⁴⁸¹

Saudi Arabia

⁴⁸¹ The penalties of these type of offences will be imprisonment of up to 1 year and/or a maximum fine of QAR 50,000

The Saudi government has regulated the activity of real estate developers under Ministerial decree No.983 on March 2010 which is meant to regulate the selling of property off plan. This Law requires the real estate developers to apply for a licence the Ministry of Commerce and Industry in order to conduct any type of construction or development in the Kingdom.⁴⁸² The real estate developers are required to submit an application that includes the title deeds of the land, safety records, sales contract forms, the contract between the master developer and the sub-developer, a feasibility study of the project, development permits and approvals, and an approved design of the property units.⁴⁸³ The said Ministry will create a real estate developers register and issues licences to qualified real estate developers.

The said Law also has set some penalties on developers for noncompliance with the Law. The penalties that are imposed are not different from those mentioned in other Gulf states on developers and which includes: fraud, false information submitted to the authority; using the funds in the escrow accounts for other purposes than the ones mentioned in the Law; failure to hand over the property units on the contractual date without an acceptable reason, failure to meet the contractual standards and specifications for the property units.

Dubai

The government of Dubai has issued a new Law No. 8 of 2007 that meant to regulated the off plan selling and aims to regulate the real estate development boom in the country. The said Law has defined the real estate development as “ The construction of multi-storey buildings or complexes for residential or commercial purposes.”⁴⁸⁴

The Law has stated that the real estate developers are required to obtain a licence

⁴⁸² Article 2 of the Ministerial decree No.983 of march 2010

⁴⁸³ Article 4 of the Ministerial decree No.983 of march 2010

⁴⁸⁴ UAE. Dubai. Law No. 8 Of 2007 concerning real estate development trust accounts in the emirate of Dubai.

from the Land Department. The application of the developer should contain the following; the developers should submit a copy of the trade licence and a certificate from the Dubai Chamber of Commerce and Industry membership. The applicant should also submit a copy of the title deed of the plot to be developed and a copy of the contract between the master developer and the sub-developer. The architectural designs and preliminary engineering plans also should be submitted and approved by the competent authorities and the master developer. The developer should submit a copy of the company financial statement and a statement of the costs, revenues and expenditure of the development project, which should be certified by a chartered auditor. The developer should submit a copy of the sale contract form between the developer and the property buyer.⁴⁸⁵ After submitting the said documents and obtaining approval from the Dubai Land Department, the department will issue its approval to the developer of the project to open a trust account. The trust account should be named as the same name of the development project.

Generally, the participants in the Gulf's real estate market have welcomed the new Laws that regulate the real estate development. In particular the new laws acknowledge and seek to address some of the problems previously encountered on major real estate development projects in the region. Real estate Law in Bahrain, Saudi Arabia, Dubai and Qatar however still has to establish a transparent and trusted regulatory framework which addresses the difficulties of a modern real estate market. The Laws of real estate development can be seen as a significant step in the right direction for the improvement and development of the Gulf's real estate market.

⁴⁸⁵ UAE. Dubai. Chapter two, article 6 of the Law No. 8 Of 2007 concerning real estate development trust accounts in the Emirate of Dubai.

Many real estate investors and end buyers hoped that the Laws and its implementing regulations would help to grow real estate investor and financial confidence, encourage better planning and management of developments and provide a higher degree of protection to all parties involved in the development projects.

7.7. The regulation of off-plan properties in the Gulf region

The definition of off-plan buying is “signing a contract to buy a property or apartment that is not yet fully constructed”. The buyer can only view the design and the location of the building and the building’s internal design plans, and there is no physical building the customer can see or inspect.⁴⁸⁶ There are a number of developers who need to sell many property units off-plan before they can begin construction. In many cases, without the initial financial investment of interested parties buying off-plan properties, the developers cannot get the project off the ground. Therefore, developers are able to offer some incentives such as attractive prices or in-house instalment plans over 60 months and up to 15 years, or offer discounts to those who invest, since their investments are on the line.⁴⁸⁷

There are many benefits of buying a property off-plan for buyers, for instance the buyer usually get a better price for the property before it is constructed. Usually, developers offer their new products to the market at a low price or good value so as to encourage a faster sale rate than when the construction commences and the developer has met their construction finance requirements. In most cases, and based on developer approval, the buyers can even sell or resell a property before it is built (often for a significant profit). There are several developers who require buyers to pay

486 Peter, Kouilzos. 2013. *Buying ‘off-the-plan’ – is it a good idea?* Real estate .com

<http://www.realestate.com.au/blog/buying-off-the-plan-is-it-a-good-idea/>

487 Dubai Property Investment <http://www.2daydubai.com/pages/dubai-property-mortgages.php>

at least 25 per cent of the purchase price before giving them the permission to resell the property. If the purchaser has paid less than that amount, they are typically required to pay an administrative fee of one to three per cent of the purchase price to be added to the selling price. Therefore, for investors or buyers who come in early to a project there is often a good price incentive.⁴⁸⁸

In many cases, the developers of off-plan properties usually offer the buyers the benefit of good payment plans, as the buyers do not have to pay the entire purchase price of the property up front. However, buyers are usually required to make a down payment of between 5-20 per cent of the total property price, with the balance of the amount paid over a period of one to seven years.⁴⁸⁹

One of the other benefits of buying off-plan properties is that the buyer may get first choice on available units in the development; have a choice when it comes to customisation of their property, and in many cases the buyer can also add certain extra features to be built into the property. This can be during the construction of the property, which makes it cheaper, easier, and more integrated than doing so after construction.

On the other hand, there are certain risks associated with buying off-plan properties. There is a risk that the project may not proceed at all, which may create cash flow problems for the buyers. In many cases, the finished product may also not be what the buyer expected. In other cases, there may be differences between the floor plan design and the final product. Some developers have built exceptional properties that have done well on the resale market, while others have built poor quality properties which

488 Off plan property investment. Assetz for investors. <http://investors.assetz.co.uk/pic-off-plan-property-investment.htm>

489 <http://www.ameinfo.com/133913.html>

have not done well.⁴⁹⁰ As such, buying off-plan can be deemed a gamble. In other cases, the expected capital growth does not arise or may fall. There is also a risk that the developers may go into liquidation, which may stall the project and tie up the buyers' deposit.

In addition, in many cases, off-plan buyers have fewer financing options, as finance companies are usually reluctant to provide funding if they are not able to see the finished property.⁴⁹¹ In many cases, the real estate developers want to sign agreements with banks or financial entities to be exclusive mortgage providers for a specific development project, but not all developments have this option. If the developer does have an exclusive arrangement with a mortgage provider in place, then the buyer is tied down to the applicable mortgage provider and is not able to shop around for better rates and prepayment options.⁴⁹²

In the Gulf region, there are a number of real estate development companies that have used the off-plan property scheme in order to secure better financial terms from lenders. Off-plan property sales in the Gulf region are normally practised in cities that have major real estate projects such as Dubai, Abu Dhabi, Bahrain and Doha and recently also in Saudi Arabia.⁴⁹³ The real estate developers offer the real estate purchasers a very generous instalment plan between 12 to 60 months.

In the Gulf region, buying an off-plan property is considered risky by many real estate investors. This is particularly the case after the financial crisis where many real estate

490 <http://www.ameinfo.com/133913-more2.html>

491 <http://www.ameinfo.com/133913-more2.html>

492 <http://www.ameinfo.com/133913-more2.html>

493 KSA (Minister of Commerce and Industry) Ministerial decree No 983, dated 02/02/1431 the Regulation for the sale of real estate units on the map

developers in the Gulf region have been unable to deliver their projects.⁴⁹⁴ Many off-plan buyers were at the mercy of developers during this crisis, because many Gulf States at the time did not regulate off-plan selling and kept it based only on sales and purchase agreements. In other words, if the real estate developers did not deliver the project at a specific time, the buyer only had the right to claim a breach of contract against the developers, which gave the property buyers a high level of risk.⁴⁹⁵

In the Gulf real estate sector there was considerable frustration among property buyers who made their down payments and their instalment payments to developers but were faced with late project starts or no evidence of physical construction progress. Besides this, most property buyers had no guarantee that their instalment payments had been used or would be used toward the construction of their property. This was why some Gulf countries attempted to regulate the off plan selling by issuing Laws that seeks to protect property purchasers and end users in the early stages by requiring real estate developers to obtain the prior consent of the authorities before selling any property units off-plan.

In Dubai for example, with the development of the real estate sector, the Real Estate Regulatory Agency (RERA) now has full legal authority to regulate all real estate activities. RERA has regulated off plan selling through real estate trust accounts (Dubai Law No. 8, 2007), which require real estate developers to open an escrow account in order to sell off-plan. This should increase protection levels and boost the confidence of real estate buyers.⁴⁹⁶ The Emirate of Ras alkhaima also has regulated

494 Parag Deulgaonkar.2012.'Off-plan property sales in Dubai need to be regulated. Emirates 24-7. <http://www.emirates247.com/business/corporate/off-plan-property-sales-in-dubai-need-to-be-regulated-report-2012-12-13-1.487223>

495 *Ibid*

496 Abbas Naini 2011. Assessment of Dubai Real estate Trust account Law and issues of Business: evidence from Ontario Utah. *The journal of business inquiry*.2011, 10, 1, 120-134.

the off-plan selling by an Amiri decree No. 22 of 2008, this Decree established a system that guarantees accounts and sale of off-plan property. This Decree obligates real estate developers to register their names with Ras Al-Khaimah Investment Authority to obtain a development licence in order to sell off-plan properties.

It should be noted that in the speculative real estate market, which is populated by numerous buyers, the ownership of a property may change several times (property flipping) before the units are ready for delivery. The government of Dubai attempted to regulate speculation by passing Law No.13 of 2008, and authorising RERA to regulate the interim register of off-plan property sales.⁴⁹⁷

The **Qatari** Law No.6 of 2014 (the “Real Estate Development Law”) permits developers to sell Off-Plan property units after obtaining the permission from the Ministry of Economy and Commerce. The said Law sets out all the requirements for obtaining such approval to sell off plan property units. The developers are required to create a strata title for each Off-Plan property unit, and to open an escrow account under the name of the project and submit all the estimated cash flow for completion of the real estate project.⁴⁹⁸

In **Bahrain**, off plan selling is now regulated by Law No. 28 of 2014 which regulates the real estate developments in Bahrain.⁴⁹⁹ Real estate developers need to follow the rules and regulation of this Law in order to conduct real estate construction activities in Bahrain. The government of Bahrain has established the Survey and Land Registration Bureau in order to regulate and maintain a register of any off plan selling activity. This department will register all the information that relates to any off plan

⁴⁹⁷ UAE, Dubai, Law No.13 of 2008.

⁴⁹⁸ See more at: <http://www.tamimi.com/en/magazine/Law-update/section-8/july-august-3/regulating-real-estate-development-in-qatar.html#sthash.UUIfl7Tc.dpuf>

⁴⁹⁹ Bahrain Law No. 28 of 2014 in relation to governing real estate developments

selling, which includes the licence of the real estate developers, all the property unit agreements and any disposals that affect these properties. The real estate developer is required to provide the department with all the details of the relevant properties in the off plan registry before undertaking any marketing activity of the real estate project. The said Law also has imposed strict financial and criminal penalties on real estate developers for non-compliance with this Law.⁵⁰⁰

Off plan selling has begun to play a significant part in the kingdom of Saudi Arabia. The Saudi government has issued Ministerial Decree No, 983 on 2/2/1431 (correspondence 18/3/2010) to regulate off plan selling in the kingdom.⁵⁰¹ This Law was meant to boost the confidence of real estate investors and allow developers to finance their projects with draw-downs from the property purchaser subject to a system of checks, balances and supervision by the regulatory authority. This Law has set the general framework to allow developers to sell off plan unites. The Law also meant to protect the right of off plan unit purchasers and to discourage property speculation. both local or foreign-owned real estate developers⁵⁰² are required to apply for a licence for each real estate project prior to announcing any marketing or commencing sales of any commercial, industrial, office, service, residential units in Saudi Arabia. The real estate developers should fill an application by the regulatory

⁵⁰⁰ The penalties will imposed if the developers sells or offered to sell property units without or in breach of a Development Licence: or if the developer are operating development activities without a Developer's Licence from the authorities; if the developer Fails to handover the property units and a copy of the plans within the contractual date; if the developer Fails to submit details of the real estate development to the Survey and Land Registration Bureau; or if the developer conduct Marketing or promoting activities for the development project prior to the receipt of the Licence and submission of details to the off-plan register; In the developer Sells property units in a 'fictitious' development or selling a property unit which has not been registered yet in the real estate Development Register; it the real estate developer Misrepresentation or fraud in relation to the sale of an off-plan unit or it he provides a false information to the Authority in order to register the Development.

⁵⁰¹ Saudi Arabia. Ministerial Decree No, 983 on 2/2/1431 (18/3/2010) to regulate the off plan sale of real estate unite on a map.

<http://www.mci.gov.sa/en/LawsRegulations/LicensingRegulationsAndDecisions/RegulationsforthesaleofPages/10-2.aspx>

⁵⁰² Who are subject to foreign investment requirement.

department in the Ministry of Commerce and Industry to get the licence for selling off plan property units. The said Ministry will examine the application and all the documents including (among other things) the establishment of an escrow account for each real estate project and a feasibility study for the project, the development permits, the number of property units of the project and the forecast costs to complete the project.⁵⁰³

Although the sale of off-plan properties is being practised in Gulf member states, there is still a lingering lack of trust from real estate investors to off plan property purchase. Although there are many property investors willing to purchase off plan property, they prefer to purchase it from a government related master developer rather than less well-known sub-developers.⁵⁰⁴ It is worth mentioning that Dubai and Saudi Arabia, and more recently, Bahrain and Qatar,⁵⁰⁵ are the only countries that have attempted to regulate off-plan sales. In Abu Dhabi, there have been attempts to regulate off-plan property sales in order to boost the confidence of property buyers. However, in most Gulf countries, off-plan property sales are currently still based on the contractual agreement between the developer and the property buyer and if there is a dispute raised between the contractual parties this will be dealt with as a breach of the contractual agreement.

7.8. The Law for escrow accounts

The escrow account has become one of the main tools that regulate and secures purchasing properties off-plan. The escrow account is a financial account held by a third party during the transaction process between the two parties.

⁵⁰³ See article 3 and 4 of the Saudi Arabia Ministerial Decree No, 983 on 2/2/1431 (18/3/2010) to regulate the off plan sale of real estate units on a map.

⁵⁰⁴ Hadeef and partners. (2014). Report of on the legal state of dubai property market 2014.

<http://www.hadefpartners.com/News/pageid/120-137/default.aspx?Mediaid=339>

⁵⁰⁵ Qatar, Law no. 6 of 2014 the real estate developers Law

The funds are held by the escrow provider until it receives the appropriate instructions. The funds will be in the escrow accounts until each party's obligations have been fulfilled. In real estate development projects, the funds flowing from any transactional party are kept in the escrow account and the funds utilised only for the proper purposes. Even the buyers of property units transfer the property price to the escrow account and the amount is not transferred to the developers until the project is completed.

Prior to the real estate collapse in 2008, the Dubai Executive Council via the Legal Affairs Department in the Dubai Government, and the Land Department issued various Laws to fill the regulatory gaps in its territory. Several Laws were developed and other Laws amended in order to address property-related matters in the Emirate of Dubai. The government of Dubai pioneered attempts to regulate off-plan sales by issuing Law No 8 of 2007 concerning guarantee accounts (escrow or trust account Law) for real estate development in the Emirate of Dubai.⁵⁰⁶ This Law requires the Dubai Land Department (DLD) to establish a registry office to register developers who sell off-plan properties. The escrow account Law sets out the terms for managing the account and the rights and obligations of the contracting parties. The trust account agents are permitted to release the account funds to developers if the Dubai Land Department certifies the progress and construction completion phase. In this manner, the Dubai Law No. 8 of 2007 puts the financial activities of developers under

⁵⁰⁶ The construction boom in the Dubai started in 2003, and the escrow Law has been issued in 2007, there was a period of 4 years where developers were essentially unregulated in relation to funds received from properties buyers.

government control and this may remove frustration and uncertainty that can be associated with buying properties off-plan.⁵⁰⁷

Law No. 8 of 2007 decrees that developers must sign and register in the Real Estate Regulatory Agency (RERA) and submit all the details of their development projects. The Law also requires developers to receive payments from off-plan buyers to open a guarantee account and place all proceeds from the sale of off-plan units into it.⁵⁰⁸ For developing the trust accounts, a new department was established by RERA to oversee the collection of payments to developers, which are tied to construction progress.

The intention behind establishing trust accounts is to regulate the activities of developers and they are expected to protect investors from developers who sell property units on an off-plan basis in the absence of a monitoring system to control the allocation of buyers' funds toward construction of their property. After the implementation of the trust Law, the buyers' instalment payments are made according to construction progress and funds are deposited into the trust account. The bank institutions (escrow account agents) manage the trust accounts and the agents should have approval and a certificate from the Dubai Land Department.

Under Dubai's Escrow Law, each escrow account should be used only for real estate development purposes. The amounts deposited in the escrow account may not be attached in favour of developer creditors, and the amounts are only used for the real estate project. Article 9, section 2, of the Escrow Law requires that real estate

507 UAE, Dubai. Law No 8 of 2007 concerning real estate development trust account (Escrow or trust accounts Law)

508 Abbas Naini 2011. Assessment of Dubai Real estate Trust account Law and issues of Business: Utah. *The journal of business inquiry*.2011, 10, 1, 120-134.

developers who carry out more than one real estate project should have a separate escrow account for each real estate project.⁵⁰⁹

The misuse of funds and penalties is also regulated. Dubai's Escrow Law clearly states how escrow accounts may be used for real estate development projects. The Escrow Law authorities are allowed to levy fines and/or to seek an order for terms of imprisonment against those who breach this Law. If there is a violation by a transaction party, according to the Escrow account Law, without prejudice to any punishment stipulated by other legislation (such as the civil code or the penal code), the escrow Law allows the authorities to levy fines and/or imprison those who breach the Escrow Law.⁵¹⁰

The Dubai Escrow Law also sets out a number of expenses for which funds in escrow accounts can be used and which generally relate to development costs, as well as other related expenses such as marketing for the project.⁵¹¹

The Law allows developers to finance projects through pre-sales. In the wake of the Dubai real estate crash the Law now requires developers to place either 20 or 25 percent of construction financing in an escrow account before beginning the selling of properties. In addition, the developers cannot take more than 30 percent of payments

509 In accordance with the UAE Federal Law, it is a criminal offence for a party (in this case a developers) who has been given funds on trust for a specific purpose to use those funds for another purpose, which is essentially a breach of trust and could be fraudulent. UAE, Dubai. Law No 8 of 2007 concerning real estate development trust account (Escrow or trust accounts Law)

510 Such breaches cover a wide range of issues, including embezzlement or use without justification of funds collected for the construction of real estate projects.

511 Dubai. Law No 8 of 2007 concerning real estate development trust account (Escrow or trust accounts Law)

upfront and subsequent instalments must adhere to a RERA approval construction schedule.⁵¹²

The trust/ escrow account should be created, with a contract put in place between the developer and the financial institution or bank to manage the trust account, named after the real estate project, and the off-plan buyer should pay into this account. The terms of managing the trust account and the rights and obligations of the contractual parties should be mentioned in the agreement.⁵¹³

Numerous legal scholars and Lawyers have stated a number of reasons why the opening of an escrow (trust) account cannot guarantee the completion of the project by the developer.⁵¹⁴ Where the property purchaser has invested in a real estate project that could not be delivered on time for whatever reasons related to the developer, then the assistance of the Escrow Law will be of limited use to the purchaser.⁵¹⁵ Prior to the enactment of the Escrow Law in the Emirate of Dubai, matters between real estate developers and the property buyer were addressed in contracts and the prevailing Law. More often than not, the contract though did not specify that the funds would be kept in projects' escrow accounts. The money in the escrow account would only be used for the construction of the real estate project, that a particular stage of construction must be reached before the next payment was paid, or due; although it can be argued that, this was implied in the contract. It was, therefore, possible, in such

512 Property finder.ae. 2012. Dubai property Law (Escrow trust accounts).

<http://www.propertyfinder.ae/en/news-and-advice/buying-selling/dubai-property-Law-81.html>

513 Abbas Naini 2011. Assessment of Dubai Real estate Trust account Law and issues of Business: evidence from Ontario Utah. *The journal of business inquiry*. 2011, 10, 1, 120-134.

514 Abbas Naini 2011. Assessment of Dubai Real estate Trust account Law and issues of Business: evidence from Ontario Utah. *The journal of business inquiry*. 2011, 10, 1, 120-134.

515 Ashraf Sayed. 2010. *Has dubai's escrow Law succeede in securing purchasers' money?.* Hadeef & Partners. <http://www.hadeefpartners.com/News/pageid/120-137/default.aspx?mediaid=115>

a self-regulated environment, for developers to use purchasers' funds for uses other than the construction of the project.⁵¹⁶

Even if the developer has a special escrow account for their real estate project, if the number of defaulting purchasers is high and the project developer has no other source of financing. The real estate project may not be completed and finalised in the scheduled time, as periodic liquidity requirements may not allow the project contractors to be paid, which may lead to a halt in the construction. This is typical of projects where sales is made to bulk purchasers who were often real estate agents or speculators wishing to make profits from quick re-sales.⁵¹⁷

It is worth mentioning that, under the new Escrow Law, if real estate developers fail to complete the real estate project, the relevant authorities (Dubai Land and RERA) have the power and the authority to preserve the rights of the property buyers in order to ensure completion of the real estate project. This might not be possible if the funds in the projects' escrow accounts have been depleted through questionable disbursements, but it can be utilised to increase the protection offered to property buyers.⁵¹⁸

Qatar Law of Escrow Account

The Real Estate Development Law No 6 of 2014 governs real estate developments in Qatar. This Law requires real estate developers to have an appropriate licence to conduct such construction. The Ministry of economy and commerce has set different

516Ashraf Sayed.2010. *Has dubai's escrow Law succede in securing purchasers' money?. HadeF & Partners.* <http://www.hadefpartners.com/News/pageid/120-137/default.aspx?mediaid=115>

517Ashraf Sayed (2010). *Has Dubai's escrow Law succeeded in securing purchasers' money?.* HadeF&partners. <http://www.hadefpartners.com/News/pageid/120-137/default.aspx?mediaid=115>

518Ashraf Sayed (2010). *Has Dubai's escrow Law succeeded in securing purchasers' money?.* HadeF&partners. <http://www.hadefpartners.com/News/pageid/120-137/default.aspx?mediaid=115>

requirements for Qatari national developers and foreign national developers.⁵¹⁹ The Qatari developers need to be registered in the commercial register as real estate developers (the activity of the company) with at least three years of experience not have been adjudged insolvent or bankrupt. However for the foreign national developers, the said Law has required the foreign developers to be established in a foreign jurisdiction with at least ten years of experience. The foreign developers should have an office and register in the Qatari commercial register or any other Gulf member states and should have as an object of the company for it to be a real estate developer.

This Law requires the developers whose sells property units off plan to open an escrow account for each project it undertakes. This escrow account will be used to hold any off plan property purchase money for this project, the off plan purchase price paid by customers will be deposited into that account. Additionally, the proceeds of any financing obtained for the project is also required to be deposited into the Escrow Account.⁵²⁰

The developers cannot withdrawal of monies from the Escrow Account unless they have an approval from the Ministry of Municipality and Urban Planning. This approval by the Ministry will be issued based on achieving construction milestones based on and subject to a schedule approved by the said Ministry.⁵²¹ The project developers cannot withdraw any amounts from the escrow account unless if they build or complete 20% of the project. The developer withdrawals from the account are only

⁵¹⁹ Qatar, Law No.6 of 2014 (the “Real Estate Development Law”)

⁵²⁰ Qatar, Law No.6 of 2014 (the “Real Estate Development Law”)

⁵²¹ Reem Al Mahroos.(2014) New Qatar Law governing real estate developments. Charles Russell Speechly. 20 may 2014.

<http://www.charlesrussellspeechlys.com/updates/publications/?keyword=New+Qatar+Law+governing+real+estate+developments>

towards the payment of the construction or to purchase the land for the project and marketing expenses.⁵²²

Saudi Law of Escrow Account

The Kingdom of Saudi Arabia has regulated the escrow accounts for real estate projects under the Ministerial Decree No, 983 on 2/2/1431 (18/3/2010) to regulate the off plan sales of real estate units on a map. The regulation of the escrow account are similar to the regulations in Dubai or in Qatar where the Law requires the real estate developers to establish an escrow account for each development projects that the company ensures that the monies in the account are used only for the purpose of the development of the project. The said Law also has required the developers to open an escrow account and name it based on the project name, and all amounts paid by the property unit buyers or any financing from financial entitle shall be deposited in the said accounts.⁵²³ These amounts of money are subject to the project cash flow and expenditures only, and it is not allowed to transfer any amount of money to other accounts.⁵²⁴ The real estate developer shall keep all the records of each buyer including the name of the buyer and how many units have been sold with the value of each unit that including the amount that has been paid and the delivered installments of each unit. The real estate developer shall also keep the records of the cash flow for the projects' escrow account and all the record of construction payments and administrative expenses and the expenditure of the building process for the named

⁵²² Rafiq Jaffer & Dina Al Wahabi (2014) *Regulating Real Estate Development in Qatar*. Law update by tamimi and partners. <http://www.tamimi.com/en/magazine/Law-update/section-8/july-august-3/regulating-real-estate-development-in-qatar.html#sthash.UUIf7Tc.dpuf>

⁵²³ Article 12 and article 23 of the Saudi Ministerial Decree No, 983 on 2/2/1431 (18/3/2010) to regulate the off plan sale of real estate unite on a map.

⁵²⁴ Article 16 of the Saudi Ministerial Decree No, 983 on 2/2/1431 (18/3/2010) to regulate the off plan sele of real estate unite on a map.

project.⁵²⁵ Based on that Law the developer of the project has the right to withdraw from the escrow account for non-construction expenses such as for administrating and marketing of the project with a percentage of 20% of the value of the sold property units, however the total expenditures from the escrow account shall not exceed 20% of the total cost of the project.⁵²⁶

Bahrain Law of escrow accounts

Bahrain has issued a long a waited Law (No. 28 of 2014) to govern the real estate development in Bahrain to strengthen the real estate market and increase investor confidence. As the same of the rest of the Gulf countries, this Law have requires the real estate developers to established escrow accounts in the name of each real estate project they conduct. The escrow account should reserve all the monies (that include project loan funds and the funds from the property buyers) for the establishment and the management of the of the project. The Law has allows the real estate developers to holds any proceeds from purchasers and any finance obtained fro the development of the project and any withdrawals are restricted to the development and administration of the project. The said Law also requires developers to retain 5% of the construction costs in the escrow account for 1 year after the delivery of the property units to the purchasers. This measure is intended to act as a guarantee and provides the property purchasers with funds against which to file any complaints against real estate developers.

⁵²⁵ Article 18 of the Saudi Ministerial Decree No, 983 on 2/2/1431 (18/3/2010) to regulate the off plan sele of real estate unite on a map.
<http://www.mci.gov.sa/en/LawsRegulations/LicensingRegulationsAndDecisions/Regulationsforthesaleof/Pages/10-2.aspx>

⁵²⁶ Article 24 of the Saudi Ministerial Decree No, 983 on 2/2/1431 (18/3/2010) to regulate the off plan sele of real estate unite on a map.

7.9. Regulation of real estate marketing and exhibitions

Real estate marketing and exhibitions are one of the main important points to protect real estate buyers. In the Arabian Gulf there is a variation in the regulation of the real estate marketing and exhibitions. Some governments make extra efforts to regulate real estate marketing and exhibitions in order to protect real estate investors. On the other hand some Gulf governments do not address the regulation of real estate exhibitions or even real estate marketing.

Dubai is a good example, where the regulatory authority is busy in regulating the real estate sector but neglected to issue regulations to regulate real estate exhibitions. Dubai is considered one of the biggest business cities in the region and has many real estate exhibitions during a year. Exhibition organisers need to have licenses to conduct exhibitions.⁵²⁷ Furthermore, clients (developers, regional and international investment promotion authorities, architects, designers and other real estate professionals) who want to promote their properties or real estate projects have to provide the authority with the basic information of these properties (such as project licences, the sketch of the properties, the validity of the project or not), whether the promoted properties are in Dubai itself or overseas.

On the other hand, in Kuwait the Ministry Of Commerce and Industry (MOCI) has issued a ministerial decree that regulates real estate marketing and exhibitions in the country.⁵²⁸ In Kuwait no one can advertise or promote properties, whether they are in

⁵²⁷Dubai land set the real estate activities in Dubai, one of the activities is the real estate exhibitions held whether to promote property locally or internationally. Permission from legal authorities is required to hold such exhibitions.

http://www.dubailand.gov.ae/english/Real_Estate_Licences/EngLicences.aspx

⁵²⁸ Kuwait, ministerial decree No.214 of 2010 to regulate the real estate marketing and exhibitions

Kuwait or overseas, before receiving written permission from the Ministry Of Commerce and Industry (MOCI).

Based on the Ministerial Decree issued by the Ministry Of Commerce and Industry (MOCI), No. 214 of 2010, in relation to organising a real estate exhibition in Kuwait, the organiser should follow these conditions and should provide the required documents: The exhibition should be in place that is licenced to do exhibitions, and it is not accepted to put up an exhibition in a company building or shopping mall unless permission is granted from the Ministry of Commerce and Industry.

The ministerial decree defines the entities that can conduct an exhibition in the state of Kuwait, and also companies who are licenced to buy and sell real estate. In case of foreign companies who want to promote their real estate projects or who want to promote their properties, this should be done through an agent in Kuwait, who must have a licence in Kuwait to conduct real estate exhibitions or to sell and buy real estate. In relation to the time period of the real estate exhibitions in Kuwait, they should not exceed two weeks. To get permission, the applicant should provide the Ministry with all the plans for the properties that want to display.

Any exhibition organiser who wants to promote their overseas properties should show all the Laws, regulations, taxes and any important information in the exhibition and should inform the buyers of these regulations before contracting. In addition to obtaining an exhibition licence, the exhibition organiser should provide the MOCI with a written letter from the authorities in the overseas country to permit the ownership of these properties for international buyers and permit these real estate projects or properties to exist. In accordance with Ministerial Decree No 197 of 2004

if the exhibition organiser wants to promote real estate projects or properties overseas he should get permission to do so.

It seems that this type of regulation to conduct a real estate exhibition will protect buyers from fraud. These regulations may protect real estate investors and raises the investors' confidence to invest in a healthy real estate sector. However, in fact, these regulations may also harm the real estate provider since such terms may take a long time to provide since there are many ministerial approvals required and in case of promoting overseas property there are a number of approvals and ratifications required from the Ministry of Foreign Affairs, which may take a long time to be issued.

The situation in Saudi Arabia is similar to Kuwait in relation to regulation of the real estate exhibitions. The Council of Ministers and the Ministry of Commerce and Industry have issued a number of regulations in order to regulate exhibition.⁵²⁹ The organiser should have a licence from the Ministry of Commerce and Industry and the organiser should apply at least 6 months in advance to conduct a real estate exhibition. Usually, in exhibitions, there are many properties under development and the developers want to sell them under off-plan contracts, so the Saudi Ministry of Commerce and Industry has issued a ministerial decree that regulates off-plan selling.⁵³⁰

529 The Saudi Council of Ministers Decree No. (2023) dated of 25/12/1394 H – the Saudi Ministerial Decree No. (1125) dated 08/09/1419 AH- the Saudi Ministerial Decree No. (663) dated 8/4/1421 AH- Ministerial Decree No. (233) dated 10/02/1424 AH about Amending the Regulation List- Ministerial Decree No. (5840) 22/5/1430 AH

530 Saudi Arabian. Ministerial decree No 983 of 2/2/1431 in relation to Regulation for the sale of real estate units on a map.

8. Conclusion

This chapter discusses legislation developments in respect to real estate matters that have developed considerably between 2002 and 2014 in Gulf countries. These developments include the establishment of Regulatory Authorities, which aim to regulate the real estate sector similar to the real estate regulatory bodies in the UAE. This real estate regulatory authority has issued a number of Laws that are concerned with regulating the real estate sector, such as the Law, off-plan regulation, and regulations of the trust accounts, brokerage regulations and many more real estate regulations.

Some of the Gulf countries have actively attempted to regulate their real estate sector in a transparent way, in order to offer investor protection and to thus encourage confidence in investors. On the other hand, in some Gulf States there are some shortfalls in relation to real estate regulations. For example, there are no Laws that meant regulate off-plan sales, escrow accounts for real estate projects and strata regulation or even jointly owned property regulations in some of the Gulf member states. Generally, the Gulf real estate sector needs such Laws as to regulate the real estate sector in order to boost the confidence and protection of investors, whether foreign or local investors. This chapter has also demonstrated the variety of regulatory bodies in the Gulf's real estate sector; whereas some countries establish specialised regulatory body to regulate all transactions that relate to the real estate sector, in other Gulf member states there are no such regulatory bodies, and the regulatory authority has been divided between the government branches.

<http://www.mci.gov.sa/en/LawsRegulations/LicensingRegulationsAndDecisions/Regulationsforthesaleof/Pages/10-2.aspx>

Chapter 5: the legal framework of real estate finance in the Arabian Gulf Countries

1. Introduction

Real estate has become one of the biggest sectors for investment in the Arabian Gulf region, resulting in the issuing of much legislation in order to regulate the sector in order to protect the investor's interests. At the beginning of the construction and luxurious real estate boom in the region in the 2000s there was a wave of legislation meant to set the platform for real estate investment, such as legislation that regulate property ownership allowing foreign nationals to own property in designated areas within the Gulf region.

The second flow of legislation was meant to regulate the real estate sector itself, such as the establishment of real estate regulatory bodies. Within these regulatory bodies, smaller regulatory branches issue decrees and circulars to control and manage the real estate sector in order to boost the confidence of real estate investors.

During the financial crisis in 2008, the Gulf's financial market was affected very hard and it hit the real estate sector even harder, with many real estate development projects stopped and many other projects delayed due to the lack of the cash flow and lack of investors' confidence to invest in the property market. The Gulf's real estate sector was severely affected and struggled for a long time from the effects of the financial crisis. As a result the Gulf governments have set internal and external policies to re-boost the economies.

This chapter outlines the main characteristics of the Arabian Gulf countries' financial systems and the role of the Gulfs' Central Banks in regulating the financial sector. It will highlight the impact of the financial crisis on the Arabian Gulf region and what

the Gulf governments' response was. The chapter will discuss and evaluate the legal framework of real estate finance that is offered by financial institutions and includes conventional and Islamic banks.

2. The nature of the Arabian Gulf economy (The Rentier Economy)

Before discussing the financial system of the Gulf member states, it is important to understand the main source of income for these countries. The economies of the region share a number of commonalities. By the beginning of the 1970s, all Gulf countries had gained their independence and they were all heavily dependent on oil as their main source of income. The Arabian Gulf countries have all witnessed significant change in their financial markets during recent decades. The Arabian Gulf countries' economies have been growing, and are powered mostly by their main source of income - oil production. However, these economies still remain exposed to fluctuations in international oil prices.⁵³¹

It is worth mentioning that the income derived from oil sales has converted the Gulf economy from a productive economy to a rentier economy.⁵³² H. Mahdavy defined rentier states in 1970 as “countries that receive on a regular basis substantial amounts of external rent.”⁵³³ External rent is defined as rents paid by foreign individuals, concerns or governments to individuals, concerns or governments of a given

⁵³¹ Saeed Al-Muharrami, Kent Matthews, Yusuf Khabari.2005. Market structure and competitive conditions in the Arab GCC banking system. *Journal of Banking & Finance* 30 (2006) 3487–3501.

⁵³²See Al-Zumai, Fahad, 'Rentier States and Economic Regulation Infrastructure: Kuwait as a Case Study', *Journal of Law*, University of Kuwait, September 2007, No: 3, Vol: 31, at p 13

⁵³³ See H. Mahdavy, *The Patterns and Problems of Economic Development in Rentier States: The Case of Iran*, in M.Cook (ed) *Studies in the Economic History of the Middle East*, (Oxford University Press, Oxford, 1970), at p 428.

country.⁵³⁴ BebLawi says that a “rentier economy is thus an economy where the creation of wealth is centred on small fractions of the society.”⁵³⁵

To be considered a rentier state, certain key characteristics must, therefore, exist.⁵³⁶ The first is the centring of wealth creation around a small fraction of firms that are owned by the governments. The governments of the Gulf countries own most of the revenue derived from the sale of oil products which constitutes one of the main sources of state income. For example, the revenue from crude oil and other petroleum products amounts to nearly 95% of export revenues and 80% of Kuwait’s government income.⁵³⁷

Another characteristic of a rentier economy is that the government, as in the Gulf countries, employs most citizens. Moreover, most Gulf citizens benefit from the revenues gained from oil sales. In other words, when the wealth is distributed, most citizens receive a share of the countries’ wealth. They also benefit by the fact that Gulf governments pay for most of the benefits conferred upon its citizens. For example, in Kuwait health care and education are offered to citizens for free,⁵³⁸ many services and goods are subsidised and the salaries of the people employed in the public sector constitute around 40% of the government’s expenses in the fiscal year 2008/2009.⁵³⁹

⁵³⁴ *ibid*

⁵³⁵ See Hazem BebLawi, *The Rentier State in the Arab World*, in Hazem BebLawi and Giacomo Luciani (ed), *The Rentier State*, Routledge, London, 1987, at p 51.

⁵³⁶ See AL-Zumai *supra* note 265, at p 22.

⁵³⁷ The Statement of The Kuwaiti Minister of Finance on the Economic, Monetary and Financial Conditions and the draft Budget for the fiscal year 2008/2009. <http://www.mof.gov.kw/#>

⁵³⁸ According to the Kuwait Constitution Article 11 states “The State ensures aid for citizens in old age, sickness or inability to work. It also provides them with services of social security, social aid and medical care”.

⁵³⁹ The Statement of The Kuwaiti Minister of Finance on the Economic, Monetary and Financial Conditions and the draft Budget for the fiscal year 2008/2009.

A favorable taxation system is the third aspect of a rentier economy and the rentier state. Most commonly in the rentier economy or rentier states they all have a low taxation system. The Arabian Gulf countries have the most favorable and the lowest taxation systems in the Middle East. In the Gulf region there are only corporate taxes and there is no tax on individual income.⁵⁴⁰ A good example of that is in Kuwait where the revenue generated from taxes during the tax year 2003/2004, is only 1.9% of the government's total revenue.⁵⁴¹

The fourth aspect of rentier states is the government's involvement in the creation of the country's gross domestic product (GDP). From 1995 through 2011, the Gulf government's contribution in GDP was approximately 70%.⁵⁴²

The emergence of rentier states in the Arabian Gulf countries began with the impact of the two oil booms that began in the mid-1970s. The Arabian Gulf region, Iraq, and Iran are some of the major crude oil suppliers to the international market and any event that happens in the region affects the international market.

The first of oil boom was in 1973 due to the oil embargo that several Arab oil exporting countries and Iran placed on the main countries that supported Israel against Arab countries during the Arab-Israeli war.⁵⁴³ The Arab countries and Iran took around 4 million barrels of oil a day from the international market, consequently oil

⁵⁴⁰ See Ahmed Jalali-Naini, *The Structure and Volatility of Fiscal Revenue in MENA Countries*, WorldBank Working Paper, 2000, at p 46.

⁵⁴¹ Interestingly, the Ruler in Kuwait levied a tax upon the pearling business when there was no legal framework for Kuwait as a state. This is evidence of the transformation of the Kuwait economy from a productive economy to a rentier economy

⁵⁴² See Ahmed Jalali-Naini, *The Structure and Volatility of Fiscal Revenue in MENA Countries*, WorldBank Working Paper, 2000, at p 46.

⁵⁴³ Matthew Gray.(2011) A Theory of "Late Rentierism" in the Arab States of the Gulf. Center for International and Regional Studies. Georgetown University School of Foreign Service in Qatar. <http://www12.georgetown.edu/sfs/qatar/cirs/MatthewGrayOccasionalPaper.pdf>

prices at that time approximately quadrupled, thereby consolidating the first oil boom and delivering enormous wealth to the Arab oil-exporting countries.⁵⁴⁴

A number of events occurred that supported second oil boom consecutively. As a result of the eruption of the Lebanese civil war, Beirut lost its status as the financial centre for offshore banking from the late 1970s onwards; whereupon, in the 1980s Bahrain became the backbone for offshore banking in the MENA region. However, as with Beirut, conflict, and uncertainty presented Bahrain acting as a financial centre for the whole Middle-East countries assets Bahrain and some other Arabian Gulf countries tried to become new financial centres for the MENA-region.⁵⁴⁵

In mid-1975, Bahrain passed legislation to regulate offshore banking. At the time, Bahrain opened the gates for foreign banks, provided they restricted their financial dealings to non-citizens. The authorities wanted to make their country the unrivalled financial centre in the Gulf, primarily by using oil revenues to diversify the economic base of the island nation in the fields of banking and finance and subsequently creating an advanced, knowledge-based economy with a technically advanced workforce. This policy was highly successful and by the early 1980s over a hundred leading international banks maintained offshore banking units in Bahrain.⁵⁴⁶

Another major event was the Iranian revolution which occurred in 1978-1979. At the time of the Iranian revolution, the Iranian oil and gas sector exported over two million barrels per day worldwide. The revolution added the uncertainty of oil supplying to

⁵⁴⁴Matthew Gray.(2011) A Theory of “Late Rentierism” in the Arab States of the Gulf.. Center for International and Regional Studies. Georgetown University School of Foreign Service in Qatar. <http://www12.georgetown.edu/sfs/qatar/cirs/MatthewGrayOccasionalPaper.pdf>

⁵⁴⁵ Asim Ali and Shatha Al-Aswad. (2012). The Sovereign Wealth Fund Initiative , Persian Gulf based SWFs & Financial Hubs in Bahrain, Dubai and Qatar: A Case of Competitive Branding.

⁵⁴⁶ Asim Ali and Shatha Al-Aswad. (2012). The Sovereign Wealth Fund Initiative , Persian Gulf based SWFs & Financial Hubs in Bahrain, Dubai and Qatar: A Case of Competitive Branding.

the international market which directly raised oil prices, Iran's oil production fell to two thirds of what it was in late 1978.

Another event that raised oil prices was the Iran –Iraq war that occurred at the beginning of 1980 and ended in 1988. This war had a major effect on oil prices at that time. After the Iran –Iraq war in the late 1980s, there was the Iraq invasion of Kuwait at the beginning of the 1990s. After the Iraqi, invasion there were sanctions from 1990 to 2003 on the Iraqi government, which created internal political and economic problems.⁵⁴⁷ This chain of political events raised oil prices to their peak. These events had several impacts on the Arabian Gulf region and led to rentier states gaining a reputation as an influential source of oil.⁵⁴⁸

Between 2002 and 2008, earnings on oil exports in the Gulf region stood at over USD 2 trillion, in a period known as the third Gulf oil boom in which the incomes from oil were more than double the average of the preceding five years.⁵⁴⁹ The increasing oil revenues in the region boosted the capital of local sovereign wealth funds (SWFs), which was very large and had grown massively.⁵⁵⁰ These sovereign wealth funds (SWFs) could be used internally to develop and to restructure the capital cities and finalised infrastructure and raise welfare services in the form of investment and commercial products.⁵⁵¹ There are now around 14 different SWFs in the Arabian Gulf

⁵⁴⁷ Matthew Gray.(2011) A Theory of “Late Rentierism” in the Arab States of the Gulf.. Center for International and Regional Studies. Georgetown University School of Foreign Service in Qatar. <http://www12.georgetown.edu/sfs/qatar/cirs/MatthewGrayOccasionalPaper.pdf>

⁵⁴⁸ Matthew Gray.(2011) A Theory of “Late Rentierism” in the Arab States of the Gulf.. Center for International and Regional Studies. Georgetown University School of Foreign Service in Qatar. <http://www12.georgetown.edu/sfs/qatar/cirs/MatthewGrayOccasionalPaper.pdf>

⁵⁴⁹ *Tracking GCC Petrodollars: How and Where They are Being Invested Around the World* (Washington D.C.: Institute of International Finance, May 31, 2007).

⁵⁵⁰ The total assets accumulated by Gulf's sovereign wealth funds as a whole is assumed to be around 34 per cent of \$5.4 trillion assets accumulated by sovereign wealth funds worldwide, which total assets by Gulf's sovereign wealth funds is estimated to \$1.8 trillion. http://www.un.org/en/development/desa/policy/wesp/wesp_wh/wesp_wh16.pdf

⁵⁵¹ Arabian Gulf sovereign wealth funds were established in the 1950s and in the 1970s. Most of the smaller Gulf's sovereign wealth funds, however, appeared after 2000, when average oil prices

countries pursuing multiple purposes some of which are dedicated to the real estate sector. Most of these funds are controlled either by influential people who are members of the ruling or merchant families owning oil resources and managing state affairs and investment strategies in ways that remain somewhat opaque.⁵⁵²

In the last two decades as the Arabian Gulf countries have become more globalised, there have been dramatic changes in different parts of the region where Dubai, Abu Dhabi, Qatar and other cities are spending their Sovereign Wealth Funds (SWF's) more intelligently to develop their economies and societies and diversify away from their strong reliance on oil. As a result many SWF's have found their way into the real estate and construction sectors locally and internationally.⁵⁵³

These funds have become engaged in numerous projects, resulting in a multiplier effect on sectors such as hotels and tourism, but mainly in the construction and real estate sectors.⁵⁵⁴ During this (2003-2008) period, the construction and real estate market recorded significant growth due to the large oil surplus in the region. These funds assisted the establishment new types of luxurious real estate development company such as Emaar, Nakheel, Damac, Barwa, Diar, ezdan which become the leading development companies in the Arabian Gulf region and in different part of the world.⁵⁵⁵ At that time, the average growth of these sectors was higher than the oil

progressively quintupled from \$20 per barrel to more than \$100 per barrel

http://www.un.org/en/development/desa/policy/wesp/wesp_wh/wesp_wh16.pdf

⁵⁵² The average value of the Linaburg-Maduell transparency index value for all GCC funds is 4.8 on a scale of 10, and the average weighted by the value of the funds is 5.1. see ⁵⁵² Pierre Kohler (2013) *GCC sovereign wealth funds: leveraging local economic development?*. World Economic Situation and Prospects. Weekly Highlights. 8 May 2013.

http://www.un.org/en/development/desa/policy/wesp/wesp_wh/wesp_wh16.pdf

⁵⁵³ Matthew Gray. (2011). *A Theory of "Late Rentierism" in the Arab States of the Gulf*. Center for international and regional studies. George town university school of foreign service in Qatar.

<http://www12.georgetown.edu/sfs/qatar/cirs/MatthewGrayOccasionalPaper.pdf>

⁵⁵⁴ Almasah Capital Limited. 2011. *GCC Real Estate - Back on growth track?*

http://almasahcapital.com/uploads/report/pdf/report_24.pdf .

⁵⁵⁵ It is worth to mention that there are many family construction companies in the region that established in back to 1931 (Bin laden Construction company). But after the third oil boom the during

sector. Qatar is a good example of how the Qataris SWF supports the growth of the economy with an eye to managing Qatar's real estate development priorities by Qatar Diar established by Qatar Investment Authority which is the autonomous wealth fund of the Qatar state.⁵⁵⁶ In 2005 the government of Qatar established Qatar Diar with \$1 billion in the capital with a main concern to invest in luxurious real estate community based projects. In a short period of time Qatar Diar has managed to create a portfolio worth around \$60 billion through its investments in different part of the world which combined, can be valued at \$35 billion.

3. An overview of the financial systems in the Arabian Gulf

The Constitutions (or the Basic Law in case of Saudi Arabia) of the Gulf member states define religion, language and the source of legislation. In relation to legislation, the sources of Law in the Gulf member states are similar and include legislation, Islamic *Shari'ah*, and finally custom.⁵⁵⁷ Some of the Arabian Gulf states describe Islamic *Shari'ah* Law as the main source of legislation, such as Saudi Arabia; *Shari'ah* is the main source legislation of Saudi Arabia where the *Shari'ah* court is the highest body in the judicial system.⁵⁵⁸

On the other hand, the Constitutions of the rest of the Gulf States clearly state that *Shari'ah* is a principal are source of legislation but not the main source of legislation. These include the Constitutions of Kuwait, UAE, Oman and other countries in the

the 2000, the SWF of the Gulf government supported the establishment of these new companies.(Barwa in 2005- Damak in 2002 – Diar in 2005- Emmar in 1997)

⁵⁵⁶ The company profile of the Qatari Diar real estate company

<http://www.qataridiar.com/English/WhoWeAre/Pages/Company-Profile.aspx>

⁵⁵⁷ See Article 2 in the Kuwait Constitution and the Bahraini Constitution and Article 7 in the UAE Constitution

⁵⁵⁸ Pepper, W.F. (1992). "Foreign Capital Investment in Member States of the Gulf Cooperation Council: Considerations, Issues and Concerns for Investors," *Arab Law Quarterly*, Vol. 7, No. 1, pp. 33–63.

Gulf which stay silent in relation to commercial transactions.⁵⁵⁹ For example, Article 2 of the Constitution of Kuwait clearly puts *Shari'ah* as a main source of legislation and Islam as the official religion. This can be evidenced in Article 547 of the Civil Code of Kuwait of 1981 where this Code prohibits the practice of charging interest on loans and Article 305 that declares such transactions will be void.⁵⁶⁰ Nevertheless, within the same year the Kuwait Authority issued specific legislation to exclude commercial transactions from the application of these Civil Code provisions.

Article 7 of the UAE Constitution recognises *Shari'ah* as a main source of legislation, and the religion of the state is Islam.⁵⁶¹ In addition Article 75 of the Federal Law No. 10/1973 provides that the Supreme Court of the UAE shall apply the provisions of Islamic Law.⁵⁶² In terms of the banking and finance sectors, the Federal Law No. 10 of 1980 concerning the Central Bank acts as the main governing Law to the monetary system, organising the banking and for the financial sectors in the UAE. This legislation grants power to the Central Bank of the UAE to regulate and supervise financial institutions.⁵⁶³

As a beginning of financial regulation development in the UAE any kinds of interest in respect of civil transactions is prohibited by virtue of Article 714 of Federal Law

⁵⁵⁹ See article 2 of Kuwaiti, Bahrain, and article 7 of UAE Constitution.

⁵⁶⁰ Al-Moqatei (1989: 138–148) views that Kuwait is considered as the leader among the Gulf state in returning to Islam through the adoption of some Islamic Laws in the form of legislations since 1980s.

⁵⁶¹ There are two views on the interpretation of the article 7 of the UAE Constitution. The Islamist tends to interpret that *Shari'ah* shall be the supreme Law and above all of other Laws while the Liberalist places *Shari'ah* on an equal footing with other Laws. The practice however shows different situation where *Shari'ah* rules are made obligatory in criminal cases and not strictly applicable in commercial matters especially in relation to banking and finance disputes. see Al-Muhairi, B. S. B. A. (1996). "The Position of Shari'a within the UAE Constitution and the Federal Supreme Court's Application of the Constitutional Clause concerning Shari'a," *Arab Law Quarterly*, Vol. 11, No. 3, pp. 219–244.

⁵⁶² Article 75 of the Federal Law No. 10/1973 provides that "the Supreme Court shall apply the provisions of the *Shari'ah*, Federal Laws and other Laws in force in the member Emirates of the Union, conforming to the Islamic *Shari'ah*. Likewise it shall apply those rules of custom and those principles of natural and comparative Laws which do not conflict with the principle of the *Shari'ah*".

⁵⁶³ Zulkifli Hasan. (2010). Regulatory Framework of Shari'ah Governance System in Malaysia, GCC Countries and the UK. *Kyoto Bulletin of Islamic Area Studies*, 3-2 (March 2010), pp. 82–115 http://www.asafas.kyoto-u.ac.jp/kias/1st_period/contents/pdf/kb3_2/07zulkifli.pdf

No. 5 of 1985 Civil Transaction Law. This provision implies interest-based transactions are void and unenforceable. In 1987, the UAE Civil Transactions Law was amended by Federal Law No. 1, which excluded commercial transactions from being governed by the Civil Transactions Law and finally, Federal Law No. 11 of 1992 invalidated all previous Laws with respect to the interest prohibition. As a result, the charging of interest in commercial transactions is permissible in the UAE.⁵⁶⁴ Federal Law No. 18 of 1993 grants a bank's right to charge interest in respect of a commercial loan as per the agreed rate in the contract.⁵⁶⁵ This position was taken in view of the necessity (*Dharuriyah*) for economic stability and the needs of the people. Moreover, this time, the implementation of Islamic finance in the UAE was still in its infancy stage and could not meet the needs of the market.⁵⁶⁶ The Civil Courts have jurisdiction in banking matters and any financial transactions in which a bank is involved so that any consideration of the legality of interest would fall under its jurisdiction.⁵⁶⁷

The influence of Islamic Law however is manifested in the civil codes in the region. These codes usually - but not always - exclude rules that contradict Islamic Law For example; in Kuwait, civil Law has gone through a process of Islamicisation wherein it has become fully compatible with Islamic Law.

In Bahrain, Islamic Law is less influential compared with Kuwait and the UAE. Bahrain has developed several substantive and procedural Laws and at the same time

⁵⁶⁴ The Constitutional Division Bench of the Supreme Court has confirmed that in the case of No. 14, Year 9 (June 1981). See Al-Suwaidi, A. (1993). "Developments of the Legal Systems of the Gulf Arab States," *Arab Law Quarterly*, Vol. 8, No. 4, pp. 289–301.

⁵⁶⁵ See Tamimi, H. (2002). "Interest under the UAE Law and as Applied by the Courts of Abu Dhabi," *Arab Law Quarterly*, Vol. 17, No. 1, pp. 50–52.

⁵⁶⁶ This was confirmed by the Constitutional Department of the Federal Supreme Court of Dhabi in its interpretation Decision No. 14/9 issues on 28 June 1981. See. Tamimi, H. (2002). "Interest under the UAE Law and as Applied by the Courts of Abu Dhabi," *Arab Law Quarterly*, Vol. 17, No.1, pp.50–52.

⁵⁶⁷ Ballantyne, W.M. (1985). "The States of the GCC: Sources of Law, the Shari'a and the Extent to Which It Applies," *Arab Law Quarterly*, Vol. 1, No. 1, pp. 3–18.

put *Shari'ah* as a main source of legislation as stated in the Article 2 of the Constitution of Bahrain. This position creates difficulties for the commercial sector particularly for financial institutions because interest-based transactions would have been declared illegal.

The new Bahraini Civil Code organises the source of Laws as follows: the first source is the Code itself, then custom, then Islamic Law, and finally natural and equity Law.⁵⁶⁸ These sources of Law can be traced to the British influence on the country, as Article 12 Section 3 in the Bahrain Order stated these as the sources of Law. This position creates difficulties for commercial sectors particularly financial institutions because the interest-based transactions would have been declared illegal. In view of this, Bahrain developed its own Laws such as the Law of Civil and Commercial Procedure of 1971, the Law on the Establishment of the Bahrain Monetary Agency of 1973, the Companies Registration Act of 1983 and the Commercial Law of 1987 which are based mainly on Egyptian codes. Article 76 of the Commercial Law of 1987 clearly allows interest to be charged in commercial loans but subject to the rate determined by the Bahrain Monetary Agency.⁵⁶⁹ The Civil Courts of Bahrain have comprehensive jurisdiction over civil and commercial matters except those relating to *Shari'ah* disputes and will therefore apply these laws to commercial transactions.

In Qatar, Article 1 of the 1972 Constitution clearly states that the Islamic Law is a main source of legislation and Islam is the religion of the state.⁵⁷⁰ Although, the Constitution of Qatar specifically puts *Shari'ah* as a main source of legislation, in relation to commercial transactions, it not a primary consideration. Moreover, there is

⁵⁶⁸ See Bahrain Law Article 1 of the Civil Code No. 19/2001

⁵⁶⁹ Al-Suwaidi, A. (1993). "Developments of the Legal Systems of the Gulf Arab States," *Arab Law Quarterly*, Vol. 8, No. 4, pp. 289–301.

⁵⁷⁰ Hamzah, A.N.(1994). "The Duality of the Legal System," *Middle Eastern Studies*, Vol. 30, No. 1 (Jan., 1994), pp. 79–90.

contradiction between the old/previous Qatar civil and commercial Laws and its Constitution.⁵⁷¹ This can be evidenced by referring to Article 4 of the Civil and Commercial Code, which states that *Shari'ah* shall apply in the absence of express legislation provision or custom. This position puts *Shari'ah* as a secondary source of legislation in the aspect of commercial transaction in which contradicting to the article 7 of the Constitution. In view of the similar situation that happened in Kuwait, UAE, Bahrain, it is presumed that the Qatar Civil and Commercial Law is excluded from the application of article 7 and hence permits the interest-based transaction as in the Bahrain financial sector. In fact, Law No 7 of 1973 (amended by Law No. 7 of 1975) granted power to the Qatar Monetary Agency to determine the interest rates on deposits and loans. The government of Qatar then established the Qatar Central Bank that inherited all functions of the Qatar Monetary Agency. The Qatar Central Bank is the regulatory body which supervises and manages the financial sector in Qatar while the Doha Securities Market serves as the securities market regulator. The judicial system of Qatar places the civil court to hear cases pertaining to commercial, banking and finance disputes.

The commercial Laws of the Gulf countries are less observant of Islamic Law than the civil codes in that none of the commercial codes⁵⁷² state explicitly that Islamic Law is a principal source of Law.⁵⁷³ The main reason is that these Laws include many rules that contradict Islamic principles, for example the allowance of *riba*. There was a

⁵⁷¹ It is reported that since 1960s, the application of Islamic Law in Qatar has been confined to family and personal matters such as marriage, divorce and inheritance. See Amin, S.H. (1983). "Legal Systems in the Gulf States," *Lloyds Maritime Commercial Law Quarterly* (Feb. 1983). See also Hamzah (1994: 79–90) for further understanding on the historical background of Qatar legal system. Qatar legal system has emerged into three stages namely tribal Law, Islamic Law and modern Law.

⁵⁷² For more discussion on the U.A.E commercial code, see Mohamed El Saied, *Aspects of Banking Law and Legal Practices in Light of the Draft of the Commercial Code of the U.A.E*, PhD thesis submitted to Faculty of Law, University of Exeter, 1990.

⁵⁷³ See Article 2 in Kuwaiti Commercial Law No. 68/1980, Article 2 in UAE Commercial Transaction Law No. 18/1993, and finally Article 1 in Bahraini Commercial Law No. 7/1987

legal vacuum in commercial Law, and this had to be filled by Western Laws since they have more developed commercial Laws.

In relation to finance regulation in the Arabian Gulf countries, there are two models of finance in the region. The first model is conventional finance through the conventional banks which is regulated by the commercial Law, civil Law and the rules and regulations issued by the Central Bank of the country. The second model of finance in the region is Islamic finance which is regulated by the *shari'ah* Law in addition to the commercial Law, civil Law and the rules and regulations issued by the Central Bank of the country.

4. The regulatory overview of the Gulf's Central Banks in regulating the Gulf's financial sector

Most central banks all over the world perform more or less the same tasks. The Central Banks of the Arabian Gulf countries occupy an important position in Local financial markets. The Central Banks differ from the rest of the other banks, as the main purpose of any central bank is the supervision and control of the operation of other banks and the organisation of the banking activities in the country. The Central Bank must have a set of authorities to control the banks under its purview. At the same time, it must itself be subjected to the general economic policy of the country.

The Central Bank controls cash and credit; implements monetary policy and manages the dual banking system by licensing the Islamic banks and conventional banks; manages the state currency; issues public debt bonds; manages financial institutions; nad investment companies (Islamic and conventional investment companies); supervise investment and pension funds and manages insurance companies and the

stock/capital markets. Central Banks in the Arabian Gulf region also licence the insurance services providers whether they are brokers or insurance companies. In addition, the Central Banks set the rules and regulations for licensing foreign banking guidelines and for local financial institutions. The Central Banks also set the corporate governance rules and regulations to prevent banks and financial institutions from engaging in any reckless or fraudulent behaviour in order to reduce the risk of financial crises.

The Central Banks of the Arabian Gulf states are relatively new. The first official Central Bank was established during the 1950s.⁵⁷⁴ The modern history of the banking system in Saudi Arabia started in 1952 when the Saudi Arabia Monetary Agency (SAMA) was established by Royal Decree M/23 of 1377 which functions under the Banking Law of 1966.⁵⁷⁵ This decree aims to achieve a stable monetary mechanism in Saudi Arabia.⁵⁷⁶ The main function of SAMA is to deal with the banking affairs of the government and the minting and printing of the national currency, in addition to managing Saudi Arabia's foreign exchange reserves.⁵⁷⁷ SAMA is the regulatory body that manages and supervises the commercial banks, exchange dealers, corporate insurance companies and finance companies.⁵⁷⁸ It is important to note that all of the Islamic financial Institutions in Saudi Arabia are not supervised by the Saudi Arab

⁵⁷⁴ Saudi Arabia Monetary Agency

<http://www.sama.gov.sa/sites/samaen/AboutSAMA/Pages/SAMAFUNCTION.aspx>

⁵⁷⁵ Pepper, W.F. (1992). "Foreign Capital Investment in Member States of the Gulf Cooperation Council: Considerations, Issues and Concerns for Investors," *Arab Law Quarterly*, Vol. 7, No. 1, pp. 33–63.

⁵⁷⁶ Zulkifli Hasan.(2010).*Regulatory Framework of Shari'ah Governance System in Malaysia, GCC Countries and the UK*. Kyoto Bulletin of Islamic Area Studies, 3-2, pp. 82–115

⁵⁷⁷ The appointment of the members of its board of directors comprising a chairman, a deputy chairman, a governor and two members. They are appointed by His Majesty the King on the recommendation of the Minister of Finance. See Al-Haj Ali, Mohamed Said, Saudi Arabian Monetary Agency, its Foundation, March and Achievements, Riyadh (Saudi Arabia): E1-Ayyoubi Press, 1991, pp. 25-32.

⁵⁷⁸ Saudi Arabia monetary agency

<http://www.sama.gov.sa/sites/samaen/AboutSAMA/Pages/SAMAFUNCTION.aspx>

Monetary Agency (SAMA) but are instead monitored and organised as commercial companies by the Saudi Ministry of Commerce⁵⁷⁹.

In Kuwait, the main two regulatory authorities to enforce Laws in relation to commercial matters are the Central Bank and the Ministry of Commerce and Industry. Kuwait's Central Bank was established by Law No. 32 of 1968, amended by Law 130 of 1977, with a mission to lay the foundation and maintain a flexible and stable financial system in the country.⁵⁸⁰ This Law grants the Central Bank the power to supervise financial institutions and organise the business of banking. This requires financial institutions to strictly comply with the commercial code and commercial companies' Law.⁵⁸¹

Before the 1970s, there was no such national authority responsible for the supervision of the banking sector in Oman. At that time, there were a small number of banks in Oman with a limited scale of activity.⁵⁸² During the 1970s, two monetary authorities were established, namely, the Muscat Currency Authority, established in 1970, and the Central Bank Oman Currency Board in 1972. These two authorities were the foundation for the Central Bank of Oman in 1974.⁵⁸³ The establishment of the Oman Central Bank⁵⁸⁴ was a natural outcome of the monetary system evolution in the country and was coupled with the prospects of vast economic development which the country was about to witness.⁵⁸⁵ The function of the Central Bank of Oman is to act as

⁵⁷⁹ Al Sayed, Mohamed Bassam Hashim. (2005). *The Role of the Central Bank in an Islamic Banking System*. Ph.D Thesis, University of Wales, Lampeter.

⁵⁸⁰ The Central Bank of Kuwait <http://www.cbk.gov.kw/WWW/index.html>

⁵⁸¹ Al-Suwaidi, A. (1993). "Developments of the Legal Systems of the Gulf Arab States," *Arab Law Quarterly*, Vol. 8, No. 4, pp. 289–301.

⁵⁸² Presley, J. R (1992) "Banking in the Arab Gulf" McMillan Academic Press

⁵⁸³ Hamad sari alshammari. (2002). *Structure-conduct-performance and efficiency in Gulf Co-operation council (GCC) Banking markets*. School of business and regional development University of wales, bangor

⁵⁸⁴ Law7 of 1974(amended by Decree3 2/1977, 55/1977, 6/1983 and 19/1983)

⁵⁸⁵ Central Bank Of Oman <http://www.cbo-oman.org/>

the depository agency for the government of Oman, and it is also the regulator of local commercial banks, specialised banks, financial entities and money exchange companies.⁵⁸⁶

In Bahrain, the Bahrain Monetary Agency (BMA) acts as a Central Bank and regulates the offshore, commercial and investment banking markets. It was set up in 1973 with advice from the Bank of England and replaced the old Currency Board.⁵⁸⁷ The Central Bank of Bahrain is the main regulatory body of the financial sector, and it has a rulebook which governs all financial activity in Bahrain.⁵⁸⁸ Add to that the five complementary regulations governing the financial sector, namely the Financial Institutions Law 2006, the Bahrain Stock Exchange Law 1987, the Commercial Companies Law 2001, the Anti-Money Laundering Law 2001 and the Financial Trust Law 2006.⁵⁸⁹ These are the main regulations covering the financial sector in the Kingdom of Bahrain.

The Central Bank of Bahrain plays a significant role in promoting Bahrain as the regional Islamic financial centre; it keeps the market open for foreign investors, unlike the Kuwaiti and the Saudi markets which licence only majority locally owned financial institutions. Bahrain began to improve its reputation as a financial centre when it hosted the Accounting and Auditing Organisation for Islamic Institutions (AAOIFI) in 1990, which serves as a standard setting body for financial reporting.⁵⁹⁰

⁵⁸⁶ Central Bank Of Oman <http://www.cbo-oman.org/>

⁵⁸⁷ Sari. Alshammary. (2002) *Structure-conduct-Performance and efficiency in Gulf co-operation council (GCC) banking markets*. School of Business and regional development. university of wales, Bangor.

⁵⁸⁸ Sari. Alshammary . (2002) *Structure-conduct-Performance and efficiency in Gulf co-operation council (GCC) banking markets*. School of Business and regional development. University of Wales, Bangor.

⁵⁸⁹ The legal provision for the implementation of Islamic finance in Bahrain is provided in the central bank rule book Volume 2, Islamic Banks.

⁵⁹⁰ The Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) is an Islamic international autonomous non-for-profit corporate body that prepares accounting, auditing,

In addition, Bahrain hosts the International Islamic Financial Market (IIFM), whose remit is to promoting common trading standards in order to help and support the Islamic capital and money markets. The Liquidity Management Centre (LMC) was also established in Bahrain for the purpose of facilitating the placing of surplus funds of Islamic financial institutions in profitable traded instruments.⁵⁹¹

The Qatar Monetary Agency (QMA) fulfills Central Banking functions in Qatar. An Emiri decree was issued to establish the Central Bank of Qatar as the regulatory body which supervises and manages the financial sector in Qatar. In early 2005, Qatar issued Law No. 7 of 2005 to establish the Qatar Financial Centre (QFC) in a free zone with the purpose of creating independent regulatory bodies which are based on English common Law for the financial sector. The QFC has a detailed rulebook regulating the financial entities established under the QFC umbrella. In the same year, the government of Qatar issued Law No. 33 to establish the Qatar Financial Markets Authority (QFMA) which regulates the security market, and these two Laws have become the main Laws of Qatar's financial sector.⁵⁹²

In the UAE, the first attempt to establish a Central Bank was in 1973 under the title of the UAE Currency Board. This aimed to unify the currency of the Emirates, after the

governance, ethics and *Shari'a* standards for Islamic financial institutions and the industry. Professional qualification programs (notably CIPA, the *Shari'a* Adviser and Auditor "CSAA", and the corporate compliance program) are presented now by AAOIFI in its efforts to enhance the industry's human resources base and governance structures. As an independent international organisation, AAOIFI is supported by institutional members (200 members from 40 countries, so far) including central banks, Islamic financial institutions, and other participants from the international Islamic banking and finance industry, worldwide. www.aaofi.com.

⁵⁹¹ www.lmc Bahrain.com.

⁵⁹² The QFC Law establishes four different independent bodies namely the QFC Authority, the QFC Regulatory Authority, the Appeals Body and the QFC Tribunal. The QFC has power to regulate the financial sector including the Islamic financial business. As the QFC is inspired by the DIFC model that has separate judicial system with the federal, the QFC also has its own civil and commercial court and the regulatory tribunal as part of its legal infrastructure.

establishment of the Union of the Emirates as a country in 1971.⁵⁹³ Federal Law No 10 of 1980, issued to replace the Currency Board, became the main Law for the UAE's financial sector. This Law concerned the Central Bank of UAE and banking system and the monetary system in UAE, and granted power to UAE's Central Bank to regulate and supervise all financial institutions.⁵⁹⁴ The new UAE Law gives the Central Bank the necessary powers which were not given to the Currency Board. The Central Bank supports the Dirham and maintains the stability of its exchange both internally and externally, thus ensuing its free convertibility into foreign currencies.

595

As regards banking regulations and supervision, all the Gulf Central Banks (or monetary agencies) are members of the Basel Committee on banking supervision. The Basel Committee does not have an enforcement authority on the member's countries; however it makes recommendations for them. All the Gulf Central Banks follow the regulations issued by the Basel Committee as well as the recommendations on banking Laws. This Committee is intended to build a solid foundation of prudent capital regulation, supervision to enhance further risk management for the banking system worldwide and to enhance financial stability.⁵⁹⁶ The intention of the Basel Committee is to create an international standard for banking regulations to guard against any financial and operational risks that banks can face.⁵⁹⁷

⁵⁹³ At the time the different Emirates uses different type of currency such as the Bahraini dinar and the Qatari and Dubai riyal. <http://www.centralbank.ae/en/>

⁵⁹⁴ See the central bank of UAE <http://www.centralbank.ae/en/>

⁵⁹⁵ Sari . Alshammaw. (2002) *Structure-conduct-Performance and efficiency in Gulf co-operation council (GCC) banking markets*. School of Business and regional development. University of Wales, Bangor.

⁵⁹⁶ Basel Committee on Banking Supervision, "Implementation of Basel II: Practical Considerations", *Bank for International Settlements*, July 2004, www.bddk.org.tr/WebSitesi/turkce/Basel/1234bcbs109.pdf, (Retrieved 1st May, 2011)

⁵⁹⁷ Amendment to the capital accord to incorporate market risks, *Bank of International Settlements*, November 2005, http://www.bis.org/list/bcbs/tid_21/index.htm , (Retrieved 1st May, 2011)

4.1. The role of the Central Banks in regulating the *Shari'ah* governance system in the Arabian Gulf countries:

The *Shari'ah* Advisory Board (*Shari'ah* Board)⁵⁹⁸ is one of the distinct features of the modern Islamic banking movement, which is a fundamental part of the Islamic banking system. Every Islamic bank or Islamic financial institution should have a *Shari'ah* Board as they monitor every new Islamic product or transaction, ensuring that it is fully compliant with *Shari'ah* Law and the advice of the board is expressed as a *fatwa*.⁵⁹⁹ This board consists of the most respected contemporary *Shari'ah* scholars specialised in Islamic jurisprudence (*fiqh al muamalat*) as well as civil contracts, in addition to knowing the conventional regulations governing financial transactions.

In the Arabian Gulf region, most of the *Shari'ah* boards are usually appointed by the financial institution's Board of Directors or by the banks' General Assembly.⁶⁰⁰ Since the *Shari'ah* boards are appointed, the *Shari'ah* board is generally quite willing to approve new types of deposit and financial services proposed by the Board of Directors of the financial institution. In fact, nowadays some believe that the system of *Shari'ah* compliance has become market driven, especially after the real estate boom in the region, which has resulted in differentiation in Islamic finance products and an extensive client choice.⁶⁰¹ Most of the Arabian Gulf states do not have a unified practical guide as to what constitutes an acceptable Islamic financial instrument. Islamic *Shari'ah* Law is open to interpretation so that the *Shari'ah* Boards

⁵⁹⁸ The *Shari'ah* advisors are specialised jurists, particularly in *Fiqh muamala* and Islamic finance, entrusted with the duty of directing reviewing and supervising the activities related to Islamic finance in order to ensure that they are in compliance with *shari'ah* rules and principals. The views of the *shari'ah* advisers shall be binding in the Islamic finance institution area of supervision

⁵⁹⁹ *Fatwa*: An authoritative opinion arrived at by a high-ranking Muslim scholar.

⁶⁰⁰ Zulkifli, Hasan. (2010). *Regulatory Framework of Shari'ah Governance System in Malaysia, GCC Countries and the UK*. Kyoto Bulletin of Islamic Area Studies, 3-2 (March 2010), pp. 82–115

⁶⁰¹ Zulkifli, Hasan. (2010). *Regulatory Framework of Shari'ah Governance System in Malaysia, GCC Countries and the UK*. Kyoto Bulletin of Islamic Area Studies, 3-2 (March 2010), pp. 82–115

of different Islamic institutions have divergent views on key *Shari'ah* issues.⁶⁰² This has resulted in a lot of criticism of the lack of standardisation of the advice given by fatwa of the different *Shari'ah* boards.⁶⁰³

There have been attempts to regulate and oversee *Shari'ah* Board activity of Islamic financial entities in some states. In the case of Malaysia, there is a national *Shari'ah* Board serving all the Islamic financial entities and only this Board has the power to issue *fatwas*. The *Shari'ah* Board of each independent Islamic financial institution is confined to ensuring that the Islamic institution activity complies with the *fatwa* issued by the national *Shari'ah* Board. All appointed members of the *Shari'ah* Board in any Islamic financial entities apply to the Central Bank to obtain accreditation.⁶⁰⁴ To be a *Shari'ah* Board member in a financial institution in Malaysia, some qualifications need to be met by the applicant in order to be a member of a *Shari'ah* Board.⁶⁰⁵ The Malaysian national *Shari'ah* Board regulates the governance of the *Shari'ah* Board of any Islamic finance institution in Malaysia, which consists of the establishment of the *Shari'ah* committee and the appointment and re appointment of the members of the Board, in addition to the application procedure, qualification, composition, secretariat, disqualification, resignation and termination of the *Shari'ah* Board members. It also adds restrictions on *Shari'ah* Boards and defines the duties and responsibilities of the *Shari'ah* Board.⁶⁰⁶

⁶⁰² Islamic finance: basic principal and structures. 2006 Freshfields Bruckhaus Deringer <http://www.nzibo.com/IB2/basicPS.pdf>

⁶⁰³ El Gamal, Mahmood, 2006. *Islamic Finance: Law, Economics and Practice*. Cambridge: Cambridge University Press, pp. 26–45.

⁶⁰⁴ Bank Negara Malaysia, *Guidelines on the Governance of Shariah Committees for Islamic Financial Institutions*, Kuala Lumpur, December 2004, pp. 18–26.

⁶⁰⁵ The applicant shall at least either have qualification or possess necessary knowledge, expertise or experience in Islamic jurisprudence (*Usul al-Fiqh*); or Islamic transaction/commercial Law (*Fiqh al-Mu'amalat*). See Bank Negara Malaysia, *Guidelines on the Governance of Shariah Committees for Islamic Financial Institutions*, Kuala Lumpur, December 2004, pp. 18–26.

⁶⁰⁶ Bank Negara Malaysia, *Guidelines on the Governance of Shariah Committees for Islamic Financial Institutions*, Kuala Lumpur, December 2004, pp. 18–26.

In the Arabian Gulf countries, Bahrain is considered one of the leading players in Islamic finance; the Central Bank of Bahrain is the sole regulator of the financial sector. The rulebook of the Bahrain Central Bank requires all Islamic Institutions to establish an independent *Shari'ah* Board that complies with the governance of International Institutions for Islamic Finance (AAOIFI's) standards. This provides a clear legal requirement for the establishment of the *Shari'ah* Board in Islamic financial institutions in Bahrain.

Bahrain has also established a national *Shari'ah* advisory Board whose aim is to confirm the *Shari'ah* compliance of business of Islamic financial institutions.⁶⁰⁷ The *Shari'ah* advisory Board of the Bahrain Central Bank does not have the authority over the Islamic financial institutions such as other national *Shari'ah* Boards of different countries as the case of Malaysia, Sudan, Brunei, and Pakistan where they have intervened in every activity of the Islamic Institutions.

In the case of Kuwait, the Central Bank Law Article 93 regulates the *Shari'ah* governance of the Islamic financial institutions; This article provides the legal foundation for the regulations of the *Shari'ah* Boards in Kuwait. This Law requires all Islamic financial institutions to establish a *Shari'ah* Board appointed by the general assembly of the Islamic bank. This is unlike other *Shari'ah* governance provisions that allow the appointment of a *Shari'ah* Board by the Board of directors of the Islamic financial institution. The Kuwait Central Bank uses AAOIFI's governance standards along with the standards of the *Shari'ah* governance system in UAE and Bahrain. In relation to the general *Shari'ah* authority in Kuwait, it is worth mentioning that there is no *Shari'ah* authority in the Central Bank of Kuwait;

⁶⁰⁷ Hasan, A. (2007). Optimal *Shari'ah* Governance in Islamic Finance. Kuala Lumpur: BNM. Available at: http://www.bnm.gov.my/microsites/giff2007/pdf/frf/04_01.pdf. Access: 27th August, 2009.

however the Central Bank sends these matters to the *fatwa* Board to the Ministry of *Awqaf* and Islamic affairs as the highest authority for any *Shari'ah* dispute relating to Islamic banking and any Islamic financial entities.⁶⁰⁸

The *Shari'ah* governance system in the UAE (except the Emirate of Dubai) is governed by the Federal Law No. 6 of 1985. Under Article 5 of the said Federal Law requires the establishment of a “Higher *Shari'ah* Authority” as a new department in the Ministry of Justice and Islamic Affairs (MJIA) to supervise and regulate all relating issues that relate to Islamic banks, financial institutions, and investment companies. The Higher *Shari'ah* Authority also provides *Shari'ah* opinion on different matters relating to Islamic banking and finance.⁶⁰⁹ Article 5 states that’s the opinion of the Higher *Shari'ah* Authority to be binding.

It is worth to mention that there is a number of *Shari'ah* scholars in the UAE have established a central committee of the *Shari'ah* supervisory Board s for harmonisation and standardisation of *Shari'ah* practice.⁶¹⁰ This voluntary arrangement at least would assure consistency of *Shari'ah* rulings. In terms of the composition of *Shari'ah* Board s, Article 6 requires all Islamic financial institutions require establishing of the *Shari'ah* Board of the Islamic financial institutions. The Articles and Memorandum of Association must contain the manner and governance of the *Shari'ah* Board such as its duties, responsibilities, functions and methods of appointment.

⁶⁰⁸ Zulkifli, Hasan. (2010). *Regulatory Framework of Shari'ah Governance System in Malaysia, GCC Countries and the UK*. Kyoto Bulletin of Islamic Area Studies, 3-2 (March 2010), pp. 82–115

⁶⁰⁹ The Central Bank of the UAE has plans to replace the Federal Law No 6 of 1985 with a new Law to establish a Higher Islamic *Shari'ah* council to supervise the *Shari'ah* boards of the Islamic banks operating in the UAE. See. Elewa, Ahmed A. 2008. UAE to Issue New Law on Islamic Finance Activities. *Gulf News*, 9 April

⁶¹⁰ Humayon, A. Dar. (2009). “Models of Sharia advisement in Islamic Finance,” *Al Watan Daily*. Available at: <http://alwatandaily.alwatan.com.kw/Default.aspx?MgDid=786239&pageId=476> . Access: 27th August, 2009.

Dubai is an exception to the above; the government of Dubai plans to promote Dubai as a global financial hub of the Islamic finance. The aim is to support and attract *Shari'ah* compliant activity to Dubai. In order to achieve that, the government of Dubai has to provide a world-class infrastructure and services for Islamic finance instruments with a high quality management standards. The Emiratis of Dubai intends to “follow international standards of Islamic economies and will be the world’s number one centre for Islamic finance”. In order to achieve that, The Islamic Higher Committee has been established to implement the initiative. In relation to Islamic finance institutions that have registered under the Dubai International Financial Centre (DIFC), they have to comply with the Law and regulations of DIFC mainly the (DIFC Law No.13 of 2004) that regulating Islamic Financial Business and the DIFC Services Authority (DFSA) Rulebook on Islamic Financial Business Module (ISF). As a general requirement, the DFSA requires Islamic financial institutions to adopt the AAOIFI Governance Standards to ensure consistency and compliance with the *Shari'ah*.⁶¹¹

In the state of Qatar, there are two regulatory frameworks of the *Shari'ah* governance system, namely under the Qatar Central Bank and under the Qatar Financial Centre. The Qatar Central Bank provides for the prudential regulation and banking supervision and as part of the supervision provides the guidelines for Islamic financial institutions. In 2007 the Qatar Financial Centre Regulatory Authority issued an Islamic finance rulebook. This book provides all the rules, guidelines, regulations relating to Islamic financial activities that all the Islamic financial entities need to

⁶¹¹Praesidium and DIFC (2007). Guide to Islamic Finance in or from the Dubai International Financial Center. Dubai: Praesidium

follow and be in compliance with the rulebook.⁶¹² With the issuance of the Islamic finance rulebook all Islamic entities in the QFC shall comply with these rules and are also they subjected to the supervision of the Central Bank regulatory authority.⁶¹³

In Saudi Arabia, it is important to note that the Saudi Arabia Monetary Agency (SAMA) does not supervise Islamic financial institutions; they are monitored and organised as commercial companies by the Ministry of Commerce.⁶¹⁴ The nature of the *Shari'ah* governance system in Saudi Arabia is different from other jurisdictions. The notion of having a *Shari'ah* governance system within Islamic Finance Institutions (IFI) is not because of any legal and supervisory requirements but rather a voluntary initiative and from the indirect influence of the market. In other words, the Saudi *Shari'ah* governance model is much more based on a self-regulated approach.⁶¹⁵ As an illustration of the *Shari'ah* governance system in Saudi Arabia, it would be beneficial to refer to the Al-Rajhi model. The 11th General Assembly of the Al-Rajhi Bank has established a *Shari'ah* Board and a new charter. The *Shari'ah* Board of Al-Rajhi bank is considered independent of all organs of governance such as management. The provision of the establishment of the *Shari'ah* Board was stipulated in the articles of association and the internal rules and guidelines of Al-Rajhi Bank.

Since there is no standard guideline of *Shari'ah* governance issued by any regulatory authority in KSA, Al-Rajhi has passed its own *Shari'ah* guidelines and procedures known as the *Shari'ah* Monitoring Guide and *Shari'ah* Control Guidelines with a

⁶¹² This rulebook set the authorisation of IFIs, disclosure requirements, constitutional documents, systems and control, conduct of business standard and a *Shari'ah* Board

⁶¹³ Zulkifli Hasan.2010.Regulatory Framework of *Shari'ah* Governance System in Malaysia, GCC Countries and the UK. Kyoto Bulletin of Islamic Area Studies, 3-2, p.100

⁶¹⁴ Al Sayed, Mohamed Bassam Hashim. (2005). *The Role of the Central Bank in an Islamic Banking System*. Ph.D Thesis, University of Wales, Lampeter. p.23

⁶¹⁵ It is worth noting that the *Shari'ah* governance system in Saudi Arabia must take into consideration of the influence of other *Shari'ah* scholars who are even not sitting in any *Shari'ah* board of the IFIs. For instance if a negative Fatwa is issued by Sheikh Al-Mani'a on certain Islamic banking product, it would be very difficult to sell the products in the market. See Selvam, J. (Spring 2008). "Call for More Intellectual Capital," *Islamic Banking and Finance*, Vol. 6, Issue 1, No. 16, pp. 12–14.

purpose to ensure the proper monitoring and implementation system of *Shari'ah* rulings. The *Shari'ah* guidelines of Al-Rajhi makes it very clear that the *Shari'ah* Board 's rulings are considered binding. Therefore, the *Shari'ah* Board must approve all products or services before they offered into the market.

The *Shari'ah* governance system in the Arabian Gulf countries can be classified into two types: namely those regulated via legal and supervisory requirements as in the case of Bahrain, Kuwait, UAE, and Qatar or those controlled by self-regulation such as is the case in Saudi Arabia. Considering numerous legal issues that relate to the current *Shari'ah* governance framework in the region, it is an essential to have a comprehensive and effective *Shari'ah* governance system either through Law or legislation. The absence of such governance system may lead to serious disruptions in the Islamic finance industry.

In this aspect, the governance standards provided by AAOIFI *Shari'ah* is an important base for bringing about the standardisation of *Shari'ah* practices while the Islamic Finance Service Board (IFSB) prudential standards on governance are also able to guide and promote best practice of a *Shari'ah* governance system. Referring to the different perception and acceptability of the AAOIFI standards and Islamic Finance Service Board (IFSB) guidelines and procedures, there must be reliable mechanisms to assure their universal adaptation and one of them is through having a proper legal framework. For this purpose, thorough and intensive studies need to be conducted to examine, analyse and scrutinise the possible adaptation of the AAOIFI standards and the Islamic Finance Service Board (IFSB) guidelines in various markets and environments. The unique challenges facing the existing regulatory framework of the

Shari'ah governance system needs further improvement and enhancement to strengthen the development of the Islamic finance industry.⁶¹⁶

5. Real estate finance in the Arabian Gulf countries (Pre and post the global financial crises):

The real estate and construction sectors are the fastest growing sectors in the Arabian Gulf countries, and Islamic and conventional banks are deeply involved in all aspects of real estate financing, from residential mortgages to financing major commercial property developments and infrastructure projects.

The real estate sector was primarily fueled largely by government-backed petrodollars and the deregulation of regional property markets, which created a desirable investment destination for local and international investors between 2003 and 2008. During that period the Arabian Gulf countries began to implement a number of strong improvements in the regulatory system to boost the attractiveness level of their investment environments. These policies aimed to reduce the restrictions on foreign investment in different sectors, mainly in the banking and real estate sectors. Some Arabian Gulf countries have facilitating finance for a lot of foreign investors and has introduced a freehold system, allowing complete ownership of land and buildings in a specific location, which attracted foreign investment in real estate sector. Based on this, the flow of foreign investment into Gulf increased ten-fold between 2003 and 2008.⁶¹⁷ The biggest real estate and construction activities in the region were in the UAE followed by Oman, Saudi Arabia, Qatar, Kuwait and Bahrain, where developers

⁶¹⁶ Zulkifli Hasan.2010.Regulatory Framework of *Shari'ah* Governance System in Malaysia, GCC Countries and the UK. Kyoto Bulletin of Islamic Area Studies, 3-2, p.100

⁶¹⁷ The foreign investment in the Arabian Gulf counties grew from just USD6.1 bn in 2003 to USD60.1 bn in 2008 http://almasahcapital.com/uploads/report/pdf/report_24.pdf

during the construction boom, were excited by the revenues and profits generated.

Real estate finance can be divided into two main parts; the first is the real estate finance by the government under the housing system that is meant to finance residential properties. The other type of finance is the one offered by financial entities whether they are Islamic or a conventional banks. The next part will show the main elements of both types of finance.

5.1. Governmental real estate finance for individuals (housing system):

Housing finance in the Arabian Gulf countries has for decades been limited to state-owned banks, specialised housing institutions or conventional banks. Government specialised institutions are usually wholly owned by the state and regulated by the Central Bank. These institutions are usually public lenders which aim towards offering facilities to fulfil the objectives and diverse policies for a specific sector of the country.

Some define specialised banks as those whose main task is real estate, industrial, and agricultural financing, with deposits on call not being part of their activity. They are named according to their specialisation such as real estate banks.⁶¹⁸ An example of this is the Kuwait Industrial Bank which is a specialised bank dedicated to supporting industry, offering Islamic and conventional financing and providing long and medium term loans for the establishment, expansion or even the modernisation of industrial units.

618 Al Sayed, Mohamed Bassam Hashim. (2005). *The Role of the Central Bank in an Islamic Banking System*. Ph.D Thesis, University of Wales, Lampeter. p.23

Governmental specialised financial institutions play a major role in the Gulf's real estate sector. These governmental specialised financial institutions, represented by the housing systems of the Arabian Gulf governments, provide houses, flats and land parcels for the citizens of the country in addition to the infrastructure for residential areas. These governmental entities are represented in the Ministry of Housing and their branches that offer houses or interest free loans for nationals only.

One of the most well-known public lenders in the Arabian Gulf region is the Real Estate Development Fund (REDF), which was established in Saudi Arabia in 1974. The REDF was established under Royal Decree No M/23 of 1974 as a specialised financing institution to speed up the development of housing in the private sector by providing long term loans to construct or remodel existing housing. REDF has been providing low-income nationals since the 1974 with free land-plot grants to build housing with interest-free loans.⁶¹⁹

In Qatar, since the late 1960s, the Ministry of Civil Service Affairs and Housing has been providing affordable houses and allowances for Qatari nationals with limited incomes or with special needs.⁶²⁰ The Qatar Development Bank is the main responsible institution for providing government housing loans for Qatari nationals. In 2007 a new Law was established granting nationals a special facility for housing loans and purchase of land, where the government has doubled the ceiling of home loans and extended the repayment nature to 37 years.⁶²¹ In Oman, a new Five-Year Development Plan (2011-15) seeks to implement housing projects with a budget of \$ 1.16 billion. The Sultan of Oman ordered a grant of \$250 million for the housing

⁶¹⁹ the Real Estate Development Fund (REDF) <http://www.saudinf.com/main/e31.htm>

⁶²⁰ the Ministry of Civil Service Affairs and Housing <http://www.mlsa.gov.qa/Pages/default.aspx>

⁶²¹ Mona S. AlMunajjed. (2012) *Affordable housing in GCC: National policies and future needs* <http://www.arabnews.com/economy/affordable-housing-gcc-national-policies-and-future-needs>

assistance programme that includes a loan project for nationals. The Oman Housing Bank plays a major role in developing the housing sector by providing affordable lending services and housing for Omani nationals with a fixed monthly income.⁶²²

These housing institutions and banks constituted a burden on government budgets through heavy reliance on subsidised finance and accumulation of contingent liabilities. As the population has grown in the entire Arabian Gulf region, mismatches between the supply and demand in the housing market have resulted, especially for those on low or average incomes. This has become a social problem for the Arabian Gulf region as the lack of affordable housing has raised housing prices.

Housing which is affordable to those on a low or average income is constrained by lack of financing schemes and scarcity of available land. As a result there are huge unmet demands for housing among lower-income households, where the waiting list for government housing or government finance has increased, with applicants often having to wait for years to get a house or a flat based on the housing system.⁶²³ In Kuwait for example, the queue for government housing loans has increased and the delivery of government-funded housing for nationals lags behind the growing demand.⁶²⁴ The housing market in Saudi Arabia suffered from high land prices and high sale prices and a shortage of small houses for people with low salaries. Bahrain also has a lack of housing, needing just over 100,000 additional houses by 2020.⁶²⁵ Based on these shortfalls in the housing system, there are many individuals who have turned to private banks and financial entities to obtain housing finance, where the

622 Global research. GCC banking sector (2005). <http://www.globalinv.net/research/GCC-Banking-Sector-2005.pdf>

623 Rodney Wilson.2009. *The development of Islamic finance in the GCC*. The Programme is funded by the Kuwait Foundation for the Advancement of Sciences www.lse.ac.uk/LSEKP/

624 Central Statistical Bureau, State of Kuwait, 2011, *Statistical Review Edition 34*, Page 7. Also see Dominic Dudley. *the middle east magazine*. Saudi Arabia Housing Shortage.

<http://www.themiddleeastmagazine.com/news-detail.php?nid=436>

625 Bahrain Economic Quarterly, 3rd Quarter 2011, Economic Development Board, Bahrain, Page 26,

conventional and Islamic banks have aimed to fill the housing gap by providing finance for nationals and foreign nationals.

5.2. Individual and construction finance in the Arabian Gulf countries

5.2.1. Individual home finance before the global financial crisis:

Before 2000 real estate activities were very simple and limited in most of the Arabian Gulf region. The common practice of real estate investors was to divide a plot of land into smaller land parcels than to sell it separately to individuals.⁶²⁶ Most financial activities was then either to buy these land parcels for personal use or for buy to let. It is worth mentioning that most individual investment during that period was limited to two primary sectors; either investments in the stock market or real estate.⁶²⁷ There was lots of buy-to-let activity by nationals to rent these properties to expatriates, as in some Gulf countries (for instance Kuwait and Saudi Arabia) only local nationals can own property, and therefore the vast expatriate workforce offers a captive market for landlords.⁶²⁸

With the beginning of the real estate boom (2003-2008), which spread all over the Arabian Gulf, banks (Islamic or conventional) raced into lending to individuals (whether they were nationals or foreign nationals) to buy or build their private homes. Individual lending at that time composed a significant part of the Banks core operations and made up a significant portion of the lending of these banks and financial entities: in many cases banks gave initial approval to finance once the client

626 In many cases this plot of land was a gift or a grant from the Ruler to the merchant families or to a member of the Ruling families or as mentioned in 2nd chapter for influential people.

627 Most of these investments are used to buy land parcels and sell them after a period of time, developing the land parcels was not much profitable since the demand for the constructed building was low

628 Rodney Wilson.2009. *The development of Islamic finance in the GCC*. The Programme is funded by the Kuwait Foundation for the Advancement of Sciences www.lse.ac.uk/LSEKP/

requested finance.⁶²⁹ Islamic and conventional banks started to introduce new financial products to facilitate the process of borrowing. The Islamic banks began to rely on Islamic financial products and tried to develop or advance these products, so other banks had to raise financial limits to around 50 percent of the property price, in addition to extending the repayment period to fifteen years to facilitate the process of borrowing. Other banks offered finance to purchase land or to build homes through an *Istisna'a* Islamic finance control to build a house, where the costs of materials supplied and construction covered, and the client repays over a period of up to twenty-five years. This differs from a conventional loan as the bank is financing costs directly from invoices supplied by the client.⁶³⁰

There are two types of real estate finance players in the Dubai real estate market. First, there is the group of specialised real estate financing companies, including Amlak and Tamweel, who offer a number of real estate's funding products. Second, there is the group of commercial banks which are engaged in housing funding by offering different financing products. These groups consist of around 10 to 12 banks according to the estimates of some observers. These two groups of real estate financiers (mortgage providers) have been offering a variety of mortgage products that strive to meet the needs of the different customers. The mortgage financing options are available to both UAE and foreign nationals with loan maturity periods of up to 25 years for UAE nationals and 15 years for foreign nationals.⁶³¹ The interest rates for Dubai mortgages are about 2% above the US base rate – but Sharia-compliant financing profit rates may be slightly less.

629 An informal interview with an employee of the finance department in one of the leading Islamic banks in Kuwait.

630 Rodney Wilson.2009. *The development of Islamic finance in the GCC*. The Programme is funded by the Kuwait Foundation for the Advancement of Sciences www.lse.ac.uk/LSEKP/

631 Day Dubai. Dubai property mortgage <http://www.2daydubai.com/pages/dubai-property-mortgages.php>

In case of Saudi Arabia many banks have raced to provide finance for clients who wish to purchase a property for rent to foreign workers. In Saudi Arabia there are over 6 million foreign workers (as previously mentioned they are not allowed to own property) looking for a place to occupy, so this type of investment is highly profitable for landlords and financiers.⁶³² Islamic banks have introduced an Islamic *Shari'ah* compliant product that facilitates housing ownership for Saudi nationals after a period of time, such as *ijara finance*, which is a leasing service that provides an ownership option after the last instalment, is paid by the client.⁶³³

Since the banks and financial entities have been eager to lend to individuals, the collateral security requested from the client for housing finance has been lowered and made simpler. Where a in the case of a bank that requests lot of guarantees and securities from the client, the client in most of the cases will go to another bank to request finance with easier guarantees.⁶³⁴ For example, sometimes banks require the client to submit some simple documents that prove their ability to repay the finance. In most cases, these required documents are simple such as those showing the monthly income of the client, and information on the property that the client wants to purchase such as its size and location. These are formal procedures by the bank to know the client's ability to repay the loan, but in many cases, the banks do not make an intensive study to find whether the client is actually able to repay the loan or not.

The banks financial requirements are simply to be completed by the client in order to get the initial financial approval from the bank. Based on the banks initial approval, the Bank will appoint an evaluator (who usually is an employee within the bank) to

632 Rodney Wilson.2009. *The development of Islamic finance in the GCC*. The Programme is funded by the Kuwait Foundation for the Advancement of Sciences www.lse.ac.uk/LSEKP/

633 Rodney Wilson.2009. *The development of Islamic finance in the GCC*. The Programme is funded by the Kuwait Foundation for the Advancement of Sciences www.lse.ac.uk/LSEKP/

634 An informal interview with an employee of the finance department in one of the leading Islamic banks in Kuwait.

evaluate the property in order to ascertain the actual value of the property used as collateral for the Bank in the event of client default.

This ease of funding activities during the real estate boom 2003-2008 resulted in many individuals speculating in residential properties. The approval for financing was very simple and uncomplicated and many individuals were able to take the necessary financing to purchase or construct properties. The result of the speculation was an increase in the value of the residential property which doubled in price but which is not equal to the actual cost of the properties. Based on this, in the year 2000 and 2005 Dubai's residential properties experienced a significant increase in growth of almost 30%, and the total number of completed buildings increased by 16 percent from 1,917 buildings to 2,222 buildings for the same period.⁶³⁵

5.2.2. Financing real estate developers and real estate companies before the global financial crisis:

Before the 2000s real estate development companies had limited activities in most of the Gulf region where their main business was building homes or facilitating government projects. A small number of these were developers represented or owned by merchant families and who conducted commercial projects such as shopping malls and business centres. With the real estate boom in the region between 2002 to 2008 development and real estate companies played a very important role in boosting the real estate sector, but at the time the real estate developers faced a lot of challenges before the global financial crisis; one of the biggest challenges was related to land access and the price of land. Although there is an abundance of land in the Arabian Gulf region, the land supply is controlled by either the government or by

635 Eisa Abdelgalil and Bader Aldeen Bakheet (2007) *Sector Monitor Series Dubai Real Estate Sector*. Data Management and Business Research Department. p.11
<http://www.arabruleofLaw.org/compendium/Files/UAE/92.pdf>

stakeholders.⁶³⁶ Land prices in different part of the Gulf region were strongly driven by real estate speculation. Land prices are one of the major factors behind the increase in the cost of real estate development in the region beside the cost of construction materials and machinery costs. The main two reasons for the land prices increasing, is the lack of provision of infrastructure and the location of the land. As a result, land prices in the Arabian Gulf are high compared to the international level with costs of the land accounting for up to 60% of the total development cost. At the international level, the land prices usually represent around 20% to 40% of the total development cost.⁶³⁷ In many cases, developers engage in joint ventures with corporations and banks or financial entities by using build-operate-transfer schemes or using public-private-partnership schemes in order to mitigate the land costs.⁶³⁸

Before the financial crisis there was no major difference between individual finance and real estate companies or developers finance, and the required documents for real estate and development company finance were also relatively simple. Usually banks or financial entities have certain requirements for the client to ensure or guarantee of their finance, usually by guaranteeing assets owned by the client or stocks in the capital market which can be used as collateral in the event of default.

As for construction financing, the client's reputation plays a very important part in getting financial approval.⁶³⁹ If the clients are well known and have a good reputation in the real estate sector, financial companies and banks compete to provide finance to these companies, and often the client gets financial approval from the bank within one

636 Rodney Wilson.2009. *The development of Islamic finance in the GCC*. The Programme is funded by the Kuwait Foundation for the Advancement of Sciences www.lse.ac.uk/LSEKP/

637 Tobias Plate, Fabian Engels, Harald Schmid. *GCC Real Estate Development Prepare yourself to succeed*. Roland Berger strategy Consultants.

638 638 Tobias Plate, Fabian Engels, Harald Schmid. *GCC Real Estate Development Prepare yourself to succeed*. Roland Berger strategy Consultants.

639 Interview with one of the real estate finance department in KHF

working week. The banks and financial entities know that their finance is in safe hands and they know that the client can repay the finance during the scheduled time period. In addition a client with good reputation can boost the confidence of other clients to receive financing from the bank.

The banks and financial entities approve the funding of development or construction projects by only asking for documents that show the client's financial status with a sketch of the building or the development plan without doing a real feasibility study on the development project or checking the validity of the building plans or construction permits from the authorities (in the municipality). Where at that time there where no such specialised Law that regulates the construction activities in the region. In addition, in the case of banks asking the client for such plans or construction licenses and authorities' permits, it is usually a formal procedure to complete the funding documents to finance such projects. However, in many cases, the banks do not verify the validity of the information or authenticity provided by the client. In many cases, the bank may miss a funding opportunity if it takes a long time verifying the clients' submitted documents and in most cases, the client will turn to another bank with easier funding requirements.⁶⁴⁰

6. Real estate finance post-global financial crisis (the impact of the financial crisis on the Gulfs' real estate sector)

After September 2008, stock market prices fell rapidly in most developing countries. This event increased the shortage of global liquidity so that international banks and financial institutions became more risk averse and the cost of the borrowing in the

⁶⁴⁰ An informal interview with an employee of the real estate finance department in KHF

Gulf region increased sharply.⁶⁴¹ The Gulf's sovereigns' wealth funds were also affected by the decline in international asset prices and the capitalisation of the Arabian Gulf stock markets fell by 38% on average.⁶⁴²

However the Arabian Gulf bank and financial institutions were relatively less impacted by the financial crisis compared to other emerging economies, except some banks and financial institutions in countries like the UAE, Kuwait and Bahrain.⁶⁴³ The profusion of financial resources in the Arabian Gulf along with the policies taken by the Gulf's governments has mitigated the impact of the global financial crisis.⁶⁴⁴

The real estate sector across the Arabian Gulf however was hit very hard by the global financial crisis. For example, the value of residential property in the UAE, Bahrain, Qatar and Oman has fallen 60, 50, 30 and 20 percent respectively between 2008 and 2012. However the Saudi real estate market grew by 20 percent over the same time period due to the demand for residential properties. In Qatar, Abu Dhabi, Dubai, and Bahrain, the prices of residential property are strongly driven by real estate speculation and property oversupply. The real estate sector in Saudi Arabia and Oman has experienced a less severe impact from the global financial crisis mainly due to genuine demand in addition to government support. Kuwait entered the real estate

⁶⁴¹ Also, deleveraging by foreign banks raised the cost and reduced the accessibility of liquidity reducing the demand for Arabian Gulf Countries assets. See Shereef Ellaboudy.(2008)The Global Financial Crisis: Economic Impact on GCC Countries and Policy Implications. International Research Journal of Finance and Economics. EuroJournals Publishing, Inc. 2008
<http://www.eurojournals.com/finance.htm>

⁶⁴² Batini, Nicoletta and Rose Levine, "Monetary and Fiscal Rules in an Emerging Small Open Economy Working Paper No. 09/22 (International Monetary Fund 2009).

⁶⁴³ Bank of international settlement and International financial Statistics, quarterly report 2009. In Shereef Ellaboudy.(2008)The Global Financial Crisis: Economic Impact on GCC Countries and Policy Implications. International Research Journal of Finance and Economics. Euro Journals Publishing, Inc. 2008 <http://www.eurojournals.com/finance.htm>

⁶⁴⁴ United Nations. Department of Economic and Social Affairs, February, 2009. In Shereef Ellaboudy.(2008)The Global Financial Crisis: Economic Impact on GCC Countries and Policy Implications. International Research Journal of Finance and Economics. Euro Journals Publishing, Inc. 2008
<http://www.eurojournals.com/finance.htm>

market quite late compared with the other Gulf States, and the effect of the financial crisis was not as hard as the effect in Dubai or in Bahrain.⁶⁴⁵

The effect of the financial crisis on the Gulf's real estate sector resulted in a number of luxury projects worth billions of dollars being cancelled or delayed due to the shortfalls in liquidity. In the Emirate of Dubai, for example, real estate prices dropped to half their actual price, which forced the real estate developers to abandon or scrap many of their projects. Based on this, some developers shut down and left Dubai without any notice to their clients. During the real estate boom there were a lot of individuals who had bought off-plan properties and paid the full amount for the property while the projects were still in the design stage; due to shortfalls in finance and in regulations they were not able to receive the properties and also were unable to recover or return their money back.⁶⁴⁶ With the inability of developers to complete their real estate projects, the Dubai Land Department intervened to cancel some projects due to the failure of developers to complete. According to the data compiled by the Dubai Real Estate Regulatory Authority around 217 property projects were cancelled in Dubai from 2009 to 2011.⁶⁴⁷

6.1. The Gulf's general response toward the financial crisis

Following the tightening of liquidity conditions in the last quarter of 2008, the Central Banks across the Gulf countries took timely actions and swiftly put policies in place to reduce the impact of the global financial crisis. Their responses took two main

⁶⁴⁵ Tobias Plate, Fabian Engels, Harald Schmid. *GCC real estate development Prepare yourself to succeed*. Roland Berger strategy Consultants.
http://www.rolandberger.com/media/pdf/Roland_Berger_Real_Estate_Developers_in_Gulf_Cooperation_Council_20130903.pdf

⁶⁴⁶ Shereef Ellaboudy.(2010) *The Global Financial Crisis: Economic Impact on GCC Countries and Policy Implications*, Economic Department, University of Dubai, Dubai, UAE International Research Journal of Finance and Economics,p.181

⁶⁴⁷ Gulf Business.(2013). *Dubai Issues Decree to Repay Investors In Cancelled Property Projects*.
<http://Gulfbusiness.com/2013/07/dubai-issues-decree-to-repay-investors-in-cancelled-property-projects/>

routes, the first route was at the national level and the second was at the regional level, between the Gulf member states. At the national level all the Gulf countries relaxed their monetary policies and chose to expand their fiscal policies, primarily Saudi Arabia, UAE, and Kuwait which have implemented countercyclical stimulus packages. At the regional level all the Arabian Gulf countries agreed to co-ordinate their monetary, fiscal, and financial policies to ease interbank lending rates in addition to addressing new stock market regulations. This agreement was further underlined in the Arab Economic and Social Summit that was held in Kuwait city in 2009.⁶⁴⁸

The Monetary Authorities, Central Banks and private banks of the Arabian Gulf countries took several measures to soften the impact of the global economic crisis and to improve the banks' and financial entities liquidity and to return the Gulf banks to profitability faster than their western counterparts. One of the policies was to lower the funding costs by mitigating tight credit conditions. Such measures included reducing the banks reserve requirements, improving governmental transparency, enhancing the corporate governance system, injecting liquidity directly, expanding guarantees for bank deposits and bank credit lines, purchasing equity, reducing policy rates and drawing down on Central Bank reserves.⁶⁴⁹

The governments of the Gulf countries and central banks invested substantial amounts into the banking system to help ease the impact of the economic crisis. According to the IMF, the Gulf governments invested some \$350 billion to ease pressure on banks, and Central Banks also intervened by lowering interest rates. Most Gulf countries

⁶⁴⁸ Ibrahim Saif and Farah Choucair (2009) Arab Countries Stumble in the Face of Growing Economic Crisis. Carnegie Endowment for international peace
http://carnegieendowment.org/files/economic_crisis_wc_english.pdf

⁶⁴⁹ May Khamis and Abdelhak Senhadji. (2010) *Impact of the Global Financial Crisis on the Gulf Cooperation Council Countries and Challenges Ahead*. IMF. Middle East and Central Asia Department. pp. 29-45

spurred by the crisis, initiated a series of productivity improvement programmes and reviewed their credit portfolios to better understand and mitigate their exposure to non-performing loans. Based on these portfolio reviews, banks were able to launch various strategic re-pricing policies and create adequate provisions for future losses.⁶⁵⁰

There were many measures taken by Gulf governments to stabilise and foster the regional economy. For example in Kuwait, the government tightened monetary policy and in late 2008 approved KD 4.7 billion for governmental development spending as part of a five year plan to stimulate growth. The government of Kuwait introduced a financial stability Law to encourage lending through partial government guarantees for new loans from local banks to the economically productive sector.⁶⁵¹ The Law was designed primarily to safeguard Kuwait's financial system and stabilise the national economy by ensuring the stability of the banking sector and supporting local business activities. Kuwait's KD 1.5 billion (\$5.2 billion) plan was designed to enable banks to lend around KD 4 billion (\$13 billion) within two years. The government also issued regulations preventing shareholding companies from dealing in private residences to limit speculation.⁶⁵² In 2010 the Capital Market Authority was established by Law No 7 of 2010 to regulate and control the activities of securities and to achieve the principles of transparency, fairness, and efficiency. The Capital Market Authority was established to regulate the activity of securities and provided new regulations to control conflicts of interest and exploitation of inside information. It required listed

⁶⁵⁰ Dan, Starta. Cyril, Garbois. Alexander von Pock. And Mukund Bhatnagar.(2010) *GCC Banks: on the road to Maturity*. A.T.Atkearney. <http://www.atkearney.co.uk/documents/10192/de65ee08-ee51-431c-ba52-025431be92eb>

⁶⁵¹ Kuwait. Law Decree 2 of 2009 on Enhancing State Economic Stability

⁶⁵² Kuwait Law No.9 of 2008 amending some provisions of the Commercial Companies Law No. (15) for the year 1960. Chapter IX: General Provision

companies to implement corporate governance principles and practices to protect investors from unfair speculation and acts contrary to the Law Commission.

In Bahrain the government eased monetary policy and cut key interest rates to stimulate economic activities.⁶⁵³ In addition the Central Bank has deposits of \$350 million in three retail banks; it also has introduced a short term dollar swap facility at no penalty to banks.

In the UAE, the Central Bank introduced several liquidity support facilities in September 2008 for AED liquidity, and for dollar liquidity in December 2008 (swaps). The Central Bank reduced the interest rate from 3.5 percent to 1.5 percent, and in addition a Committee comprising the Economy Minister, Central Bank governor, and Minister of Finance has been established to develop policy responses to the crisis.⁶⁵⁴ The government of Abu Dhabi has established government-backed lenders to respond to the liquidity situation aimed at regulating and stabilising the market. Abu Dhabi's policies to tackle the financial crisis include injecting a \$4.4 billion to recapitalise five of its banks - those contending with increasing default rates.⁶⁵⁵ Furthermore, the UAE's designed swap facilities with maturities ranging from one week to twelve months to help banks meet liquidity needs if funds are not available on the inter-bank market.⁶⁵⁶

The real estate sector in the Emirate of Dubai has been the worst hit. The total debt on the government-owned Dubai World is estimated at \$109 billion of total debt,

⁶⁵³ Camilla Hall, Massoud A. Derhally and Francine Lacqua. *Bahrain's Interest Rate Is Currently 'Suitable'*, Bloomberg news. Oct 26, 2010. <http://www.bloomberg.com/news/2010-10-26/bahrain-s-interest-rate-is-currently-suitable-central-bank-chief-says.html>

⁶⁵⁴ May Khamis and Abdelhak Senhadji and others(2010) Impact of the Global Financial Crisis on the Gulf Cooperation Council Countries and Challenges Ahead. IMF, Middle East and Central Asia Department

⁶⁵⁵ *ibid*

⁶⁵⁶ Ibrahim Saif and Farah Choucair(2009). Arab Countries Stumble in the Face of Growing Economic Crisis. Carnegie Endowment for international peace http://carnegieendowment.org/files/economic_crisis_wc_english.pdf

including \$32.2 billion of direct sovereign debt.⁶⁵⁷ Abu Dhabi has intervened to rescue Dubai World with a \$10 billion loan and⁶⁵⁸ Dubai launched a \$20 billion bond programme and sold the first \$10 billion tranche to the U.A.E Central Bank. In relation to real estate developers the government of Dubai (represented by the Real Estate Regulatory Authority) permitted developers to access up to \$2.2 billion from escrow accounts to cover construction commitments. In late 2010 the government of Dubai introduced a debt restructuring of governmental companies (such as Dubai World the state-owned holding company) where the debt on Nakheel (Dubai's world developer) separately cost \$10.5 billion of debt⁶⁵⁹ In addition their two largest government-owned mortgage providers (Amlak and Tamweel) have been struggling following the global financial crisis and were merged into one government owned bank (the Real Estate Bank).⁶⁶⁰

In order to enhance Dubai's real estate sector and to fill the property oversupply in the emirate, the government of Dubai has issued a number of Laws that aim to improve the real estate sector regulations and to boost investors' confidence to reinvest in Dubai. The government issued a new rent cap Law which shifted the balance of power in favour of the landlords, and outlined some practical steps for landlords and tenants to be better prepared for the implementation of the new rent cap.⁶⁶¹ The Dubai Land Department also issued a unified real estate contract aimed to avoid problems

⁶⁵⁷ Asa Fitch & Nicolas Parasie. 2013. Dubai Group Restructuring Lifts Debt Cloud. accessed <http://online.wsj.com/news/articles/SB10001424127887323744604578472491654741524>

⁶⁵⁸ BCC. 2009. Dubai \$10bn help from Abu Dhabi 'was loan, not handout' <http://news.bbc.co.uk/1/hi/8418013.stm>

⁶⁵⁹ Arif Sharif & Maher Chmaytelli. 2011. Dubai World Signs Restructuring Deal With Creditors on \$25 Billion of Debt <http://www.bloomberg.com/news/2011-03-23/dubai-world-signs-restructuring-deal-with-creditors-on-25-billion-of-debt.html>

⁶⁶⁰ Lin Noueihed (2008) *Amlak, Tamweel to merge under gov't bank* . November 2008 <http://www.arabianbusiness.com/amlak-tamweel-merge-under-gov-t-bank-82406.html>

⁶⁶¹ UAE. Dubai. Decree No. 43 of 2013 on Determining the Increase in the Real Estate Rentals in the Emirate of Dubai

arising from misinterpretation between the contractual parties.⁶⁶² In early 2012 RERA put into place a draft Real Estate Investor Protection Law but the Law not yet been applied.⁶⁶³

In late 2013, a decree was issued concerning the formulation of a special judicial committee for liquidation of cancelled real estate projects.⁶⁶⁴ Dubai's Real Estate Regulatory Authority has the authority to cancel a real estate project based on a reasoned technical report.⁶⁶⁵ Article 23 of the resolution sets out the nine grounds pursuant to which RERA may resolve to cancel a real estate project which will give greater certainty and a faster process for purchasers to make claims and which increases protection for purchasers.⁶⁶⁶

The government of Dubai has introduced a new mortgage Law (14 Of 2008) for nationals and for foreign nationals in order to fill the gap in oversupplied properties.⁶⁶⁷ The new mortgage Law set a mortgage cap for nationals with a limit of 80% of the property's total property price,⁶⁶⁸ and for the second and subsequent purchases the borrowing limit is 65% regardless of the cost. The borrowing cap for foreign nationals to purchase a property in Dubai will be limited to 75%,⁶⁶⁹ and for

⁶⁶² <http://Gulfnews.com/business/property/uae/dubai-land-department-announces-issuance-of-unified-real-estate-contracts-1.1307318>

⁶⁶³ Draft Law Regarding the protection of the real estate investors in Dubai. <http://www.dubailand.gov.ae/Upload/DRAFT%20LAW%20REGARDING%20THE%20PROTECTIO%20N%20OF%20THE%20REAL%20ESTATE%20INVESTOR%20IN%20DUBAI.pdf>

⁶⁶⁴ UAE. Dubai. Decree No. (21) of 2013

⁶⁶⁵ 665UAE. Dubai. Article 11(5) of Law No. (13) of 2008 Regulating the Interim Real Estate Register in the Emirate of Dubai, as amended by Law No. (9) of 2009, gave the Real Estate Regulatory Authority ("RERA") authority to cancel a real estate project based on a reasoned technical report.

⁶⁶⁶ Article 23 of the Decree No. (21) Of 2013 sets the nine grounds pursuant to which RERA may resolve to cancel a real estate project.

⁶⁶⁷ Camilla Hall and Simeon Kerr. *Dubai developers show improving picture*. Financial times. August 1, 2012 <http://www.ft.com/cms/s/0/e9aaea10-dbd4-11e1-8d78-00144feab49a.html?siteedition=uk#axzz2vfKzvPgX>

⁶⁶⁸ Courtney Trenwith. (2013) *UAE confirms new mortgage cap rules*. Arabian business. <http://www.arabianbusiness.com/uae-confirms-new-mortgage-cap-rules-524690.html>

⁶⁶⁹ If the expatriate willing to buy the first property in Dubai, the borrowing cap is limited to 75% or the property value is less than AED5m (\$1.36m).

second and subsequent property purchases is limited to a maximum of 60% of a property's value. In case of a client wanting to buy a property off-plan, the government has restricted all mortgages to 50 % for such properties regardless of the property value or the client's nationality.⁶⁷⁰ In regard to the mortgage time limit, it has been raised to a maximum of a 25 years for locally employed expatriates, while the maximum age is 65 years for expatriates and 70 for UAE nationals.⁶⁷¹

Oman has lowered its income tax to attract foreign investors. In October 2008, the Central Banks reduced effective reserve requirements by broadening the eligible classes of assets. In January 2009, it reduced the reserve requirements and restored the original asset class for reserves. In addition the government established a \$400 million facility to support equity prices.⁶⁷²

Qatar was in a relatively more comfortable position and has focused its efforts on preventative measures. The response of the government of Qatar towards the financial crisis was to inject, through the Qatar Investment Authority, up to 10-20 percent of listed banks' enhanced capital.⁶⁷³ Up until late 2010 \$1 billion had been injected as opposed to the announced \$5 billion.⁶⁷⁴ In addition the government has purchased an investment portfolio of listed local banks shares in April 2009 (amount is up to \$2 billion). The government also has purchased banks' real estate portfolios in June 2009 (amount up to \$4 billion). In addition the Qatar Investment Authority subscribed to the

⁶⁷⁰ International investors (Non UAE resident) can obtain mortgages from a limited number of institutions – mainly UK banks in Dubai.

⁶⁷¹ Courtney Trenwith. (2013) UAE confirms new mortgage cap rules. Arabian business. <http://www.arabianbusiness.com/uae-confirms-new-mortgage-cap-rules-524690.html>

⁶⁷² May Khamis and Abdelhak Senhadji and others (2010) *Impact of the Global Financial Crisis on the Gulf Cooperation Council Countries and Challenges Ahead*. IMF, Middle East and Central Asia Department

⁶⁷³ Ibrahim Saif and Farah Choucair(2009). Arab Countries Stumble in the Face of Growing Economic Crisis. Carnegie Endowment for international peace http://carnegieendowment.org/files/economic_crisis_wc_english.pdf

⁶⁷⁴ May Khamis and Abdelhak Senhadji and others (2010) *Impact of the Global Financial Crisis on the Gulf Cooperation Council Countries and Challenges Ahead*. IMF, Middle East and Central Asia Department

share capital of the First Finance Company, an investment company, by \$70 million. In relation to the real state sector, the government of Qatar has issued a new Law to allow 100% foreign property ownership in specified areas and additional amendments to GCC nationals' property ownership⁶⁷⁵ and the government has also some amendments on the real estate brokerage Law.⁶⁷⁶ There are further amendments on the Law of expropriation for the public benefit in Qatar.⁶⁷⁷ All of these regulations aimed to enhance and raise individual legal protection.

In late 2011, the Saudi Central Bank (SAMA) reduced the interest rate and at the same time injected liquidity into banks through direct deposits. The government of Saudi Arabia announced a reform package covering the minimum wage, housing units and raising the upper limit of loans provided by the government real estate development fund. In 2012 the government approved 25,000 loans to help finance the construction of 3,000 residential units. Furthermore, and in the same year the government of Saudi Arabia submitted the first draft regulation of a mortgage Law in order to cover the shortage in the housing supply.⁶⁷⁸ The government also introduced five new Laws in relation to the finance sector focusing on real estate finance; the execution and enforcement mechanism in the courts; a Law on the supervision of financial companies; a real estate finance Law and a financial lease Law.⁶⁷⁹ The

675 Qatar Law No. 25 of 2008

676 Qatar Law No 13 of 2013 to organise the real estate brokerage practice in Qatar

677 Qatar Law No. 15 of 2009

678 Abeer Allam (2012) Saudi Arabia approves first mortgage Law. *FT.com*. on July 2, 2012
<http://www.ft.com/cms/s/0/327154d6-c461-11e1-9c1e-00144feabdc0.html#axzz2rnJrYxKw>

679 Hesham Al Homoud (2012). *The New Saudi Finance Laws*
<http://www.tamimi.com/en/magazine/Law-update/section-6/september-2/the-new-saudi-finance-Laws.html>

enactment of these Laws will open up liquidity and the availability of the mortgage Law will boost the real estate market and will usher in a new financing boom.⁶⁸⁰

The general response of the governments of the Arabian Gulf has aimed to enhance the economy in general and to stabilise the financial sector. On the other hand, the financial companies have also introduced new internal policies in order to straighten their internal management structure and they have reassessed their financial products that may affect their interests in addition to promoting new collateral structures to increase their level of protection.

6.2. Individual home finance and real estate companies finance after the global financial crisis

With the beginning of the global financial crisis, there was a shortage of individual liquidity, and many people were not able to repay the value of the mortgage. There were a number of companies which laid off employees layoff to reduce their expenses, which also increased the number of the mortgage defaulters. At the time, the interest rate (the profit margin for Islamic banks) of funding was too high. In many cases, the mortgage interest rates equaled half of the actual mortgage value, and in others cases was even higher, depending on the mortgage value and the period of the repayment of this mortgage. Mortgage providers realised with the eruption of the financial crises that the guarantees (whether it was the salary of the client or the purchased property itself) that they received from the clients would not cover the clients' debt instalments. At the time banks began to repossession and foreclosed individual residential properties. In Dubai, for example, there were about 200

⁶⁸⁰ Saudi Arabian Monetary Authority
<http://www.sama.gov.sa/sites/samaen/Finance/Pages/Laws.aspx>

foreclosure cases.⁶⁸¹ However, in some Gulf countries, the banks or financial providers cannot foreclose on residential real estate (as is the case in Kuwait), especially if this is the only residential property for the client.⁶⁸² This issue was a stumbling block for many banks in Kuwait and some banks had to resort to rescheduling these clients' funds to facilitate the process of repayment of the mortgage. In cases when the client owned several residential properties and was unable to repay the mortgage, the bank has the right to foreclose on the client property after receiving the approval of the court.⁶⁸³

With the appearance of the financial crisis, most of the Gulf lenders set up a new framework for individual funding, where getting a mortgage became more robust, even for people with near perfect credit. Mortgage lenders became more cautious with client guarantees, and they became very strict in approving client mortgages. Banks and financial entities have undertaken restructuring exercises in order to avert a further massive default crisis at the individual and corporate level. There were increased mortgage provisions that individuals had to meet to get the acceptance of banks, where the individuals in most cases had to prove their ability to repay the mortgage and had to submit more guarantees for the lenders to get the finance approval. In the case the client cannot prove the ability to repay, they needed to bring a guarantor to ensure the client's repayment. This procedure was applied for foreign nationals if they wanted to purchase a property before the crisis, and in most cases lenders will require a guarantor for nationals or for foreign clients if their credit background is not sufficient.

681 Parag Deulgaonkar. 200 foreclosure cases in Dubai courts. *Emirates 24/7 news*. April 27, 2011.

<http://www.emirates247.com/news/200-foreclosure-cases-in-dubai-courts-2011-04-27-1.385896>

682 Kuwait Law No.121 of 1986 Article 216 of the Kuwaiti Civil Procedure Law. Foreclosure process will be discussed in the next chapter.

683 *ibid*

After submitting all the documents, the bank usually appoints a third party to evaluate the property (before the crisis, the property evaluator would usually be a bank employee) and in most of the cases the loan or the finance is based on the property asking price or property evaluation.⁶⁸⁴ If the finance is for a construction project, in many cases the finance value will be based on the land price, not on the building being constructed. After evaluating the property the banks will pass the mortgage documents to the risk management departments to assess the risk of the transaction.

In relation to financing real estate developers and real estate companies the global financial crisis resulted in a lack of liquidity in the local and international markets, and regional and international banks and financial entities began to hold and reserve their funds because of the liquidity crisis.

Real estate developers and real estate companies (including government and state owned development companies) were the hardest hit by the financial crisis, and because of a shortage of liquidity they could not complete their development projects and deliver their commitment to their clients.⁶⁸⁵ There were many development companies which had begun their construction projects without having secured full construction funding, and following the crisis many developers did not have enough funding to complete construction. Many such projects were stopped in the middle of the construction process as developers were unable to obtain financing needed to complete their projects. The Dubai Real Estate Regulatory Authority canceled around

684 <http://www.2daydubai.com/pages/dubai-property-mortgages.php>

685 Anjana Kumar.(2009) *Shortage of Shariah-compliant realty financing in UAE*. Emirates 24/7 <http://www.emirates247.com/eb247/companies-markets/real-estate/shortage-of-shariah-compliant-realty-financing-in-uae-2009-04-19-1.97168>

495 property projects, which is about half of the developments planned in Dubai.⁶⁸⁶

This has had the ultimate result of fewer new construction projects getting off the ground since the financial crisis.

In relation to real estate finance, there are many banks and financial entities which are unwilling to supply long-term development finance, due to the liquidity shortage. Further, many banks have reduced their real estate finance products and only operate clearly profitable and the safe financing products. The outcome of the financial crisis causes many banks to restructure finance for developers,⁶⁸⁷ and in other cases banks or the finance providers enter as partners into the real estate project as a funding restructuring and as collateral for the bank.

The outcome of the financial crisis caused many banks and financial entities to engage in internal management restructuring to introduce internal policies to strengthen their securities and guarantees and set new requirements to be provided by the clients in order to get the financing approval. The financial crisis caused banks and financial entities to be more cautious. To approve finance for a real estate company or a developer much collateral need to be provided to the bank to show the ability to repay.

7. Conclusion:

In this chapter, an attempt has been made to explore the nature of the Arabian Gulf economy as a rentier economy and how the Gulf's Sovereign Wealth Funds have played an essential role in boosting the Gulf economy and the luxury real estate

686 Simeon Kerr and Robin Wigglesworth.(2010). Half of Dubai's property projects scrapped. Financial times. <http://www.ft.com/cms/s/0/8a4b91a8-ca67-11df-a860-00144feab49a.html?siteedition=uk#axzz2zirCHeSf>

687 Asa Fitch. (2011).Dubai developer Nakheel's \$16bn financial restructuring completed. The national <http://www.thenational.ae/business/property/dubai-developer-nakheels-16bn-financial-restructuring-completed>

sector. In addition this chapter looked at the financial system in the Arabian Gulf including how the central banks have managed to control the dual banking system and the main differences between the conventional finance and Islamic finance systems in the region, including explaining the nature of Islamic Finance and the differing Principles of Finance.

This chapter has also highlighted the regulatory overview of the Gulf's Central Banks and the role of the Central Banks in regulating the *Shari'ah* governance system in the Arabian Gulf countries, which suggested that the existing regulatory framework of the *Shari'ah* governance system needs further improvement and enhancement in order to strengthen the development of the Islamic finance industry. This brings into focus the measures and efforts that need to be taken to strengthen the Islamic financial institutions through enhancing the *Shari'ah* governance framework.

The impact of the recent global financial crisis on the Arabian Gulf Countries has been discussed in this chapter as has the Gulf countries responses toward the financial crisis. This has been based on research that shows the weakness of the governance structures, financial transparency and performance management of the financial entities to ensure the entire organisation is aligned with the strategic goals. This chapter has also discussed the real estate finance in the Arabian Gulf countries, (before and after the financial crisis) including individual home finance and financing real estate developers and real estate companies before global financial crisis. This chapter has exposed how the financial crisis has changed the structure of real estate finance whether it is for individuals or for real estate projects.

Chapter 6: the real estate mortgage Law in the Arabian Gulf region.

1. Introduction:

The Gulf States saw an extraordinary economic growth during the period 2000-2008, and attracted many people to invest in luxurious real estate products. These investments led to the transformation of the Gulf into an important financial centre for conferences and festivals and international events.

Real estate finance is considered one of the essential elements for economic development. There are large numbers of real estate projects in the region which have supported the increase in property supply. Nonetheless, most of them are luxurious real estate projects such as the ones in Dubai, Bahrain, Oman and Qatar which are dedicated to the higher income segment of society. The slowdown in the Gulf economy after the financial crisis of 2008 has led to a decline in the availability of instalment financing and led to a severe reduction in real estate demand, despite the decline in property prices. As a response to the economic decline, some of the Gulf countries have introduced new financial mechanisms in Islamic finance and by conventional banks in order to re-boost the real estate sector and to cover the oversupply in the property market. Some of these financial entities providers have been offering a variety of mortgage products that have attempted to meet the needs of different customers. The mortgage financing options are available for both citizens and foreign nationals with loan maturity periods of up to 25 years for citizens and 15 years for foreign nationals.⁶⁸⁸ The interest rates for mortgages are about 2% above the US base rate – but Shari'a-compliant financing profit rates may be slightly less.

688 Day Dubai. Dubai property mortgage. See <http://www.2daydubai.com/pages/dubai-property-mortgages.php>

The Arab political crisis known as the Arab Spring has had a multiple positive effect on the Gulf real estate sector and the financial market. The unstable political events in different part of the MENA region, mainly Algeria, Egypt, Tunisia and Syria have had a positive impact on the Gulf real estate sector, where many families have moved to the Gulf region searching for safety, security and looking for better living conditions. A large number of these moving families are ex-governmental parties of the old regimes who have a sufficient amount of money that they need to invest in safe investments. The majority of these investments found their way into the real estate sector. The response of the Gulf governments towards the Arab Spring crises has been to introduce a number of Laws to allocate new areas where foreign nationals can own property, where before there were only a limited number of area or territories allowed for foreigners to own property. Some other governments have facilitated finance for Arab nationals in order to purchase a property to accommodate their families.

There are a number of mortgage products now available to borrowers in western countries, but these mortgage products differ from those in the Gulf region. This chapter will introduce the current Islamic housing finance mechanism that has been implemented in the Gulf region. The second part of this chapter will focus on the legal framework of mortgage finance in the Arabian Gulf region and the importance of introducing a mortgage finance Law and how it can support the development of the real estate sector, in addition to the challenges that mortgage markets may face in the Arabian Gulf region.

2. The significance of mortgage finance in Emerging Markets

Introducing mortgage finance should improve and enhance the efficiency of the real estate finance system. This leads to strength in the financial system and benefits both mortgage borrowers and real estate developers. It would particularly improve the

affordability of properties for households. A developed mortgage finance market allows households to smooth out consumption, while easier access to housing finance leads to an increase in the demand for housing. In relation to real estate developers, mortgage finance can reduce the financial pressures on real estate developers.

A number of Arabian Gulf countries have been making major steps in recent years to introduce and develop a system of mortgage finance. Housing finance in Arabian Gulf countries has been for decades limited to state-owned housing and Islamic or conventional banks housing loans, leaving the real estate sector primitive and underdeveloped. The population of the Gulf countries however is demographically young and fast growing and this puts pressure on the local real estate market. The large and continuous influx of foreign nationals attracted by the economic boom, with high paid jobs puts an extra pressure on the housing market. The booming of the Gulf economies with the reforms and improvements in the property Laws, which allow foreigners to own property, has fuelled investment in Gulf real estate and the property market. Traditional lending institutions, however such as commercial banks and finance companies, remain the only source for finance facilities.

The adopted mortgage policies in some of the Arabian Gulf countries are aimed to expand real estate finance through interest rate ceilings, which have added a further protection for property owners and reduced the complicated foreclosure procedures which had adverse effects. Housing finance was restricted to borrowers with a good wages and as a result the real estate markets remained under-developed and unable of serving the needs and requirements of low and middle-income households.

Two of the Arabian Gulf countries (Saudi Arabia and UAE) have recently gone through the process of developing viable mortgage finance markets.⁶⁸⁹ The main objectives of introducing mortgage finance are to improve the affordability of housing and access to better accommodation for households and to reduce the shortage in the housing supply. In other cases the aims of creating a mortgage Law are to cover the oversupply of properties and to re-boost the real estate sector after an economic downturn. Some of the Gulf countries have introduced a mortgage finance Law to achieve improvements and efficiency in their financial sector by introducing new financial securities to fund the real estate sector. In addition, the Gulf legislative authorities have been making concerted efforts to improve and develop legislation in order to introduce a mortgage Law. The process of legal development has been mainly in the system of property and property right registration and introducing new kinds of mortgage providers and developing the judicial infrastructure that would help the repossession or foreclosing on defaulting borrowers, helping to underpin the mortgage market.⁶⁹⁰

Although, some of the Gulf countries have introduced a mortgage Law, they also need to develop their current legislation to address issues such as the procedural constraints on foreclose and repossession, the lack of mortgage secondary market regulation and the controls on lending interest rates all of which issues will adversely affect the mortgage market. On the other hand the Central Banks have to put the financial institutions under scrutiny as part of reforming the real estate finance systems in order to establish a healthy and stable mortgage market.

⁶⁸⁹ UAE Dubai mortgage Law No. 14 of 2008. Saudi Real Estate Mortgage Law (Royal Decree No. M/49 dated 13/8/1433 Hij ri (corresponding to the 3rd July 2012) published in the national official gazette on 31 Aug 2012. Qatar Is drafting its first mortgage Law but until this date the Law has not been published <http://www.bloomberg.com/news/2012-03-11/qatar-is-drafting-its-first-mortgage-Law-the-peninsula-says.html>

⁶⁹⁰ Clifford Chance. (2012) *Saudi Arabian mortgage, finance and court reform*. September 2012

3. The current housing finance system in the Arabian Gulf countries

The markets of the housing finance are considered an essential part to develop any economy. In most developed countries, mortgage lending is the primary mechanism to finance the acquisition of residential property.⁶⁹¹ The mortgage is an extremely versatile concept in the Law of real property. For most people, a mortgage signifies the method by which they may raise enough capital to purchase a house or other property. Mortgages however have been used as security for the repayment of a loan or for the performance of some other obligation, for much longer.⁶⁹²

The mortgage is a contract between the borrower and the lender, the borrower of money (mortgagor) will enter into a binding contract with the lender mortgagee (bank or financial entity), whereby a capital sum will be lent on the security of property owned by the mortgagor. Mortgage finance are loans used to finance property purchases that are secured on a clear property ownership, and where the borrower defaults on making the required repayments, the lender (bank or financial entity) has the right to take possession of the clients' property (known as foreclosure) and sell it based on the terms and conditions of the mortgage agreement.

The current real estate finance products in the Gulf region cannot be considered as a mortgage finance similar to those in the common Law system in western countries, because in the Gulf the mortgage is only considered as a guarantee and as a form of protection for the lender. In the Gulf region, the current real estate finance that is funded by banks or financial entities (Islamic or conventional) its cannot be considered as mortgage, however it only can be considered as a long term loans, with a fixed or floating rate interest regulated by the Central Bank, and based on the contractual

⁶⁹¹ Grant S. Nelson, Dale A. Whitman. (2007). *The Real Estate Finance Law*, fifth edition, Thomson, USA, p.9

⁶⁹² Martin Dixon. (2012). *Modern Land Law*. Eighth edition. Routledge. p.390.

agreement between the lender and the borrower.⁶⁹³ It is common in the Gulf region to name any type of real estate or housing financing as a mortgage but there are major difference between these loans and true mortgage finance. The differences are in relation to the contractual agreement between the lender and the borrower, the period of finance where the loans in usually do not exceed 15 to 20 years in the Gulf region. In the Arabian Gulf countries the procedure of possession or foreclose in the event of the client default differs generally between western or more developed countries.

In the Arabian Gulf region, the sources and instruments of housing and property finance have lagged behind with only traditional lending institutions, such as banks and finance companies, being the only source for finance facilities.⁶⁹⁴ Mortgage finance usually replaces the existing systems of deferred instalment sale contracts made by banks, finance companies or real estate developers in most of the Arabian Gulf states. Property sales based on instalments do not offer secure or favorable conditions for borrowers. As the title of the property is only transferred after the last instalment is paid by the borrower, and due to low or average wages, the housing affordability in many cases is much less. Moreover, the housing finance system is not very sustainable, especially where developers have a large number of unsold houses/flats units, as their financial conditions are weakened due to the growing debt servicing pressures that limit the level of deferred instalments they can offer.

Compared with other housing finance arrangements, mortgage finance makes purchasing a property affordable, and allows people to buy at lower price. This ultimately boosts the property market to the benefit of developers and current homeowners who can move to bigger and better houses if they desire. As a result, an

⁶⁹³ Most of the banks in the Gulf region secure mortgages on the client's salary

⁶⁹⁴ *Building Mortgage Markets for a Revival of GCC Real Estate* Dr. Nasser Saidi1 Speech at 'Arab Real Estate Environment Post Global Economic Downturn' Conference Dubai 16-17 March, 2011

efficient, well-organised and well-functioning mortgage market offers vast advantages and boosts any mortgage market in any developing economy, reducing the fiscal burden on the government in the form of subsidies for housing finance and with no adverse consequences on government policies.

4. The mortgage Laws in the Gulf region

Two of the Gulf countries have taken the first initial steps to enacting a mortgage Law, but each country has its independent vision of introducing such a Law. The first to pass a mortgage Law was Dubai in the UAE under Dubai Law no. 14 of 2008. The main objective of introducing their mortgage Law was to enhance the real estate sector and to add more collateral for lenders in order to boost the financial sector after the financial crisis that hit Dubai real estate in late 2008.

The second country to introduce a mortgage Law is the Kingdom of Saudi Arabia. The Saudi government vision of introducing the mortgage Law was to facilitate the accommodation to the citizens as the main objective of this Act, the other objectives of the Act being to boost the financial and the real estate sectors. The main aim of the Saudi mortgage Law is to facilitate the process of buying a property for nationals where there is a shortage in the governmental housing in the Saudi Arabia. The government of Saudi Arabia has considered the reform and introduction of mortgages as a solution for the housing system, which became increasingly urgent. The increasing size of the middle class who were unable to buy a house put more pressure on the government to find solutions for this problem. Based on that, the Saudi government indicated that the mortgage Law is one of the main solutions to the housing problem.

The upcoming part will introduce a general overview of the mortgage finance in both countries and what is the main difference between the mortgage Laws of the said countries.

4.1. Mortgage Law in Dubai:

Dubai is one of the seven federal Emirates, which has taken many measures to introduce an integrated mortgage Law. With the beginning of real estate development in Dubai, property finance in Dubai was mostly provided by either the commercial banks or financial entities. However, significant governmental real estate project conducted by governmental developers is usually financed by governmental finance providers such as Tamweel⁶⁹⁵ who financed most of the Nakheel real estate projects and Amlak Finance⁶⁹⁶ who financed the properties that been provided by Emaar real estate projects.⁶⁹⁷

There have been some studies to introduce different mortgage models in the UAE as a whole since all the Emiratis are under the umbrella of the Federal Laws, and they have been conducted in order to identify the benefits to the UAE financial and real estate sectors. These studies, however, did not reach an agreed mortgage system for the whole emirates.

There are some legal gaps between the mortgage models the current legal and practical infrastructure in the UAE. There is a lack in some areas of Law mainly there is no federal mortgage Law and federal bankruptcy Law there is also lack of a full implemented strata Law, and there is an unclear legal framework for expatriate ownership and the expatriate residency. Some Laws have been enacted in these areas and applied in some Emirates and not applied in some others. There is some variation between each Emirate's local property ownership Laws and there is no standardisation for these Laws at the federal level. All of these issues need to be solved or clarified before the implementation of a proper mortgage model in the UAE.

⁶⁹⁵ <http://tamweel.dib.ae/>

⁶⁹⁶ <http://www.amlakfinance.com/>

⁶⁹⁷ Amlak Finance and Tamweel merged together in late 2009

However, with the peak of the real estate market in Dubai, financial entities were under a substantial competition to provide a greater range of mortgage finance products for real estate purchases in Dubai. The downturn of Dubai's real estate sector in late 2008, there were unprecedented rates of loan defaults and the Central Bank acknowledged that there was a growing proportion of non-performing loans in Dubai. The Mortgage Law No 14 of 2008 was introduced to reflect the expectations of an international market place and to be used as security for debt. The mortgage Law also assists many residents in Dubai to move from rented properties to buy their own property once the mortgage market began to open up and accommodate their requirements.

If we take a closer look at the Dubai's' mortgage Law we can see that it only regulates the contractual parties and the rights and duties of the contractual parties and the legal effect of mortgaged property without regulating the mortgage market as a whole. Whereas the essential aim of the mortgage Law is to safeguard mortgage lenders as a security for debt is also protects the mortgagor. The mortgage Law as mentioned before should regulate all related activities the in real estate sector in order to have a transparent and a healthy mortgage market.

The said Law applies to mortgages of property and property units as security for debt. Mortgage lenders, whether they are banks, companies or financial institutions, should all be licenced and registered with the Central Bank of UAE in order to be a valid mortgage lender.⁶⁹⁸

The mortgagor of the property must be the owner of the mortgaged property and in a

⁶⁹⁸ Article 4 of the Dubai Mortgage Law No. 14 of 2008

position to dispose of the property. The mortgage over property must be shown to exist ipso facto or ipso jure off-plan when the mortgage is made.⁶⁹⁹ The mortgage over a property includes all appurtenances to the property or property unit,⁷⁰⁰ the Law provides that the owner of the mortgaged property and the mortgage must be registered with the Dubai Land Department.⁷⁰¹ Accordingly, only registered mortgages and interim real estate registration with the Dubai Land Department are recognised and considered as a valid registration.

The mortgage application form shall be filed and signed using the standards of the Land Department, and the application should include all information related to the Property. That's includes the size and location of the property, the property value and the value of the debt. The application should include the personal details of the contractual parties and guarantor in rem including the place of residence.⁷⁰² Upon signing the mortgage form the Land Department should give the contracting parties a mortgage deed signed by the competent officer with the seal of the Land Department. Based on signing the mortgage contract, the said Law restricts the owner (mortgagor) to sell, gift or dispose of the mortgaged property. The mortgagor shall not create any type of right in-rem or dispose of the mortgaged property without a written approval from the mortgagee.

The said Law also had regulated a special mortgage such as one the *Musataha* right, usufruct or long-term lease for a term up to 99 years. The holder of a *Musataha* right can mortgage buildings or plants over the time of the *Musataha* right without having

⁶⁹⁹ Article 5 of the Dubai Mortgage Law No. 14 of 2008

⁷⁰⁰ That's including buildings, plants, assigned/apportioned properties and any improvements made after the Mortgage contract. See UAE. Dubai. Article 6 of the mortgage Law No. 14 of 2008

⁷⁰¹ Article 5 of the Dubai Mortgage Law No. 14 of 2008

⁷⁰² Article 8 of the Dubai Mortgage Law No. 14 of 2008

the right to mortgage the land that is to be developed.⁷⁰³ The holder of a usufruct right or the holder of a long term lease for a period up to 99 years may mortgage his interest in the property for the term of the usufruct or long term lease.⁷⁰⁴ The mortgages over these types of rights shall terminate and be deleted from the register files based on the repayment of the debt secured by the Mortgage or based on the expiry of the term of the contracts.⁷⁰⁵

4.2. Mortgage Law in Saudi Arabia

For the last ten years, mortgage reform has been studied as a solution to Saudi Arabia's housing woes. This crisis is becoming increasingly urgent, with a growing body of middle class Saudis who are unable to own a home, and an estimation that current demographics require at least 1.5 million new houses to be built in the coming years. The housing shortage is becoming a big political problem in Saudi Arabia and has made reform imperative.

Saudi Arabia has enacted a bundle of Laws to regulate mortgages in the Kingdom. The authorities have enacted five complementary Laws; each Law was passed by Royal Decree in 2012.⁷⁰⁶ Only one of these Laws specifically relates to mortgages. Two of the said Laws address financing beyond just real estate. One of the said Laws deals with the enforcement of judgments and has created a new department of enforcement judges dedicated to hear enforcement disputes and insolvency actions and generally provides for other instruments of execution in the court system. The said Laws have added some new developments with a consolidation of existing principles. Three of the five Laws was completed and implemented on the 24th Feb

⁷⁰³ Article 21 of the Dubai mortgage Law No. 14 of 2008

⁷⁰⁴ Article 22 of the Dubai mortgage Law No. 14 of 2008

⁷⁰⁵ Article 23 of the Dubai mortgage Law No. 14 of 2008

⁷⁰⁶ The Real Estate Mortgage Law (Royal Decree No. M/49 dated 13/8/1433 Hij ri (corresponding to the 3rd July 2012) was published in the national official gazette on 31 Aug 2012

2013. The Enforcement and the Registered Real Estate Mortgage Law still have was enacted in August 2014.⁷⁰⁷

4.2.1. The Real Estate Financing Law⁷⁰⁸

This is the main Law that regulates Real Estate Financing and it provides the regulatory framework for the establishing and licensing of banks and finance companies to enter the real estate market. It also regulates the incorporation, activities, and governance of companies engaged in real estate financing. The said Law provides the Saudi Arabia Monetary Authority (SAMA) with the authority to license banks and finance companies to provide real estate finance. The said Law also provides a regulation in order to establish a transparent secondary market through mortgage refinance companies and securitisation in Saudi Arabia. SAMA is empowered to authorise financial providers (whether they are banks or financial entities) to own houses for the purposes of real estate finance, where before there was a prohibition in Saudi Arabia for banks and financial companies to own houses.⁷⁰⁹

This Law is an exemption to current legal restrictions.

The Real Estate Financing Law also empowers SAMA to issue regulations and procedures relating to real estate financing that includes reviewing real estate lease contracts. In addition SAMA has introduced various regulations to improve the real estate secondary market through better information flow.

⁷⁰⁷Deloitte, (2013) *Saudi mortgage Laws, A formula for a well- functioning market?*

http://www.deloitte.com/assets/Dcom-MiddleEast/Local%20Assets/Documents/Industries/Real%20Estate/me_real_estate_mortgage_whitepaper_072013.PDF

⁷⁰⁸ Saudi Arabia. The Real Estate Finance Law (Royal Decree No. M/50 dated 13/8/1433 Hij ri (corresponding to the 3rd July 2012);

⁷⁰⁹ See Article 10 section 4 of the Banking Control Law, which restricts banks from owning real estate other than their own business premises.

4.2.2. The Finance Companies Control Law⁷¹⁰

Finance Companies already exist in Saudi Arabia⁷¹¹ The new Finance Companies Control Law sets out a new regulatory system to regulate finance companies and sets a framework for *Shari'ah* compliant finance companies and banks to enter the market as a real estate finance provider. This includes other types of finance such as Islamic lease finance, consumer finance, micro finance and any type of finance approved by SAMA. The said Law also has established a new Judicial Committee⁷¹² to hear disputes under the Finance Companies Control Law or any related Laws such as the Real Estate Finance Law or the Financing Lease Law. SAMA will be in charge of regulating the financing and re-financing companies in order to protect borrowers. SAMA has set strict regulations to ensure the stability of the real estate sector, in addition to the supervisory power given to SAMA to investigate, prosecute and impose fines if there is a violation of the Law. SAMA has set new requirements for new finance companies licence applications. The new finance companies should be *Shari'ah* compliant based on the requirements of SAMA that includes the appointment of Shari'ah supervisory Boards.

4.2.3. The Registered Real Estate Mortgage Law⁷¹³

This Law has been enacted as a supplement of the Realty in Kind Registration Law.⁷¹⁴

The Registered Real Estate Mortgage Law sets out a new framework for security over

⁷¹⁰ Saudi arabia. The Finance Companies Control Law issued under a Royal Decree No. M/51 dated 13/8/1433 H(2 July 2012 G)

⁷¹¹ Though SAMA had previously registered two of these, oversight seems to have migrated to MOCI pending the passage of the new Law. There is a two-year grace period for existing companies to comply with the new Law.

⁷¹² The Committee for the Resolution of Financing Violations and Disputes

⁷¹³ Saudi Arabia. The Registered Real Estate Mortgage Law has been issued under a Royal Decree No. 6 on 9/21423H, corresponding to 24/2/2004

⁷¹⁴ Saudi Arabia. Royal Decree No. 6 on 9/21423H, corresponding to 24/2/2004

real estate, including new provision for second ranking mortgages. This Law requires registering all real estate mortgages, which should includes a full description of the mortgage property to avoid uncertainty or fraud. The said Law also allows the mortgagee to transfer the mortgage to a third party. The said Law also gives the right to finance providers (in the event of default by the borrower) to request a further security if the value of the collateral falls below the value of the debt. In the event of borrower default, this Law also gives the mortgage providers priority over all other creditors in receiving their debt upon the sale of the mortgaged property in accordance with their ranking.⁷¹⁵

4.2.4. The Finance Lease Law⁷¹⁶

The Financial Lease Law was issued under the Royal Decree No. M/48 corresponding to the 3rd July 2012. This Law has set out the rules and regulations that relate to real estate finance leasing as an alternative product to secured debt. This Law addresses the leases fixed assets, provided the asset has been acquired by the lessor for leasing “as a profession”, subject to regulations to follow.

The said Law sets out the responsibilities of the contracting parties in a way which, consistent with the general Saudi courts which apply a *Shari’ah* approach, places asset risk on the lessor during the lease term but makes the lessee responsible for their

⁷¹⁵Deloitte, (2013) Saudi mortgage Laws, A formula for a well- functioning market?
http://www.deloitte.com/assets/Dcom-MiddleEast/Local%20Assets/Documents/Industries/Real%20Estate/me_real_estate_mortgage_whitepaper_072013.PDF

⁷¹⁶ Saudi Arabia. The Financial Lease Law (Royal Decree No. M/48 dated 13/8/1433 Hij ri (corresponding to the 3rd July 2012));

use of the relevant asset.⁷¹⁷ The Law also provides a framework around this with provisions for registration, enforcement, and rights concerning third parties. The Law permits the lessors to securitize their rights (if the lessee is in payment default) by requesting from the lessee future rental payments. It is specifically permitted⁷¹⁸ to transfer the ownership of leased assets to the lessee at the end of the lease period in accordance with the terms of the lease.

4.2.5. The Enforcement (Execution) Law⁷¹⁹

The Execution (Enforcement) Law was issued under a Royal Decree No. 53 (corresponding to the 3rd July 2012). This Law has established a new department of dedicated enforcement judges and has also defined the types of “enforcement instrument” in a way that may broaden the kind of enforcement actions which can be brought into the kingdom.

This Law provides for the establishment of a new department of dedicated enforcement judges applying the *Shari'ah* procedural law.⁷²⁰ The judges of this department empowered to order the enforcement of judgments and to hear enforcement disputes and insolvency actions. The new enforcement judges will be arranged in territorial circuits, and their decisions will be final subject to a right of appeal in respect of judgments on enforcement disputes and insolvency actions (in

⁷¹⁷ Lessees are responsible for operative (running) maintenance with lessors responsible for basic maintenance (unless specified to the contrary in the contract); lessee not to alter without lessor consent; destruction/damage is the lessor's risk unless the lessee is responsible; the lessor may add identification and is entitled to inspect (subject to regulations); the lessee is responsible for licence renewal in connection with licences required for the leased asset; if the lessor sells the leased asset to a third party, ownership and the lease contract shall be transferred; liens over the asset are not permitted without lessor consent.

⁷¹⁸ Previously an area of doubt, in that the courts might disallow the lessee's right on the basis of two subject matters in one agreement.

⁷¹⁹ Saudi Arabia. The Execution (Enforcement) Law (Royal Decree No. 53 dated 13/8/1433 Hij ri (corresponding to the 3rd July 2012)).

⁷²⁰ This is principally to cover procedural issues (e.g. the circumstances in which a judge should be considered conflicted) rather than being an indication that matters.

which case the appeal will be final).

5. Prerequisites for a successful mortgage finance system in the Arabian Gulf region

There is no specific model for a successful mortgage finance system. There is a wide range of mortgage finance models in a developed mortgage marketplace, which can be differentiated by three features: the payment structure, the amortisation schedule, or by the term (duration) of the mortgage loan. Some mortgage contracts operate through securitisation; these are based on financing through the bond market; others operate through the banking system or through specialised retail housing finance lenders. The common feature in these mortgage models is the availability of long-term loans, of 20 years or more, from a number of competing financial institutions provided certain legal requirements are met. Another feature is that the real estate market has to be an active market, where property loans could be used to purchase new property or previously owned ones. Moreover, the interest rate charged to real estate loans should be at market price, which is sufficient to cover the cost of raising funds, administration costs, risk, and profit.⁷²¹ Another common feature is that the procedures for purchasing and selling a house should be smooth and efficient.

In order to have successful mortgage finance, it is imperative to ensure confidence in the mortgage system between lenders and borrowers. The confidence can be obtained by having a generally accepted method of property valuation which reflects the real value of the property based on the market price that could be obtained in the open market. The mortgaged property must be fully and property described to avoid

⁷²¹ In most of the developed countries, the margin between the cost of funds and the mortgage rates is two percentage points

uncertainty or fraud. Usufruct (i.e. rights of use and enjoyment) may be mortgaged separately from the rest of the asset. The property valuation must be based on well-trained and qualified valuers. For example, some banks will only provide finance based on a valuation from international surveyors such as Knight Frank, Cluttons, or Colliers, since there were many cases in Dubai where the property did not reflect the actual value of the property set locally due to the high speculative practices in the real estate market which artificially raised property prices.

Finance companies and commercial and Islamic banks that engage in mortgage finance should operate on a market basis. In the case of subsidised lending there should be an explicit subsidy provided by the government. In practice, not many developing countries can afford the provision of an explicit subsidy. However in the Arabian Gulf countries, the governments do provide their citizens with subsidised loans through the housing system. Institutions providing mortgage loans should not be responsible for providing any subsidy. In general, mortgage companies should operate on a commercial basis with no unnecessary limits, such as interest rate controls or portfolio limits, being imposed on them.

In most developed countries, the margin between the cost of funds and the mortgage rates is two percentage points. There is an ongoing debate about whether mortgage lending is best done by commercial banks or specialised institutions. Commercial and Islamic banks hold the majority of mortgage lending in most Arabian Gulf countries. However, if a property and mortgage market is still at an early stage of development, specialised institutions are recommended. These institutions are more focused and keen on addressing obstacles that impede the development of the market and on influencing government policy.

Transparency of the real estate market is considered a fundamental issue to increase the confidence of borrowers and mortgage providers in the mortgage Law. In order to reach a high level of transparency and give confidence to mortgage borrowers, the authorities have to take a number of practical steps in order to promote the availability of necessary information. This is an important matter concerning the valuation of properties that will eventually become collateral for issued mortgages. Banks and financial providers also need to have an access to the registry office in order to be able to collect any important information on properties that are under their consideration. This can be reached by establishing a centralised database system that keeps all the real estate information in an accurate and timely record and it is preferable to have an organised and standardised registry practice of all real estate transactions allowing access to any interested parties. The closest example of a centralised database system is the Dubai Land Department where any interested party is allowed to have access to the real estate database. This type of information would serve to enhance lenders' and borrowers' confidence in the system.

A stable inflation rate in the real estate market can ensure confidence and stability for the market participants and for mortgage finance companies who help in developing the mortgage market. A stable economic environment needs to be accompanied by well-developed financial markets. A well- developed financial market in terms of both short and long-term funding is crucial for a well-functioning mortgage market. A sustainable system is crucial for market participants to give confidence to the market and certainty that no major change is going to take place that would have adverse effects of them. Uncertainty could discourage people from entering into long-term commitments.

6. Legal and institutional requirements for mortgage finance in the Gulf region:

In order to have successful mortgage finance, Arabian Gulf countries need to meet a number of requirements (legal, regulatory and institutional) which should be considered to establish an efficient mortgage market. A mortgage market certainly requires a mortgage Law; this Law sets the supervision and licensing procedures of the companies that engage in finance activities and determines which governmental authority supervises the activities of finance companies. The mortgage Law should also regulate the mortgage primary and secondary markets and, in order to promote an efficient mortgage market, the regulatory authorities should enhance the real estate market regulations.

6.1. The real estate market regulations

Real estate transactions are usually governed by a wide body of governing Laws and ministerial rules. One of the main elements in order to have an efficient and comprehensive real estate market is to have an efficient real estate registry office to record all transactions in relation to transfer of ownership in a timely manner and with inexpensive registration fees.⁷²² The procedure of registration of a property whether it is a new property or previously owned should not be complicated and once the property is registered it has been effected and it may not be challenged, annulled, or put in

⁷²² All properties become either registered or capable of being registered. A good example of this now is Dubai, where the Dubai Lands Department has issued a number of regulations that facilitate property registration in a timely manner. Currently property buyers and developers can register a property within 15 minutes instead of 7 days. See. Roustam Farman. (2014). *Laws, regulations that shaped Dubai real estate market in 2013*. Kashwan Law firm. <http://www.kashwaniLaw.com/Laws-regulations-that-shaped-dubai-real-estate-market-in-2013/>

doubt.⁷²³ In the Gulf region the registry system has developed by using a system that creates a database of all the properties and lands in the countries, but there is some shortfalls in relation to inherited lands or unregistered land. The real estate market regulation consists of all the related regulations that deal with real estate transactions; such as the land registration Law; Laws that regulate real estate developers; brokers; real estate agents; real estate valuers; an off-plan property selling regulation; a clear property ownership regulation; mortgage brokers; insurance agents and a mortgage finance Law. These types of regulation are needed in order to establish a well-regulated real estate market which in return will boost the confidence of real estate transactional parties.

6.2. The Primary Mortgage Market

In order to have a healthy mortgage market, the mortgage Law should set rules and regulations for the primary mortgage market and the said Law must include clarifications and definitions of which transactions fall under the auspices of the Mortgage Law and its requirements. The Mortgage Law should include guidelines for establishing mortgage finance companies and the supervision regulations over such mortgage companies, including the relationship between mortgage finance companies and mortgage banks. The Mortgage Law also should set out a clear and fast recovery procedure under judicial supervision. The Mortgage Law should regulate the professional activities in relation to the real estate sector which are needed in order to provide relevant services in relation to the real estate sector. The provisions of the Mortgage Law should protect the rights of mortgage borrowers from any unfavorable market practices by the mortgage providers or by any real estate professionals. The

most important item that the Mortgage Law should include is the foreclosure and possessory procedures which are the most difficult to achieve. This is particularly true in systems which may have concerns over the social and political implications of mass defaults and recovery suits. However, a system that facilitates the borrowing of funds while failing to facilitate its recovery in case of default will not lead to the establishment of a proper mortgage market.

6.3. The Secondary Mortgage Market

The secondary market gives the capacity to mortgage lenders to offload their mortgage contracts portfolio to specialised institutions which finance the purchase by issuing capital market bonds (securitisation) thus allowing the original lender to restart the lending process once more. Securitisation is a series of financial transactions which are based on the existence of a sound and well established trust Law. In French influenced legal systems—as most Arab countries are—the securitisation Law has to recreate the whole notion of trust Law in order to produce the required legal effect.

Based on that, the Mortgage Law preferably includes securitisation regulation and must provide the rules and regulations for the establishment of securitisation companies or other such special purpose vehicles. The said Law should also provide for the "true sale" of the mortgage portfolio from the original lender to the securitisation company and should clearly provide for such company to be "bankruptcy remote" i.e. unaffected by the potential bankruptcy of the other parties involved in the transaction. The Law should exempt the whole securitisation mechanism from any effect of stamp duties or other transfer taxation and exemption from bank secrecy Laws and regulations. The said Law should organise the relationship between the original lender, the securitisation company and the trustee or

custodian of the assets. In order to have a healthy and transparent secondary market, the Mortgage Law should provide the basic accounting requirements and guidelines for the conduct of securitisation transactions.

In the Arabian Gulf region, the Emirate of Dubai has conducted a number of studies (mainly by the Dubai International Financial Centre (DIFC) and Absalon Company) to introduce a stable and transparent mortgage market in Dubai. One of these studies was to consider introducing the Danish Mortgage model in the UAE and to introduce a mortgage securitisation regulation in the UAE.⁷²⁴ The idea of introducing mortgage securitisation regulations was well accepted by all interested parties including banks (commercial / mortgage banks), construction companies, developers and investors. However, it has not yet been applied for unknown reasons. The Emirate of Dubai took the first initiative to introduce a Mortgage Law as a form of security of debt, without monitoring the mortgage market as a whole and without mentioning the regulations of the secondary markets. The said Law did not regulate the financial entities that provide mortgage lending to their clients and instead kept it under the control of the UAE Central Bank.

On the other hand, the Saudi Arabia Mortgage Law has provided a regulatory framework of the real estate finance market, under the Saudi Arabian Monetary Agency (“SAMA”). this Law includes promotion of a secondary market in Saudi Arabia. The Real Estate Finance Law provides the regulatory framework for authorised banks and financial entities to enter the Saudi real estate finance market.

⁷²⁴ The Danish Mortgage Model has caught international interest during the latest financial crises. The model eliminates market risk and significantly reduces credit risk for banks. The mortgages are financed through an ongoing issuances of covered bonds with the same characteristics as the mortgages. On top of the payments to investors the borrowers pay an administration fee. This makes the solution completely transparent. Investors have access to low risk and liquid bond series and borrowers have transparent, affordable and flexible mortgages. The strict origination procedures in the model will comply to the suggested Basel 3 rules with minor changes.

The said Law also has regulated the secondary mortgage market through mortgage finance and refinance companies and securitisation, which paved the way for their use as securitisation vehicles (and possibly for other uses).

SAMA has set a strict regulation for mortgage financing and re-financing companies in order to ensure the stability and the transparency of the new mortgage secondary market and also to protect mortgage borrowers. This includes promoting transparency of activities in the new mortgage secondary market,⁷²⁵ preventing speculative real estate investments⁷²⁶ and to maintain a fair pricing.⁷²⁷ SAMA also has introduced some amendments to the Saudi Capital Market Law to facilitate the establishing, licensing and regulating of special purpose vehicles under the supervision of the Saudi Capital Market Authority.

There are some initiatives by the Public Investment Fund to establish a refinance company called “The Saudi Real Estate Refinance Company” with a capital of 5 billion SR which the equivalent of \$1.33 Billion. The main aim of the new company is to purchase mortgages from banks, real estate companies, financing companies and securitise them in order to issue mortgage-backed securities.

7. Challenges Facing Mortgage Markets Developments in the Arabian Gulf countries

There are a number of challenges facing the Gulf’s mortgage finance proposals to implement an efficient mortgage market. For example, One of the main challenges is

⁷²⁵ See Saudi Arabia, Real Estate Finance Law, Article 6 and 26

⁷²⁶ See Saudi Arabia, Real Estate Finance Law, Article 23 and 24

⁷²⁷ See Saudi Arabia, Real Estate Finance Law, Article 20

the inefficient procedure for land registration. Another is foreclosure where in many cases the lender is unable to take possession of properties when borrowers have defaulted. Various Laws have been enacted to address these concerns. But there is no consistent approach to property valuations, making the valuation process of limited use. In most Arabian Gulf countries, (these other than Saudi Arabia and Dubai) mortgage loans are not currently available and the property purchase is generally financed by Islamic or conventional banks, or in other cases by developers, through deferred instalment arrangements, which imply an effective interest rate of about 20 percent compared to an average 15 percent for a regular mortgage rate.

The challenges that are facing the Gulf real estate market is the lack of sufficient property rights protection that includes the limitation of ownership rights and the weak foreclosure system. The lack of transparency on, in relation to property rights and the right of residence is one of the challenges of the Gulf real estate market where there a quite number of property transactions that are still conducted outside the formal registration system.

There is a weak or non-existent financial information infrastructure, because of a lack of credit bureaus in the region and because there is a shortage of long-term finance secured financial instruments. The lack of institutions that provides insurance against mortgage defaults by individuals is also a challenge that faces the Gulf real estate mortgage market.

Without adequate financing tools and the availability of financial institutions in the Gulf region, the real estate market will continue to be a burden on the local economy, which may lead to reduction of the growth of the Gulf economies. The lack of typical

financial tools and institutions available in the region, which allow risk mitigation and risk pooling has raised the challenges to a developed Gulf real estate market.⁷²⁸

7.1. Inefficient Property Registration Procedures

All the Arabian Gulf countries have set the platform by issuing Laws and regulations that regulate property registration following independence and the establishment of these countries during the early 1970s.⁷²⁹ However property registration is still facing some difficulties and challenges in some areas in the region. In some cases there can be change in the actual possession of the property as transfer of ownership is not registered. One of the main reasons behind low real estate property registration is also the high registration fees and the cumbersome process of registration. Also, there are a large number of grants of land made by the Ruler to an individual without registering the grant. In fact, there are many properties in the Gulf region which are not formally registered and are which are transferred in the “informal sector” under customary practices. It is, however, essential to have a centralised, computerised land register office that provides transparent and reliable information. A separate special registry may also need to be created for mortgage transactions.

One of the main difficulties that challenges the creation of a land registry office is that there are a number of land categories in the Gulf real estate sector; there are state owned properties, privately owned ones; privately owned state land; *Waqf* (Endowment) land; informal properties; extralegal ones and mixtures of categories in the same physical asset. The classification of properties therefore adds some

⁷²⁸ Nasser Saidi. (2011) *Building Mortgage Markets for a Revival of GCC Real Estate*. Speech at 'Arab Real Estate Environment Post Global Economic Downturn' Conference Dubai 16-17 March, 2011

⁷²⁹ To see the development of the Law of property registration go back to chapter four

difficulties for the Gulf real estate market. A land registry office may not register all land parcels in the country and in some cases the land registry office may miss or not record the changes of property names, unrecorded inheritances, unsettled disputes, shifting boundaries and informal extensions, all of which would all complicate the reconstruction of chains of ownership and render them in a lot of cases impossible. A Gulf land registration office will require significant changes in order to create a speedy, efficient, low-cost, comprehensive and reliable registration which is needed to have a good real estate market.

As mentioned in the previous chapter, the property registration process remains lengthy and not efficient enough in some of the Gulf countries and is in need of substantive reforms. Efficient and reliable registration of both real property titles and their mortgages is essential to mortgage market development.

It is worth mentioning that in Saudi Arabia there is general refusal and a practical block of notaries to register pledges of real estate in favour of banks or financiers. Where the banks and mortgage providers want to develop different methods for taking unperfected security over land or property in different contexts, sometimes these methods involve subsidiary entities, but these solutions have been inadequate for the proper development of a home finance market on a scale comparable to other jurisdictions.

However, the Saudi Mortgage Law has provided for the registration of real estate mortgages and set the provisions that regulate the rights of the contracting parties, along with other matters such as ranking, assignment and termination of the mortgage. The mortgaged property should be registered in accordance with the Real Estate

Registration Law and the mortgage is effective from the time of registration.⁷³⁰ To the extent that the property has not been registered the interest is to be endorsed on the title deeds and associated register by the relevant court or notary. To register a mortgage contract there is some requirements which need to be mentioned, including that the mortgaged property be fully described to avoid uncertainty or fraud. Usufruct (i.e. rights of use and enjoyment) may be mortgaged separately from the rest of the asset.

The new Saudi registered Real Estate Mortgage Law has improved some issues that would not previously have been available to real estate financiers and mortgage providers. This includes the ability to have second ranking (and successive further) mortgages. Unless otherwise agreed upon, the mortgagee has the right to transfer the mortgage to a third party, though these must be registered to be effective. There is an express obligation on the mortgagor to safeguard the property with a right for the mortgagee to object to any matter which may reduce the value of the property and to take “regular precautionary measures” to protect his rights at the mortgagor’s cost. The Law also provides a “top-up” provision which, allows the mortgage provider to request a further security if the value of the mortgaged property falls below the debt value due to the misuse or fault of the borrower. The Law gives the mortgagee the right to apply to the court for a summary judgment to prevent any works by the mortgagor that may damage the property as collateral.⁷³¹

⁷³⁰ Saudi Real Estate Registry Regulation promulgated by Royal Decree No. M/6 11/2/1423 H. (24 April 2002)

⁷³¹ Certain provisions however are not permitted and will be null and void if written into the contract: a right for the mortgagee to foreclose by taking outright ownership of the property in extinguishment of the debt or a right for the mortgagee to take the right of use (benefit) of the property for its own account (however the parties may agree that the income generated from the secured property, including income from the right of use, can be received/collected by the mortgagee and utilised to settle part of the secured debt).

Provisions also specifically state that with a registered mortgage the mortgagee shall have priority over other creditors in receiving his debt from the value of the real estate when sold in accordance with his ranking. The mortgagee is also expressly entitled to trace the mortgage real estate into the hands of third parties which will survive the death of the mortgagor.

7.2. General Lack of Mortgage Loans

In the Gulf region property buyers are able to obtain finance from any bank or financial entity (whether they are Islamic or conventional financial entities) but not in the form of mortgage loans. In many cases the property buyer applies for a general loan from a bank to purchase the property, so the loan interest rate is usually regulated by the Central Bank and the period of the loan contract is based on the contractual agreement. The most common real estate finance is the one provided by Islamic banks where it is *Shari'ah* compliant and the interest rate is fixed and the repayment time period is longer. The Islamic banks have a number of financial tools that facilitate the client to purchase a property.

The most common finance arrangement in the region is the deferred instalment loan system used by real estate developers to sell properties to their clients. The purchaser pays a down payment of around 10 to 25 percent of the property purchase price, and further monthly instalments over a period ranging from 4 to 8 years. The title of the property is officially transferred when the purchase client pays the last instalment. Under this system the property buyer pays a significantly higher rate of interest than they would be able to obtain if they could have a loan secured on the property. On the other hand, it is obviously not a good deal for developers too as it ties up their funds,

although they are well secured. This system prevents many from entering the housing market.

7.3. Ineffective foreclosure procedures

In general, the foreclosure and repossession of property in the Arabian Gulf countries is characterised as a complex and slow procedure and as one of the main barriers to the development of the mortgage market in the region. Even with a court order the repossession or foreclose on a property is not an easy task. In practice in all of Gulf countries, the repossession of a property is difficult and complicated and usually takes a very long period if it is not impossible to get the loan or mortgage defaulter out of the property.⁷³² This is because the mortgage borrowers are in a much weaker situation than mortgage providers. Based on that the legislature has protected the borrowers because the lenders may impose and force any conditions on borrowers who may deprive them of all of their assets.⁷³³

The Arabian Gulf countries emphasise the rights of borrowers and the weaker parties in transactions.⁷³⁴ Thus, foreclosure procedures will tend to be slow and culminate in the sale of assets in public auctions. This is considered as a stumbling block and cannot serve the establishment of a modern mortgage market in the Gulf region,

⁷³² This has been implemented in other civil Law countries. In France, for example, the foreclosure procedure on a real estate was introduced at the beginning of the 18th century. And when it is allowed to foreclose on a real estate it was very difficult and complicated, which makes the legislature interfere to ease and simplify the process of foreclosing. Decree Law 17/6/1938 amended by decree Law 4/1/1955 and amended again by Law 98 of 1959

⁷³³ This principle is derived from Egyptian civil Law that was influenced by French Laws. The prominent Egyptian scholar Abdul Razzaq Al Sanhoury and the majority of French scholars reason that such prohibitions are for the public interest. The explanation of these protecting of borrowers by the legal scholars is that entitling the mortgage providers to own mortgaged assets would be contrary to the main purpose of the mortgage itself, which is to grant the lender a right over the value of the asset and not over the asset itself. Nowadays these type of prohibitions are not valid because banks and mortgage providers are controlled and supervised by the Central Bank, which means that mortgage borrowers are protected and no longer in the weak position that they were when the prohibition was enacted in the old days. See Habib Almulla. (2010). *Dubai mortgage Law: much ado about nothing* | The In-House Lawyer.

⁷³⁴ This is based on the influence of the French civil School of Law.

where mortgage providers must have the authority to repossess the property directly—under court supervision—in order to dispose of them on the market again as soon as possible.

None of the Laws in the Gulf provide an adequate framework to deal with mortgage or loan default and resulting foreclosure. In sum, foreclosure of real property in all the Gulf countries requires a formal court order to sell the property at a public auction. Under the civil Laws in the Gulf, there is no separate mechanism, which exists to foreclose on real estate outside of enforcement of contractual rights, which, in turn, can only be administered through regular court proceedings.

Hence, mortgage providers work on the assumption that even if they have the security of a mortgage over property, the possibility that they can exercise that security is very low. Consequently, in practice, the mortgage is unsecured and therefore carries a rate of interest appropriate to unsecured lending rather than a rate appropriate to a mortgage loan where they can gain possession in case of a borrowers default.⁷³⁵

As a result, some mortgage providers use different tactics to avoid calling default on a mortgage. Mortgage providers may try to apply the threat of the criminal Law to force borrowers to repay. This is usually done by the mortgage providers requiring from the borrowers a set of guaranteed post-added cheques as security for the mortgage, where all of the Gulf countries criminalise the giving of dishonoured cheques. Accordingly, if the borrower defaults and fails to repay the mortgage, the mortgage provider has the option of cashing one of the guaranteed cheques. If the guarantee cheque does not cover the debt, it becomes under the Law a dishonored cheque and a criminal offence is committed and can be punished by a jail sentence.

⁷³⁵ UAE. Dubai Law No. 14 of 2008 section 4 article 25.

Some of the Arabian Gulf countries have issued Laws which provide a satisfactory framework to deal with mortgage default and resulting foreclosure. In sum, however generally most of the Laws in the Arabian have a weak foreclosure or repossession process of real property that requires a formal court decision and a public auction to sell the property (see section four of the Dubai mortgage Law).⁷³⁶

7.3.1. Foreclose in Dubai

Based on the sharp down turn in the Dubai real estate sector in 2008, the unprecedented mortgage default rate led to a series of legal and economic difficulties.⁷³⁷ The government of Dubai issued a Mortgage Law, which contains provisions for specific execution proceedings in Dubai's courts. The said Law states that a clause in a mortgage contract may stipulate that when the mortgagee defaults to pay the mortgage within the specified period, the mortgage provider shall have the right to repossess the title of the mortgaged property or can sell the mortgaged property by themselves.⁷³⁸ Instead of mortgage providers going through the traditional court procedures, mortgage providers can now give the defaulter a 30 days written notice through the Notary Public before commencing execution proceedings.⁷³⁹ If the borrower fails (within the 30 day period) to repay the amount due, upon request of the mortgage provider the execution judge shall order an attachment against the mortgaged property so that it can be sold by a public auction in accordance with the applicable procedures of the Land Department.⁷⁴⁰

⁷³⁶ UAE. Dubai Law No. 14 of 2008 section 4 article 26.

⁷³⁷ Parag Deulgaonkar (2011) *200 foreclose cases in Dubai courts*. Emerates 24/7 news. <http://www.emirates247.com/news/200-foreclosure-cases-in-dubai-courts-2011-04-27-1.385896>

⁷³⁸ UAE. Dubai. Article 11 of the mortgage Law No. 14 of 2008

⁷³⁹ UAE. Dubai Law No. 14 of 2008 section 4 article 25.

⁷⁴⁰ UAE. Dubai Law No. 14 of 2008 section 4 article 26

Under the Dubai's Mortgage Law, if the mortgage provider adds any clause in a mortgage agreement stipulating that when the borrower/mortgagee defaults to pay the mortgage debt within the specified period, this gives the mortgage provider the right to sell the mortgaged property without taking the enforcement steps, then these clause in the mortgage agreement will considered as null and void the enforcement steps are a fundamental prerequisite for the validity of the foreclose procedures under the Mortgage Law.⁷⁴¹

Dubai has been the only Emirate among the other Emirates in the UAE to have adopted the practice of foreclosure in its territory. Foreclosure in Dubai is still in its infancy and is still rather opaque. The procedures and timelines involved in the actual court proceedings are unclear. The timeframe between the court judgment and the auction property sale is still not less than a year.⁷⁴²

The auction proceedings are conducted by the Dubai Land Department. After the real estate crisis it has been reported that there are several hundreds of properties subject to foreclosure proceedings in the Dubai courts. But in fact in 2012, the Dubai Land Department sold less than ten foreclosed properties at auction.⁷⁴³ The number of foreclosed properties pales in comparison with the reported number of properties subject to foreclosure proceedings in Dubai courts. The property valuation process by the Dubai Land Department is considered one of the main reasons for such discrepancy. The other reason is the fear of oversupply of low-priced homes in the real estate market, at a time where the house/property prices in Dubai are already fifty

⁷⁴¹UAE. Dubai Law No. 14 of 2008 section 4 article 27.

⁷⁴² Ashraf Alsayed. (2012) *Inside the dubai land department property auctions*. Hadif and partners. UAE <http://www.hadefpartners.com/News/pageid/120-137/default.aspx?Mediaid=230>

⁷⁴³Zainab Fattah. (2010). Dubai's First Foreclosure May Open Floodgates in Worst Market. Bloomberg <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a4TwfISIfjdM> (accessed March 10, 2015).

to seventy percent below their peak rate. Based on the delay in the process of property foreclosure in the courts and at auctions, the mortgage providers have been reluctant to go through the foreclosure process. Instead some mortgage providers prefer to renegotiate with the debtor for new repayment terms based on a court action. This reluctance of banks' and financial entities is attributable to factors stemming from the peculiarities of the UAE legal and business landscape.

The government of the UAE realises these problems and has begun to introduce new measures in response. Currently there are a number of legislative initiatives being considered, which include a new draft UAE bankruptcy Law. In addition the Central Bank of UAE has employed new standards to enhance the regulation of mortgage lending by mortgage providers. This will include, among other things, more thorough scrutiny of the borrower's repayment ability, as well as a more stringent loan-to-value ratio. This, however, may be some time coming insofar as, at present, the UAE does not have an effective credit rating system to be able to assess a borrower's creditworthiness. The particularity of the UAE demography, the majority of which are expatriates from other countries, is a further complication. It is more difficult to assess a person's creditworthiness outside of the UAE's jurisdiction. Equally challenging is to cope with the expatriates' ease of escaping liability by simply leaving the UAE for their home countries. While the challenges are clear, it is also clear that the UAE is determined to address them and it has already done much in that regard, at least in the way of public discourse and a series of draft Laws.

7.4. Mortgage Guarantee Corporation

There is another policy initiative that could support the creation of the mortgage market in the Arabian Gulf region, which is the establishment of a Mortgage

Guarantee Corporation. Banks in the Gulf region in many cases hesitated to lend to clients due to the difficulty of evaluating the creditworthiness of (local or foreign national) clients in an environment characterised by uncertainty database and where information on credit history is not precise or in some cases absent. These credit information and assessment problems usually increased with the lack of typical risk management tools and institutions availability in developed countries and many emerging markets, which allow the mortgage lenders to mitigate risk by risk pooling, so reducing individual bank exposure to adverse events.

Banks and financial institutions are exposed to a number of risks: such as when the borrower defaults or if there is a local or regional economic downturn which causes a general decline in the value of all assets, including real estate prices and credit quality.

The first risk is a reasonably manageable risk, as it involves foreclosure to repossess the property and reselling it in order to cover the customer debt. The process of foreclosure to repossessing, in normal times, is usually costly and time consuming for the finance provider, but it does not jeopardise its solvency.

Gulf countries lack institutions that provide insurance against mortgage or loan defaults by individuals experiencing economic difficulty. The objective of the Mortgage Guarantee Corporation is to provide insurance coverage to eligible institutions, banks, and financial institutions or special mortgage providers in full compliance with regulatory authorities and prudential requirements, of the highest percentage amount of the total mortgage value. It would insure (against the payment of a premium fee) the “top tier” of the loan, bearing the first portion of the loss in case

of default.⁷⁴⁴ As discussed above there would be standardized mortgage contracts (both conventional and *Shari'ah* compliant) to allow efficient packaging of risk and efficient risk management. This type of insurance institution is increasingly common across the world: the time has come for the Gulf countries to establish a Mortgage Guarantee Corporation in order to support the mortgage market in the region.

The Mortgage Guarantee Corporation would provide insurance coverage of eligible property loans to approved institutions. (i.e. designated banks and financial institutions in full compliance of regulatory requirements, and in particular capital adequacy requirements) for an amount of up to 30% of the value at origin. (subject to the insurance eligibility criteria of different mortgage guarantee products), enabling the banks to advance mortgage loans of up to 80% to 90% the property value, with the home buyer putting down 10% to 20% of the value. With the additional protection of a mortgage guarantee, the down payment required for potential homebuyers can be reduced without additional risk to the banks and financial entities.

There have been attempts in some of the Gulf countries to introduce a mortgage/ loan insurance scheme. In Dubai for example, a number of economic and legal scholars have advised establishing an entity to guarantee property loans. This Mortgage Guarantee Corporation can be established as a private-public partnership and the funded by public entities, insurance companies, banks and by private investors and non-bank financial institutions.⁷⁴⁵ However, in some Gulf countries loan or mortgage insurance has been provided by the banks or financial providers as a product or

⁷⁴⁴ Nasser Saidi. (2009) *Housing Finance & Advantages of EMGC*, Economic Workshop No 6: Housing Finance. http://www.difc.ae/sites/default/files/ews6_0.pdf

⁷⁴⁵ Nasser Saidi.(2011) *Building Mortgage Markets for a Revival of GCC Real Estate*. Speech at 'Arab Real Estate Environment Post Global Economic Downturn' Conference Dubai 16-17 March, 2011

service to their clients in the cases of default or death subject to the terms and conditions of an insurance policy.⁷⁴⁶

7.5. Inconsistency in the Valuation Process

In order to have a safe and healthy mortgage market, the value of the property should reflect the actual price of the property. The mortgage lenders usually want to be in a safe situation when they provide a mortgage to a client; they require an evaluation of the property from a qualified valuer. Some mortgage lenders require two independent valuers, where each real estate valuer should be qualified and reliable in order to make sure that the price of the property reflects the actual price.

The property valuations in the Arabian Gulf region face some vagueness where there are no clear local standards by which to evaluate a property. Most of the properties are evaluated based on the value of the land and the location of the property: the value of building itself represents a small portion of the valuation price of the property.

Real estate valuation companies normally identify the price of comparable properties that have been recently sold in the same area and take into account any advantages or features of the property in question. Information on the prices at which properties have been sold are in many countries now publicly available and in some countries it is available on online systems.

Compared with other developed countries, the lack of a Gulf housing market, however, makes it difficult to value houses on a market basis. This requires skillful and experienced real estate valuers to make accurate valuations of the property. One technique commonly used to calculate the actual price of a property is by using rental

⁷⁴⁶ SAMBA financial institution in Saudi Arabia <http://www.samba.com/en/personal-banking/personal-finance/for-saudi-nationals.html> and also see NBK bank in Kuwait also provides the same service http://www.kuwait.nbk.com/personal/loans/loan_insurance_en_gb.aspx

values. Valuing a property by the cost of construction is inadvisable because in the long-term there is no strong relationship between the price of the house and the cost of building it. In an active market, prices can increase much more rapidly than the cost of constructing it and the reverse is true in a depressed market.

In Kuwait, for example, the Ministry of Commerce and Industry has issued a number of conditions for registration in the Ministry as a real estate valuer. To be licenced as a real estate valuer the applicant should have a licence in one of the following activities: buying and selling land and real estate; rental and lease of land and real estate; practicing brokerage; having his office licenced to practice the profession; submitting a certificate of experience in real estate appraisal either from a governmental entity related to the assessment of the real estate or from at least two of the shareholding companies listed on the Kuwait Stock Exchange which falls within the activity of buying and selling real estate.⁷⁴⁷

The real estate valuers in some Gulf countries are well regulated and apply international valuation standards. For example, the Dubai Land Department has established a regulatory arm called the Dubai Real Estate Appraisal Centre. This centre licences the valuation companies and also registers individual valuers.⁷⁴⁸ The valuation process is regulated by the relevant Dubai and UAE Federal Laws, in addition to the two main documents that have been issued by the valuation centre; the Emirates Book Valuation Standards (EBVS) and regulations by the Royal Institution of Chartered Surveyors.⁷⁴⁹ Any valuations (whether by valuation company or

⁷⁴⁷ Kuwait ministry of commerce and industry (in Arabic)

<http://www.moci.gov.kw/StaticShow.aspx?id=438>

⁷⁴⁸ This centre called Taqyeem (means “valuation” in Arabic) was set up in 2009 to regulate the real estate Valuation profession

http://www.dubailand.gov.ae/english/Taqyeem/Valuers_Valuation_Companies.aspx

⁷⁴⁹ trade Arabia. (2014). New valuation regulation for UAE real estate valuers. Jun 17, 2014

http://www.tradearabia.com/news/CONS_260260.html

individual valuer) will be illegal unless conducted by a registered valuer who works at a Licenced Valuation company. The aim of this high standard of valuation regulations is to support improved confidence and to have a transparent and auditable valuation.

Qatar is preparing to issue a new Law to regulate and licence real estate valuations in order to enhance and to improve the real estate sector.⁷⁵⁰ There was a lack of legislation in relation to regulating property valuation and which defines valuation standards in Qatar. The real estate sector was packed with problems resulting from the lack of regulation in this area and was tainted by a lot of uncertainty. There is not enough control or standards to regulate and limit the deterioration of the real estate sector in the future.

The valuation procedures in the region must be addressed so that all market actors have confidence in the valuations of the property in terms of having qualified valuers and consistency in the value of the property. Valuers, as in most developed countries, should be legally accountable for their valuations, in the sense that they could be sued if their valuations were not accurately and properly made.

7.6. The lack of the Regulatory Framework of the mortgage secondary market

In order to develop a stable and effective mortgage secondary market it requires a comprehensive development of a regulatory framework for securities (i.e., those eligible for a lower risk-weighting, for repossession transactions, to be held by insurance companies with higher investment ceilings than the current 20 percent, to be held by pension funds). Also, banks and specialised mortgage companies will need to be placed on a level playing field with respect to permitted leverage ratios. On the

⁷⁵⁰ Francesca Astorri.(2013). *Qatar eyes Law on property valuations*. Arabian business. <http://www.arabianbusiness.com/qatar-eyes-Law-on-property-valuations-487908.html>

other hand, further regulations are required, notably by the regulatory authority of the capital market, regarding the disclosure and listing of these specific instruments, as far as information about the mortgage pool is concerned. The need for any amendments to the Capital Market Regulatory Authority and banking Laws needs to be investigated.

Recently, there have been new regulations added to the Saudi Capital Market Law in order to meet best practice concerning securitisation. An amendment to the Capital Market Law provides the Capital Market Authority with the authority to regulate and licence the establishment of special purpose vehicles (“SPVs”), with separate legal personalities from their founders. Though it is anticipated that these SPVs will be utilised as a securitisation vehicle by real estate financiers, the Saudi legislative amendment does not provide guidance as to the possible uses of such SPVs. The CMA will therefore, at least in theory, have the discretion to specify the permitted uses of SPVs which could be wider than a securitisation vehicle to include, for example, vehicles to establish investment funds or acquisition vehicles for private equity and venture capital funds. The CMA will also need to prescribe the applicable incorporation requirements such as the minimum number of shareholders and foreign ownership restrictions. It should be noted that these SPVs will not be subject to the Companies Law and will be rather be governed by the implementing rules that the CMA will have to issue as a result of the amendment. There is no time frame as to when the CMA will issue such rules.

8. Conclusion

This chapter intended to represent the regulatory framework of current mortgage finance in the Arabian Gulf countries. This chapter also shows the significance of

mortgage finance in emerging markets and how mortgage finance affects positively the economies of emerging countries.

This chapter intended to represent the challenges facing mortgage markets developments in the Arabian Gulf countries. Inefficient Property Registration Procedures and a general lack of mortgage loans in the region (which is not regulated yet by the central banks) are considered the main challenges that face the development of the mortgage market in the region.

The other challenges that are facing the Gulf real estate market is the lack of sufficient property rights protection that includes the limitation of ownership rights. Ineffective foreclosure and repossession procedures is considered as a major stumbling block and cannot serve the establishment of a modern mortgage market in the Gulf region, where mortgage providers must have the authority to repossess the property directly—under court supervision—in order to dispose of them on the market again as soon as possible.

The lack of transparency in relation to property rights and the right of residence is one of the challenges in Gulf real estate market, where there are quite a number of property transactions that are still conducted outside the formal registration system.

Another challenge that faces the development of the mortgage market in the region is a weak or non-existent financial information infrastructure, because of a lack of credit bureaus in the region and because there is a shortage of long-term finance secured financial instruments. The lack of institutions that provide insurance against mortgage defaults by individuals is also a challenge that faces the Gulf real estate mortgage market.

Another policy initiative that should support the set-up of the mortgage market in the Arabian Gulf region is by the creation of a Mortgage Guarantee Corporation. The inconsistency in the property valuation process of the property value which should reflect the actual or the market price of the property is one of the added challenges of the mortgage market. The lack of the Regulatory Framework of the mortgage secondary market is another stumbling block.

Currently only two of the Arabian Gulf countries have introduced mortgage finance in the region with a complete mortgage regulatory framework to regulate mortgage finance and to regulate the housing market. The Dubai Mortgage Law No 14 of 2008 and the Saudi mortgage law has introduced to reflect the expectations of an international marketplace and to use as a security of debt.

In Dubai, The Mortgage Law also supported many residents in Dubai to move from rented properties to buy their property once the mortgage market began to open up and accommodate their requirements. Dubai's Mortgage Law only regulates the contracting parties and the rights and duties of the contractual parties and the legal effect of mortgaged property without regulating the mortgage market as a whole. The essential aim of the Mortgage Law should be to safeguard the mortgage lenders as a security of debt and to protect the mortgagee. The Mortgage Law as mentioned before should regulate all related activities in the real estate sector in order to have a transparent and a healthy mortgage market.

The Saudi Arabian government has enacted a bundle of Laws aimed to regulate mortgages in the Kingdom. The authorities have enacted five complementary Laws;

each Law was passed by Royal Decree in 2012.⁷⁵¹ Only one of these Laws specifically relates to mortgages. Two of the said Laws address financing beyond just real estate. One of the said Laws deals with the enforcement of judgments and has created a new department of enforcement judges dedicated to hearing enforcement disputes and insolvency actions and provides for other instruments of execution in the court system. The said Laws had added some new developments with a consolidation of existing principles. Three of the five Laws was completed and implemented on the 24th Feb 2013. The Enforcement and the Registered Real Estate Mortgage Law was enacted in August 2014.⁷⁵²

The other Gulf countries (Bahrain, Kuwait, Qatar and Oman) did not start to work on the establishment of the mortgage Law in their territories. Some of these countries have just started to do studies and research on the mortgage Law and how it may affect the development of the real estate market and the financial sector alike.

⁷⁵¹ The Real Estate Mortgage Law (Royal Decree No. M/49 dated 13/8/1433 Hij ri (corresponding to the 3rd July 2012) was published in the national official gazette on 31 Aug 2012

⁷⁵² Deloitte, (2013) *Saudi mortgage Laws, A formula for a well- functioning market?*

http://www.deloitte.com/assets/Dcom-MiddleEast/Local%20Assets/Documents/Industries/Real%20Estate/me_real_estate_mortgage_whitepaper_072013.PDF

Chapter 7: The legal framework of Foreign Direct Investment (FDI) **in the Gulf's real estate sector.**

1. Introduction:

As the Arabian Gulf states try to diversify their national returns from oil to reduce their dependence on oil revenues, they have begun employing their Sovereign Wealth Funds (SWFs) in international markets as vehicles to secure risk-adjusted returns and to achieve inter-related economic and political objectives. The Arabian Gulf states envisage transforming their economies to become world-class industrial and commercial centres and most of them have made significant efforts to become financial hubs to engage with other financial actors outside the region. Based on this, the direct investment by domestic Sovereign Wealth Funds (SWFs) and foreign investors has been a major contributor to the advancement of the Arabian Gulf economies.

SWFs have existed for more than 60 years. The first SWF was the Kuwait Investment Authority (KIA), which was established in 1953 to invest Kuwait's oil revenue surpluses for future use and reduce its reliance on single nonrenewable resources.⁷⁵³

The Abu Dhabi Investment Authority (ADIA) is widely recognised as the largest among its peers. The Gulf Sovereign Wealth Funds (including Abu Dhabi, Dubai, Kuwait Qatar and Saudi Arabia) are among the top ten SWFs in the world and are considered the largest such funds in the world, with assets amounting to US\$1.783 trillion - roughly 34% of the total global SWFs.⁷⁵⁴

⁷⁵³ Lu, Kevin W., Gero Verheyen, and Srilal Mohan Perera, eds.(2009) *Investing with confidence: understanding political risk management in the 21st century*. World Bank Publications. p.61

⁷⁵⁴ The second largest SWF in the world is the Abu Dhabi Investment Authority with assets under management of \$773bn billions. The Saudi Arabia sovereign wealth funds (various funds including Saudi Arabian Monetary Authority) came as the 4rd largest SWF with assets under management of

Most of the Gulf's Sovereign Wealth Funds were hit by the financial downturn in 2008; however the Gulf SWF's remain important and wield considerable power on the international investment stage. The Arabian Gulf countries (like many other countries) have employed their Sovereign Wealth Funds as a cushion against the economic slump and unemployment and low financial liquidity. The Sovereign Wealth Funds of the Gulf countries have contributed to the creation of the Gulf Cooperation Council Development Fund to which is meant to reduce the impact of the financial downturn in the region due to fear of extending Arabian political instability to the Gulf countries.

The Arabian Gulf-based SWFs form a significant size of the national economic policy⁷⁵⁵ of the Arabian Gulf state. However, regional SWFs appear to be looking at international markets with caution and they have invested less in international markets in recent years. The Gulf's SWF's benefit from international investment opportunities and maintaining more balance in their portfolios. The new economic policies of the Gulf region are partly driven by international forces such as the international financial crisis of 2008 and partly by local political turmoil such as the Arab Spring. It is becoming evident that the Gulf's SWFs are redirecting a portion of their funds from international investments back into the region by investing and boosting the domestic private sector by establishing a number of investment entities and authorities through which to channel their funds and investments. Most of the Governments of the Gulf

\$671 bn. The Kuwait Investment Authority came in 5th largest SWF with assets under management of \$592bn. The Qatar Investment Authority came in the 9th largest SWF with assets under management of 60 \$billions. The Investment Corporation of Dubai came in 11th largest SWF with assets under management of \$183bn. See SWF institute.(2015). Largest Sovereign Wealth Funds by assets nder management. <http://www.swfinstitute.org/sovereign-wealth-fund-rankings/> (accessed at 11/Sep/2015)

⁷⁵⁵ Such as the economic diversification, economic development, macroeconomic stability

countries have intervened in their domestic market and private sectors by providing them with liquidity and/or investment to boost their productivity.⁷⁵⁶

The current emphasis of the Gulf's SWFs is local investments via public private partnerships in different domestic sectors. The key focus of investment in the region is in infrastructure, tourism, education and banking. However real estate investment continues to be one of the strongest ongoing trends of the regional SWFs, which invested around \$23.981 billion in real estate as of November 2013.⁷⁵⁷ The Gulf's SWFs are also employed in domestic services through their investment arm in order to indicate that the Arabian Gulf states are using their SWFs to promote real economic diversification.⁷⁵⁸ The SWFs are employed to set a platform to establish their own financial centres in order to attract international investors to invest in their domestic markets, where SWF investments are in the most important sectors, such as banking, infrastructure, tourism, education, transportation and real estate.⁷⁵⁹

Dubai and Qatar, for example, have employed their SWFs to invest in leading global financial institutions in order to obtain financial expertise to support their national development objectives. The city of Dubai, for example, has purchased stakes in a number of well-recognised financial organisations such as the London Stock

⁷⁵⁶ The relationship between the state and the private sectors are interconnected via the personal links between individual businessmen and individual state officials. See Niblock, Tim, and Monica Malik. (2007), "The political economy of Saudi Arabia". Routledge.p21

⁷⁵⁷ Bernardo Bortolotti, Veljko Fotak and William Megginson (2009). *Sovereign Wealth Fund Investment Patterns and Performance*. Notadi Lavoro
<http://www.feem.it/userfiles/attach/Publication/NDL2009/NDL2009-022.pdf>

⁷⁵⁸ This is an example of the investment arms of the Gulf's Sovereign Wealth Funds in their domestic markets. Mubadala Development Comp, Abu Dhabi Investment Authority (QIA), Kuwait Investment Authority (KIA) Abu Dhabi Investment Authority (ADIA), Dubai International Capital LLC, Dubai International Financial Centre (DIFC). International Petroleum Investment Corp. Saudi Arabia Public Investment Fund. Dubai Financial LLC. Investment Corporation of Dubai.

⁷⁵⁹ see Niblock, Tim, and Monica Malik. (2007), "The political economy of Saudi Arabia". Routledge.p.21

Exchange, the Swedish stock exchange (OMX) and NASDAQ⁷⁶⁰. Qatar has also taken a considerable stake of 15.1% in the London Stock Exchange for similar reasons.⁷⁶¹ Likewise, Kuwait and Qatar have used their respective SWFs to jointly enter into the Chinese financial sector; they have purchased equities in different well-recognised financial companies such as the Chinese Industrial and Commercial Bank⁷⁶² and the Agricultural Bank of China.⁷⁶³ Similarly, the Qatar Financial Centre (QFC), following the Dubai International Financial Centre (DIFC), restructured their legal and supervisory framework to meet international best practices. Both financial hubs (QFC and DIFC) offer foreign companies the chance to enter national markets with full foreign ownership in addition to zero tax liabilities on foreign profits.

Generally, in the Middle East region, there have been a number of political and economic factors considered stumbling blocks to the development of a well-established financial centres in the region. For instance, Beirut was originally considered as the region's financial centre for offshore banking but the outbreak of the Lebanese civil war in 1975 caused Beirut to lose this status; whereupon, Bahrain became the hub for offshore banking in the region in the 1980s. However, as with Lebanon, the conflict and uncertainty in the Gulf region associated with the Iran-Iraq war in the 1980s and the Arabian Gulf War in the 1990s, and with the recent domestic political unrest, contributed to removing Bahrain as the financial gateway for wealthy

⁷⁶⁰ is an American stock exchange. It is the one of the largest stock exchange in the U.S. The exchange platform

⁷⁶¹ "Dubai, Qatar hold key to LSE's Future," Emirates 24/7, 1 July 2011 <http://www.emirates247.com/business/economy-finance/dubai-qatar-hold-key-to-lse-s-future-2011-07-01-1.405350>

⁷⁶²Dyer, Geoff. (2006). "Kuwait and Qatar to take ICBC stake," The Financial Times, 24 September 2006. <http://www.ft.com/cms/s/0/891b2580-4c32-11db-90d2-0000779e2340.html#axzz3HMK5EQ12>

⁷⁶³ Agricultural Bank to receive Qatar and Kuwait Investments," Asian Banking & Finance, 22 June 2010. <http://asianbankingandfinance.net/markets/news/agricultural-bank-receive-qatar-and-kuwait-investments>

regional and international clients.⁷⁶⁴ Thereafter, in mid-2000s, the government of Dubai established the Dubai International Financial Centre (DIFC), to become the main site of financial activity in the MENA region. Currently, however, Dubai is plagued with a massive debt that could remove it as the leading financial hub in the region.⁷⁶⁵ Dubai's experience paved the way for Qatar to launch the Qatar Financial Centre (QFC) - an opportunity to eclipse other regional aspirants to become the leading financial hub in the region. Abu Dhabi, Kuwait and Saudi Arabia also have aspirations to become financial centres. Saudi Arabia, which is the leading economy in the region, is considered a competitor to the QFC and the DIFC and has recently created its own financial centre.⁷⁶⁶

2. Explaining an International Financial Centre

The financial centre has been existed throughout history from ancient nearly legendary, such as Babylon, Samarkand, Constantinople, Marrakech or Timbuktu through to London, New York, Paris, Tokyo or Shanghai.⁷⁶⁷ International financial centres are considered to be a channel for international, national and regional financial participation. A financial centre is usually a city or a district that is a home to a large number of internationally significant banks, stock exchanges and business, for instance New York, London, Hong Kong and Singapore which offer a highly developed commercial and communications infrastructure and also offer several services that serve clients' needs through a good regulatory and legal system in

⁷⁶⁴ Wilson, Rodney. (1995). 'Economic Development in the Middle East'. *Routledge Studies in Development Economics*.

⁷⁶⁵ Kerr, Simeon. (2010) *Dubai Fights for finance sector*, "The Financial Times, 9 June, 2010. <http://www.ft.com/cms/s/0/f7d581c6-7426-11df-87f5-00144feabdc0.html%23axzz17u6kf4oI>

⁷⁶⁶ See "a bouquet of desert flowers." *The Economist*, 13 Sep 2007. <http://www.economist.com/node/9753196>

⁷⁶⁷ Zyen. (2005). 'The Competitive Position of London as a Global Financial Centre' <http://www.zyen.com/PDF/LCGFC.pdf>

addition to technological environments that serve clients' needs.⁷⁶⁸

In fact there are two different types of factors that encouraged participants to choose a place of their business in a specific financial centre. The first type is that related to business such as the availability of skilled and well-trained workforces and the flexibility of the labour markets in the country, which are considered as one of the main factors that encourage foreign investors to choose the home of their business. The regulatory environment and the accessibility to customers and to other international financial centres is also considered as an important factor that support the decision of the foreign investors to choose their place of their business. The availability of good business infrastructure, government responsiveness, Corporate Tax Regime, a fair operational cost, accessibility to Suppliers of Professional Services. The other type of factors that encourage participants is the quality of life factors such as the transportation, health sector, culture and language, quality and quantity of commercial and residential properties, personal tax regime. All of these factors considered as a foundation stone that should be available to support the establishment of any financial centre.

A number of Gulf countries have used their Sovereign Wealth Funds to develop the foundation of their own financial centres. The Gulf region needs certain prerequisites to generate a good investment climate in order to become a financial centre and to compete with other financial hubs around the world.⁷⁶⁹ The first aspects are human capital and physical facilities, which are currently considered to be a challenge for the

⁷⁶⁸ Ali, Asim, and Shatha Al-Aswad.(2012) "Persian Gulf-based SWFs and Financial Hubs in Bahrain, Dubai and Qatar." *World Economics* 13, no. 3. p.109-126.

⁷⁶⁹ Ibrahim F. Shihata, (1988) *Multilateral Investment Guarantee Agency and Foreign Investment*, pp.8-13

Gulf region. The other aspect is to possess a business environment with a regulatory framework, and a good administration system in the host country that deals with foreign investors and the settlement of investment disputes.

The other important aspect that needs to be looked at is the institutions which are in charge of fostering political stability in the host country, where there is political turmoil across the Gulf region, such as that in Bahrain, Saudi Arabia and Kuwait which may affect the foreign investors' decision to invest in the region in one way or another.⁷⁷⁰ Market accessibility is also considered to be one of the elements key to a competitive financial centre.⁷⁷¹ General competitiveness is also considered a key factor to establish a healthy financial centre, but the level of competitiveness currently varies from place to place in the Arabian Gulf region. The recent global financial crisis and political unrest (the Arab Spring) has reduced the attractiveness of foreign investment in the MENA region. The Arabian Gulf countries have to consider challenging elements and develop new policies in order to overcome these challenges and to set up entirely new financial centres in the region with a good business environment, a well-established regulatory framework, and an excellent judicial system in order to deal with the settlements of investment disputes. The Arabian Gulf countries need to overcome these challenges in order to establish a financial centre and to compete with other international financial centres.

3. Rationale for Financial Centres in the Arabian Gulf States

As the Arabian Gulf countries have driven to diversify their economies from oil and

⁷⁷⁰Peterson, J. E. "Turmoil in the Arabian Peninsula." Foreign Policy Research Institute FPRI E-Notes 12 (2011). Also see. Mohammad AlRumaihi.(2014) *Political turmoil in Kuwait*. Gulf news. <http://Gulfnews.com/opinions/columnists/political-turmoil-in-kuwait-1.1358808>

⁷⁷¹ Daniel D. Bradlow and Alfred Escher. (1999) legal aspects of foreign direct investment. Kluwer Law international. pp27-35

gas, by employing their own SWFs as a tool to achieve their economic and political objectives, their vision has been to change their economies into world class industrial, commercial, insurance and, in some cases financial hubs (such as Bahrain, Dubai, Qatar, among some others) to engage with other international financial actors.⁷⁷² In the case of the Arabian Gulf states, the purpose of respective financial hubs in the region is to attract multinational enterprises and international financial service corporations to support the national financial sector and, consequently, national economic development.⁷⁷³ The other purpose of the financial hubs is part of a wider investment and development strategy and to facilitate the participation of companies and other financial enterprises and to diversify economies and create jobs to develop the national economy of the Gulf countries.⁷⁷⁴

There is competition in the Arabian Gulf region to set up financial centres, which has resulted in specialty financial boutiques.⁷⁷⁵ For example, Bahrain focuses on Islamic Finance and other Islamic finance tools while Dubai focuses on investment and private banking and Qatar takes has attempted to become an essential player for insurance and asset management in the region.⁷⁷⁶

Saudi Arabia, intends to establish a number of economic cities under the supervision and authority of the Saudi Arabian General Investment Authority (SAGIA). In Saudi Arabia there are four economic cities that are in the development stage: the first of

⁷⁷² Legrenzi, Matteo and Bessma Momani (editors). *Shifting Geo-Economic Power of the Gulf: Oil, Finance and Institutions* (Ashgate Publishing, 2011).

⁷⁷³ Fasano, Ugo, and Zubair Iqbal. (2003). *GCC countries: from oil dependence to diversification*. International Monetary Fund.

⁷⁷⁴ Ali, Asim, and Shatha Al-Aswad. "Persian Gulf-based SWFs and Financial Hubs in Bahrain, Dubai and Qatar." *World Economics* 13, no. 3 (2012): 109-126.

⁷⁷⁵ Fasano, Ugo, and Zubair Iqbal. *GCC countries: from oil dependence to diversification*. International Monetary Fund, 2003.

⁷⁷⁶ Ali, Asim, and Shatha Al-Aswad.(2012) "Persian Gulf-based SWFs and Financial Hubs in Bahrain, Dubai and Qatar." *World Economics* 13, no. 3. p,109-126.

these cities is the King Abdullah Economic City (KAEC), located between the cities of Makkah and of Al-Madinah and the commercial hub of Jeddah. KAEC covers some 168-180 square kilometers, and also comprises residential complexes and a resort district. It has the objective of becoming a regional transshipment centre. The city comprises a seaport, expected to be among the world's largest on completion.

The Knowledge Economic City is the second economic city in the kingdom. It is situated in Al-Madinah city with an objective of being the regional hub for the knowledge and information market.⁷⁷⁷ The third economic city is the Prince Abdulaziz bin Mousaed Economic City and is located in Hail and spread over 156 square kilometers. This economic city is intended to be a land-based transport, logistics and tourist centre.⁷⁷⁸ The fourth economic city is Jazan Economic City, intended to be another all-inclusive city similar to KAEC; this city will have its own desalination plant in addition to a power plant.⁷⁷⁹

It is worth mentioning that there is no clear agreement between the Arabian Gulf countries on the identification or specialisation of their financial centres. However, the rationale for financial centres in the Arabian Gulf states will positively affect the whole region. In other words, the comparative advantages of an advanced financial centre in the region could lead to specialisation between the Gulf member states; thus, the competitiveness of the financial centre in one region could be positive with several benefits for the region as a whole. A good example of this is that Qatar, Bahrain and Dubai, which are all considered financial centres in the Gulf region, have not engaged in competitive sectors put each country has concentrates in different

⁷⁷⁷ King Abdullah Economic City (KAEC) <http://www.kaec.net/>

⁷⁷⁸ Prince Abdulaziz Bin Mousaed Economic City (PABMEC) in the Kingdom of Saudi Arabia <http://www.pabm-ec.com/>

⁷⁷⁹ Jazan-Economic-City.com'. 2014. InternetCont Group - internetcont.com. Accessed October 27. <http://www.jazan-economic-city.com/>.

sectors. The specialisation of the Gulf countries' economies can explain their attractiveness as a financial hub for investors through cooperation in the region. Qatar, for example, is considered a major oil and natural gas exporter; in contrast, Dubai is a diversified service-based economy, based on commerce, residential and commercial construction, and its sizable tourist industry. Similarly Bahrain remains a competitive player in the area of Islamic Finance and banking, insurance and reinsurance activities. As a result, some of the Arabian Gulf countries have employed their SWFs to establish financial centres and issued many policies to encourage international and multinational entities to enter and to establish their headquarters in their countries.

4. The main factors that encourage foreign investors to invest in the region.

Generally, foreign investors invest abroad for several reasons. One of the common motivations is to expand their market and take advantage of regional free trade areas and customs unions.⁷⁸⁰ Foreign investors typically expect a higher rate of return than from domestic investments because the commercial and non-commercial risks of going abroad are higher.

The main factors of foreign investment decisions can be conveniently classified into macro and micro strategies. The macro determinations, which closely follow the theories of corporate investment behavior, emphasise the importance of the size and the growth of the host market.⁷⁸¹ In addition to there are factors such as prices, interest rate profitability, incentives that have been offered by the host countries such as tax exemption and favorable property ownership and the level of protection afforded by the host country to encourage foreign investors to invest in a country.

⁷⁸⁰ Daniel D. Bradlow and Alfred Escher. (1999) legal aspects of foreign direct investment. Kluwer Law international. pp27-35

⁷⁸¹ as given by the level of gross domestic product

Most of the motivations that encourage foreign investors to invest overseas are primarily economic and entrepreneurial considerations. However, international foreign investors have to know the rules to establish, operate and secure their business overseas. The legal dimension relates to how they can protect themselves against possible risks as it is normal that there are commercial risks associated with foreign investments which can be divided into macro-economic, political, commercial and other specific risks.⁷⁸²

From a legal point of view, the non-commercial risks of foreign investment in the host country can be summarised into four major risks: the first is related to the process of establishing foreign investments, where in many cases the approvals and monitoring relating to the necessary licences is not transparent in the host country. This type of risk occurs where the written Laws and regulations of the host countries do not conform with the real practices this may result in corrupt activities which may take place in various forms at the different agencies which are in charge of granting approvals, licences and incentives to international foreign investors.⁷⁸³

The second type of non-commercial risks are related to the investment climate in the host country being unstable; where the administrative authorities rapidly change (in an unpredictable way) which may adopt new policies that affects the foreign investment incentives including tax rates, conditions of export producing zones, import duties and disguised administrative costs.

⁷⁸² The macro-economic risks address the following: volatility of exchange rates, devaluation of the host country currency, occurrence of the recession of inflation. Political risks concern the possibility or revolutionary turmoil, civil unrest and a complete change attitude towards foreign investors in the host country. Commercial risks are the possibility of higher costs, smaller turnovers and smaller profit that initially expected.

⁷⁸³ Daniel D. Bradlow and Alfred Escher. (1999) legal aspects of foreign direct investment. Kluwer Law international. pp27-37

The third type of risks can be related to the banking system of the host country, which may not be well established or well developed, where the procedures for wiring and exchanging money may be too difficult; there may be no imposition of exchange controls and repatriation restrictions may be unforeseeable.

Finally, one of the most important risks that may face the foreign investors is if the existing judicial system in the host country is not effective or it is not independent and reliable when it comes to the enforcement of contractual and property rights.⁷⁸⁴

Another significant risk that foreign investors need to be aware of regards the political stability of the host country.⁷⁸⁵ In many cases the new administration of the host country may not honour the foreign investment contract which was concluded with the old administration, so this may deprive an investor of existing contractual rights. Radical political changes that may occur in the host country and may even lead to nationalisation, outright and creeping expropriation and civil unrest.⁷⁸⁶

High returns are the main driver of foreign investment; the other driving force is the diversification of investment, which can be achieved through portfolio risk reduction.⁷⁸⁷ The level of transparency, which assists the foreign real estate investors' analysis of new real estate markets, increases the level of transparency and raises the level of financial or market reporting.⁷⁸⁸

⁷⁸⁴ Lu, Kevin W., Gero Verheyen, and Srilal Mohan Perera, eds.(2009) *Investing with confidence: understanding political risk management in the 21st century*. World Bank Publications.

⁷⁸⁵ Lu, Kevin W., Gero Verheyen, and Srilal Mohan Perera, eds.(2009) *Investing with confidence: understanding political risk management in the 21st century*. World Bank Publications.p115

⁷⁸⁶ Petrochilos, George A.(1989). *Foreign direct investment and the Development Process: the Case of Greece*. Avebury.p12

⁷⁸⁷ Gordon, J. (2003). The big picture: Global economics and property markets. Presented at IPD European Property Strategies Conference, Wiesbaden, 9.

⁷⁸⁸ Dunning and Lundan trace FDI theories and hypotheses as back as 1930's, and they argue that until 1960's, there was no established theory of FDI, as most hypotheses focused only on explaining particular types of FDI in a positivistic manner. See Dunning, John H., and Sarianna M. Lundan. *Multinational enterprises and the global economy*. Edward Elgar Publishing, 2008.

In order to attract foreign investors, the host country should create a good investment environment and provide attractive incentives such as fully-protected ownership, tax holidays, a well-developed banking system, a good judicial system and political stability in the host country in order to attract foreigners. Government policies can influence investors by changing the relative attractiveness of the regulations for the host country to foreign national investors.⁷⁸⁹

This thesis focuses on the main general element that encourages foreign investors to invest in the Arabian Gulf. This element is the openness to and restrictions on foreign investment in the region. Another key investment element for foreign investors to consider is the right to have private ownership and establish foreign investment. In addition, the level of protection of property rights and the expropriation and compensation regulations in the region are considered an important factor that encourages foreign investors.

Another important factor that raise the confidence of foreign investors is the transparency of the regulatory system in the host country, in addition to the level of corruption and risks to political stability in the Arabian Gulf countries. The chapter will illustrate the above mentioned factors in the Gulf region and what the initiatives are that have been taken by the Gulf countries to boost the confidence of foreign investors.

4.1. The openness to, and restrictions upon, international foreign investment in the Arabian Gulf region:

In all the Arabian Gulf countries, the liberalisation of foreign investment restrictions has been slow. At the beginning of the 2000s many countries in the region began

⁷⁸⁹ Pepper, William. 1991. 'Foreign Capital Investment in Member States of the Gulf Cooperation Council'. Arab Law Quarterly 6 (3). p33-63.

liberalising foreign investment regulation, and Qatar, Oman, Kuwait and Saudi Arabia currently lead the way with such reform. In the region, there have been significant constraints on foreign investment regulation which have included full foreign ownership restrictions outside free trade zones and restrictions on foreign investors investing in certain sectors (mainly oil, banking, and insurance). There are also some restrictions on both national and foreign companies competing in key sectors (mainly infrastructure, energy and manufacturing) with an imprecise and inconsistently applied regulatory framework.

In recent years, as never before, the inflow of financial liquidity into the Gulf region from different oil-based derivatives, in addition to the availability of experienced labour, has meant economic development in the Arabian Gulf region has been accompanied by comprehensive government restructuring and reforms. Governments across the Gulf region are beginning to apply new legal reforms that will liberalise their economies. The governments of the Gulf countries are moving towards greater regulatory and monitoring roles and promoting the role of the private sector, including small and medium enterprises in addition to the role of foreign investments.⁷⁹⁰ The growing level of financial liquidity in the region is increasingly being invested back into the Gulf as both governments and entrepreneurs see the need for regional investments. According to Global Insight (2009), around \$2 trillion has been invested in the development of the Gulf economies in the last ten years.⁷⁹¹

Recently, the Arabian Gulf countries have been trying to diversify their economies away from natural resources by utilising the concept of economic free zones to attract

⁷⁹⁰ Hvidt, Martin. (2013). "Economic diversification in GCC countries: Past record and future trends."

⁷⁹¹ Hvidt, Martin. (2013). "Economic diversification in GCC countries: Past record and future trends."

foreign capital and resources.⁷⁹² Essentially economic free zones are geographical areas, subject to special rules and regulations, which seek to attract foreign companies by easing restrictions on establishment of companies and by offering various tax and business incentives.⁷⁹³ There are three main elements that make free zones attractive for companies. The first of these elements are financial incentives: the free zones in the Gulf region offer exemptions from corporate and personal income tax, as well as from customs and commercial levies that might exist elsewhere in the country. The second element involves reducing business barriers: free zones can offer up to 100 percent foreign ownership, as well as minimal red tape and quick, hassle-free approval procedures. The third element is supportive infrastructure: successful free zones offer modern, state-of the art infrastructure in an attractive working environment.⁷⁹⁴

The GCC alone is home to more than 60 functioning free zones, of which around 20 are in the UAE. The Jebel Ali Free Zone Area (JAFZA), established in 1985 in the country, is one of the largest economic free zones in the world.⁷⁹⁵ Starting from a base of 19 companies, it now accommodates approximately 6,000 companies from over 110 countries throughout the world.⁷⁹⁶ Meanwhile, the Qatari Cabinet Resolution 6 of 2006 established the first free zone in Qatar which will be comprised of 10 square km.⁷⁹⁷ The Dubai International Financial Centre (DIFC) and the Qatar Financial

⁷⁹² Pepper, William F. (1992). "Foreign Capital Investment in Member States of the Gulf Cooperation Council Considerations, Issues and Concerns for Investors: Part 3." *Arab Law Quarterly*. p: 33-63.

⁷⁹³ Fasano, Ugo, and Zubair Iqbal. (2003). GCC countries: from oil dependence to diversification. International Monetary Fund.

⁷⁹⁴ Fasano, Ugo, and Zubair Iqbal. (2003). *GCC countries: from oil dependence to diversification*. International Monetary Fund.

⁷⁹⁵ Rao, Kishore. (2000). "Free zones in the Middle East: Development patterns and future potential." Trade policy developments in the Middle East and North Africa 2.p 245.

⁷⁹⁶ Meyer-Reumann, Rolf. (1991)"*The Jebel Ali Free Zone in the Emirate of Dubai: A Commercial Alternative after the Gulf Crisis*." *Arab Law Quarterly*. p 68-78.

⁷⁹⁷ The Qatari free zone established with the activity of Small and medium clean industries, medical industries, maritime industries and high-end industries; Electricity and desalination plants, telecommunication and data technical industries; Service providers, accounting, auditing, tax, legal and

Centre (QFC) are examples of financial free zones, hubs for commercial and investment banks and other financial institutions providing services including underwriting, private equity and foreign exchange trading. Typically, these financial free zones offer licensing services for wholesale and offshore operations and services such as information provision and visa application assistance.

The next section provides an overview of the economies of the Arabian Gulf countries, in terms of their economic structure and investment regulations, as well as the overall taxation regimes and key incentives as well as the main incentives as seen by major international research and advisory companies such as EIU and others.

4.2. The right to private ownership and establishment of foreign investments in the Arabian Gulf countries.

Qatar:

Law No 5/2002 of the Qatari Commercial Companies Law controls and regulates the establishment of all private business concerns in the state of Qatar. Foreign investments may occur in all sectors of the national economy provided that there is one or more Qatari national as a partner with shares not less than 51% of the total capital of the company, and the establishment of the company should be in accordance with the provisions of the Qatari Commercial Companies Law.⁷⁹⁸ The Minister of Commerce and Industry has the authority to issue a decree allowing foreign investors to establish a company and to exceed 49% of shares up to 100% of the project's capital in selected sectors.⁷⁹⁹ However, foreign investors still have some

consulting; Financial and investment consulting; Company head offices and business management offices; Media, entertainment and tourism businesses; and Cargo, transit and storage businesses.

⁷⁹⁸ Qatar. Law No. 13 of 2000. Qatar investment Law regulating the investment of foreign capital in economic activities.

⁷⁹⁹ Qatar. Law No. 13 of 2000. The sectors including agriculture, industry, healthcare, education, tourism, exploitation and development of natural resources, energy

restrictions in investing in some other selected sectors such as the banking sector, commercial agencies, insurance companies and the purchase of real estate.⁸⁰⁰

However, as a part of Qatar's national vision 2030, the government has continually tried to encourage and support foreign investment and attract foreign expertise to their country. Based on this, Qatar has recently amended Law No 13 of 2000, which regulates foreign investment in Qatari economic activities, by issuing the new Law No 1 of 2010. This Law has set out sectors in which foreign investors are allowed to invest and where the Law allows them to own up to 100% of the capital of the company in selected sectors.⁸⁰¹

To support the national vision, the Ministry of Business and Trade (MBT) has established the Investment Promotion Department (IPD) to promote foreign investment in Qatar. This new department has full authority to grant approval to foreign applicants to invest in the permitted activities in selected sectors. The said department also has a private role in smoothing the progress of investment procedures through communicating and coordinating with other governmental departments and related authorities.⁸⁰²

In relation to real estate ownership in Qatar, Arabian Gulf citizens have the right to own a total of three real property assets in designated residential areas, provided that, in total, the properties do not exceed three thousand square meters. In addition, Gulf citizens are permitted to own real property within certain zones considered

⁸⁰⁰ Qatar. Law No. 13 of 2000 article 2 part 3

⁸⁰¹ Consultancy Services; Technical Services; IT Services; Cultural Services; Sports Services; Entertainment Services; Distribution Services; and Any other field added by virtue of a resolution taken by the cabinet.

⁸⁰² In relation to each of the permitted activities to include without limitation; Ministry of Energy and Industry in relation to energy and industrial activities Ministry of Education in relation to educational activities Supreme Council of Health in relation to health care related activities General Tourism Authority in relation to tourism activities. See more at: <http://www.tamimi.com/en/magazine/Law-update/section-6/may-4/qatar-boosts-foreign-investment-application-machinery.html#sthash.EcVf0GjV.dpuf>

“investment areas.”⁸⁰³

Prior to 2004, non-Qatari nationals (non-Arabian Gulf nationals) were not allowed to own property in Qatar. However, Law No 17 of 2004 allows non-Qatari nationals to own residential property in select projects in designated investment areas. Based on this Law, foreign nationals are allowed to own interests as a freehold title, but the properties should only be inside designated areas such as the Pearl-Qatar, West Bay Lagoon and the Al Khor Resort Project. In other investment zones, foreign nationals can only hold long-term leaseholds (of up to 99 years) over real estate in these “investment areas.”⁸⁰⁴ This Law also allows foreign nationals (if they own a residential or business property) to have residency permits up to five years without a local sponsor as long as they own the property. Foreign nationals also have the usufruct right over a property for a period of 99 years in investment-designated areas. As an incentive for foreign investors, the ministry can provide real estate to the foreign investor to establish an investment project with a lease for a period of not more than 50 years, which can be renewable for the same period.⁸⁰⁵

Oman:

⁸⁰³ The property in these investment areas can be allocated for many uses, including commercial, residential, industrial and tourism, among others. Currently there are around 18 areas concedes as investment areas. See James R. England.(2012) Real Estate Investing In The Middle East: Foreign Ownership Restrictions In The GCC. *The metropolitan corporate counsel*. <http://www.metrocorpconsult.com/articles/17520/real-estate-investing-middle-east-foreign-ownership-restrictions-gcc>

⁸⁰⁴ James R. England.(2012) Real Estate Investing In The Middle East: Foreign Ownership Restrictions In The GCC. *The metropolitan corporate counsel*. <http://www.metrocorpconsult.com/articles/17520/real-estate-investing-middle-east-foreign-ownership-restrictions-gcc>

⁸⁰⁵ Qatar Law No. 17 of 2004

The Omani Foreign Business and Investment Law issued in 1974 was the first Law issued permitting non-Omanis to engage in trade or business in Oman,⁸⁰⁶ and the Law also states that all foreign and local firms can engage in almost all commercial activities after obtaining a commercial licence from the Ministry of Commerce and Industry (MOCI). In fact, Oman had many severe entry barriers for foreign investors at that time, for example during the 1970s and 1980s the government was not willing to encourage foreign investors; which was reflected in Laws that discouraged foreign capital investment.⁸⁰⁷ The Omani Laws of 1974 and 1978 that govern investment gave priority to national investors with severe discrimination against foreign investors.⁸⁰⁸ These Laws have restricted foreign capital from conducting any type of business in Oman without a licence from the MOCI, in addition there is a high degree of screening of sectoral restrictions and barriers. The business should be conducted by an Omani company with a capital of not less than RO 150,000 and with a foreign share that does not exceed 49% of total capital (at least in certain circumstances the Minister of Commerce and Industry can make a decision to increase foreign ownership up to 65-70%).⁸⁰⁹

During the early 1990s, the government of Oman wanted to integrate its economy into the global economy and put into place legal and economic reforms seeking foreign investment, and reducing legal barriers in order to promote foreign investments.⁸¹⁰ Royal Decree No 102 of 1994 issued the Foreign Capital Investment Law which, with

⁸⁰⁶ And Amended by Decree No. 2/1977 and Decree No. 16/1978

⁸⁰⁷ Gulf Organisation for Industrial Consulting (GOIC). (2001). The Foreign Investment in The GCC States. March 2001. Qatar.

⁸⁰⁸ Gulf Organisation for Industrial Consulting (GOIC). (2001). The Foreign Investment in The GCC States. March 2001. Qatar.

⁸⁰⁹ Article 2 section 1 of the Oman Foreign Capital Investment Law – Oman Sultani Decree 102/94 as amended & with comment on the amendment of this Law by the operation of Oman Sultani Decree 112/2000

⁸¹⁰ The main catalysts for this change of direction have been the drop in oil prices during the 1990s and pressure from the World Bank and International Monetary Fund.

subsequent amendments, liberalised the Omani investment framework and also assigned a special governmental entity to promote Oman to foreign investors. The new investment Law removed all entry barriers and restrictions on local projects together with the removal of ownership boundaries that were in place in most sectors, and also reduced the minimum foreign capital requirements. Furthermore, during the first five years after its establishment, foreign companies could be exempted from corporate tax.⁸¹¹ In general, foreign national companies and individual foreign nationals are not permitted to own land for business purposes in Oman.

In relation to real estate investments in Oman, Arabian Gulf citizens are treated as local citizens and they are permitted to hold freehold title anywhere in the country. Foreign nationals⁸¹² may hold a property freehold title in specific investment zones.⁸¹³ Foreign nationals may acquire properties or undeveloped land for investment purposes in the same ministry (the Ministry of Tourism). If a foreign national purchases undeveloped land, then the purchaser is obliged to construct buildings on the land within a period of 4 years of its purchase, and the landowner cannot dispose of land until the development of the land, or the land owner needs to wait for the four-year period to expire - whichever occurs first.⁸¹⁴ In the case of the landowner failing to develop the land during the aforementioned period, the Ministry of Tourism then has the authority to dispose of the land.

⁸¹¹ Donboli, John H., and Farnaz Kashefi. "Doing Business in the Middle East: A Primer for US Companies." *Cornell Int'l LJ* 38 (2005): 413.

⁸¹² Whether they are natural or corporate persons

⁸¹³ These investment zones are designated by the Ministry of Tourism as Integrated Tourist Complexes (ITCs),

⁸¹⁴ The land owner can grant an extension for that period for big constructions

In addition, subject to the approval of the Council of Ministers, foreign nationals may also hold a long-term leasehold interest in special zones with a leasehold period of not more than 50 years (as a usufruct right), and this lease can be renewable for the same period. If the granted land will be used for the development of the country the amount of land should be proportional with the size of land use. Additionally, any land granted as long-term leasehold will typically restrict the use of the land to a fixed purpose.⁸¹⁵

Kuwait:

Rights to private ownership and establishment are well respected in Kuwait, although foreign nationals have some restrictions in selected sectors.⁸¹⁶ In order to establish a new company, a licence is required from the Ministry of Commerce and Industry (MOCI) and appropriate municipality, and government authorisation is required for any incentives offered for Foreign Direct Investment.

Part of the Kuwait 2035 Plan is to transform the country into a regional financial and commercial hub. The government aim is to diversify the economy by reducing dependence on the oil industry and engaging the national private sector in driving economic activities.⁸¹⁷ The Foreign Direct Investment Law passed in Kuwait under Law No. 8 of 2001 has the objective to encourage, secure, and protect foreign

⁸¹⁵ James R. England.(2012) Real Estate Investing In The Middle East: Foreign Ownership Restrictions In The GCC. *The metropolitan corporate counsel*. <http://www.metrocorpconsult.com/articles/17520/real-estate-investing-middle-east-foreign-ownership-restrictions-gcc>

⁸¹⁶ Foreigners other than Gulf nationals are not permitted to acquire real estate except under certain conditions stipulated in Law No.74 of 1979 concerning the acquisition of real estates by non-Kuwaitis. Pursuant to this Law, Arab and foreign countries may acquire ownership of real estate allocated for the location of their diplomatic missions, and residence of the ambassador and members of such mission provided a decree is issued to this effect by the Council of Ministers.

⁸¹⁷ See <http://www.tamimi.com/en/magazine/Law-update/section-5/september-3/the-new-kuwait-foreign-investment-Law.html#sthash.xZm1V3NO.dpuf>

investments in the Kuwait market. The said Law allows foreign entities to own up to 100% of a Kuwaiti commercial entity where the entity operates only in select financial and industrial sectors.⁸¹⁸ The Kuwaiti foreign investment Law provides many incentives for foreign investors to invest in Kuwait, including real estate incentives in the form of a land grant to establish their investment projects and a tax exemption of up to 10 years.⁸¹⁹

The regulation of Foreign Direct Investment (FDI) in the State of Kuwait under Law No 8 of 2001 ended the existence of the Kuwait Foreign Investment Bureau (KFIB).⁸²⁰ However, the foreign investment Law arguably did not meet the desired objectives that were envisaged at the outset. This was due to the difficulties in establishing a legal entity or in obtaining a licence from the government department. Further, the process of establishing a company and obtaining a licence often takes several months, in addition to the delays in obtaining land grants, due to the non-cooperation of different governmental entities.⁸²¹

Argument took place between Kuwaiti parliament members and members of the government about the lack of validity and ineffectiveness of the foreign investment Law, largely taken up by foreign investors and national private investors and

⁸¹⁸ Such as infrastructure, insurance, hospitals, housing, tourism and entertainment.

⁸¹⁹ These incentives are linked to the proportion of Kuwaiti nationals that are employed. See more at: <http://www.tamimi.com/en/magazine/Law-update/section-5/september-3/the-new-kuwait-foreign-investment-Law.html#sthash.xZm1V3NO.dpuf>

⁸²⁰ Law No. 8 of 2001 Regarding the Regulation of Direct Investment of Foreign Capital in the State of Kuwait. Consequently, the Kuwait Foreign Investment Bureau (KFIB). This is an independence authority established under Law No 8 of 2001 followed the ministry of commerce and industry and chaired by the minister of finance. <http://www.kfib.com.kw/Default.aspx>

⁸²¹ Based on the difficulties in establishing a legal entity or in obtaining a licence from the government department; many foreign investors have to stop pursuing the establishment of their own licence from the Kuwaiti local department many foreign investors instead has put their efforts on doing business in Kuwait through other forms of incorporation (e.g. the use of SPVs within the GCC). The objectives of the foreign investment Law is to attract investment into Kuwait, but the Law has been affected by political turmoil which resulted in many delays in a number of expected projects in Kuwait, which were also designed and aimed to boost economic diversification and foreign investment. See more at: <http://www.tamimi.com/en/magazine/Law-update/section-5/september-3/the-new-kuwait-foreign-investment-Law.html#sthash.xZm1V3NO.dpuf>

government officials. The Kuwait Foreign Investment Bureau wanted to improve the Law after discussing a variety of concerns that face foreign investors. Due to the serious need for changing the old foreign investment Law (Law No. 8 of 2001), the said Law was repealed and replaced by the new Foreign Direct Investment Law No 116 of 2013.⁸²² The objective of the new Foreign Investment Law is to address fLaws in the repealed Foreign Direct Investment Law and to make it easier for investors to obtain a licence in Kuwait and to encourage more direct investment in Kuwait.

As a starting point for improving foreign investment regulation, the government has established a new independent authority called the Direct Investment Promotion Authority “DIPA” as a replacement for the Kuwait Foreign Investment Bureau “KFIB”⁸²³ which has the same authority and power as the KFIB. The new authority will take on all the assets and liabilities assigned to KFIB, which has subsequently been dissolved. Based on that, the Kuwait Foreign Investment Bureau “KFIB” will cease to exist. The objective of the new authority is to attract foreign capital and to promote both foreign and local investment in Kuwait. The new Law is aimed at developing and improving the investment environment in the country. In addition, the said Law’s objective is to facilitate the establishment procedures and to remove the hurdles encountered by investors. The DIPA is keen to implement the new foreign investment Law and believes this is a positive step towards achieving the economic objectives of the 2035 Plan.

First, the new foreign investment Law provides a “One-Stop Shop” for all foreign investors whereby the new authority (DIPA) combines a dedicated governmental department including relevant officials from various government departments in order

⁸²² Kuwait Law No. 116 of 2013 Regarding the Promotion of Direct Investment in the State of Kuwait

⁸²³ was published in the Official Gazette (Kuwait Al-Youm, issue No. 1136)

to licence all foreign applications. This unit's objective is to reduce bureaucratic delays and it deals with the issuance of all licences required for operations, including the issuance of land that is required for foreign investors' projects.

There are other developments and enhancements that have been made to the old foreign investment Law which reduce the time required by DIPA to provide a licence. The new Law obligates the new Authority (DIPA) to respond to a licence application within 30 days of receipt.⁸²⁴ This may ease the process of licensing foreign investors, which could bring Kuwait closer in line with its neighbors.

In relation to foreign ownership regulation over real estate investments in Kuwait, the nation has come to be considered as the strictest among the Arabian Gulf countries. Although Gulf nationals are permitted to own freehold titles in any area in Kuwait for residential purposes, foreign nationals are not allowed to hold any real estate interest except in the form of a contractual lease.⁸²⁵

In relation to foreign companies owned by foreign nationals, it is prohibited for foreign companies to hold freehold title or a long-term leasehold interest in Kuwait.⁸²⁶ However, Foreign Investment Law No. 116 of 2013, which is meant to regulate foreign direct investment, provides that foreign companies have the right to use land parcels and real estate required for the purpose of investment in accordance with the said Law and to the principles and rules established by the board of directors of the Direct Investment Promotion Authority in this regard.⁸²⁷ The Kuwait Foreign Direct Investment Law does not clearly present or specify the types of real estate interest that are meant to accrue for foreign investors. However this Law provides a guaranteed

⁸²⁴Unlike the KFIB who could take up to 8 months to issue a licence,

⁸²⁵ See chapter 3 on foreign ownership in Kuwait.

⁸²⁶ Even if the ownership of the company is commingled with local citizens or Gulf national ownership,

⁸²⁷ See article 27 item 4 of Law No. 116 of 2013 regarding the Promotion of Direct Investment in the State of Kuwait.

right for foreign investors to have or to use the land for their business as long as the business is in operating in Kuwait, instead of having a right “in rem” ownership interest such as long-term leasehold.⁸²⁸

Saudi Arabia

The present economic reforms in Saudi Arabia started in 2000 with the creation of a new administrative structure.⁸²⁹ Central to the government’s plans for economic reform – and to influence the perceptions of international financial institutions concerned with the potential for sustainable development in Saudi Arabia - have been measures designed to attract foreign investments. The Law of Foreign Investment 2000 in Saudi Arabia provides the main framework for governmental attempts to boost foreign investments, but legal changes affecting taxation, capital markets, intellectual property rights and insurance are also important.⁸³⁰

Prior to the 2000 Foreign Investment Law, foreign investment was only permitted in Saudi Arabia if it fulfilled three conditions: (i) undertakings could only be ‘development projects’; (ii) investment had to generate technology transfer; and (iii) there had to be a Saudi partner with at least 25 per cent equity. During that time the application for licences tended to take a long time, except for those in which the government was a partner. Furthermore, foreign companies and individuals, apart

⁸²⁸ James R. England.(2012) Real Estate Investing In The Middle East: Foreign Ownership Restrictions In The GCC. *The metropolitan corporate counsel*. <http://www.metrocorpounsel.com/articles/17520/real-estate-investing-middle-east-foreign-ownership-restrictions-gcc>

⁸²⁹ Aarts, Paul, and Gerd Nonneman. (2005). "*Saudi Arabia in the Balance. Political economy, society, foreign affairs*". New York University Press. P85

⁸³⁰ Niblock, Tim, and Monica Malik. (2007). "*The political economy of Saudi Arabia*". Routledge.

from other Gulf nationals, could not own land or engage in internal trading and distribution activities.⁸³¹

The Law of Foreign Investment in Saudi Arabia has been issued under Royal Decree No. (M/1), dated 5/1/1421H (corresponding to 10/4/2000A.D), and a framework for future legislative and regulatory activities was established by the Law, intended to enhance the country's investment climate and attract capital. This Law gives all foreign investors who have a licence from the authorities the right to establish full ownership of companies (except in certain specific sectors), where previously the Foreign Capital Investment Committee had usually demanded 51 per cent Saudi ownership. In general, all foreign entities now have the right to establish and the right to dispose of interests freely in business enterprises. In addition, foreign entities have the right to engage in all types of business activities in all sectors,⁸³² although the Council of Ministers has the authority to set out exceptions in some sectors for state monopolies and Saudi nationals only.⁸³³

The Saudi Council of Ministers issued a resolution - No 20 of 2000 - to establish the Saudi Arabia General Investment Authority (SAGIA);⁸³⁴ which replaced the Saudi Consulting Services House and takes over all its rights and obligations.⁸³⁵ The General Investment Authority is a governmental authority reporting to the President of the Supreme Economic Council. The SAGIA is the only authority responsible for overseeing investment affairs in Saudi Arabia and it issues investment licences to

⁸³¹ Monica Malik and Tim Niblock.(2005)"*Saudi Arabia economy: the challenge of reform*". in Aarts, Paul, and Gerd Nonneman. (2005). *Saudi Arabia in the Balance. Political economy, society, foreign affairs*". New York University Press. p85

⁸³² Saudi Arabia, Foreign Investment Law Article 2

⁸³³ Saudi Arabia, Foreign Investment Law Article 3

⁸³⁴ Saudi Arabia, Resolution No. (20) Dated 5/1/1421H concerning the Statute of the General Investment Authority, article 1

⁸³⁵ Saudi Arabia, Resolution No. (20) Dated 5/1/1421H (corresponding to 10/4/2000AD) concerning the Statute of the General Investment Authority, article 2

foreign investors and is also responsible for applying new policies in order to promote and encourage international foreign direct investment in Saudi Arabia. The General Investment Authority was established to take care of foreign investment in the country with the responsibility to provide policies towards developing and increasing foreign investment. The Authority has to propose an operational plan and rules in order to improve the investment environment in the country; in addition, it has to follow up, and estimate performance of local and foreign investment in addition to issuing a periodic report and study of the opportunities for investment in the country and promoting them internationally.⁸³⁶

The authority cooperates with the governmental ministries and entities in a way that enables the Authority to perform its tasks. As a part of the policies to ease the process of establishment of foreign investment, the authority has to process the application of the foreign investor within 30 days of the submission of all the required documents. If the specified period has passed without the authority acting on the foreign investment application, it shall issue the required licence to the investor.⁸³⁷

Attracting foreign investment also required changes to the taxation levied on such investment. Before 2000 the overall rate of corporate tax for foreign investors stood at 45 per cent, in addition to a 2.5 per cent *Zakat* contribution. In 2000 the overall rate of foreign corporate tax was reduced to 30 percent, and with the introducing of new corporate tax Law in 2004 the rate was further reduced to 20 per cent.⁸³⁸ However, the

⁸³⁶ Saudi Arabia, Resolution No. (20) Dated 5/1/1421H (corresponding to 10/4/2000AD) concerning the Statute of the General Investment Authority.

⁸³⁷ Article 2 of the Foreign Investment Law in the Kingdom of Saudi Arabia <http://www.mci.gov.sa/en/LawsRegulations/SystemsAndRegulations/ForeignInvestmentSystem/Pages/4-2.aspx>

⁸³⁸ For investment in hydrocarbon sectors a higher rate was maintained; 30 per cent in natural gas investment activities, and 85 per cent in oil and hydrocarbons productions. See Article 7: Tax Rates Corporate Tax Law 2004, accessed at SAGIA website at <http://www.sagia.gov.sa/Documents/Laws/Income%20Tax%20Law.pdf>

reduction in taxation was still bigger in other Arabian Gulf States. In the UAE and Bahrain, for example, no corporate tax is imposed. Therefore, the decision to reduce corporate tax was unlikely to lead investors to shift investment from smaller Gulf States to Saudi Arabia.

In relation to real estate investments in Saudi Arabia, the economic agreement between the Arabian Gulf countries in 2001⁸³⁹ gives Gulf national citizens the right to own up to three freehold titles in residential areas in Saudi Arabia except in the two holy cities of Makkah and Al-Madinah. Gulf citizens cannot be in possession of more than three thousand square meters in the total area of residential space, and these must be used for residential purposes only. The owner of the property cannot dispose of it until four years after the date of registration of the property. In addition, the companies that are owned by Gulf nationals also have the right to hold long-term leasehold interests in real property or land for business purposes, and long-term leasehold interests should be for the specific use of business for which it is licenced and the amount of land should be proportional to the size of land use.⁸⁴⁰

Individuals from foreign countries (non-Arabian Gulf nationals) may be entitled to own real property (except in the two holy cities of Makkah and Al-Madinah) under a number of significant restrictions. One of these conditions is the individual foreign national should have a normal legal residency status from the Ministry of the Interior.⁸⁴¹ The permission given to foreign nationals for ownership of freehold title or

⁸³⁹ see Chapter II Article Three of the Economic Agreement Between the GCC States, Adopted by the GCC Supreme Council (22nd Session; 31 December 2001) in the City of Muscat, Sultanate of Oman

⁸⁴⁰ James R. England.(2012) Real Estate Investing In The Middle East: Foreign Ownership Restrictions In The GCC. *The metropolitan corporate counsel.* <http://www.metrocorpconsult.com/articles/17520/real-estate-investing-middle-east-foreign-ownership-restrictions-gcc>

⁸⁴¹ Here it is worth to mentioned that there are also restrictions regarding their ability to hold Contractual Leases in the two holy cities of Makkah and Al-Madinah.

long-term leasehold is only for residential property; non-residential properties owned by foreign nationals remains prohibited in Saudi Arabia.

As a corollary to the Foreign Direct Investment Law, the Council of Ministers enacted a real estate Law. The Law, which was sub-titled ‘the System of Real Estate Ownership and Investment of Non-Saudis’, gave non-Saudis (meaning non-GCC nationals) the right to own real estate for their private residence.⁸⁴² There are also significant restrictions on foreign national companies where they must acquire a licence from the Saudi Arabia General Investment Authority to own property in Saudi Arabia. The new Saudi Foreign Investment Law gives foreign investors the right to have full ownership of the development projects, and in addition the said Law allows the foreign investors to own real estate or a parcel of land for the project itself or housing the workers/employees of the company.⁸⁴³ Prior to the said Law, the Saudi partner had been required to hold the title of the land. The Law also gives foreign investors the same incentives that have been given to national companies. For instance, a fully foreign-owned project is eligible to receive loans from the Saudi Industrial Development Fund. Foreign investors will also be able to have more than one type of investment licence for different activities.⁸⁴⁴

Bahrain:

Bahrain provides many benefits and a high level of protection to foreign investors, in addition to a highly favorable tax environment with no personal, corporate or

⁸⁴² Saudi Arabia, Real Estate Law. (2000), Regulation of Ownership and Investment in Real Estate by Non-Saudis, Issued Under: Royal Decree No. M/15 dated 17/4/1421H. accessed at the SAGIA website http://www.sagia.gov.sa/Documents/Laws/Real_Estate_by_Foreigners.pdf

⁸⁴³ Article 8 of the Foreign Investment Law in the Kingdom of Saudi Arabia. <http://www.mci.gov.sa/en/LawsRegulations/SystemsAndRegulations/ForeignInvestmentSystem/Pages/4-2.aspx>

⁸⁴⁴ Article 2 of the Foreign Investment Law in the Kingdom of Saudi Arabia. <http://www.mci.gov.sa/en/LawsRegulations/SystemsAndRegulations/ForeignInvestmentSystem/Pages/4-2.aspx>

withholding taxes. The government of Bahrain also offers a sophisticated internationally oriented legal framework with a developed legal and administrative infrastructure, with a cost-effective, highly trained, bilingual workforce.⁸⁴⁵ The authorities offer a fast track system for registration of foreign branches or foreign establishment, in addition to the one-stop facility, which is responsible for assisting investors with application procedures in Bahrain.⁸⁴⁶

The Bahraini Commercial Companies Law No 21 of 2001 permits foreign nationals to establish a company in Bahrain with 100% foreign capital, although it is worth mentioning that there are some restrictions for foreigners in certain activities, where the foreign ownership is limited to 49% in certain sectors and other types of business activities are restricted to Gulf nationals only.⁸⁴⁷ Bahrain permits full foreign ownership of new industrial entities, and in addition the Bahraini Commercial Companies Law No 21 of 2001 permits the establishment of a branch of a foreign company or representative offices of a foreign entity with no need for a local sponsor.

In relation to land and property ownership, nationals of the Gulf member states are permitted to own freehold title property anywhere in Bahrain. Foreign nationals are also permitted to own freehold title, but only within designated Investment Zones.⁸⁴⁸

⁸⁴⁵ <http://www.bahrainconsulate.org.hk/aboutbahrain/economy.htm>

⁸⁴⁶ No custom duties on imports; Strategic geographic location as a transit centre in regional market; Free movement of capital and foreign exchange; Well developed offshore facilities; Proximity and strong business ties with the major markets.
<http://www.bahrainconsulate.org.hk/aboutbahrain/economy.htm>

⁸⁴⁷ Some business activities are restricted to only Bahraini nationals, such as: Certain real estate services. Press and publication services. Printing. Film and television services. Management and operation of cinema theatres and film distribution. Land transportation of goods, passengers and tourists. Domestic sea cruises. Car rentals. Hajj and Umra services. Foreign manpower supply services. Commercial agencies. Small business activities. The other type of businesses for Gulf nationals Such as Book-keepin and accounting services. Import, export services. Cargo clearing. Fishing.

⁸⁴⁸ James R. England.(2012) Real Estate Investing In The Middle East: Foreign Ownership Restrictions In The GCC. *The metropolitan corporate counsel*.

The Foreign Investment Law specifies some areas that permit foreign investors to own commercial and residential property in these designated areas.⁸⁴⁹ Based on the foreign property ownership in those designated areas, the authority (the Ministry of Interior) gives the right to apply for a residency permit for the foreign national property buyer and his family. From 2006, non-Gulf citizens could own high-rise commercial or residential properties, as well as property in selected sectors.⁸⁵⁰

The Foreign Investment Law permits companies owned by Gulf nationals as well as foreign companies to own land in designated areas in Bahrain. Only Bahraini nationals and Gulf nationals have the right to own high-rise commercial or residential properties; in addition they are permitted to own properties for tourism, banking, financial and health projects in specific geographic areas of Bahrain. Foreign investors (non-Gulf nationals) may be permitted to own the above-mentioned properties based on a decree from the Prime Minister's Cabinet.

United Arab emirates (UAE):

Foreign investors have a number of options available to establish their companies in the UAE. Here it worth mentioning that foreign investors have two methods of establishment in the UAE, either by establishing a company under the UAE (Federal) Commercial Company Law, which will give them the right to conduct commercial activities (in selected sectors) in all Emirates of the UAE and abroad. The other method is to establish a company under the rules and regulations of the free zone of any Emirate, but if the free zone company wants to carry out activities outside the free

<http://www.metrocorpconsult.com/articles/17520/real-estate-investing-middle-east-foreign-ownership-restrictions-gcc>

⁸⁴⁹ Examples of these Investment Zones include, the Bahrain Financial Harbor, the Bandar Al Seef Area and certain tourism developments, as well as certain residential developments in greater Manama, including the diplomatic area.

⁸⁵⁰ Commercial. Industrial. Tourism. Banking and financial services. Healthcare. Education and training.

zone and inside the UAE it will have to comply with the provisions of the UAE Commercial Company Law. Here it is worth mentioning that the UAE has seven Emirates and each Emirate has its own free zone and each zone has its own regulations that may differ from other free zones in other Emirates.

The most common company legal structures adopted by foreign companies are UAE limited liability companies (in non-free zones). This type of establishment is widely used by foreign national companies wishing to conduct commercial activities in the UAE. This type of company is regulated under the UAE Companies Law No 8 of 1984 which restricts foreign ownership to a maximum of 49% of the share capital in a Limited Liability Company (LLC).⁸⁵¹ However there are recent amendments to the Companies Law (UAE Federal Law 2 of 2015) that have paved the way for relaxation of these existing requirements on foreign investors who want to establish a company in the UAE, which state that companies should be at least 51% owned by UAE nationals.⁸⁵² The amendments to the Companies Law also cancelled the minimum capital requirement for LLCs in UAE, which leaves more flexibility for foreign shareholders to determine the capital requirements for their companies by themselves. In addition, an LLC is not subject to corporate taxation for most industry sectors. The LLC is widely used in the UAE by foreign companies in order to conduct commercial activities due to the ease of establishment and the clarity of the legal structure.

The other common type of establishment of foreign companies in the UAE is within a

⁸⁵¹ It worth to mentioned that the shareholders of a company (foreign and local) are allowed to agree between themselves to distribute the company profit in proportions, in other words the amount of the company profits to be distributed to the foreign shareholder may exceed 49%.

⁸⁵² Nigel Wellings, James McCarthy and Graham Watt. (2013) New UAE Companies Law – Key Provisions, Clifford chance.
http://www.cliffordchance.com/briefings/2013/07/new_uae_companiesLaw-keyprovisions.html

free zone. Currently, in the UAE there are more than 30 Free Zones in different parts of the country with more being developed. Each free zone in the UAE is established with a specific purpose of facilitating foreign investment and therefore each free zone has been given a distinct legal status. The UAE has major free zones in Dubai, Abu Dhabi, and smaller zones in the other Emirates. The most famous and the most successful free trade zone on the Arabian Peninsula is the Jebel Ali Free Zone (JAFZA). This free zone focuses on light manufacturing and distribution companies, with JAFZA currently attracting over 600 international manufacturing, distribution, trading and processing companies. The Sharjah Free Zone, meanwhile, focuses on heavy industry. The free Zones in the UAE also feature airport free zones in Dubai and Sharjah; with the Sharjah Zone is an air cargo hub between Asia and Europe. Fujairah free zone is also one of the biggest free zones in UAE and is now considered the world's biggest container free zone.⁸⁵³

The free zones have their own Laws (with less restrictions on foreign investors) and regulations that regulate the establishment and licensing of companies that operate therein.⁸⁵⁴ What encourages foreign companies to move into free zones is that companies incorporated in free zones are subject to a wide range of commercial incentives like zero income tax and 100% foreign ownership in addition to the complete freedom to repatriated profits.⁸⁵⁵

Another common type of ownership for foreign companies in the UAE is to have a

⁸⁵³ The Free Zone of Fujairah was established by an Emiri Decree, issued on the 28th day of November 1987; with the objective to offer most liberal terms, minimum regulations, and world class facilities to all our investors. <http://fujairahfreezone.com/testimonials.htm>

⁸⁵⁴ Marisa Finnerty. (2011) *Guide for foreign companies setting up in the UAE* . Hadeef and partners <http://www.hadefpartners.com/News/pageid/120-137/default.aspx?Mediaid=198>

⁸⁵⁵ Marisa Finnerty. (2011) *Guide for foreign companies setting up in the UAE*. Hadeef and partners <http://www.hadefpartners.com/News/pageid/120-137/default.aspx?Mediaid=198>

branch office either within Dubai free zone or under the Federal commercial Law . The branch office is not considered to be a separate legal entity and the mother company will remain responsible for all finance and liabilities obligations of the UAE branch office.⁸⁵⁶ Branch offices incorporated outside the free zones are allowed to have 100% foreign ownership provided that a UAE national acts as a local agent. However, foreign entities established in any of the free zones are under no requirement to appoint a local agent.⁸⁵⁷ In general, branches of foreign companies are permitted to carry out the same activities as their mother company subject to approval from the authorities from time to time.⁸⁵⁸

Foreign companies that have been established within the UAE's free zones are treated as offshore companies or companies outside the UAE for legal and operational purposes. Therefore, there are limitations on the free zone companies' business activities outside the relevant free zone. Based on that, the licence of a company within the free zone will not permit the free zone company to carry out its business activities outside of the free zone in all UAE jurisdictions.⁸⁵⁹ Currently, in order to conduct business activities outside of the free zone, the free zone companies are required to appoint a local commercial agent or distributor to conduct business activities. Based on this, the free zones suit foreign entities that intend to have regional manufacturing or distribution warehouses or other services in the free zones,

⁸⁵⁶ A branch of foreign company may have tax implications in the country of origin of the parent company since any revenue generated by the branch, no matter where it is established, would generally constitute a part of the revenues generated by the parent company.

⁸⁵⁷ As long as the branch does not operate outside of the relevant free zone.

⁸⁵⁸ Grant, Jim, Fatema Shabbir GoLawala, and Donelda S. McKechnie. "The United Arab Emirates: The twenty-first century beckons." *Thunderbird International Business Review* 49, no. 4. Pp. 507-533.

⁸⁵⁹ Marisa Finnerty. (2011) *Guide for foreign companies setting up in the UAE*. Hadeef and partners <http://www.hadeefpartners.com/News/pageid/120-137/default.aspx?Mediaid=198>

especially if a large part of their business is based outside the UAE.⁸⁶⁰

In Abu Dhabi, only local citizens are allowed to hold freehold title and/or long term leaseholds in restricted zones. Citizens of the Gulf member states and foreign nationals are limited to taking a contractual lease in the restricted zones. However, citizens of the Gulf member states are allowed to hold freehold title to land within certain designated areas known as Investment Zones.⁸⁶¹ In Abu Dhabi, foreign nationals are not permitted to hold true freehold title; however they are permitted to hold long-term leasehold interests and units of buildings inside the investment zones, however ownership of such “floors” and property units does not give any type of interest on the underlying land itself.

In the Emirate of Dubai, local citizens and the citizens of the Gulf member states are permitted to have freehold title rights in the restricted zones. Foreign nationals (non GCC nationals) can only own freehold title within designated Investment Zones.⁸⁶² In addition, it is worth mentioning that any UAE established company that is not 100 percent owned by local citizens or citizens of Gulf member states is considered to be a foreign company, which have certain ownership restrictions in the UAE.⁸⁶³

In most of the Gulf countries, foreign investors will face some difficulty in obtaining full foreign ownership outside free trade zones and in selected investment sectors. The applied regulatory frameworks of foreign investment are imprecise and inconsistent in

⁸⁶⁰ Marisa Finnerty. (2011) *Guide for foreign companies setting up in the UAE*. Hadeef and partners <http://www.hadeefpartners.com/News/pageid/120-137/default.aspx?Mediaid=198>

⁸⁶¹ The Investment Zones in Abu Dhabi include, but are not limited to, Sowwah Island, Lulu Island and Masdar City, among several others

⁸⁶² Such as certain areas in the Dubai Marina, but cannot hold freehold Title in the restricted areas

⁸⁶³ James R. England.(2012) *Real Estate Investing In The Middle East: Foreign Ownership Restrictions In The GCC. The metropolitan corporate counsel.* <http://www.metrocorpounsel.com/articles/17520/real-estate-investing-middle-east-foreign-ownership-restrictions-gcc>

most of the Gulf region. In addition, there is still a requirement for majority local equity in a number of sectors, including the prohibition of foreign investors in the upstream oil sector or the inability of new oil corporations to enter the oil industry such as in KSA, Kuwait and in the UAE. Currently, the Gulf countries are making the most progress towards liberalisation of their foreign investment regulation. Most of the policies that have been under taken by the Gulf countries to liberalise the foreign investments regulations have been confined to company establishment with full foreign ownership and other incentives. However, in terms of foreign property ownership there are certain reservations and barriers towards foreign nationals' land/property ownership in the Arabian Gulf countries; there are still some restrictions on foreign investors in relation to property ownership. However, most of the Gulf countries have outlined some designated investment zones and free zones that permit foreign investors to own a property in these areas for business purposes (for example, offices, warehouses and manufacturing) or for residency purposes and this trine is likely to continue.

4.3. The level of corruption in the Arabian Gulf countries

There are some research papers and studies examining the impact of corruption of the host country on the inflow of FDI. The studies show varying results due to the difference forms that corruption can take, including practices such as bribery, extortion, and fraud. In the comments cases, foreign investors incur extra costs in the form bribes of government officials to obtain business licences to conduct investment in the host countries.⁸⁶⁴

⁸⁶⁴ Al-Sadig, Ali. "Effects of Corruption on FDI Inflows, The." *Cato J.* 29,p 267.

The issue of corruption has become an essential item on the agenda of many international institutions and national governments. The OECD Convention on Fighting Bribery of Foreign Public Officials in International Business Transactions⁸⁶⁵ have criminalised bribery of foreign officials by firms from OECD member countries. Indices produced by organisations such as Transparency International suggest that corruption is still a widespread phenomenon.⁸⁶⁶ There exists confirmation that demonstrates how corruption has a negative impact on the magnitude of inward foreign direct investment inflow.⁸⁶⁷

Corruption does not seem to prevent the inflow of foreign investment in absolute terms. For example there are a number of countries with perceived high levels of corruption, such as China, Brazil, Thailand and Mexico which attract large flows of foreign investment.⁸⁶⁸ A high level of corrupt activities may reduce the effective protection of foreign investors' tangible and intangible assets. In addition if there is a dispute between the foreign and domestic partners it may be adjudicated unfairly, which reduces the value of having a local partner.⁸⁶⁹ Corruption makes local bureaucracy less transparent and increases the value of using a local partner to cut through the bureaucratic maze.⁸⁷⁰

In recent years, corruption has received increasing attention because of a series of

⁸⁶⁵This was signed in 1997 and went into effect in Feb 1999.

⁸⁶⁶ Beata K. Smarzynska, Shang-Jin Wei (2000). Corruption and the compensation of foreign direct investment. The World Bank. Trade and public Economics.

⁸⁶⁷ Hines, James R. Jr., (1995), "Forbidden Payment: foreign bribery and American business after 1977" National Bureau of Economic Research. working paper.

⁸⁶⁸ Beata K. Smarzynska and Shang-Jin Wei. (2009) *Corruption and composition of foreign directs investment: firm- level evidence*. National Bureau of Economic Research.

⁸⁶⁹ Beata K. Smarzynska and Shang-Jin Wei. (2009) *Corruption and composition of foreign directs investment: firm- level evidence*. National Bureau of Economic Research.

⁸⁷⁰ Beata K. Smarzynska and Shang-Jin Wei. (2009) *Corruption and composition of foreign directs investment: firm- level evidence*. National Bureau of Economic Research.

high-level corruption cases in industrialised countries and an increasing awareness of the costs of corruption throughout the world. Corrupt practices range from petty corruption, in which bribes are necessary and become common practice for normal bureaucratic procedures to be accomplished, to large-scale corruption, in which considerable amounts of money must be paid in return for preferential treatment or access to markets or contracts.⁸⁷¹ Corrupt activities can affect every sector of government, from the highest executive, such as the legislative and judicial branches, to governmental officials, which may reduce the efficiency of government practices. Corrupt activities consequently present a potential threat to all governmental institutions and all sectors within a country.⁸⁷² A range of international organisations have carried out surveys of multinational entities that operate in different economies to examine the relationship between corruption and economic growth and foreign investment.⁸⁷³

The Arabian Gulf countries have different strategies at the national and international level to fight corruption in order to boost the confidence of international investors. Some of the Arabian Gulf countries have established governmental entities and have issued a number of Laws and regulations in order to challenge the corrupt activities in its territory. The following second part will show what type of corruption exists in the region and how the Arabian Gulf countries fight it and their attempts to boost the confidence of foreign investors to invest in their countries.

⁸⁷¹ Aye Mengistu alemu.(2012) Effects of corruption on FDI inflow in Asian economies. *Seoul Journal of Economics*, Vol. 25, No. 4, pp. 387-412, 2012 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2182405

⁸⁷² Devrim Dumludag.(2012). How does corruption affect Foreign Direct Investment in developing economies?. *Talk business*. September 21, 2012. <http://www.talkinbusiness.net/2012/09/how-does-corruption-affect-foreign-direct-investment-in-developing-economies/>

⁸⁷³ The Political Risk Service (PRS), Transparency International (TI), the World Business Environment Survey (WBES) of the World Bank, the Global Competitiveness Report, and the Freedom House. <http://www.talkinbusiness.net/2012/09/how-does-corruption-affect-foreign-direct-investment-in-developing-economies/>

Bahrain⁸⁷⁴

The government of Bahrain has issued a number of Laws to fight corruption in the public sector.⁸⁷⁵ Amiri Decree no. 15 of 1976 is considered one of the first anti-bribery and corruption provisions, with respect to the enactment of the Bahraini Penal Code, which criminalised civil servants asking for or accepting gifts or privilege of any kind in order to perform,⁸⁷⁶ or refrain from carrying out, their official duties.⁸⁷⁷ A breach of this Law may result in fines and/or imprisonment for a period of up to 10 years.⁸⁷⁸ The Bahraini Penal Code also states that any person giving such a bribe can receive a prison sentence of up to three years in addition to fines.⁸⁷⁹ It is also prohibits government officials from accepting any type of reward or gift, which either directly or indirectly affects the performance of their duties.⁸⁸⁰

As a result of the above provisions, petty corruption is relatively rare in Bahrain; instated corruption mainly occurs in the process of bidding on governmental development projects. In relation to government-tendering procedures for high-value contracts, there is a high level of ambiguity and the process is not always transparent for the bidders. Government-tendering contracts are not always decided based on the price and technical merit.

There is an existence of bureaucracy in Bahrain, which is sometimes inefficient but is

⁸⁷⁴ The corruption perception index has ranked Bahrain 57th out of 177 countries with a score of 48 of 100. Corruption perceptions index <http://www.transparency.org/country#BHR>

⁸⁷⁵ Bahrain has issued a number of Laws that against bribery and corruption. Amiri Decree no. 15/1976 with respect to the enactment of the Penal Code (the Penal Code); Civil Service Directive no. 12/2007 with respect to the schedule of violations and penalties; Civil Service Directive no. 2/2010 with respect to disciplinary; and Legislative Decree no. 36/2002 with respect to regulating government tenders and purchases (the Tenders Law)

⁸⁷⁶ Or even accept a promise to be given the same

⁸⁷⁷ Under Article 186 of The Penal Code

⁸⁷⁸ This is depending on whether or not the act done or refrained from is part of the civil servants official duties. See Article 186 of the Bahraini penal code

⁸⁷⁹ Article 190 of the Bahraini penal code

⁸⁸⁰ Civil Service Directives Article 4(b) of CSD No. 2

generally honest. It is illegal in Bahrain to give or accept a bribe,⁸⁸¹ and although government officials rarely enforces the relevant Laws this seems to stop minor corruption. At a higher level a number of ministerial officials and chiefs of governmental entities have been dismissed for what was seen as blatant corruption, but the government has never confirmed this officially in the local press; and they have merely been asked to leave their positions without prosecuting them. The King of Bahrain has a policy of publicly visiting and rotting government branches in order to try to reduce the level of corruption in governmental entities.

Foreign investors are optimistic that there is growing transparency in the government-tendering procedures. At the beginning of 2003 a new Law was put in place to thoroughly reorganise the government tendering and procurement procedures and in 2010, Bahrain signed and ratified the UN Anticorruption Convention.

The government of Bahrain established the National Audit Bureau in 2005. The Bureau publishes annual reports, which highlight governmental ministries and entities' fiscal irregularities. Legislators are empowered to exercise oversight and call for an investigation of fiscal discrepancies of the accounts of government entities. The Council of Representatives investigated 34 irregularities that appeared in the National Audit Report in 2013. The Council of Representatives has also transferred around 13 cases to the Public Prosecution for investigation. In addition, the President of the National Audit Bureau of Bahrain has announced that there are around 10 cases, which have been transferred to the Public Prosecution based on their annual reports.

⁸⁸¹The kingdom of Bahrain. The Penal Code

Kingdom of Saudi Arabia ⁸⁸²

There has been some limited legislation aimed at reducing corruption in Saudi Arabia. In 1992, Saudi Arabia issued Royal Decree No M/36 for Combating Bribery, which criminalised all types of bribery. The said Law also criminalises various types of corruption including abuse of authority and active or passive bribery as assault and infringement of the Law. This kind of activity can result in prison sentences of up to 10 years and fines up to one million Saudi Riyal. The Saudi Arabian Monetary Agency (SAMA) issued new regulations and new guidelines in 2002 to detect money-laundering activities in Saudi Arabia.⁸⁸³

In 2004, the Saudi Tenders Law was enacted which improved the transparency of government procurement through the publication of tenders. Further, government ministers and officials of government entities appointed by Royal Decree are forbidden from engaging in business activities with any government entity or ministry during their employment. Unlike Bahrain, there are many public cases of well-known government officials being charged with corruption in Saudi Arabia.⁸⁸⁴

The government of Saudi Arabia has made serious positive legal developments in relation to corruption and investment regulation and has issued new regulations to clarify government procurement procedures. Saudi General Auditing Bureau was assigned and mandated to combat corruption in all governmental branches and

⁸⁸² Saudi Arabia ranked as the 63 of 177 and scores 46 of 100 according to the Corruption perceptions index <http://www.transparency.org/country#SAU>

⁸⁸³ The Law that combating Money Laundering was enacted in August 2003 under royal decree No M/39.

⁸⁸⁴ A judge at the Third Criminal Court of the Board of Grievances in Jeddah has sentenced a former mayor to eight years in jail and a fine of SR1 million for accepting a bribe. The judge also sentenced a businessman to five years in prison and a fine of SR1 million for offering the bribe. Another businessman, who did not attend the hearing, was sentenced to four years in prison and fined SR500,000. Also see 'Ex-Mayor Jailed for Graft'. <http://www.arabnews.com/news/486301>. (accessed 23 Sep 2015)

ministries. In 2011, a Royal Decree, A/65, was issued to establish the Saudi National Anti-Corruption Commission (Nazaha)⁸⁸⁵ as an entirely independent authority. The aim of establishing this Commission was to create a clear environment of integrity, transparency, honesty, justice and equality in governmental bodies that fall within its jurisdiction or specialisation. The Commission mentioned above has the authority to cover all public sectors with no exception and the competence to combat financial and administrative corruption.

Kuwait ⁸⁸⁶

The Kuwaiti Penal Law 31 of 1970 criminalises all kinds of corruption, whether it is through passive or active bribery, money laundering and abuse of office. The attempt to engage in corruption and extortion is criminalised under this Law.

Kuwait passed a stronger anti-corruption Law in September 2011; this Law was issued to widen the areas that the previous Law did not cover. This Law criminalises any manipulation in public tenders and public auctions and expands the definition of bribery activities to include counterfeiting, forgery and graft. The said Law also includes a number of articles on financial disclosure and money laundering and further provides criminal penalties of up to seven years in prison for any previous corrupt practices.⁸⁸⁷

The Kuwaiti National Assembly in January 2013 passed two further decrees - the Anti-Corruption and the Wealth Disclosure decrees. By the first deems the Kuwaiti

⁸⁸⁵ Nazaha” which is an Arabic word meaning “integrity”

⁸⁸⁶ Kuwait ranked as the 69 of 177 and scores 43 of 100 according to the Corruption perceptions index 2014c. Transparency International e.V. Accessed October 27- 2014. <http://www.transparency.org/country#KWT>.

⁸⁸⁷ According to a September 2011 article by The Jurist, the passage of the Law was a reaction to the IMF's assessment report of the same year, which criticized Kuwait's anti-money laundering Laws and financial monitoring.

National Assembly called for the establishment of a national anti-corruption authority. As a part of the Wealth Disclosure Decree, all ministers, MPs and governmental officials are required to submit a disclosure of their wealth, and to efficiently track their wealth the disclosure should include their wealth, before and after taking office.

The Kuwait National Assembly has passed a bill to establish an anti-corruption authority and based on that Law, the Kuwait Council of Ministers passed a Decree in 2013 to appoint board members to form a national anti-corruption authority in the country.

Oman⁸⁸⁸

As a part of the anti-corruption system in Oman, ministers and governmental officials are forbidden to hold offices in public shareholding or public-private shareholding companies or serve as chairpersons of presidents of a company. However, many influential governmental officials have private business interests, and some of these businesses are involved in private-public projects, which are considered conflicts of interest. The Omani Tender Law⁸⁸⁹ was updated in 2011 to prevent officials in the Tender Board from adjudicating development projects that involved interested relatives of the tender board members.⁸⁹⁰ There have been a number of cases that involved financial irregularities and abuse of office or misuse of influence in awarding government contracts, which were why the legislator were implemented.

888 Oman ranks 61 of 177 and scores 47 of 100 according to the Corruption perceptions index. Transparency International. <http://www.transparency.org/country#OMN>. (Accessed October 27-2014)

889 The Omani Tender Board was established in 1972 in order to handle all government projects and requests for projects from civil service ministries and other government agencies. The Tender Board strives to excel in organisational performance. By developing its human resources and administrative systems it intends to fulfil the highest economical values of the overall development strategy for the 2020 sustainable future vision.

890 “The second degree of kinship of the family members”.

A number of ministers and senior government officials were dismissed for engaging in corruption. In one of Oman's biggest corruption scandals, over 30 ministerial officials, including the Under Secretary of Governmental Entities and certain employees from the private sector were convicted of different types of bribery and forgery during their terms of office. As a part of the Omani anti-corruption policies, the Government of Oman announced that employees of the public sector would be subject to financial disclosure requirements. In 2011 the Omani State Audit Institution was renamed the State Financial and Administrative Audit Institution and granted expanded powers and authority under Royal Decree 27/2011 to promote transparency and fight against financial and administrative corruption.

In relation to tenders for governmental projects, the Omani tender boards often award major contracts through a slow and strict tender process. In Oman there is a disclosure of all local tenders as a part of its transparency policies though advertising national tenders in the national and international press. However, there are a few sensitive development projects which are not publicised and not subject to FTA obligations. If there are any disputes arising from the tendering process they are reviewed locally.

Qatar⁸⁹¹

Qatar is like any other Arab Gulf country where bribery is considered a crime under the Law. Qatari Law imposes penalties for governmental officials and related departments convicted of taking action or refraining from action in return for pecuniary or personal gain. The Law also imposes penalties on any other individual who takes action or even attempts to influence a governmental official through

891 Qatar ranked as the 28 of 177 and scores 68 of 100 according to the Corruption perceptions index 2014. Transparency International e.V. Accessed October 27.
<http://www.transparency.org/country#QAT>.

pecuniary or personal gain.

Penal Code Law No 11 of 2004 governs corruption and means individuals convicted of any type of bribery may be imprisoned for up to 10 years and may be fined an amount not over than the bribe but not less than 5,000 Qatari Riyals.

Those individuals or government officials who are convicted of any embezzlement by the Qatari national treasury are subject to between 5 and 10 years in prison. An amendment to this Law has increased the minimum term from 5 to 7 years and the maximum term from 10 to 15 years if the perpetrator of the corrupt activity is a government official in charge of collecting taxes or any government officer exercising any type of fiduciary responsibilities over the Qatari national treasury. In addition, the Qatar State Security Bureau (QSS) and Public Prosecution have the authority and power to investigate allegations and claims of any type of corrupt activity and the final judgement issued by the criminal court.

As a part of the Qatari ratification of the UN Convention for Combating Corruption,⁸⁹² an Amiri Decree (No. 84 of 2007) was issued to establish a National Committee for Integrity and Transparency to combat corruption in Qatar. The head of the National Audit Bureau chairs the Permanent Committee of Integrity and Transparency.⁸⁹³ As a part of the partnership with the United Nations, Qatar has opened a centre for Anti-Corruption and put in place the rule of Law in 2012. Based on that, in 2011 the Corruption Perceptions Index (CPI) ranked Qatar as the least

892 The ruler of Qatar issued Amiri Decree No 17 of 2007 to ratify the UN Convention for Combating Corruption

893 'Qatar down Five Places in Corruption Index'. 2014. Qatar down five places in corruption index. Accessed October 27. <http://thepeninsulaqatar.com/news/qatar/217021/qatar-down-five-places-in-corruption-index>. also see 'Corruption Perceptions Index 2012 View Results Table View Brochure'. 2014. Transparency International e.V. Accessed October 27. <http://www.transparency.org/cpi2012/results>.

corrupt country in the region.

Another Amiri Decree (No 75 of 2011) was issued to establish the Administrative Control and Transparency Authority in Qatar. The said authority has the power and the authority to track ministers and governmental offices to probe claims of abuse of power or funds and the said authority also has the power to supervise companies in the private sector that provide public services in Qatar. The main objective of this authority is to prevent government officials' corruption and to ensure that all ministries and governmental agencies are operating with transparency. The said authority is charged to investigate suspected crimes against finances or public property perpetrated by governmental officials. Here it worth mentioning that the said authority is an independent authority and it is accountable only to the ruler of Qatar. Its chairman prepares the annual budget for this authority and approved by the ruler of Qatar.⁸⁹⁴

United Arab emirates (UAE)⁸⁹⁵

The UAE is considered to be one of the least corrupt Arab Gulf countries.⁸⁹⁶ It has had anti-bribery legislation since the 1980s under the Federal Penal Code. The said code is the main federal Law that regulates anti-bribery practices in the country. Articles 234 to 239 of the said Code contain provisions which criminalise bribery activities or even attempted bribery in any form in either the public or private sector.

894 Here it is worth to mention that there is a lot of criticism of the rule of the said authority especially that it had the sole power to deter anti-corruption in Qatar. Many legal commentators hold that the authority did not functions the assigned authority and power to them correctly and properly, where based on the power assigned to the said authority, Qatar should be in a better rank among all the other countries. <http://www.moj.gov.qa/readnews.php?id=511>

895 UAE ranked as the 26 of 177 and scores 69 of 100 according to the Corruption perceptions index <http://www.transparency.org/country#ARE>

896 UAE is considered the most transparent Arab nation in global corruption rankings in 2014. See The National. Accessed October 27- 2014. <http://www.thenational.ae/business/economy/uae-most-transparent-arab-nation-in-global-corruption-rankings#ixzz3H4M721WT>.

Article 237 of the said Code imposes a minimum term of one year in prison for accepting a bribe, whereas any person convicted of attempting to bribe a public official may be imprisoned for up to five years.

The financial crisis, however, exploded the construction bubble, and a number of high-profile corruption cases has been revealed indicating the need for stricter regulations on the higher levels of all sectors. The objective of the UAE federal anti-corruption Law is to reduce misappropriation of public funds. Based on that, a team of international experts have been sent to the UAE to assist with the compliance by the UAE of it obligatory under the United Nations Convention against Corruption. There is no reported evidence that corruption of governmental officials is a general problem in the UAE. The State Audit Institution is considered the main anti-corruption authority in the UAE. The said institution plays a major role in detecting and fighting against corruption in order to protect public funds.

The UAE's anti-corruption body in 2012 uncovered more than 10 cases of corruption and bribery worth more than 1 billion dirhams, which were embezzled from public funds. The State Audit Institution discovered irregularities including acts of forgery, bribery and fraud. The State Audit Institution referred this case to the public prosecution.⁸⁹⁷

The Central Bank established the Anti-Money Laundering and Suspicious Cases Unit (AMLSCU) to perform the functions of a financial intelligence unit. The UAE also enacted a number of comprehensive money laundering laws that obliged strict documentary requirements on wire-transfers of large amounts.

897 No verdicts have been rendered so far in these investigations. 'U.S. Department of State'. United Arab Emirates. <http://www.state.gov/e/eb/rls/othr/ics/2013/204755.htm> . (Accessed October 27-2014)

The Central Bank strengthened the legal authority of the Anti-Money Laundering and Suspicious Cases Unit by passing Federal Law No. 1 of 2004 to combat terrorism and terrorist financing.⁸⁹⁸ Based on that, the Central Bank of UAE blacklisted almost 30 bank accounts and detected and intercepted several money laundering attempts.⁸⁹⁹

Despite all these initiatives that have been taken by the Arabian Gulf countries, there are still some challenges in curbing corruption in the Arabian Gulf countries. Some of these challenges are related to personal relationships and connections between influential people and governmental officials, which play a key role when it comes to government contracting. In addition, most of the Gulf countries do not provide any form of disclosure Law and all members of the ruling family and governmental officials enjoy a high degree of immunity since the ruler most of the time has the authority to select ministers and government official, set foreign and domestic policies and control the main tools of the national economy.⁹⁰⁰

4.4. Risk to political stability in the Arabian Gulf countries

For large foreign investment companies, risks of a non-commercial nature have increased substantially in the last five years. Four traditional political risks that may face multinational enterprises. The first type of risk is related to public corruption and is typically much more prevalent in certain regions or countries that do not traditionally score well in transparency or the rule of Law. The second type is risks

898 According to the Law, public officials found guilty of embezzlement face a minimum prison sentence of five years if the crime is committed in connection with counterfeit goods. A public official found guilty of accepting a bribe is sentenced with a minimum of one-year imprisonment, while a private person trying to bribe faces a maximum of five-year imprisonment. Article 62 of the UAE Constitution addresses the issue of conflict of interests of government ministers by prohibiting them from practicing any financial, professional or commercial occupation.

899 'United Arab Emirates Country Profile'. GAN Integrity. <http://www.business-anti-corruption.org/country-profiles/middle-east-north-africa/united-arab-emirates/initiatives/public-anti-corruption-initiatives.aspx>. (Accessed October 27-2014)

900 Yom, Sean L. and F. Gregory Gause III, (2012). "Resilient Royals: How Arab Monarchies Hang On". *Journal of Democracy* 23(4): p 74-88.

related to resource nationalism, where populist politics often drive a country's political agenda to seek to retain mineral resources. The other types of risks are related to criminal behavior and are far less sensitive to a country's prevailing political leanings and such risks are more pronounced in failed or failing states with either a limited institutional will or limited Law enforcement capacity to protect foreign investors or prosecute prominent criminal elements.⁹⁰¹ In recent years political risks related to empowerment of local or regional interests have increased virtually everywhere in the world.⁹⁰²

The beginning of political instability in the MENA region (the Arab Spring) that started in Tunisia in 2011 and moved to Libya, Syria and Egypt was made many foreign investors who invested in these countries seek to relocate to safer places and many moved to the Arabian Gulf countries. The Arab spring therefore boosted the Gulf's real estate sector especially in the UAE, where there are many migrants who moved from the affected Arab countries searching for a safe place to live. Many of these Arab migrants were related to previous ousted regimes, which usually have a sufficient amount of funds to invest. Most of these funds have been invested in apartments, houses and other types of real estate in the region. The Gulf region was a safe place for these migrants, which have a good investment climate.

As a result of the Arab spring, and the flow of Arab migrants to the Gulf region, some Gulf States have taken advantage of the flow of migrants and issued legislation allowing any foreign national to own a property in selected areas. In addition, as we here seen, legislation has been introduced such as the mortgage Law in the Arabian Gulf region to facilitate purchasing properties. For example the Emirate of Dubai and

901 Such as a countries like Sudan, Sumalia, the Democratic Republic of Congo)

902 Lu, Kevin W., Gero Verheyen, and Srilal Mohan Perera, eds. (2009). "Investing with confidence: understanding political risk management in the 21st century". World Bank Publications.

Saudi Arabia have both issued a mortgage Law to facilitate nationals and foreigners buying properties.

Political stability is also a very important factor that may boost the confidence foreign investors planning to invest in a country for business purposes. Generally speaking there is political stability in the Arabian Gulf countries with some exceptions in Bahrain and Kuwait. For example politically motivated violence is rare in Oman. Some incidents of violence occurred at demonstrations in February, March, and April 2011, although most protests in Oman is a peaceful demonstration. The Omani government permits peaceful demonstrations to occur, but any public protest is generally rare. Likewise, Qatar is also politically stable with a low crime rate: there are no political parties or labour unions and there is no known organised domestic political opposition.

However, in Kuwait there are contentious relations between the Kuwaiti government and the opposition who have made a number of demands to change the electoral Law and to end corruption in the country.⁹⁰³ As a result there have been a number of public demonstrations with street protests (occasionally turning violent) against the Amiri decree to amend Kuwait's electoral Laws.⁹⁰⁴ The Kuwaiti anti-government protests occurred in autumn 2012 and continued to December of the same year. The public demonstrations were the largest crowds registered in Kuwait to date. At the time there was no damage to foreign investment and most of the street protests were in front of the Kuwaiti national assembly and the protest was limited against the amendments on the electoral Laws.

903 Dahlia Kholaf.(2014). *Kuwait opposition demands end to corruption*. Aljazeera. <http://www.aljazeera.com/news/middleeast/2014/06/kuwait-opposition-demands-end-corruption-201461113937107882.html>

904 Talia Ralph. (2012). *Kuwait: Thousands protest changes to electoral Laws*. Global post. <http://www.globalpost.com/dispatch/news/politics/121022/kuwait-protest-changes-electoral-Laws>

The Kingdom of Bahrain has been an open, politically moderate, economically liberal country. In recent years, however, Bahrain has seen big public demonstrations arising from different issues such as housing, employment, and sectarian discrimination between Sunnis and Shia.⁹⁰⁵ Based on this, the government started to arrest any prominent anti-government activist accused of inciting violent street protests, which has further fuelled political tensions. In 2011, Bahrain witnessed unprecedented political and civil unrest that resulted in casualties and deaths. The unstable political environment in Bahrain placed hundreds of millions of dollars of local and international investments at risk. The duration of the political unrest affected the entire economy, which resulted in some capital outflows from Bahrain. The outflow of foreign investment and decline in the tourism sector represent two of the economic casualties resulting from the protests.⁹⁰⁶

4.5. Expropriation, Nationalisation and Compensation of foreign ownership in the Arabian Gulf countries

Each host country has the right to formulate policies that protect its sovereignty. Such policies that are adopted by the host country may either directly or indirectly restrict international foreign investment. Host countries in many cases take a number of measures aimed at protecting their sovereignty as against the international foreign investor's interests. Host countries adopt different policies that may interfere with international foreign investment interests. The adopted policy used can be by expropriation or nationalisation and may be by direct or indirect intervention. Expropriation usually occurs when a host country seizes a foreign or local company's development rights or properties for its own use under the excuse of the national

905 Ajami, Fouad. (2012)"*Arab Spring at One: A Year of Living Dangerously*, The." Foreign Aff. 91. p 66.

906 Despite Unrest, Bahrain's Economy Remains a Solid Investment
<http://menaviews.com/post/90047358640/despite-unrest-bahrains-economy-remains-a-solid>

interest. The nationalisation tool is very similar to expropriation, and usually occurs after expropriation, when the host country takes a decision to expropriate foreign property and hands the property to a local company.

The protection of private property has been a traditional part of international Law, in particular, of the Law on the treatment of foreigners. For a long period of time the topic of foreign property protection against host country expropriation has played such a major role that the initial attempt of the International Law Commission (ILC) to codify and regulate the Law of State responsibility.⁹⁰⁷ The decision of expropriation of foreign property may lead to international responsibility of the expropriating State unless it is been conducted in compliance with (ILC) which requires certain conditions, such as expropriation for the public utility or interest, non-discrimination, and 'lack of arbitrariness' These considerations clearly reflect the traditional legality requirements.⁹⁰⁸

The host country should conduct the nationalisation or expropriation of foreign investment or foreign property on grounds of public utility or for the national interest which are recognised as overriding purely individual or private interests, whether it is domestic and foreign property. In such cases the government should pay the owner appropriate compensation, in accordance with the rules in force in the host country taking such measures in the exercise of its sovereignty and in accordance with

⁹⁰⁷ See, in particular, the Special Rapporteur's Fourth Report on State Responsibility, F.V. García Amador, 'Responsibility of the State for injuries caused in its territory to the person or property of aliens—measures affecting acquired rights', UN Doc. A/CN.4/119, Yearbook of the International Law Commission (1959-II). See also L.B. Sohn and R.R. Baxter, 'Responsibility of States for Injuries to the Economic Interests of Aliens', 55 *American Journal of International Law* (1961) 545; F.V. García-Amador, L.B. Sohn, and R.R. Baxter, 'Recent Codification of the Law of State Responsibility for Injuries to Aliens' (1974).

⁹⁰⁸ It can also be found in some of the United Nations General Assembly (UNGA) resolutions confirming the right to expropriate as an expression of the permanent sovereignty over natural resources.

international Law.

Although the expropriation and nationalisation are considered one of the biggest concerns that foreign investors may face in host countries. Most of the Gulf's foreign investment Laws have put these risks in to consideration in compliance with the International Law Commission (ILC), where most of the Laws mention and regulate the expropriation or nationalisation of foreign investment. For instance, the Qatari Foreign Investment Law No 13 of 2000, Article 8, states that foreign investment is not subject to expropriation either directly nor indirectly, unless the expropriation is done for the public interest and in a non-discriminatory manner, and if there is any expropriation or nationalisation of foreign investment, compensation should be prompt and reasonable. Another example of this is in the Kuwait Foreign Investment Law No. 116 of 2013 which states in article 8 that foreign enterprises may not be confiscated or nationalised.⁹⁰⁹ And if there is an expropriation, it must only be made for the public interest in accordance with Law No. 33 of 1964 and with fair compensation that is equivalent to the real economic value of the enterprise at the time of the expropriation.⁹¹⁰

According to the Qatari Foreign Investment Law No 13 of 2000, Article 8 item 2 states that the compensation of any expropriated activity should be equal to the economic value of the foreign investment and the compensation shall be paid without unnecessary delay. In addition, compensation shall be estimated by the normal economic value of the investment.⁹¹¹ However, in Qatar there have been only two cases of nationalising foreign investment since independence in the mid-1970s when

909 Kuwait, Law No 8 of 2011 Regulating Direct Foreign Capital Investment in the State of Kuwait.

910 Kuwait, Law No. 33 of 1964 on Expropriation and Temporary Possession for Public Interest.

911 Qatar, Law No. 13 of 2000 Qatar's investment Law regulating the investment of foreign capital in economic activities.

the two foreign companies operating in Qatar, Shell and Dukhan Services, were nationalised and the foreign interests were compensated promptly.⁹¹²

In the UAE, there is no such Law that regulates the foreign direct investment in the country. However the corporate and business licensing regulations play a significant role in determining the structure of foreign investment in the country. In the UAE, foreign investors have not been involved in any expropriation in recent years. There is no set of rules regulating the compensation of expropriation and individual emirates would probably treat this issue differently. In practice, the UAE governmental authorities would not expropriate any project unless there was a convincing development for the public interest and in such cases compensation would probably be generous.

The Oman Foreign Investment Law No, 102 of 1994, Article 12, states that if there was any expropriation of foreign investment for the public benefit, there would be fair compensation. Although Oman would compensate for any expropriations it makes, there are no recent examples of expropriations in Oman.

Kuwait is like the rest of the Gulf countries in that there are no recent cases of expropriation of foreign investments. The Foreign Capital Investment Law No 8 of 2001 and the new Foreign Investment Law No 116 of 2013 safeguard and guarantee against any expropriation or nationalisation in Kuwait. The said Law sets out some exceptions to the new foreign investment Laws providing for expropriation or nationalisation for the public benefit, and the said Law mentions that the compensation of any foreign investment should be provided without any delay to maintain the economic value of the project at the time of expropriation. Kuwait, a

912 The Dukhan Services was a combination of six international oil companies handling Qatar's onshore operations on the country's west coast.

major case of nationalisation occurred in the oil industry in 1974, and the government negotiated with two foreign companies⁹¹³ to purchase the 40% share owned by them.

5. Conclusion:

This chapter has shown how the Arabian Gulf states have tried to diversify their national returns from oil and gas, and how they have employed their Sovereign Wealth Funds (SWFs) as vehicles to achieve inter-related economic and political objectives. The Arabian Gulf states envisage transforming their economies to world-class industrial and commercial centres, and most of them have made great efforts to become financial hubs and to engage with other financial actors outside the region. Despite all of these seemingly plausible strategies and the other policies taken by the Arabian Gulf countries, success has still been elusive. The SWFs of the Gulf States have invested significantly to establish a stable platform to become financial hubs to encourage international and multinational enterprises to enter and establish their headquarters in the region. The total income from foreign direct investment in all Arabian Gulf countries did not reach a quarter (during 2013) of the total SWF's investment in the region, where the total regional investment is more than three times of the total income from the foreign investments in the region.⁹¹⁴

The rationale for financial centres in the region has resulted in competition between the Arabian Gulf countries to attract multinational enterprises and international financial service corporations to support the national financial sector and, consequently, national economic development.⁹¹⁵ The other purpose of the financial

913 BP and American Gulf Oil Company.

914 UNCTAD (2013) the annual World Investment Report 2013.

915 Fasano, Ugo, and Zubair Iqbal. (2003). GCC countries: from oil dependence to diversification. International Monetary Fund.

hubs is part of a wider investment and development strategy to facilitate the participation of companies and other financial enterprises and to expand the financial sector in the region.⁹¹⁶

There is competition in the Arabian Gulf region in setting up financial centres, resulting in specialty financial boutiques.⁹¹⁷ Each of the Gulf member states has focused on specific financial tools, for example Bahrain has focused on Islamic Finance, Dubai focuses on investment, private banking and real estate, while Qatar focuses on insurance and asset management in the region.

The chapter has also illustrated the main factors that encourage and boost foreign investors' confidence to invest in the Gulf's real estate sector. One of these factors is the openness to foreign ownership and the restrictions upon foreign investment in the Arabian Gulf region. The right to property ownership of foreign nationals in the Arabian Gulf countries can be confined to three common types of real property interests. The most basic form of real property interest are contractual rights which are usually in the form of short-term leases. The second are long-term leaseholds; this type of property interest (up to 99 years) has no true property ownership of the underlying land. The third type of ownership is full ownership freehold title that includes buildings and the underlying land.

International real estate investors considering investments in the Arabian Gulf need to be aware of the real estate ownership regime in the region. Foreign investment in real

916 Ali, Asim, and Shatha Al-Aswad. (2012) "Persian Gulf-based SWFs and Financial Hubs in Bahrain, Dubai and Qatar." *World Economics* 13, no. 3. p 109-126.

917 Fasano, Ugo, and Zubair Iqbal. (2003). *GCC countries: from oil dependence to diversification*. International Monetary Fund.

estate within the Arabian Gulf countries is a relatively new phenomenon that started in the late 90s, and the real estate investment industry in the Arabian Gulf countries is in its early stages. During the past decade, most of the Arabian Gulf countries have permitted some form of foreign national ownership within their territory. Most of these countries permit local citizens, the citizens of the Gulf member states and foreign nationals, to hold contractual leases outside designated areas that permit foreign nationals to own a property. However, a number of restrictions were placed on long-term leasehold interests, and the highest number of restrictions were placed on freehold title interests. Unsurprisingly, the local citizens of a country and the citizens of the Gulf member states have the greatest ownership privileges, with the fewest ownership privileges being afforded to foreign nationals, whether they are individuals or corporations.

Generally speaking, local citizens can hold property freehold title anywhere in the country and it is permissible for the citizens of the Gulf member states to own real property interests equal to those available to local citizens anywhere within another Gulf member state.

The Gulf member states have signed a number of economic agreements between each other which give Gulf natural and legal citizens common treatment as if they were their own national citizens, without any differentiation or discrimination, in all economic activities including property ownership.⁹¹⁸ The 2001 Economic Agreement between the Gulf member states agrees to take steps in order to unify their investment related Laws and regulations. However, certain Gulf States did not comply with the Economic Agreement and placed some land ownership restrictions on citizens of

918 See The Economic Agreement Between the GCC States (2001). Chapter II, GCC Common Market, Article Three.

other Gulf member states by limiting the land ownership of Gulf citizens to designated areas such as investment zones. Other Gulf member states have some restrictions on Gulf citizens including the prohibiting of freehold title or limiting the number of properties in specific zones or for specific uses. It was become clear therefore that there is a difference in treatment of the Gulf citizens and there is also a variation in real estate legislation between the Gulf member states.

The restrictions placed on foreign national ownership are significantly more cumbersome than the restrictions on the Gulf nationals. Even though the ownership restrictions differ significantly from one country to another within the region, a few common restrictions have been taken by the Gulf governments, where most of the Gulf member states have specific areas for foreign nationals' property ownership such as investment zones. The other common restrictions that have been taken are that most of the Gulf member countries have prohibited the ownership of freehold title in their territory and limit foreign nationals to long-term leaseholds; and most of the Gulf member countries have imposed significant use restrictions on all foreign national owned property.

In relation to the level of corruption in the Arabian Gulf countries, the region is facing many difficulties fighting corruption, which is considered an obstacle to foreign investors. At the local level, each of the Gulf countries has issued a number of Laws and regulations in order to challenge the corruption in the private and public sectors. The governments of the Gulf countries have established a number of authorities to combat corruption and also established auditing bureaus for the same purposes. At the international level, the Gulf countries have entered a number of international conventions such as the UN Convention for Combating Corruption, and the members

of the Gulf Cooperation Council States have signed a number of agreements between themselves and with other countries in order to tackle corruption in the region.

The expropriation of real property is considered to be one of the main factors that causes foreign investors to hesitate to enter a country for investment. The expropriation activity in the Arabian Gulf countries occurred in the late 50s-60s in the case of Kuwait and during the 1990s and 2000s in the cases of UAE and Qatar. During that time, expropriation in these countries only occurred in order to conduct development projects and for city restructuring. During that period none of the foreign investment properties were expropriated, and the expropriation activity was only conducted on a citizen's properties with a fair compensation. Based on this, the Arabian Gulf Countries are considered a safe place to invest from the perspective of expropriation of real property. There has been no expropriation of foreign investment or foreign property in recent years. However, it is worth mentioning that expropriation activity during the old days occurred to conduct development projects, and it is possible that in the future some expropriation of foreign investments or foreign properties will occur, if it is inconsistent with the public interest. In the case of any government of a Gulf country deciding to expropriate foreign interest, the foreign investment Law of that country will protect the foreign interest and will compensate the foreign investor based on the market price.

Chapter 8: Thesis Conclusion:

1. Introduction

The subject matter discussed in this thesis covers several aspects relating to the legal framework of real estate investment in the Arabian Gulf countries. The thesis begins with the urban development of Arabian cities as well as the development of the regulatory system in the Arabian Gulf countries. The thesis shows the development of the structure of property ownership, including the types of property and what are the ownership restrictions in the Gulf's property sector. The fourth chapter of the thesis shows how the governments of the Gulf region intend to regulate the real estate sector. This include the regulation of the real estate participants in the real estate sector which includes the regulatory framework of real estate brokers, agents and developers in addition to the growth of escrow accounts, off plan sales regulations, lease to own and *Musataha* regulations. The fifth chapter illustrates the regulatory framework of real estate finance in the region and what is the regulatory system that regulates the real estate finance providers. The sixth chapter shows how the world financial crises of 2008 have affected the Gulfs real estate sector. The chapter also explains how the governments of the Gulf have set their policies to respond to the crises. The seventh chapter shows how the Arabian Gulf states have tried to diversify their national returns from oil and gas, and how they have employed their Sovereign Wealth Funds (SWFs) as vehicles to achieve inter-related economic and political objectives which have impacted the real estate sector and other relates sectors. The Arabian Gulf states envisage transforming their economies to become world-class industrial and commercial centres, and most of them have made significant efforts to become financial hubs and to engage with other financial actors outside the region.

Yet, despite these seemingly plausible strategies and policies taken by the Arabian Gulf countries, success has still been elusive.

The need to have efficient and effective real estate regulation that aims at offering the needed protection for real estate investors is an essential foundation necessary for the long-term success of all the Gulf real estate markets. Establishing the necessary protection of a viable structural framework is a very complex task numerous studies have concluded that the level of protection afforded to investors in a particular country's real estate market largely coincides with the maturity of the overall general legal system as developed within each jurisdiction.

2. An Analysis of the Current real estate Situation

After reviewing the history of urban development and the real estate regulations and reviewing the property ownership in the covered Arabian Gulf countries, one can produce the following overall conclusions.

2.1. **The first conclusion** is that the nature of regulation in the Arabian Gulf real estate markets tends to be similar, but not identical. One exception that stands out, however, occurs in the area of market abuse regulations; otherwise this can be seen as part of a path dependence that these real estate markets are currently undergoing.

The shared legal systems and legal institutions in the Arabian Gulf countries lead to the conclusion that these real estate markets and states are intra-cultural, i.e., they share similar legal institutions and systems. It is not suggested that they are identical as there are some distinct differences in the regulations that are directly related to the unique circumstances of each individual market. It is expected that future reforms in the Arabian Gulf region will lead to more convergence in terms of the substantive

rules, based on the aims behind of the Economic Agreement of the GCC countries signed in 2001 that introduced regulatory frameworks for national property ownership in the GCC member states. However the competition between the Arabian Gulf countries to be the leading financial hub in the region has affected the principles of the Economic Agreement.

The reasons behind such convergence is the fact that whenever the regulators in the region engage in a substantial reform process, they tend to refer to international consultancy firms to upgrade the existing rules, and these consultancy firms usually suggest the implementation of international standards. Eventually, the rules of the real estate market tend to become more or less similar. Transplantation of foreign real estate Laws is the most favourable mechanism of reforms in the region, as previously illustrated in Chapter four, and this tends to lead to convergence, especially when the transplanted Laws come from the same source.

2.2. **The second conclusion** is that the current real estate rules and regulations fail to produce an adequate level of needed real estate investor protection during financial crises. Whet the general impression of the real estate sector regulation has revealed is that the real estate regulation has put too much focus into protecting the supply side participants (e.g. real estate developers, real estate consultants, and other real estate market players) at the expense of the demand side of the real estate participants (e.g. local and foreign investors, financial institutes and other end users).

This calls for major reforms to take place in order to upgrade and enhance the level of protection in general and to real estate investors in particular. However, having said this it should be noted that any reform strategy to upgrade the existing substantive

rules will, most likely, not produce the expected results of protection for a number of reasons.

2.2.1. **The first reason** behind this scepticism is the fact that the level of the rule of Law in the markets dealt with is jeopardised and does not stand on firm ground as has been illustrated in the previous chapters and the results derived from the fieldwork. Failure to address this problem will hinder any intended reforms to these markets. This is due to the real estate markets' sensitive nature as these markets cannot tolerate relaxed environments when it comes to violation of the Law; such environments will reflect negatively on the level of confidence of the investors in these markets and undermine any reform process adopted by policy makers.

2.2.2. The **second reason** is the fact that the infrastructure of the real estate markets in the Gulf is not ready for such an upgrade. For instance, the absence of institutional investors along with the ineffectiveness of relevant gatekeepers, which will be discussed in more detail below, are major obstacles for any intended reform process.

2.2.3. **The third reason** is that the people of the Arabian Gulf countries are unable to participate in the issuance of Laws: the role that Gulf citizens play in the enactment of Laws is limited to the legislative functions awarded by the Constitutions to the Council of Representatives, or the National Assembly or Consultative Council (depending on the Country). As can be seen, most of the members of the national councils of the Gulf member states are appointed (except for the Kuwaiti National Assembly), which does not really reflect the opinion of the people. Since the various council members are appointed by the ruler or by a committee appointed by the ruler, this may affect the decision of these members and they may well show their loyalty to the ruler by supporting his decisions. Furthermore, the role of the legislative councils

in the enactment of Laws is limited to reviewing bills and raising non-compulsory recommendations to the ruler. Since the recommendations are not compulsory, the ruler can accept these recommendations or ignore them. It is clear from the above that the peoples and the councils of the Gulf do not have a real or influential role in the enactment of legislation. The exception is for Kuwait, where the Constitution gives the National Assembly Council many legislative powers, that enacted Laws and regulations reflect the people's will. However in the rest of the Gulf States the appointed legislative councils do not have the power that in Kuwait the National Council has. Where most of the Gulf councils are appointed by the ruler, and the decisions of these councils are not compulsory on the ruler, then the councils find it difficult to pass their own independent decisions which is may be inconsistent with the will of the ruler.

Based on that, the members of the royal families or the influential persons in the Gulf still enjoy massive powers to enact Laws and legislation that reflects their wishes to occupy vast tracts of land and claim ownership over them or transfer state property to private property by enacting Laws. It is true that the ordinary citizen has certain rights of ownership, but the influential people still have the most robust control over the territory since they influence members of the legislative councils. The infringement on public lands activity is still practiced; either through a decision by the ruler to expropriate some residential lands; or by using the Build, Operate, Transfer (BOT) system; or expropriation or conversion of residential land into investment land (which raised the value of the land more the double). The infringement on public lands claiming lands occurs through public tenders that are usually won by companies owned by the influential people or merchant families who have ties to the authority.

All the Gulf countries should really establish an independent regulatory authority regulate the real estate sector such as the one in DUBAI (the Real Estate Regulatory Authority RERA) where this authority regulates all related transactions to real estate sector, as well as regulating the real estate developers, brokers, agents, mortgage providers and other related real estate players. The Regulatory Authority should be established by Law with the power to issue real estate regulations to protect all the transactional parties in any real estate transaction, with a clear statement of its powers and intent when it comes to enforcing Laws against master developers. Establishing such an authority that regulate all the real estate transactions and all related parties can then refer to one place for any information or to review regulation. This is considered a vitally important issue that would offer more transparency for overall regulation.

3. The Contribution of this Study

This study is the first study to consider the real estate sector in all Arabian Gulf member states from a legal perspective. This study has investigated the urban development of the Gulfs real estate sector in addition to the legal infrastructure of the real estate sector in Arabian Gulf countries. This study has examined the efficiency of the current Laws and regulations that relate to the real estate sector. The study describes and shows the contrast between the real estate Laws in the Gulf countries and shows the similarity of some real estate Laws in the region. An examination was made of the legal systems of the Arabian Gulf countries and to the laws that govern the real estate sector in the region. Moreover, this study has also addressed the importance of the real estate regulatory authorities to monitor controls and enhance the real estate sector.

Accordingly, this study contributes to bringing to the attention of policymakers in the Arabian Gulf region the importance of adopting proper real estate regulation to provide clear protection for investors.

4. Further Research

This research aimed to offer an analysis of the current regulations in the real estate markets in the GCC from an investor protection perspective. This thesis did not cover all the relevant aspects of the existing regulations due to word and time limits. Besides, the fact that this is a legal thesis adds limits to the available venues in this topic.

For instance, the social characteristics of the societies in the GCC states and the existing relationships with the speculative mania that is witnessed nowadays and throughout the history of these markets are topics mainly outside the scope of this work.

Further research is therefore essential and needed to cover the topic from all perspectives. Suggestions for future research include the following:

- Regulatory analysis of a real estate markets in the Arabian Gulf countries, especially the Dubai real estate market as it is the largest market in the Middle East.
- Whether integration between the Arabian Gulf real estate markets is feasible economically, and if so, what are the regulatory obstacles facing such integration and the ideal model for integration.
- The economic effects of the mortgage Law in the Arabian Gulf real estate markets.

- The impact of the emergence of financial centres in the Arabian Gulf region such as the Dubai International Financial Centre and the Qatar Financial Centre on local markets in the region.

It is hoped that this thesis will be the start of more intensive studies on the Arabian Gulf real estate markets due to the importance of the topic and the tremendous impact it has on the societies and the economies in the region.

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