

Foreigners' Real Estate Property in United Arab Emirates Comparative study

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ملخص :

بات الاستثمار العقاري أحد الأنشطة الاقتصادية الهامة التي تعتمد عليها الدول في تنمية مواردها المالية، وهو الأمر الذي ينعكس بصورة كبيرة على تحسين ميزان المدفوعات خاصة في الدول النامية. ولقد عمدت معظم الدول على تشجيع المستثمرين بصفة عامة والأجانب بصفة خاصة في الولوج إلى الأسواق العقارية، في ضوء تنظيم قانوني يسمح لهم بالملكية العقارية. وتعد دولة الإمارات من الدول العربية التي برزت في هذا المجال، من خلال اعطاءها حوافز عدة للأجانب في تملك وحدات عقارية خاصة في المناطق الحرة والاقتصادية على السواء.

ولما كانت الإمارات تتخذ من النظام الاتحادي (الفيدرالي)؛ نظاماً سياسياً لها، حيث تتكون من سبع امارات مستقلة كل منها لها حاكم لها، يجمعهم كيان اتحادي واحد، من خلال دستوراً اتحادياً، ينظم العلاقة بين الدولة الاتحادية والإمارات السبع؛ حيث ينفرد الاتحاد ببعض الجوانب تشريعاً وتنفيذاً، ويترك مسائل أخرى، يكون لكل امانة الحق في تنظيمها تشريعاً وتنفيذاً، من ضمنها القطاع العقاري.

لذا اهتمت الدراسة بالتنظيم القانوني للقطاع العقاري في سبع امارات، خاصة فيما يتعلق بملكية الأجانب للعقارات والمزايا والمحددات لهذا النوع من الملكية، وذلك للوقوف على مدى التماثل والاختلاف بين التشريعات العقارية المحلية في الامارات، للوصول إلى نهج جماعي تشريعي لهذا القطاع بالنسبة للأجانب في دولة الإمارات. ولقد انتهت الدراسة إلى وجود تباينات واختلافات في التشريعات المحلية فيما يتعلق بملكية الأجانب، فمنها من تشدد في عدم منح مزية التملك الحر والاكتفاء بملكية الانتفاع لمدة طويلة تصل إلى تسعين عاماً ومنها من يفرق بين المناطق الحرة والاقتصادية، واتفقت التشريعات على معاملة تفضيلية للأجانب من مواطني دول مجلس التعاون الخليجي، وإن اختلف مدى هذه المعاملة. وفي ضوء ذلك أوصت الدراسة أن يكون هناك تشريع اتحادي للملكية العقارية.

Summary:

Real Estate property investment is one of the main economic activities, which most countries rely on, to increase and flourish its financial sources, this reflects on the payment balance especially in the developing countries.

Most countries encourage investors in general, whether nationals or foreigners and especially the later in facilitating the access of its real estate markets in a legal context that permit for them real estate property.

UAE, is one of these countries that concern by this sector. it is considered a pioneer in the Arab region for the incentives, which it delivers to the foreigners in owning flats and stores particularly in free and economic zones.

As UAE is considered a federal country, which includes seven independent Emirates, each Emirate has its monarch, and all the Emirates are gathered in a union entity, through a federal constitution that organizes the relationship between the union and the Emirates. The Emirati constitution provide that there are some issues the Federal entity has the exclusivity in legislating and

executing and left other issues to be legislating and administrating by local authorities in the Emirates, the real estate sector is considered one of these later issues.

Therefore, the study concern by the legal organization of the real estate sector in the seven emirates, especially in the side of the foreigners' property for the real estates and the incentives which delivered to them in the same time the restrictions and limitations for this privilege.

This is to stand on the similarities and differences in the local real estate legislations in the seven emirates, to reach one method in legislating this sector for the foreigners in the country.

The study concluded that there are differences between local laws in the context of foreigners' property; emirates go to forbid the freehold ownership, others permit the usufruct ownership for an extended period, sometimes it reaches 90 years, and the third distinct between the ownership in the economic and free zones and the other areas in the country. All local legislations agreed in giving preferential treatment for the GCC national, rather they had contrasted in its extent. The study recommended that it is better to develop a federal legislation for the real-estate property.

Abstract:

Real estate property is one of the main forms of property, that mankind enjoy and keen to have it, not currently but from the distant past, till Tomorrow and the far future. Thus legislations all over the world respect and consider it as a right for the man to own a property and have the powers to use, exploit and assign or transfer it.

Right to own property, had been organized in national legislations; that draw its scope and limitations, which determine the powers of the owner and his obligations towards his property, and also with others in relation to its property. One of the main limitations in interesting real property rights is the differentiation between nationals and foreigners, that in most cases the scope of ownership for the national is wider than the foreigner; sometimes it is prohibited for the later. This scope or limitations may be broadened or narrowed, varies from country to other according to elements as policy, ideology, and sometimes economically circumstances.

The situation in UAE is worthy consideration to study, because of the federal formation of the country, the Emirati constitution reserves the principal issues, which represent the main pillars of the country, to be organized under the federal level and leave some issues to be organized under the local authorities, the entire seven emirates, which form the Emirati union, considered the real estate sector is one of these issues. Consequently, there are variations in organizing this sector in the seven emirates; each emirate has its unique local law that differs from other local laws in the country.

Herein our study concerns by similarities and differences in these local laws, which deals with the foreigner real estate property rights in UAE, in order to reach a common line or trend for these local legislations that may be a nucleus for a federal law to organize foreigner rights in real estate property, especially real estate sector is considered, as one of the main economic sectors which had been flourished, in the last few years and attract seekers and investors from all over the world.

The study relies on the comparative method on two levels; the first level is the local level in order to reach the similarities and contradictions between the seven local legislations in the country. While the second level is the international level, to clarify the experiences of other countries especially liberal countries, which open the real estate market to foreigners to own and invest in this economic sector.

Key words: Emirati Union, Foreigner, Powers, Real estate property.

Introduction:

United Arab Emirates (UAE) is a federal country, composed of seven Emirates; Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah and Umm Al- Quwain. Each Emirate is governed by an absolute monarch and has its local laws, beside the federal laws which are governed all the state in some defined matters had been determined in the Emirati constitution, and leaves the local governments to organize its local affairs, by local laws provided that to be without any contradict with the federal level.

Although UAE economy relies on Oil and Gas, but in the last years the country directed its economic policy to be more diversity in the gulf area, really Dubai is considered the first Emirate which began this approach earlier relying on different fields as tourism, trade, and

investment. It enlarged in establishing free zones all over the Emirate, this may be referred that Dubai has no oil or a Gas wealth as Abu Dhabi.

Dubai's diversity method is appeared clearly in industry, trade, investment and real property sectors, this diversity had attracted investors from worldwide to invest there. The rest of emirates especially Abu Dhabi the capital of the Emirati union followed Dubai steps in this path, particularly in real estate sector and more property companies (Public and Private) had been established in all the Emirates of UAE.

The real property sector in UAE was encouraged from the federal government and the local governments too, not only for nationals, but also for foreigners who are working and living in the country, regarding that foreigners, according to the Emirati statistics, form approximately 9/10 of the entire population in UAE¹. These high percent is considered as a real market that the country can invest in it, especially when we know that all these population are interested to live in this country for many reasons; mainly security, and prosperity.

Emirati constitution affirms on the rights of foreigners, when stated in art.40 that "Foreigners shall enjoy, within the union, the rights and freedom stipulated in international charters, which are in force or in treaties and agreements to which the union is party. They shall be subject to the corresponding obligations." This statement had been reflected and translated in all federal and local laws that touch and related to foreigners for all their affairs and rights, not only in labor field but also in health, education, public freedoms, housing and real estate ownership.

Real estate ownership for foreigners in most countries is subject to local organization, which appears in local laws in the country, influenced and complied by multilateral or bilateral agreements. Laws differ in their perspectives, some tend to be restricted, other prefers the freely way, but the most of legal systems follow the former one in respecting national security and to avoid the monopolization of the core resources of the country. Thus countries put restrictions, conditions and rules for Foreigners real estate ownership.²

UAE, as the most of countries tend to put rules and conditions, for foreigners' ownership, these rules appear in the local laws, which are vary from one Emirate to another as we mentioned before. This is the focal point of our research; Real Estate ownership for foreigners in the different Emirates which form the Emirati union.

In our research paper we will try to answer the following questions:

- 1- What do we mean by Foreigner in the Emirati legal system, compared with other legal systems?
- 2- What is the meaning of Real Estate in the Emirati legal system compared with other legal systems?
- 3- What is legal framework which organizes real estate sector in UAE?
- 4- What are the granted privileges for foreigners to have a real estate ownership in UAE?

I- Foreigner Scope in UAE.

I-1 Foreigner definition:

Foreigner; in language, is a person from another country, and in law it is the legal status of a person (natural or juristic), who is belonging to another country, in a said country. Thus all legislations in the world concern with organizing its legal status and put the provisions which determine their rights and obligations in a said country. Moreover international conventions and pacts draw an international frame of rights that countries must consider it,

when drafting its legal provisions regarding the legal status of the foreigner, otherwise it will be subject to the international responsibility.³

Foreigner in Legislations:

If we make a survey for the definition of foreigner in comparative laws, we will notice that most of legislations rely on Nationality to differ between the national and the foreigner, and define the latter as the person who is not a national.⁴

British law defines the alien that he is the person, who is not British subject⁵. On the same track the German Law goes through, when defines alien; is any person who is not a German national within the meaning of article 116, para.1 of the basic law⁶. The French law follows the same context, it considers the foreigner; is the person without French citizenship, and the latter means anyone who has the French nationality, either by being born French, or after having become French later⁷.

Most of Arabian Countries take this way as the Egyptian law which defines the foreigner; is the person who does not enjoy the Egyptian nationality⁸, not only for the natural person but it extends to include the juristic one⁹. On the same way, the Algerian legislature defines the foreigner that is the person who is not bearing the Algerian nationality.¹⁰

The Gulfian legislations on the same track too, as example; Law of Sultanate Oman considers the foreigner; is the person who not bearing the Omani nationality¹¹. The Saudi Arabian legal regime defines the foreigner; is the person who is not Saudi, and defines the Saudi; is the person who is a follower to the government of his majesty king bulks of Saudi Arabia¹².

While the American law gives another perspective, it defines the alien; any person not a citizen or national¹³. Law distinct between both legal terms; the former means someone who was born in and maintains a domicile within a political jurisdiction, who owes allegiance to the sovereign within that jurisdiction, and who participates in the functions of government by voting and serving on jury duty, that is to say; Citizens are members of a political community. While National, includes all citizens, of the United States and other persons, who owe allegiance to the United States but have not been granted the privilege of citizenship.

Nearby the American way, the Syrian Law broadens the alien or the foreigner concept, when defines alien; as any person who not bearing the nationality of the Arabian Republic of Syrian or the Nationality of any other Arabian country.¹⁴ This law refers not only, to the Syrian nationality criteria, but also the Arabian identity in considering with the meaning of aliens, whom are neither the both. The Iraqi law is nearby to some extent to the Syrian legislation, it defines the foreigner according to the field or sector of organization; that law regarding the Iraqi nationality¹⁵ defines the foreigner is the person who does not bear the Iraqi nationality, while in the Real estate registration law; it considers the person who does not bear the Iraqi nationality or any Arabian nationality.¹⁶

The Emirati law follows the first perspective; which relies on the nationality criteria in defining foreigner, it states that everyone does not bear the Emirati nationality is considered foreigner¹⁷. This mirrors the Emirati legislature's belief about Nationality; as it expresses the physical and moral cord between man and country, which he is belonging.

This cord is country's beliefs, norms, ethics, culture, problems, history, modernity...etc. that the national not only interact with it, but also indulgences in it¹⁸. What we can say that the national in UAE, as an example, feels consciously and unconsciously, the Emirati soul. This may interpret the restricted provisions in granting the Emirati Nationality.

I-2 -Classifications of Foreigners:

As enjoyable the legal personality, we can distinguish between two main forms of foreigners, the natural foreigner person and the juristic foreigner person.

i- Natural Foreigner Person:

We can differentiate between three forms of natural foreigner persons:

a- Relative Foreigner:

This term means the person who bears a nationality of a particular country, in this sense he considers national for this country and foreigner for the other countries, this latter prescription appears in his movement across borders. In addition to this form there are other terms related to this category; as the multinational or dual nationality, refugees, and asylum seekers, which take the same prescription, because in spite of their social or political circumstances, they are bearing a nationality, joining them by a particular country.

b- Absolute Foreigner (Stateless)

This person does not bear any nationality for any country, in other words he considers foreigner for all countries in the world.¹⁹ Universal declarations for human rights and International conventions²⁰ concern with this category, to cope with this unhuman phenomenon, in conformity of human rights principles, every person has the right to bear nationality which joins him with a country.

c- Preferential Foreigner:

This term means the relative foreigner, who enjoys with such a treatment, from the said country different than what be delivered to other foreigners, this due to reciprocity principle between countries or multilateral agreement,²¹ as an example the nationals in Gulf Countries Council (GCC)²², they bear the nationality of their countries and they deemed foreigners for other countries in GCC, but they enjoy a preferential treatment in all the countries included in the GCC convention. This treatment in most rights affirms equality, between nationals and this category of foreigners, who enjoy the same treatment, especially in residence, labor, and establishing companies at any Gulfian country.

ii- Juristic Foreigner Person:

a- Simple (sole nationality) foreign entities: as foreign companies, all partners have the same nationality, thus the company bears one nationality; which often is its business center, other than the nationality of its investments.

b- Multinational Foreign entities: as multinational corporations; that the partners are from different countries bearing various nationalities, but the entity bears one nationality and spread out via establishing subsidiaries.

c- Transnational Foreign entities: this form considers as an economic concept rather than legal one. Economically, it means the corporation; which does not identify itself with one national home; it spreads out their operations in many countries to sustain high levels of responsiveness²³. On the legal context it is treated as the previous form; a Multinational Corporation.

Regarding that, most of comparative legislations assign particular provisions, and impose stipulations for granting licenses, in order to access in their markets, according to their countries' economic and investment policies, which may be open or conservative.

Emirati law mixes between both trends; while it draws a conservative and protective legal frame, which restricts the access of foreign investments, by a group of limitations, in order to save the national economy. It states that any foreign company wants to establish a

branch for its company; it must have a local agent from nationals. In addition if this agent is a company all the partners therein have to be nationals²⁴.

In the same time, the country went through and broadened in establishing free zones all over its Emirates, in order to encourage and attracts foreign investors, (natural or juristic), to invest and permits the possibility of establishing and owning freely an investment, without being subject to the civil and commercial Federal laws, but under some stipulations, as the prohibition in making transactions out of the free zone, they haven't the right to invest in the Emirati market, in addition, they have to deal with foreign currencies only.²⁵

II- Real estate Property:

II-1 Real estate definition:

Real estate or immovable property is a legal term; that encompasses land, along with permanently affixed to the land²⁶. This view appears in most of comparative laws; the Egyptian law defines the immovable things; it is the things which are fixed, and cannot be removed without damage.²⁷ The Emirati civil law defines the real estate; it is the thing of a permanently fixed nature and cannot be removed without damaging or altering its nature or form, shall be regarded as real property²⁸. We can notice that the Emirati law does not stop on damage action, but extends the issue to the alteration of the thing to another nature or form.

In the same scope, the Emirati local and sectorial legislations follow the same notion, particularly the real estate legislations, in the different Emirates. Dubai law defines real estate; it is lands and all fixed buildings established over it and cannot be transferred from location to another without damaging or altering its form.²⁹ In Abu Dhabi Emirate, law does not define real estate, but determine the forms of real estate, it enumerates in Lands, Buildings, Establishments and immovable by reason of its destined use.

II.2- Real estate property ownership right:

Ownership or property right may be defined; as the right by which a thing belongs to someone in particular and exclude all other persons, to enjoy his dominion on it as he or she wishes to the extent of limitations determined by law³⁰. In this context, comparative legislations define property right in the same way. French law defines property that is the right of enjoying and disposing of things in the most absolute manner, provided that; they are not used in a way prohibited by laws or statutes³¹. Same the Emirati legislature defines the ownership right; that is the power of the owner to dispose absolutely of his property, whether of the property itself, or of the benefit or exploitation of it. Regarding that the owner of a thing, alone has the right to the beneficial use of the thing owned, and to its yield, fruits and produce, and to dispose of it in any manner permitted under the law.³²

Thus we can define real estate ownership right as, it is the right of a person to exercise exclusively his legal powers (using, exploiting, disposing) on a real estate (land, fixed buildings, or a unit in a building), in the light of limitations determined by law in order to make balance between personal right and social responsibility.

Legal powers of ownership right³³:

a- Using Real estate:

This may be appeared in the living in a real estate or a unit thereof, in other words right of habitation, cultivating, reclaiming the land. Whether this use by himself or by others after taking his/her permission and consent without any compensation. The Landlord has the right to determine the form of using as he or she prefers in compiling with law.

b- Exploiting Real Estate :

This may be appeared, when the landlord got the fruits of his owned real estate, by leasing his house to a tenant in opposite to a rent, or leasing his land to a farmer in order to cultivate it in opposite to get a rent.

c- Disposal of Real Estate:

This may be appeared into forms; physically by demolishing or destroying the building, and legally in selling or assigning the real estate to others or by mortgaging the real estate.

II-3 Forms of real estate property:

In differentiation between the two major legal schools; we can notice that the Latin school represented by French legislation, which believes in the inclusive ownership, this means that ownership cannot be divided in different ownership rights, but the owner can exploit his property as the form in which the owner deems. In addition it recognizes the right of usufruct and timeshare arrangements.³⁴

Most of Arabian laws follow this path. The Egyptian legislation recognizes ownership as an inclusive right too; the owner enjoys lonely all legal powers, but in the same time it gives him the right in exploitation his property; by leasing or selling his right in usufruct, in opposite of rewards or compensation. Moreover it distinguishes between parcel ownership and benefit ownership³⁵. In addition, ownership is considered a permanent right, which means that this right does not lapse or abate for disusing the property, in contrary; the derived rights of ownership right, will be lapsed after a period from disuse, because it is temporary determined by a specific period.³⁶ We can summarize the main properties of ownership right in three words; Exclusive for the owner, Inclusive to all rights on the thing, and Permanent not abate or lapse.

On the other hand the Anglo-American school, represented by United Kingdom law, particularly England and Wales Legislation, which mentions that there may be estates, being ownership limited in time, as it provides the forms of property in the following:³⁷

1- Freehold ownership:

It means that the owner has complete and absolute ownership on land, and all buildings thereon. There is no limited time of ownership; the owner is therefore in a position to do whatever they wish, with the property, as long as, they adhere to local planning regulations. Thus it considers as the strongest or the highest category of ownership.

2- Leasehold ownership:

A lease is a contract between the leaseholder and the landlord; it defines the responsibilities and obligations of both sides. Owning a leasehold property is finite, it has an expiry date.

3- Common hold ownership:

It is a new type of property ownership; it is named Condominium property in United States.

It introduced in UK on 2002 as an alternative, to the long lease hold system; it is broadly equivalent to freehold ownership of individual flats.

On the Egyptian track with some influence by Sharia law, the Emirati legislature states the rights which are delivered from ownership or property right as follow:

A- Usufruct right:

The Emirati civil law mentions this right, as a derivative of ownership right, and defines it as a right in rem in favor of the usufruct, to use property of another and to exploit it provided that; it remains in its original condition. This right may be acquired by a legal

action, pre-emption, inheritance, or by passage of time. Law as well as, the agreement between the parcel owner and the beneficiary draws the scope of enjoyment, that both parties must be obliged by it. Usufruct right is finite; not forever like right of property, law states that right of usufruct shall be terminated upon the expiration of fifty years unless its establishment deed states another period.

B- Right of use and right of residence:

Law mentions that right of usufruct, may exercise on right of use, or right of occupation, or both of them. It added that; who has this right is the only one, and his family shall enjoy this right, in regard with the agreement thereof, the owner of this right cannot assign to another, unless the agreement states otherwise. All usufruct right provisions shall be applied on right of use and occupation.

C- Musataha right:

It is a right in rem that, in compliance with law and its deed, gives the holder the right to construct a building or to cultivate on a land belonging to another. It is a type of ground development lease, and its holder has the right to invest in, mortgage, lease, sell, or purchase a plot of land for a period of up to 50 years. Right of Musataha may be acquired by agreement or by the passage of time, and may be transferred by inheritance or testamentary.

In comparing both perspectives, (Latin and Anglo-American), we can notice that the notion is one, but the difference appears in names or titles and method of framing rights; that property or ownership in Latin school means absolute ownership, and is synonymous to Freehold ownership, while the rest of ownership forms in Anglo-American are considered as derivatives to ownership in the former one.

In other words, organizing ownership in both perspectives refers to the scope of ownership right and its powers, if the owner keeps all his powers in his hand, this is encoded in the term of freehold or absolute ownership, but if he gives up on one of his exclusive powers, whatever in opposite compensation or not, then we will face the other forms of rights or ownerships.

In the same time, both schools agreed in organizing Common ownership; as a form of ownership. The Emirati law states³⁸; that if there are several owners of stories in a building or of different apartments, they shall be deemed to be co-owners of the land and of parts of the building intended for common use such description for which, by the nature of the building, must be in common ownership, including in particular the following:

- a- Foundations and structural walls.
- b- Party walls, walls of entrances, and walls supporting the roof.
- c- Ventilation ducts for amenities.
- d- Roof supports, gangways, entrances, yards, ceilings, stairs and stairwells, corridors and passages, floor supports, lifts, and porters rooms.
- e- Heating and cooling appliances and other pipes, nozzles, drains, installations and extensions used in common such as lighting and water appliances appurtenances, and all that forms part of the building save those parts inside any particular floor or apartment.³⁹

III- Powers of foreigner owner:

In order to introduce the foreigner's powers on his real estate property, we will present his situation in each emirate in the Emirati union, because of the existing of local laws, which

organize these powers. This situation is resembled to most Federal systems in the world, that have subnational legal systems organize its internal and municipalities affairs.

III-1. Abu Dhabi Local Laws:

Law no: 19 of 2005, for real estate ownership, follows the same track of the general principle in enjoying ownership exclusively for nationals, and moral persons which owned in full by them. In the same time it permits for the foreigners to own, but under special conditions, considering the differentiation between the Gulfian persons and other nationalities.

1- Gulfian persons:

Law states that the Gulfian persons whether, natural or moral, have the right to own a real estate (Lands, Buildings, Establishments and immovable in reason), provided that the real estate included in the investment zones, which be determined by Abu Dhabi Emirate Executive Council, and they have the right to assign or to arrange any other rights in rem whether original or securities over property.⁴⁰ This means that the Gulfian persons enjoy freehold ownership, in the determined investment zones only not in the rest of the entire Emirate.

2- Foreigners other than Gulfians:

We can distinguish between two groups of rights that law gives to foreigners in enjoying real estates.

i- Freehold ownership:

Law states that foreigners in general; whether natural or moral persons, resident or nonresident in UAE have the right to own stories in buildings, which are existed in the determined investment zones. Consequently they enjoy the right to arrange all rights on it whether, original or securities over it; acquire, buy, sell, lease, and mortgage and invest these storyes and flats therein without land.

Law provides that these owners have to register themselves, in the real estate registry as owners for these stories, and flats without land in the investment zones, and they will get official certificates or deeds proves their ownership. Once they got these deeds or certificates they will have, officially, the right to dispose or assign their property considering provisions of law, regulations and the particular provisions in the contract or building regulations.⁴¹

ii- Related ownership rights:

This group of rights includes three types of rights; Musataha, Usufruct and Lease for a long period:

- 1- Law permits to foreigners to get Musataha right, on any kind of a real estate for a period, not exceed than fifty years, and may be renewal, by the agreement of the parties for another same period.
- 2- Usufruct right is permitted for foreigners, that they have the possibility not only to use a property owned by another one, but also exploit it as long as the property kept on its case, regarding that make any improvements or additions to the property not consider changing of the its nature. This right is for a period not more than 99 years not to be renewed.
- 3- Law permits to foreigners the possibility to lease for a period not less than 25 years, and may be renewal for any periods determined in the lease contract.

In addition, law states that, all related rights holders, taking into account law and contract provisions, they have the right to develop, invest, mortgage, lease, sell and buy their real estate rights. The registrar shall register them in the real estate registry as related right

holders and specifies their type of right, once they delivered the required documents, regarding that, this group of related ownership rights is applicable, for all foreigners, whether natural or moral, gulfians or others.

Thus, we can conclude that law in Abu Dhabi does not permit foreigner's ownership in general, it is not permissible to own a real estate in any zone in the Emirate, except in investment zones, which determined by Abu Dhabi Executive Council, which plays as the cabinet of the Emirate. This rule is applied to the extent, that if one of the inheritors is foreign, he/ she will be obliged by law to sell his share, to the rest national inheritors in the market value, if the latter cannot buy his/her share, they have to resort the court, in order to issue a judicial order to sell the foreigner inheritor's share or the property in full and distribute shares among partners.⁴²

Abu Dhabi legal organization for gulfians is a real practical translation, for what had been concluded and decided in the supreme council of the Gulf Countries Council (GCC), in his special round held in 27-29 of Nov. 1984, for organizing real estate ownership, of what had been stated, that gulfians of natural persons has the right in owning one real estate; whether land or building in the determined habitual zones, by any method of transferring or willing provided that area of land not exceed 300 m2. Law extends its applicability on moral persons too, provided that all partners must be gulfians

In investment zones, law differentiates between gulfian persons and other foreigners, the first has the right to enjoy freehold ownership in these zones, and they are equal with other foreigners in enjoying related ownership rights as Musataha, Usufruct, and leasing for Long period. All these rights may be transferred by selling, buying, and gifting, also by inheritance.

Abu Dhabi Global Market (ADGM) is an example, for the special treatment of foreigners, in investment and free areas in Abu Dhabi. ADGM, had been established by Abu Dhabi local law no 4 of 2013, and according to this law the Board of Directors of the ADGM has developed its own regulations, which are independent from other federal or local laws and regulations, same not subject to any of the federal and local power entities and organization except matters related to criminal actions or what may roil or cloud public order or security.⁴³

ADGM's Real property regulations mention types of real property interests; it determine four types of interests as follow:⁴⁴

1- Freehold interests in Land, this interest is restricted to citizens of member states of the Cooperation Council for the Arab States of the Gulf, and bodies corporate owned wholly by such persons.

2- Freehold interests in real property (other than land), consisting of fee simple interests and life estate interests.

3- Future interests, interests in real property that becomes effective at a future date.

4- Joint estates , interests in real property held by more than one person simultaneously, including the following:

i- Joint tenancy; two or more persons (joint tenants) ownership of a real property interest on an individual basis and with right of survivorship; and

ii- Tenancy in common; Two or more persons ownership of a real property interest in shares agreed among themselves, each tenant in common having the right to possess the entire real property interest;

5- Leasehold; an interest in real property that gives a person (the tenant) the right to use and occupy real property owned or leased by another person (the lessor). A leasehold interest

shall include one or more sub-leasehold interests arising under a leasehold interest (and successive sub- leasehold interests of such sub-leasehold interests, at any tier of ownership). A lease hold interest does not include a license interest, including an occupational license interest, which is not an interest in real property;

6- Strata interests; an interest in one or more strata lots.

III-2 Dubai Local Laws:

Law 7 of 2006 is considered as the open gate, for the foreigner real estate investment, as it permits for foreigners to own real estates. It distinguishes between two categories of foreigners:

1- Gulfian people:

On the same Abu Dhabi track, Dubai legislature went, in giving preferential treatment for gulfian person whether natural or moral persons, in compliance with GCC decision 1984 but it goes in more privileges to the gulfians, than that stated in the GCC decision and Abu Dhabi law have stated in its provisions.

Law in Dubai equals between nationals and Gulf nationals, when it permits for persons in general, natural or moral, provided that the later must be owned in full to Gulfian people and same as the public joint stock companies. In addition, it permits for them to free hold ownership in any spot in Dubai not in determined areas. They have all rights on it.⁴⁵

2- Foreigners other than Gulfians:

Dubai law permits to this category the possibility of either freehold ownership, or the usufruct right on a real estate, or leasing for a period not exceed than 99 years, provided that these rights on real estates existed in special areas determined by Dubai Ruler.⁴⁶

The later issued a decree for determining these special areas, where he distinguished two groups of zones; the first is 23 special areas⁴⁷, in which foreigners be able to enjoy a freehold ownership without any stipulations or may have usufruct right or leasing for a long period not exceed than 99 years, while the second is one area named in plot no 224 of the Nad al – Sheba area, the foreigners can get only usufruct ownership or long period lease.

Whatever any of the two categories of foreigners, the owner has to register his property, in the property registry, and all transactions; transfer, amend, or extinguish the real property, shall be recorded likewise the final judgments, which validate such transactions. The owner gets an electronic certificate proving his ownership, and powers on the property, this certificate has the same evidentiary value, as the originals of such documents and reports⁴⁸.

In addition to these advantages mentioned herein above, there are more advantages in free zones as Dubai International Financial Center. DIFC regulations are equal for all foreigners in enjoying freehold ownership within the area of DIFC, law considers the freehold ownership of real property, that it is carrying the same rights and obligations, as ownership of an estate in fee simple under the principles of English common law and equity, regarding that real property includes real property, buildings, and items placed in, or under the soil with the intention that they should remain in position permanently or indefinitely; and any interest in real property.⁴⁹ Herein we can notice the more influence of the English Common Law and Equity that is considered the reference of this law.

III-3 Sharjah Laws:

On the same Track of Dubai, Law in Sharjah goes through, that Law no 5 of 2010 for the real estate registration, restricts the ownership of real property rights in the Emirate, to both of the Emirati nationals and the gulfians, as well as, the companies which is fully owned

by either, or a combination of both, but in the same time, law makes exception to whom get their ownership via the consent of the ruler and upon conditions had been prescribed by the ruler.⁵⁰

Further on, law clarifies methods of transferring ownership; that beside the possibility of selling the estate or property, it may be transferred by inheritance, provided that the inheritors must submit a doctrinal certificate proved their prescription therein, while the third method is that the owner can assign his ownership to one of his first degree relatives, according to what is prescribed in the Executive Regulations of this law.

The previous provision refers to the freehold ownership, that the owner has all powers on the property; use, usufruct and transfer or disposal. It seems very narrow for foreigners, other than Gulfians, to the extent of closing the door, but the light was switched on, and the path had been cleared by the Executive Council Resolution no 26 of 2014, for the usufruct of real estates in the Emirate.

This resolution allows foreign nationals, whom have a valid residency in the state and companies owned by them, and have a valid real estate activity license, to own usufruct rights over particular areas be determined, by the local government, for a period of 100 years.

The resolution gives to the beneficiary, the right of using and exploiting the property, and its extensions as he wishes, but in the limit of contract and law, he has the right to transfer his right to others, not inconsistent with what the property was allocated to him, this means that the beneficiary cannot change the purpose of the property by himself, regarding that the period of disposals must not exceed or cross the usufruct period in all, in addition that he has to get the approval of the Real Estate Registration Department.

In the same time the resolution obliges the beneficiary, that he never proceeds any core amendments in the property, without the prior consent of the owner, added that he has to, upon the termination of the usufruct period, return back the property, in its original nature when he started the contract, otherwise the contract provides, like wise he has not the right to sell the ownership of the property.⁵¹

III-4 Umm Al Quaween Law:

Same as Abu Dhabi, Dubai and Sharjah laws, the legislature in Umm Al Quaween went in, law No 3 of 2006, for the Real Estate property, it restricts the real estate ownership, for Emirati nationals and the Gulfians, and the moral persons owned totally to them and the public joint stock companies.

In the same time, it permits to foreigners other than Gulfians; the right of owning the stories without land in the investment areas only, and they have the possibility to arrange all real rights on the property. In addition, this category has the right to own the Usufruct right by a contract, for the period not more than 99 years and Musataha right by a contract for a period not more than 50 years, over properties existed in the investment areas, these contracts are renewable for a similar period by the consent of both parties.

Law adds that the Usufruct right or Musataha holder ,over than 10 years, and without the owner's consent, has the right to dispose his right, as he wishes, included mortgaging. On the contrary, the owner has not the right to mortgage his property, only with the consent of the Usufruct owner or the Musataha owner, unless the parties agreed otherwise.⁵²

III-5 Ajman Law:

Law in Ajman⁵³ distinguishes between the Gulfians and the Foreigners, from other nationalities, that law equals between the former, and the Emiratis nationals in owning Lands

in the Emirate, in addition to companies and organizations owned in full to Nationals and Gulfians, and Emirate joint stock companies, further the public organizations established in Ajman Emirate, have the same right in owning lands.

The principle is cleared, that land or real estate ownership is restricted only, for the nationals and GCC nationalities, in spite of this situation, law provides the possibility of non GCC foreigners to get the right of ownership, when it states that the latter category, after getting the approval from the ruler, and they may be granted two kinds of ownership:

- 1- Unlimited Free hold ownership, or,
- 2- Usufruct of any land for a renewable period of 50 years.

In addition, law organizes the common ownership in the real property projects, and the investment buildings which comprises of multi estate unites. It permits to any person whether foreigner or national, natural or moral, to acquire free hold ownership on land or estate, on the basis of free common ownership, or have a usufruct right for a long period.⁵⁴

III-6 Al- Fujairah Law:

According to the local ordinance no: 2 of 1987, concerning Land registration, art. 1 provides that real estate ownership is restricted for Emirati nationals and the companies in which are owned in full to nationals. It is permissible to the ruler grants real estate ownership, to foreigners after completing the licensed building. Regarding that ownership's deeds issued exclusively from the Ruler, which is considered an absolute evidence for real estate rights. These deeds clarify the extent of ownership, rights and restrictions that the owner must comply with.⁵⁵

Here, we can notice that legislature in Al Fujairah, takes the approach that the Ruler is the lonely owner of all lands in the Emirate, and he grants ownership in the frame of rights, restrictions and constrains, he is the only source of ownership in the Emirate.

In addition, Law restricts granting ownership to nationals only; moreover it did not distinguish between Gulfians and non-Gulf nationalities. This situation is different than the other sub national laws organizing real estate in UAE, that there is not a preferential treatment for GCC nationalities.

III-7 Ras- Al khaimah Law:

On the same track of Al Fujairah law, Ras Al – Khaimah legislature organizes land ownership under law no 3 of 2013 which amends law of 1981 concerning Land acquisition. It states that the Ruler shall grant real estate to the beneficiary, according to various conditions included in the donation provisions, which is appeared as notes, in the Margin of ownership deed and /or the organizational out plan. Regarding that law categorizes 4 kinds of grants as follow:⁵⁶

- a- Habitual grant; this kind is specialized for UAE nationals, unless the Ruler by a decision excludes a particular person.
- b- Agriculture grant; this kind is specialized for UAE nationals, unless the Ruler by a decision excludes a particular person.
- c- Investment grant and this kind issued by a Ruler decision.
- d- Charity grant, this kind is assigned for charity projects which shall be established in the Emirate, and issued by a decision from the Ruler.

Decision No. 20 of 2005 is considered one of the main turning point, in Real property ownership in Ras Al Khaimah, especially when the local government has set up its own public joint stock property development company, which received the free hold rights for all

its properties from the Ruler's court, this means that the system had been turned from granting to be owning Real property.

Although, it maintains for the UAE nationals the possibility to own property, in all areas of Ras Al Khaimah, and the GCC nationals are not specifically provided for in the Decision, but really in practice, there is a custom that they are treated, in the same way as UAE nationals.

It was provided that all other nationalities were able to own property, in specific investment projects, provided that they established a company in the Ras Al Khaimah Free Zone or Al Hamra Free Zone, and purchased the property in the name of the company, i.e. foreign nationals could not buy directly in their individual capacity.

This situation was subsequently amended, through the issuance of Decision No. 12 of 2007, which relaxed the previous rules, allowing non-UAE nationals and corporate bodies (regardless of where they are incorporated), to own freehold title to property in projects owned by Ras Al Khaimah Investment Authority (RAKIA), Al Hamra and Raken, without the need to establish a company in Ras Al Khaimah.⁵⁷

Conclusions and Recommendations.

In the previous pages, we introduced the seven legal treatments for the situation of foreigners in enjoying real property ownership, what we can notice that each Emirate has its unique organization, for this issue. This may be illustrated, that each Emirate has its nature, and economic characteristics in which impose to draw a legal frame be suitable for it.

In comparing, between all of them, we saw that there are some similarities and differences which may be concluded in the following:

1- The common issue in all the seven local laws, is the confirmation on the main principle for ownership in UAE, which gives the exclusivity of ownership to the Emirati nationals, whom are bearing the Emirati nationality without any distinction between them all over the country. This may be illustrated as a practical translation between the components of the country and the interaction between national and land that the first feels land is a valuable thing for his life, because it is a real part of him.

2- Except Al- Fujairah Emirate, the rest Emirates developed their local laws of real property ownership, particularly when they altered their consideration regarding ownership; from a mere donation from the Ruler under some conditions and constrains, to the full ownership method which relies on acquisition of land or property is under buy and sell basis in principal. While the Former Emirate (Al – Fujairah) is still apply the donation method.

3- Although that UAE is one of GCC countries, it is obliged by all the agreements and decisions be issued by the council, according to its international responsibility, and the historical, tribal, moral and sentimental relation between this confederation, we found disparities in compliance with applying GCC's decisions in local laws particularly for the treatment of GCC nationals with real property ownership. In reviewing local real estate ownership laws; Dubai and Ajman equal between the Emirati nationality and the Gulfians. While the rest of Emirates except Al Fujairah give a preferential treatment for them but not reach the equality with the Emirati nationality, as for Al Fujairah there is not a preferential treatment as the previous Emirates in law but in practice it is subject to the discretionary power of ruler to grant any of them by a decision from his court.

4- Treatment with foreigners, other than GCC nationals also is different in the seven Emirates, particularly in the extent of enjoying real property rights, we noticed that no

freehold ownership for foreigners in Abu Dhabi, except in investment areas, even in these areas the freehold ownership is limited for apartments and stories only, while the related property rights as Usufruct, Musataha, and Long period lease are permissible. While in Dubai the matter is wide enough than in Abu Dhabi, that in addition to the permissibility of the related rights of ownership, it permits for the free hold ownership in investment areas. Sharjah is more restricted than Abu Dhabi, whereas law, after a long time in foreigner ownership prohibition, currently law permits related, as usufruct and long period lease without freehold ownership. Umm Al Quwain law approaches something to Abu Dhabi law; it gives the right to the foreigner to own apartments in stories, Musataha and usufruct. Ras Al Khaimah allows non -nationals to own freehold property in projects. The more extremist restricted is Al Fujairah Emirate subject granting Lands to foreigners to the discretionary authority of the ruler.

This situation of multi local treatment in UAE with ownership organization may opposite to the Emirati constitution when it states that the union shall have exclusive legislative jurisdiction in real estate⁵⁸.

5- According to the principle; The particular rules restricts the public rules, the real estate sector is subject to the local particular rules, but in the same time if there is no provisions in local laws judge or organize a defined issue the federal transactions law will be applied.

6- Although the Emirati law can be categorized as belonging to the Latin school which relies on codifications, but we can notice the influence of common law clearly in organizing real estate sector, especially in Al Fujairah and Ras Al khaimah, that as same as in England and Wales; the crown is the ultimate owner of all land and all other land owners hold from the crown the same in Al – Fujairah the Ruler grants the nationals and any person according to his discretionary authority. However, in the rest of Emirates this path is nearly abolished.

7- This pushes us to recommend that it is better to harmonize all these local laws in a federal law organizes the real estate property, or even to have a common trend to these local laws in order to minimize disparities and differences between them.

8- Moreover, English Common Law is considered the reference of Real property laws in either ADMG or DIFC; in Abu Dhabi and Dubai respectively, for the provisions of these laws, on the other side the Latin provisions and Islamic sharia is reference for the civil transactions and the local laws that governing real property law, this make it hard for lawyers and advocates, especially the nationals to familiarize themselves by both perspectives (Latin and Common law), particularly that there are special courts in both previous free zones, and judges are from common law nationalities, and the procedures before courts applies the same English court procedures, this situation must be put in consideration.

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5. - see, 27.1 in British Nationality and Status of Aliens Act 1914.

6. - see sec 1. Para. 1, Act Concerning the Entry and Residence of Aliens in the Territory of the Federal Republic (Aliens Act), 1991 <http://www.refworld.org/docid/3ae6b55a0.html>. Article 116, in the basic law states the definition of German. 1) Unless otherwise provided by a law, a German within the meaning of this basic law is a person who possesses German citizenship or who has been admitted to the territory of the German Reich within the boundaries of 31 December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such person. 2) Former German citizens who between 30 January 1933 and May 1945 were deprived of their citizenship, on political, racial or religious grounds, and their descendants, shall on application have their citizenship restored. They shall be deemed never to have been deprived of their citizenship if they have established their domicile in Germany after 8 May 1945 and have not expressed a contrary intention.
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9. - See, art. 1, Law no 89 of 1960, for Foreigners Residence, in Egypt.
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- 11.- see Art.2 in order no, 66/211 of 21.07.1966, which had been amended and comprehended by the order no, 67/190, of 27.09.1967 for foreigners' status in Algeria.
- 12.- see art. 2 of Law no 16 of 1995 for Foreigners Residence , and its amendments, <http://www.omanlegal.net/vb/showthread.php?t=3693>
- 13.- see, art. 3 in the Saudi Arabian Nationality regime, 1374 Hijri, in www.mofa.gov.sa .
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- 17.- see, Art. 154, Law no: 43 of 1971, for the Iraqi Real estate Registration.
- 18.- see, Art. 1, Law no: 6 of 1973, for the Entry and Residence of Foreigners.
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20. See art. 1.1 in convention relating to the status of stateless persons 1954, states that (the term stateless person means a person who is not considered as a national by any state under the operation of its law,
- 21.- see, 1954 convention relating to the status of stateless persons, 1961 convention on the reduction of statelessness.
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- 23.- GCC includes Saudi Arabia, United Arab Emirates, Sultanate Oman, Kuwait, Qatar and Bahrain.
- 24.- Drucker, Peter F. , The Global Economy and the Nation State, council on Foreign Relations, 1997, p.167.
- 25.- see. arts.328, 329, Federal Law no: 2 of 2015, for the commercial companies.
- 26.- See, art. 4. Par. B, in law no: 4 of 2004, for Financial Free Zones.
- 27.- Khattab, Tolbah Wahba, Real Property Rights, Ownership Right, 1995, p. 8.
- 28.- see, art 82 in Law no: 131 of 1948 for civil law, Egypt.
- 29.- see, art. 101 in Law no: 5 of 1985 for the civil transactions in UAE.
- 30.- see, art 2 in Law no: 13 of 2008 for organizing the initial real estate record in Dubai Emirate.
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- 41.- see art. 3 par. 2 in law no 19 of 2005, for real estate property.
- 42.- see. Art. 3 in The Chairman of Abu Dhabi Executive Council’s Decision, no 64 of 2010, for real estate ownership provisions.
- 43.- see Art. 8 in the chairman of Abu Dhabi Executive Council Decision, no 64 of 2010, for real estate ownership provisions.
- 44.- DLA, Real Estate Investment In Abu Dhabi, The Legal Perspective, p. 8 in <http://www.dlapiperrealworld.com/export/sites/real-world/brochures/downloads/Abu-Dhabi-Investor-Guide.pdf>
- 45.- see, sec. 1 in chapter 1, Real property regulations 2015, NYDOCS 03 /992724.25.
- 46.- see Art. 4 in Law no 7 of 2006 concerning Real property Registration in the Emirate of Dubai which state “ The right to own real property will be restricted to UAE nationals , nationals of the Gulf Cooperation Council member states and to companies fully owned by these, and to public joint stock companies”
- 47.- Ibid, “ Subject to the approval of the ruler, non UAE nationals may in certain areas determined by the Ruler, be granted the following rights:
- a- Freehold ownership of Real property without time restrictions; and
 - b- Usufruct or leasehold over Real property for a period not exceeding ninety- nine (99) years.”
- 48.- see art. 3 in Regulation no: 3 of 2006, Determining Areas for ownership by Non UAE Nationals of Real Property in the Emirate of Dubai, which states the following areas:
- a- Umm Hurair 2. Plot No.013.
- Al Barsha South 2 plot No 002
 Al Barsha South 3: plot 002.
 Emirates Hills 1: Plots No. 004 and 814.
 Emirates Hills 2 plots no 001 and 049.
 Emirates Hills 3 plot 001.
 Jebel Ali: plots 051,074, 081, 082, 083, 084, 142, 143 and 391.
 Al Jaddaf: plots no 003, 007 and 008.
 The World Islands: Plot no 001.
 Ras al Khor: no 165.
 Al Rowyah: Plots no 063 and 065.
 Sheikh Zayed Road: plots No 118 and 147.
 Sofouh 1: Plot no 069.
 Sofouh2: plot no 005.
 Al – Qouz 3: Plots No, 005 and 006.
 Al – Qouz Industrial area 2 : plots 010 and 030.

- Al – Qouz Industrial area 3: plot 028.
Midif: Plots no 143 and 144.
Dubai Marina: Plots no 007,014,015 and 033.
Palm jebel Ali: plot no 001.
Palm jumiairah: plot 001.
Nad al Sheba: plos no 209, 215 and 222.
Warsan 1: plot no 002.
- 49.-see Articles 7 and 8 in Law no 7 of 2006 concerning Real property Registration in the Emirate of Dubai which state.
- Art.7: A property register will be maintained in the department to register all real property rights and any amendments thereto. This property Registry will have absolute evidentiary value against all parties and the validity of its data may not be impugned unless it is proven to be the result of fraud or forgery.
- Art.8 Subject to the provisions of Article 7 of this law, all electronically recorded Real property documents and reports will have the same evidentiary value as the originals of such documents and reports.
- 50.- see sec.10 in Real Property Law, DIFC Law No. 4 of 2007.
- 51.- Ibid, see article, 4. ‘ The right to own real properties in the Emirate shall be restricted to nationals of the state, nationals of the Gulf Cooperation Council for the Arab states, and the companies and organizations wholly owned by any of the foregoing. Notwithstanding, the right to own real properties in the Emirate may be granted as follows: a) Ownership with the consent of the ruler and upon the conditions prescribed by the ruler and (b0 by inheritance upon doctrinal certificate or by assignment from the owner to one of his first degree relatives according to what is prescribed in the executive regulations of this law ’
52. - see articles 9,10 in the Executive Council Resolution No. 26 of 2014 concerning the Usufruct of Real estate Properties in the Emirate of Sharjah.
53. -see Article 3. In Law No: 3 of 2006 for the Real Estate ownership, Emirate Umm Al Quaween.
54. - see Art. 3 in Amiri Decree, no 7 of 2008, concerning Land acquisition, and its registration, in Ajman Emirate.
55. - Ibid, see art. 9
56. - see art. 1, 2 and 4 in Local order no 2 of 1987, concerning Land registration.
57. - see Art.1 in Law no 3 of 2013 which amend law of 1981 concerning Land acquisition.
58. -<http://www.tamimi.com/en/magazine/law-update/section-6/june-4/real-estate-within-the-uae-a-summary-of-legislative-development.html>
59. See, Art 121 in the Emirati constitution, without prejudice to the provisions of the preceding article. The union shall have exclusive legislative jurisdiction in the following matters: Labor relations and social security, real estate and expropriation in the public interest, extradition of criminals, banks, insurance of all kinds, protection)