



## LEGAL DEVELOPMENTS IN OMAN

### AMERICAN COMPANY FORMATION IN OMAN

The recent implementation of the US-Oman Free Trade Agreement (FTA) is great news for American companies wishing to do business in Oman. Oman's Ministry of Commerce and Industry (MOCI) recently issued Ministerial Decision 102/08 stating that American companies now will be allowed to open branches in Oman before entering into a contract with the government or a government entity.

This is a significant development for American companies, as branch offices of foreign companies were permitted previously only for companies that had contracts with the government. Even in cases where branch offices were permitted, the foreign company's activities were restricted to servicing the government contract. Similarly, the Oman branch could remain open only for the duration of the government contract.

Under the FTA and the recent Ministerial Decision, American companies are permitted to form branches in Oman without an existing government contract, and may engage in business with both the public and private sectors. Similarly, American companies wishing to tender for government contracts will have the option of opening a branch in Oman before the contract is awarded.

The MOCI has stated also that American companies now may form wholly American-owned limited liability companies (LLCs). Subject to the terms of the FTA, American companies will be accorded the same treatment as Omani companies in LLC formation. On a procedural level, this means that American companies will only need RO 20,000 (approx. US\$52,000) of capital to form the LLC and no Omani ownership will be required.

American companies can now do business in Oman with relatively few barriers to entry. The FTA has provided an unprecedented level of openness and access to the Omani market for American companies and they will enjoy distinct advantages in navigating Oman's legal and procedural framework.

Similarly, the recent Ministerial Decision and other statements by the MOCI make it clear that Oman is serious about implementing the FTA and allowing Omanis and Americans to enjoy fully the benefits it is meant to provide.

To hear more about the FTA, please join us on March 1, 2009, at 9:00 AM (Omani time) for a discussion of the FTA implementation, in partnership with the Muscat American Business Council at the Oman Chamber of Commerce and Industry (OCCI) Exhibition Hall. For more details, please contact Githa Nair at [gnair@curtis.com](mailto:gnair@curtis.com).

### FOCUS ON: SECONDMENT OF EMPLOYEES

Foreign companies doing business with local partners in Oman or that own shares in local companies may consider "seconding" an employee to the local company. There are a number of factors that the local and foreign companies should consider when arranging to second an employee.

First, the Oman Labour Law issued by Royal Decree 35/03 (as amended) does not recognise the concept of secondment. However, it is a fairly common practice that is effected through a private agreement between the employee, foreign company, and the local company. Through the years, certain principles have evolved which do not have the force of law but are followed by many companies in respect of secondment. Some of them include:

1. The secondee usually remains the employee of the foreign company irrespective of any agreement that the local company enters into with the secondee for the purpose of obtaining employment permits;
2. The local company and the foreign company should enter into a secondment agreement setting forth the terms of the secondment and providing essential safeguards for both parties;
3. The local company often acts as the local sponsor for the secondee for the purpose of procuring visas and permits; and



4. The foreign company will be expected to withdraw the secondee immediately in case of misconduct or breach of any provision of the local laws.

#### DOING BUSINESS IN OMAN: ELECTRONIC TRANSACTIONS

Companies doing business in Oman that wish to conduct electronic transactions can take advantage of the legal framework provided in the Electronic Transactions Law (Royal Decree 69/08). The Electronic Transactions Law sets a uniform standard for e-commerce transactions and makes it easier for companies to conduct business electronically. For example, the law provides the following benefits:

- Removal of obstacles to electronic transactions, such as writing and signing requirements;
- Provision of a uniform standard for authentication of electronic records;
- Detailing of security measures, including an encryption standard to ensure confidentiality of transactions; and
- Allowing private entities to sign binding contracts on the internet.

The law aims to:

- Facilitate electronic transactions and the transfer of electronic documents;
- Eliminate obstacles to electronic transactions;
- Minimize forgery and fraud in electronic transactions;
- Standardize rules and regulations for security and authentication of electronic documents; and
- Boost consumer confidence and public confidence in the security and validity of electronic transactions.

Companies wishing to engage in electronic transactions can rely on the comprehensive legal

framework provided by the Electronic Transactions Law, which has now been in effect for more than six months.

#### DOING BUSINESS IN OMAN: FREQUENTLY ASKED QUESTIONS

**Q:** In the current economic climate, some companies are having difficulty fulfilling their contractual obligations. Can a company that defaults on its obligations use the global economic crisis as a basis for declaring force majeure?

**A:** The answer depends on the language of the applicable contract and the jurisdiction, but in general the economic crisis is not considered an appropriate basis for declaring force majeure. Unless the agreement between the parties explicitly states otherwise, Omani courts are unlikely to excuse a company from performing its obligations based on a force majeure declaration due to the economic meltdown.

#### NEW LAW ALERT: CORPORATE TAXATION

It has been reported that the government will issue a new corporate tax law in the next month. The new law is expected to amend the existing tax law, as provided in Royal Decree 47/81.

The new law is expected to clarify existing tax issues and issue new rules on areas of taxation not covered by the existing law. For example, the new law is expected to set forth rules for thinly capitalized companies (a company is said to be thinly capitalized when its capital includes a greater proportion of debt than equity). In addition, the new law will broaden the applicability of withholding tax rules, which relate to amounts withheld by companies from payees in order to pay tax authorities. Lastly, the new rules will include a clarification of transfer pricing rules, or the rules that govern the prices companies charge for assets transferred between separate divisions/subsidiaries of the same company.



**FOCUS ON: TEAMING AGREEMENT**

A company submitting a bid for a technical project may need to subcontract parts of the project to another company having expertise in a given area. A teaming agreement can be an essential part of the tender process, enabling both the primary company and the subcontracting company to clarify their rights and responsibilities in submitting the tender. The teaming agreement may cover topics such as timing of the tender submission, allocation of responsibilities if the bid is awarded, exclusivity, and price terms.

**FOCUS ON: CURTIS OMAN BLOG!**

Curtis Oman would like to announce officially the launch of the Curtis Oman Legal Blog on February 10, 2009.

The blog features commentary and analysis on Omani and international legal developments by local and international lawyers. Curtis bloggers analyze Omani legal developments in real time and help readers understand the impact on business issues in Oman. The blog can be accessed at <http://curtisoman.blogspot.com/> and will be updated regularly.

**ABOUT CURTIS**

Curtis is an international law firm with over 250 lawyers located in more than 14 offices across the world. The Muscat office has been in operation for over 12 years, and currently includes several US licensed attorneys and foreign and Omani qualified

lawyers. We offer a full range of domestic and international legal services in the fields of real estate, corporate and commercial law, banking, energy, arbitration, insurance, shipping and port development, tourism, employment, public procurement and more.

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