

Oman's new foreign investment law

by Arif Mawany - a.mawany@tamimi.com - Muscat

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Oman's new foreign capital investment law ('FCIL') is now in force and repeals the previous law that was passed in 1994. This article takes a brief look at a number of progressive changes to the inbound investment regime in Oman.

Full ownership

The key structural highlight of the FCIL is the recognition that foreign investors may wholly own investment projects in Oman. An investment project is defined as "an economic activity established by a foreign investor, whether individually or together with an Omani partner". The investment project must be conducted through a company in one of the categories of permitted activities and the share capital invested into the company can be wholly owned by the foreign investor. The FCIL requires new foreign investors to provide a short economic feasibility study of the business that they expect to carry out in Oman. The requirement to prepare a feasibility study has been introduced to provide comfort to the Government that the business activity is considered viable and likely to be of benefit to both the investor and the Omani economy.

Equal treatment, preferential treatment

The FCIL further provides that the investment project has all of the incentives that 'national projects' enjoy under Omani law. This is a key development and suggests foreign companies will be placed on an equal footing with local/Omani companies; this could alter the way in which foreign companies are currently perceived, particularly with regard to public tendering and Omanisation requirements and new foreign investors may now be able to access favourable terms for debt finance from the domestic banking sector. The FCIL also opens the door for the Cabinet of Ministers to issue a resolution to provide preferential treatment for foreign investors, in a manner that is similar to the way in which US investors are currently afforded reciprocal treatment under the US-Oman free trade agreement.

Importation regime

The FCIL expressly permits the investment project to import (by itself or a third party) products through the border of Oman without registering itself with the registry of importers. This is a key benefit and will be an improvement on the current regime which generally requires the engagement of agents and distributors. The new regime is also likely to assist with alleviating the complexities associated with licensing and cross licensing with other Ministry bodies.

Other guarantees and benefits

Various forms of comfort to foreign investors have been baked into the FCIL. These include:

1. freedom to remit proceeds of the investment project, proceeds of sale or liquidation and court settlement amounts;
2. a restriction on expropriation of the investment project's assets; and
3. freedom to transfer the shares or assets of the company that runs the investment project.

An additional highlight from the FCIL relates to the licensing procedure. The FCIL now requires the body that is responsible for issuing foreign investment applications to simplify the licensing process and commit to specific timelines in relation to issuing those approvals.

Supporting regulations and impact of COVID-19

Regulations that provide more detail on the scope of the FCIL were expected during 2020. Those regulations are intended to confirm the business sectors that would not be available for 100 per cent foreign ownership. Other areas that would be expected to be covered by those regulations include the minimum share capital (if any) to set up a foreign investment company, licensing requirements and any other restrictions and benefits. However, due to the various measures taken by the Government to curb the effects of COVID-19, those regulations are likely to be delayed. It is pertinent to note that the Ministry of Commerce and Industry of Oman is already accepting applications from foreign investors under the new law in all but a very limited range of business activities so the FCIL is already being implemented in the absence of those regulations.

How can foreign investors apply?

As noted above, the Ministry of Commerce and Industry is accepting applications from new foreign investors although it is likely that these applications will be delayed significantly in the current climate. Existing foreign investors will be able to review their current arrangements and obtain the requisite consents to restructure their Omani businesses, unless those businesses are in a restricted category, in which case their current shareholding pattern must remain as is.

For further information, please contact [Ahmed Al Barwani \(a.albarwani@tamimi.com\)](mailto:a.albarwani@tamimi.com) or [Arif Mawany \(a.mawany@tamimi.com\)](mailto:Arif Mawany@tamimi.com).