

Musahama

What is it and how can it be applied?

Musahama is a form of real estate collective investment scheme that was historically implemented informally and subsequently banned in Saudi Arabia just before the advent of the Real Estate Investment Fund Regulations. However, earlier this year the Real Estate General Authority (“REGA”) issued the new *Musahama Law* and its implementing regulations, legalising and regulating *Musahama*. Below is a summary on key attributes for *Musahama*.

1. The term *Musahama* has been loosely translated into English as “Real Estate Contributions Certificates”.
2. Article 17 of the *Musahama Law* provides that a *Musahama* acquires legal personality upon the issuance of a license by REGA and is subject to the provisions of the law and regulations.
3. The register of certificate holders is kept by the CMA authorized person (or a third-party registrar it may appoint) through which the *Musahama* is offered.
4. A *Musahama* may borrow (i.e. obtain debt financing) but cannot lend to others.
5. All funds raised by a *Musahama* must be deposited into an escrow account as should the process of sale of / income earned from its assets.
6. Chapter 4 of the *Musahama Law* provides that each *Musahama* will have an assembly of certificate holders that can convene meetings and vote on various issues.
7. On this basis, there is no requirement for the creation of an SPV to hold the assets of the *Musahama* nor is a *Musahama* SPV, as a *Musahama* in and of itself is considered a legal entity with its own legal personality and the characteristics described above.



8. Typically, *Musahama* have been used in the past to hold freehold ownership of land, and not a lease, as a lease with rental payment obligations is typically considered a liability and not an asset under IFRS.

9. If debt financing is raised, it will be interesting to see if the banks are comfortable lending directly to the *Musahama* legal entity, given its legal status, and also given the fact that its assets can be mortgaged to guarantee the debt.

10. Note part 3 (Offering Real Estate Contributions Certificates) of the Capital Market Authority's ("CMA") Instructions on the offering of *Musahama*.

11. It is prohibited for any person to advertise, announce, offer, or collect funds for real estate contribution certificates in the Kingdom unless the following conditions are satisfied:

- The offer must be made through a licensed capital market institution authorized to carry out arranging activities.
- The offer must be made through a private placement or a public offering.
- The funds collected from the offering of real estate contribution certificates must not exceed 100 million Saudi Riyals.

12. Despite the implementing regulations of the *Musahama Law* being issued by REGA, providing for the use of *musahama* for medium (SAR 100m to SAR 300m) and large (SAR 300m and above) real estate projects, the CMA has indicated that it will only approve the use of *musahama* to raise capital of not more than SAR 100 million, as per their *Instructions on the Offering of Musahama*.

13. For example, a developer could have a project worth SAR 300m and structure it as a *musahama*, but that developer cannot raise more than SAR 100m in equity for that project. The developer would have to contribute the remaining SAR 200m itself, in this example.

14. It is very important to note that *musahama* need to be both (i) licensed by REGA and (ii) approved by the CMA, as both have jurisdiction over the subject matter.

15. We expect this to be an effective and efficient tool for smaller real estate projects where developers need to raise less than SAR 100m.