

Real Estate Holding Structures for Middle Eastern Investors

Overview

The global economy is currently experiencing an unprecedented crisis. The real estate sector in particular has suffered from falling valuations and a general lack of liquidity and investor confidence. However, history tells us that the real estate market is cyclical and the market will recover.

Real estate in the UK and Europe is often viewed by many Middle Eastern investors as a hugely important part of their portfolio for a number of reasons. The markets are mature and, due to accepted levels of political stability, are generally viewed as a safe haven to shelter surplus wealth earned in the Middle East. The more developed European markets generally have a high level of transparency and absolute title can be gained to assets in these jurisdictions.

There are other factors which make investment in UK and European property attractive to Middle Eastern investors such as:

- Middle Eastern investors have a strong affiliation with the UK;
- The UK can provide an alternative residence providing a secure platform in European timezones from which to carry out business activities;
- A cooler climate providing a break during the hot Middle Eastern summer months;
- Easy access routes to and from the Gulf;
- Non domiciled taxation advantages; and
- Prestigious / flagship assets.

Given the recent turbulence in the economic markets, it will be no surprise to learn that the Middle Eastern investor's appetite for UK and European real estate will continue. It is likely that Middle Eastern investors will be keeping a close eye on the real estate markets to assess opportunities arising as a result of the downturn due to the following factors:

- The price of oil over the last few years has enabled Middle Eastern investors to harvest surplus wealth;
- The recent weakness of Sterling and the Euro against the Dollar;

- The ability to acquire prime assets at significant reductions due to forced sales from distressed vendors;
- The ability to take a long time view and acquire assets without an immediate need to borrow funds; and
- Acquisitions will not necessarily be financially driven.

The Use of Offshore Structures

Offshore structures have commonly been used to hold real estate assets in the UK and Europe. However, it has become increasingly important to ensure that structures are established and administered in a professional manner by a reputable organisation with a proven track record.

This paper looks at some of the advantages of using offshore holding structures and generally provides some background on Ogier's experience in establishing structures and providing ongoing proactive administrative services to the Middle Eastern Investor.

About Ogier

Ogier is one of the largest and most respected providers of offshore legal and fiduciary services. Ogier provides advice on all aspects of BVI, Cayman, Guernsey and Jersey law and associated fiduciary services through a global network of offices that cover all time zones and key financial markets.

The group employs over 800 professional and support staff with 180+ lawyers. An increasingly large proportion of our work is sourced from the Middle East, either directly or via intermediaries in London or other leading international financial centres. We have a large variety of clients from business and banking backgrounds based in Dubai, Abu Dhabi, Bahrain, Oman, Saudi Arabia, Qatar and Kuwait who have all been able to benefit from the use of offshore products, whether structuring acquisitions, investment funds, Islamic investments, private wealth management solutions or other products.

Ogier in Bahrain

Ogier has established a representative office in Bahrain to service its growing client base in the region.

In conjunction with Keypoint Consulting W.L.L. in Bahrain, Ogier has also established a Trust Company known as Two Seas Trust B.S.C. Two Seas Trust is regulated by

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the Central Bank of Bahrain. It provides administration services to trusts established under Bahraini trust law and associated holding vehicles.

Our partners and senior fee earners travel regularly to the Middle East to meet with clients and their advisors and hold board meetings.

Our Middle Eastern Experience

- In the 1990's Ogier established and administered a number of Islamic finance and securitisation structures for one of the world's leading banks.
- Ogier currently administers a significant number of onshore and offshore real estate and investment holding vehicles for Middle Eastern investors.
- Ogier acts as trustee to a number of trusts established by Middle Eastern investors for wealth and succession planning purposes.
- Ogier administers a number of offshore vehicles established to protect client confidentiality in connection with real estate development projects and joint ventures in the Middle East.
- Ogier has established and administers a number of onshore and offshore vehicles used to enable Middle Eastern investors to participate in Private Equity deals.
- Ogier administers employee benefit trust arrangements for financial services clients based in the Middle East. These include share plan administration, deferred bonus plan and share warehousing arrangements.
- Ogier has provided offshore legal advice to Middle East based clients in connection with corporate multi jurisdictional transactions and private wealth management and family office structures for many years.
- Ogier has recently set up and advised on a Jersey incorporated company which owns Qatar based real estate development company that has listed on the Alternative Investment Market (AIM)

Set out below are some of the key reasons why Middle Eastern clients are increasingly going "offshore" and the type of product which is likely to be beneficial to them.

Why go Offshore?

The four main jurisdictions in which Ogier operates have similar legal systems and laws which are based on those in England. Each of those jurisdictions has stable economic and political climates. Furthermore, each jurisdiction is viewed as one of the key offshore centres. They are proactive and continue to evolve to meet client demands for innovative products.

Tax Neutral

There are no taxes payable in any of the offshore jurisdictions in which Ogier operates. For example, there is no stamp duty payable on the transfer of shares.

Flexible and Robust Regulation

Each offshore jurisdiction in which Ogier operates has comprehensive and robust regulation to protect clients. At the same time the regulation is also sufficiently flexible to enable a client to structure the deal in an efficient manner.

Confidentiality

Confidentiality is of paramount importance to many Middle Eastern clients. Often, structures are established offshore for this reason alone.

There are no public records of beneficial owners and the use of nominee shareholders ensures complete confidentiality. In nearly all cases there are no public records of directors available.

Flexible Legislation

Each offshore jurisdiction in which Ogier operates has flexible legislation which ensures that it is possible to use innovative structuring in ways which may not be possible onshore.

Exit Strategies

It is important to consider exit strategies when making investments and using offshore companies ensures that international prospective purchasers / investors are offered a vehicle with which they are familiar and comfortable acquiring.

Bank Lending

Businesses and banks around the world are all familiar with BVI, Cayman, Guernsey and Jersey structures which are all based on English legal principles. Lending banks are comfortable lending to vehicles registered in these jurisdictions and have developed a good understanding of the general principles of taking security under the relevant offshore laws. This enables transaction costs to be reduced.

Professional Expertise

There are a large number of professionals with a significant amount of expertise based in the key offshore jurisdictions including professional trustees and administrators as well as lawyers and accountants.

Clients have different needs but one or more of these factors will usually mean that there are significant advantages to using an offshore structure.

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Convergence of Offshore Jurisdictions

The differences between offshore jurisdictions are becoming fewer (although subtle differences remain) and this includes the types of products offered by and the regulation in respect of the jurisdictions of BVI, Cayman, Guernsey and Jersey. For example, in all jurisdictions it is, or will shortly be possible, to return capital to shareholders in exactly the same way based upon its solvency test rather than the Company's source of funds. Similarly, all jurisdictions now have an unregulated investment fund product which allows the client complete flexibility when structuring a fund.

This means that other factors such as existing relationships, availability of professional support staff and time zone of adviser / administrator may become more significant.

Examples of Offshore Products used by Middle Eastern Clients

Applying these reasons for going offshore, there are a number of different offshore products being used by Middle Eastern clients. Set out below are some of the more common ones:

Investment Funds

Hedge funds, private equity funds, property funds and others are all structured using offshore companies, limited partnerships and unit trusts. The use of an offshore fund ensures a tax neutral platform for all investors thereby avoiding any prejudice to one or more of them if the fund had been established in an onshore location. It is possible to set up Sharia compliant investment funds.

Structured Finance Products

A wide variety of debt instruments, bonds and other types of product are used frequently. They are often set up as "orphan" or off balance sheet transactions.

Islamic Law

Due to the flexibility when using offshore products it is possible to ensure that Sharia compliant investments can be structured with relative ease. For example, Sharia compliant trusts and Sukuk bonds and programmes.

Real Estate Holding Vehicles

A significant number of Middle Eastern clients use offshore vehicles to hold real estate investments around the world, particularly UK property. The use of offshore vehicles which are properly administered can result in significant taxation advantages. Prospective purchasers are comfortable acquiring and maintaining vehicles which are set up in established offshore centres and administered by reputed professional administrators.

The current economic slow down and factors associated with it has resulted in an unprecedented opportunity for real estate investors seeking to add value to their portfolio. The Middle East has been well insulated to the problems elsewhere and buyers/potential investors with access to funds are well positioned to take advantage of these circumstances.

Trusts

Trusts are an important wealth and inheritance planning tool. Middle Eastern investors will be keen to utilise services of offshore corporate trustees who have comprehensive expertise of such matters. Ogier has significant experience operating trust structures for individuals and families who want to retain involvement in the structure. Ogier's corporate trustees can draw on the experience of one of the largest private client legal teams in the offshore world in connection with the most up to date practices. The benefit of the close working relationship with the legal team can be invaluable in circumstances where there are complicated family issues to be considered by the trustee.

Ogier has also developed trust deeds which comply with Sharia principles.

The use of trusts also extends to employee benefit and executive remuneration planning for businesses where shares or cash may need to be warehoused.

Holding Structures for Acquisitions

A tax efficient way of holding private equity or other trading investments which maximise flexibility on a return of capital. Such structures are particularly common for private equity acquisitions including consortium deals where a tax neutral structure is preferable.

Listing Vehicles

Many non UK businesses which are listed on AIM or the Main List of the London Stock Exchange are structured using an offshore holding company to ensure the business is not subject to any UK laws or regulation. Shares or depositary receipts can be held through CREST just like any English company.

Cell Companies

All jurisdictions in which Ogier operates can offer cell companies which are a convenient way of ring fencing assets within a "cell" for particular shareholders. The different cells are treated like an umbrella fund but have statutory recognition rather than relying on contract.

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Channel Islands Stock Exchange (CISX)

The securities of trading companies and investment funds (including limited partnership interests) and other forms of specialist debt securities can all quickly and efficiently be listed on the CISX. This includes the listing of Eurobonds for UK based issuers where interest on the listed notes can be paid gross to the investor note holders.

The CISX is a recognised stock exchange and securities listed on it can form part of an investors "recognised" portfolio. Except for trading companies, there is no requirement that the securities are traded.

The Ogier Solution

Ogier is dedicated to providing practical solutions based advice. It is the only offshore law firm to be able to offer legal and administration services for BVI, Cayman, Guernsey and Jersey companies, trusts and limited partnerships. As well as having offices in BVI and Cayman there are BVI and Cayman, lawyers in London, Jersey, Guernsey and Hong Kong and administrative operations in Dublin and New Zealand.

In addition to 180+ lawyers Ogier has over 250 administrators providing bespoke and professional trust and company administration services in all time zones and key financial markets to companies, investment funds, trusts, real estate holding structures and numerous other types of structure.

Our core legal and fiduciary practice areas in all four jurisdictions include:

- Real Estate
- Corporate and Commercial
- Investment Funds
- Structured Finance
- Private Clients and Trusts
- Employee Benefits

We act for over 60% of the top 100 global law firms and over 60% of the top 50 global banks.

Ogier can advise on which jurisdiction is more appropriate for the client and can utilise substantial knowledge gained from previous transactions to add value for the client.

In respect of multi-jurisdictional deals where more than one offshore jurisdiction is involved, Ogier can put together a cross jurisdictional team which can seamlessly provide all offshore advice thereby assisting the client with project management of the transaction.

Industry Recognition

Ogier has received significant industry recognition over the past 18 months winning numerous awards and is regularly placed at the top of offshore transaction league tables.

2008 Awards

'Offshore Law Firm of the Year 2008'
The British Legal Awards

'Best Law Firm'
Hedge Fund World Latin America's Award

'Offshore Law Firm of the Year 2008'
The Hedge Fund Journal

'Securitisation Deal of the Year 2008'
IFLR Awards

2007 Awards

'Offshore Law Firm of the Year 2007'
The Lawyer Awards

'Offshore Law Firm of the Year 2007'
CityWealth Magic Circle Awards

'Jersey Law Firm of the Year 2007'
Who's Who Legal Awards

'Top Offshore Law Firm 2007'
Alpha Awards

2006 Awards

'Offshore Law Firm of the Year 2006'
Chambers Global Wealth

'Top Offshore Law Firm 2006'
Alpha Awards

'Niche Firm of the Year 2006'
Legal Week Awards

'Offshore Legal Team of the Year 2006'
STEP Private Client Awards

Offshore Transaction League Tables

Ogier is in the number one position on the FactSet league table "Lawyer to Issuer for bond issues for the year 2007".

'Top Listing Agent'
CISX

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