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Opportunities for US investors to conduct business in the Sultanate of Oman

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The Sultanate of Oman and the United States of America formally agreed to cement their business relationships through the ratification of a free trade agreement (FTA). Following its implementation in the US in 2006, the FTA was implemented into Omani law in 2008 by way of Ministerial Decision No. 102/2008.

The FTA contains broad commitments by both parties to open their respective markets for products of origin and services by US and Omani business people alike. This openness is supported by immediate duty-free access to almost all consumer and industrial goods (with special provisions for agriculture, textiles and apparel).

As a result of the implementation of the FTA, US companies and investors are treated in much the same manner as domestic businesses and Omani nationals irrespective of whether they invest in the Sultanate or enter the Omani market by establishing a local presence through a branch office, incorporating a local entity or entering into a joint venture agreement with a local partner.

Investment by foreign investors

Investments by foreign investors (other than Gulf Cooperation Council (GCC) nationals or wholly-owned GCC entities) are controlled in the Sultanate of Oman by virtue of the foreign capital investment law (Royal Decree No. 102 of 1994) requiring, among other things, a 30% minimum share participation by an Omani sponsor and a minimum equity investment of OR150,000 (approximately \$390,000).

Similarly, the opening of a branch office is restricted to foreign businesses which have been awarded a government contract and the

duration of a branch office is of a temporary nature (for the duration of the government contract only).

Investment by US investors

When establishing a local presence in Oman, US investors are largely exempt from the aforementioned restrictions and can instead open a branch office or incorporate an Omani limited liability company (LLC) in much the same way as Omani and GCC nationals can. As a result, US businesses can readily incorporate an Omani LLC without the need for any Omani sponsorship (provided, always, that the LLC is wholly owned by at least two US shareholders) and with an equity investment that is limited to OR20,000.

Also, US investors are allowed to open a branch office irrespective of whether they have been awarded a government contract and are permitted to conduct business with both the public and private sector through their local branch office. When tendering for government contracts, US companies are treated on the same footing as Omani bidders and the Omani governmental entities tendering for goods or services are not allowed to discriminate against US companies or in favour of Omani companies when awarding government tenders above a certain threshold amount.

Areas of investment

US investors can engage in any type of services in the Sultanate which are not specifically excluded from the application of the FTA. Areas which may be of particular importance to US investors include:

- * the energy sector (and services incidental thereto);
- * financial services (US financial service providers have the right to establish subsidiaries, branches and joint ventures to expand their operations throughout Oman and to offer the full range of financial services with only limited exemptions as set out in the FTA); and

* telecommunications (US phone companies have the right to interconnect with a dominant carrier in Oman at non-discriminatory rates and have non-discriminatory access to key facilities).

The services that have been excluded are limited in nature and include activities such as air travel, real-estate brokerage, security/defence services, etc.

As a result of the implementation of the FTA, immediate duty-free access has been granted in respect of most industrial and consumer goods which originate from the US. Where tariffs continue to apply after implementation of the FTA, the same will be phased out over time. The FTA also prohibits the introduction of new custom duties. Note that in the area of agricultural products, textiles and apparel, special rules have been adopted.

Another advantage of the FTA is that it puts in place certain protections for US investors conducting business in the Sultanate. The protections awarded under the FTA include international arbitration procedures for the settlement of investment disputes, enforcement mechanisms for copyright, trademark and other intellectual property rights infringements, and strong deterrence against piracy and counterfeiting.

The reciprocal implementation of the FTA by the United States of America and the Sultanate of Oman has paved the way for an increased focus on strengthening and deepening the economic relationship between the US and the Sultanate. It is fair to say that the FTA has to a large extent removed the barriers for US investors to doing business in Oman and has offered US investors the opportunity to invest in a stable economy in the Middle East which is strategically located in the Persian Gulf.

Financial and corporate

Recommended firms

Tier 1

Al Busaidy Mansoor Jamal & Co
SNR Denton
Trowers & Hamblins

Tier 2

Curtis Mallet-Prevost Colt & Mosle
DLA Piper
Said Al Shahry Law Office (Saslo)

“The most important thing that has happened in the region in last 12 months is the financial failure of Dubai, that has had its effects across the Gulf and it has also affected the level of business in Oman,” says one partner. “No doubt there is a slow-down here, manifesting itself in the level of inward investment.”

The crisis in Dubai has left its mark across the Middle East causing widespread caution on the part of investors and lending institutions. The past 12 months in Oman have been characterised by a marked slowdown in activity for law firms, most notably so in the first quarter of 2010. “The volume of deals we see now isn’t something you saw a year ago, it was down to liquidity drying up. Oman wasn’t affected as the other regions but it was very much a credit crunch,” says one partner

For the time being, the market remains real-estate driven as the country moves to diversify away from the oil and gas. “By 2020 Oman wants to be this sort of tourism paradise so what you do have is a lot of efforts being made to promote those, so there are a lot of hotels and resorts being built,” says one partner.

In perspective, the economy has not been profoundly impacted and market players note some restored confidence on the part of lending institutions as well as increase in the field of project finance. “Oman has been conservative but banking activity has started picking up in the latter part of this year. There is still going to be a 6.5% increase in GDP in the current calendar year therefore that would translate in terms of the legal markets into quite a lot of work,” says one partner. This growth is largely expected to stem from government investment in infrastructure projects.

Al Busaidy Mansoor Jamal & Co

“The practice is considered to be one of the pre-eminent firms in Oman,” says one competitor. Mansoor Jamal Malik, who heads the financial and corporate department, is also praised by peers: “He is experienced, helpful and responsive. He is the leading man. I don’t

know what would happen without him in that firm, he is important,” says one.

Clients agree. “Mansoor is probably the best lawyer in the country and has very good experience in the Omani market,” says one.

The firm is also praised by clients for its excellent service skills: “It is one of the preferred firms that we deal with so they are definitely among the best in Oman. They have a very good grasp of what individual stake holders require in a transaction,” says a client.

Al Busaidy Mansoor Jamal & Co has significant presence in the region with a sizable practice. The firm has been visible across a range of deal types.

One highlight saw Malik lead a team advising Bank Muscat, as facility agent for the lenders, in connection with a project finance deal which involved a large deep water jetty in the Sohal Industrial Port area. The deal, approximately \$200 million in value, closed in November 2009.

On a further transaction, Marcus Pery acted on behalf of ICICI Bank in connection with credits facilities of \$48 million to Shiv-Vani Oil & Gas Co. This represented an increase in cross-border lending activity between Oman and the UK.

The firm was also active on the capital markets side, representing Nawra, a leading telecommunication company in Oman, on its IPO on the Muscat securities market. The 40% share capital issue is the first IPO to be undertaken in Oman on the basis of a book-building exercise. The ongoing deal is being led by Malik and a team and is expected to close in September 2010.

On the M&A side Malik has also been active leading a team in representing Jindal Steel & Power on its acquisition of Shadeded from Al Gaith Holding. The deal, approximately \$464 million in value, closed in May 2010.

Leading lawyers

Mansoor Jamal Malik
Marcus Pery

SNR Denton

“They are one of the international law firms here that have lots of experience in different pockets and have expertise in the local area,” says one client.

The practice is divided into corporate and banking divisions, the former headed by George Sandars and the latter by senior associate Justine Harding. “Denton’s are great for work with an international element. They do a good job and have good lawyers,” says one peer.

One of the key figures highlighted by competitors is Mary Allan, who heads the energy

and infrastructure projects team and has lived and worked in the Middle East for almost 20 years; with ten years in the firm’s Muscat office. “Mary Allan is a name that stands out. She pretty much developed the specialism in the power and water sector. She is there and the quality of her work is very high,” says one peer.

There is no doubt among competitors about Denton’s position in the market. The firm is recognised as an important player with key lawyers on the ground in Muscat.

The firm has been active in the banking sector over the past 12 months. New partner Ian McGrath and Justin Harding represented Oman Refineries and Petrochemicals Company in connection with a \$475 million working capital facility from a syndicate of local banks, as well as its subsequent amendment. The transaction was one of the most significant projects in the petrochemical sector. The deal closed in June 2009, with the completion of amendments taking place in December 2009.

On a separate deal, Harding acted on behalf of Oman Refineries and Petrochemicals Company on its bilateral \$200 million working capital facility with Bank Muscat in December 2009.

Leading lawyers

Mary Allan

Said Al Shahry Law Office (Saslo)

“It was the first time we did business in Oman and they really took us from the hand and led us through the transaction. They were really proactive, really took the time to go into the details of the transaction and looked at what we needed,” says one international client.

One of the key figures to be singled out by clients of Saslo is Alastair Neale. “He is a very experienced lawyer in the Omani market and it was a very smooth cooperation. He is very much focused on banking and commercial law and has a deep knowledge of Omani banking law,” says one.

Taimur Malik is also a considered an important figure at the firm and is praised by clients and peers alike. “Taimur is a brilliant lawyer. Both Taimur and Alastair are very pragmatic and focused on understanding what the client needs which is very helpful during a transaction,” says an international client.

The firm is managed by Stephen Sayer who, along with Taimur Malik, has been active in advising Dhofar Power Company SAOG in relation to the sale of 53.9% of the company’s shareholding. This was one of the most significant transactions on the Muscat

securities market during 2009. The deal, approximately \$40 million in value, closed in July 2009.

On another highlight, Neale and Malik were active in representing China Development Bank, as the mandated lead arranger, in connection with the Salalah II independent water and power project. The \$1 billion deal closed in March 2010.

Neale and Malik also advised DEG Deutsche Investitions, a German development bank, on its \$37.3 million financing of Bauer Nimr, a project for the water treatment plant. In addition to the loan agreement, the firm advised on the sponsor support agreement and subordination agreement.

Leading lawyers

Alastair Neale

Other notable firms

Al Alawi & Co has been active in representing Terra Alta Group in connection with the sale of a 50% participation in an Omani company to a foreign investor. The deal involved advising on transaction structuring issues as the seller and purchaser are foreign investors, with documentation being subject to Canadian and Omani laws. The \$3.5 million deal is led by senior associate Caroline Bolle.