

Investment in Oman

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In order to pave the way for such expansion states have started to form trade unions and to enter into bilateral agreements with other states for the creation of a more transparent investment legal framework which protects the interests of their respective investors and workers. The focus for investment has been on countries with developing economies and steady growth within a safe environment. The Sultanate of Oman presents itself as one of the options which meets such criteria.

This article outlines the regulatory environment for foreign investment in Oman, the investment incentives provided by the government of Oman, the pitfalls associated with such investment and how to avoid them.

Investment Legal Framework

A combination of regional and international agreements and local laws has formulated the legal framework for GCC and foreign investment in Oman. Examples of agreements which have had a remarkable impact on the size of GCC and foreign investments in Oman are:

1. The Unified Economic Agreements Between Countries of GCC signed on 1981 & 2002 (UEA)
2. The Marrakesh Agreement on the Establishment of World Trade Organization (WTO), ratified by Sultani Decree number 112/2000
3. The Free Trade Agreement with the USA (FTA), ratified by Sultani number 109/2006
4. The Free Trade Agreement between the Republic of Singapore and GCC states, ratified by Sultani Decree number 8/2009
5. The Free Trade Agreement between GCC states and the European Free Trade Association (EFTA), ratified by Sultani Decree 43/2010
6. Bilateral Investment Agreement between Oman and other states like Britain, France, Pakistan, Austrian and Yemen.

The obligations in these agreements are reflected in local laws and regulations in the form of Sultani Decrees issued by His Majesty, the Sultan or Ministerial Decisions issued by his ministers. The main local law which regulates foreign ownership is the Foreign Investment Law (FCIL), promulgated by Sultani Decree number 102/94 as amended.

The most common legal form adopted by foreigners to carry out business in Oman is a limited liability company (LLC). An LLC must have at least two shareholders, often referred to as partners in LLCs. One of them must be an Omani national (whether natural or corporate entity) with an ownership of at least a 30% shareholding of the company.

Oman's accession to the Unified Economic Agreements Between Countries of GCC and the subsequent issuance of high GCC council decisions and ministerial decisions to implement the provisions of the said agreement, has resulted in permission for GCC nationals (whether they are natural persons or corporate entities wholly owned by GCC nationals) to own the 100% shareholding of an Omani corporate entity (with a few exceptions, including by way of an example, commercial agencies).

American nationals are accorded similar treatment as Omanis following the implementation of the

provisions of the Free Trade Agreement with the USA, with the exception of the activities included in a list enclosed in a separate schedule to the trade agreement. These excluded activities are common to all foreign nationals.

By way of examples of excluded activities, ownership and investment in real estate by foreigners is restricted in designated tourist areas. Secondly, foreign nationals can only own up to 70% shareholding in any enterprise established in Oman that provides legal services. Real estate brokerage services can be carried out only by Omanis (pursuant to the provisions of Sultani Decree No 78/2000 which promulgates the Law Organizing Brokerage Profession in Real Estate Activities). There are other activities like employment placement services, investigation and security services, printing and publishing services, and radio and television transmission services. As these activities are regulated by specific laws legal advice should be sought by the foreign investor intending to carry out investment in such activities to identify the best legal mechanism for its investment.

However, there are some practical issues in the implementation of the USA Trade Agreement by various government bodies (including the Royal Oman Police (customs department), Ministry of Commerce and Industry and Ministry of Manpower) because the interpretation of the trade agreement is left for those bodies to adopt. This can create inconsistencies that take time to overcome. By way of an example, the Ministry of Commerce interprets the provision relating to national treatment in terms of investment as giving the right to American nationals to be treated on equal basis with Omanis while Ministry of Manpower still treats American nationals as foreigners when it comes to issuance of labour clearance for Omanization purposes. Would national treatment provisions or any other similar provisions extend to the workforce or not? It is an area which is still under further scrutiny, and as it is the case with many trade or investment agreements not all issues are thought of or considered during the negotiations between the parties or covered expressly in the text of the agreement.

Apart from GCC and American nationals, the practice implemented by the Ministry of Commerce and Industry responsible for the registration of companies in Oman is that a foreign investor may not own more than a 70% shareholding in the share capital of a corporate entity, and the remaining is legally required to be owned by a local Omani partner as mentioned above. However the profit and loss of the business can be split between the foreign and local shareholder on any other percentage, as it does not need to be proportionate to the shareholding ownership. This depends on the partners' contribution in the business which is entirely a commercial arrangement. Such percentage could, for example, be 80/20 or 99/1.

Investment Incentives

The Foreign Investment Law provides for a number of incentives for foreign investment which includes exemption from payment of income tax subject to the following conditions:

- That the income is realized directly from the main activity of the company in the following fields (except management and projects contracting execution):
 1. Industry in accordance with the provisions of unified industrial regulatory law of GCC states
 2. Mining pursuant to the provisions of mining law
 3. Export of products manufactured or processed locally
 4. Operation of hotels and touristic villages
 5. Production of farms and processing of its products
 6. Fishing and fish farming
 7. Undergraduate studies or colleges or high institutes or private schools or training colleges or nurseries
 8. Medical care through establishment of private hospitals.

The exemption period from income tax is five years from the date of commencement of carrying out the activity, and can be renewed for another five years in case of necessity.

A number of free zones have been established in the last ten years along the coast of Oman which include

Sohar Free Zone, Salalah Free Zone and Al Mazyunah Free Zone. Free zone companies are eligible for exemption from income tax, corporate tax, and customs. They also allow for 100% foreign ownership, full repatriation of profit and capital, and low start-up capital.

In addition to this is the Public Establishment for Industrial Estates (PEIE), which was established in 1993 through issuance of Sultani Decree number 4/1993. Its main objective is to plan, establish, administer and develop industrial estates across Oman. There are eight industrial estates in total in the Sultanate. These industrial estates all have facilities that an industrial estate requires with investment incentives, which includes exemption from income tax and customs, as well as loans from the government for fisheries, agriculture, health and traditional handicraft activities.

The income tax rate is 12% which is applied to all non-freezone companies registered in Oman equally regardless of the percentage of the foreign shareholding.

Investment Pitfalls

It is a common practice for a foreign investor to enter into a private agreement with an Omani local partner or owner of sole proprietorship. A cautious approach must be taken when entering into these types of arrangements as some have been held to be void by the courts in Oman. The owner of a sole proprietorship is considered to be the legal holder of the license and therefore liable for all debts vis-à-vis third parties and it cannot be agreed otherwise with the foreigner who manages and runs the business for his own interest. Another example of void transactions found in the case law are those agreements in which the Omani partner is not entitled to or responsible for any profit or loss generated by the company, but instead receives an agreed fixed monthly or annual amount. Generally, lock-in clauses whereby one or both parties are obliged not to terminate the contract during a particular period or not to sell their shares to a third party are not recognized by Omani courts.

Entering into arrangements which are subsequently held to be void will result in the closure of the business. Seeking the right legal advice for a foreigner intending to invest in Oman is essential and any agreement must be reviewed before it is entered into to confirm its validity. It should also be noted that the documents registered with the authorities in Oman supersede any private agreements if there is a conflict. As it is often the case that a foreigner manages the LLC, his powers must be outlined clearly in commercial registration documents to avoid acting outside those powers as there is responsibility on managers under the provisions of commercial law to act in the best interest of the company.

Conclusion

Oman remains an attractive investment opportunity for many foreign businesses especially in infrastructure project and the associated services. Care must however be taken to ensure that the arrangements used to facilitate the investment are valid and made the most of the various freezones and incentives that Oman has to offer. It is worth noting that the foreign investment law and commercial companies law are being reviewed by the relevant authorities in Oman with the aim of relaxing the rules relating to foreign investment. A draft of the antitrust law has been finalized by Consumer Protection Authority but has not come to force yet. It is expected that this piece of legislation will promote fair competition, reduce monopoly in the market and remove practices that lead to restraint of trade.