

Oman: 25 Years of Progress

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

April 2016

The legislative change in Oman during the last 25 years has been immense.

A vast range of treaties and primary and secondary legislation now pervades the legislative system with a key focus: to modernise the legislative framework and bring it into line with some of the other more mature global economies. In turn, Oman's economy has grown and flourished. This growth occurred during a period in which the price of Oman's main export, oil, peaked and the Government of Oman recognised that a plan for economic diversification ought to become a priority. That plan became urgent in the latter part of 2014 and during 2015 as Government revenues reduced in line with the falling cost of oil. In line with previous iterations, Oman unveiled its ninth five year plan under the Vision 2020 economic programme to reflect prudent and realistic goals for the future.

The key features of the most recent five year plan for Vision 2020 are increasing private investment and reducing non-core expenditure. The Government has outlined five promising sectors likely to benefit from investment: manufacturing, transport and logistics, tourism, fisheries and mining. Set out below is a summary of some of the legislation and other bodies of law which are likely to have an impact on these five promising sectors.

Foreign Investment Law: – Foreign Investor Independence

The current foreign capital investment law was passed in the early 1990s and offered a compromise against a complete opening up of the private sector. While offering the foreign investor the opportunity to own up to 70% and, in certain limited situations 100%, of an Omani company, the law was designed to ensure that Omani nationals were not excluded from participation in the private sector. The law worked well for many years although critics argued it created an unnecessarily high entry barrier to the Omani economy because it required investors to raise a minimum of approximately USD 400,000 as a condition to trading the law favoured the national population by imposing a requirement on the foreign investor to partner with an Omani shareholder.

It was not until the end of 2015 that the Government, in consultation with the World Bank, decided the time was right for further reform and economic development and a draft of the new foreign investment law was passed through the legislative process for approval. The prevailing view in the business community is that the new law will significantly reduce some of the thresholds and barriers to trade which critics aimed at the old law and there could be scope for foreign investors to own 100% of companies in certain business sectors. When the law finally arrives it will mark a significant turning point in the private sector and may serve to act as the catalyst for a private sector growth spurt.

US Free Trade Agreement: – Equal Treatment For US Investors In Oman (And Omani Investors In The US)

The US entered into a free trade agreement (FTA) with Oman in January 2009 for the purpose of eliminating tariffs, expediting movement of goods and services and strengthening protection for investors. The agreement resulted in the prevalence of US goods in Oman rather than Omani goods entering the US market but one of the key benefits for US investors was the opportunity to invest in Oman without the requirements of the Foreign Capital Investment Law; the US had negotiated a key arrangement providing US investors with a competitive edge in the Omani

economy and allowed big hitters from the US to successfully tender and win oil and gas contracts quicker than might be the case without the FTA. One of the defining features of the FTA is the reciprocal benefit available to Omanis investing in the USA. While this benefit is of limited application in the current climate, it may become more valuable as the Omani private sector strengthens and businesses look for new markets.

Recognition Of Foreign Arbitral Awards: Providing Certainty

Oman formally acceded to The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1997. The accession provided greater comfort to foreign investors in Oman and to businesses which were indirectly connected to projects in Oman. Companies in the infrastructure and construction sector have cited the certainty that comes with having arbitral awards enforced and upheld in countries such as Oman where large scale projects are still a relatively new phenomenon and the court system has not yet had the opportunity to acquaint itself with the type of complex claims often made in large scale infrastructure projects. As time moves on so too does Oman, and the Chamber of Commerce recently announced the development of an arbitration centre to enable disputes which have originated in Oman to be settled in Oman without investors having to seek the comfort of arbitration centres outside the Middle East.

The Civil Code:– A Compendium Of Laws

The Civil Code which was promulgated in 2013 filled some of the holes created by such a fast growing economy. Not only did it restate the Commercial Companies Law of 1974, but it provided additional framework on a wide range of areas such as employment, real estate, banking and finance, construction, personal injury and contracts. While a relatively new law, it is perhaps one of the most commonly consulted because of its range of application and applicability to international transactions.

The Creation Of A Public M&A Regime

As the Muscat Stock Exchange evolved, its constituent public companies began to grow and attracted the attention of larger foreign acquirers. The Government recognised that the existing legislation was devoid of provisions which sought to protect shareholders of a public company from a potentially more aggressive acquirer. The introduction of the Takeover and Acquisition law was an interesting moment because it strongly resembled legislation taken from a jurisdictions where takeovers of public companies occur almost all the time and under all market conditions. The message provided by the legislation appeared to be a very strong and assertive statement that Omani public company shareholders will be treated fairly and equally under all circumstances and that takeovers would be strictly regulated. The real strength in these regulations is that they come with the force of law (rather than a code) by which companies are required to comply and sanctions are likely to be imposed for non-compliance.

Competition Law: – Lowering The Barriers To Trade

One of the key facets of a developing economy is the apparent strength which can sometimes be wielded by enterprises which have some level of dominance over an economy, for example in their ability to control pricing and exclude competitors. As the Omani economy strode forwards, the need to protect smaller market participants from larger players became more important. The result was the Competition and Anti-Monopoly law which drew inspiration from European treaty legislation on the same topic. Abusive behaviour by dominant players was now outlawed, as were agreements which had the effect of restricting competition in the Omani market. A range of prospective mergers affecting trade in Oman would now potentially be subject to approval by the Omani regulator and certain mergers above a certain threshold would not be permitted. How the law is applied in practice remains to be seen.

Electronic Transactions Law: – Taking Oman Online

A developing economy is at an advanced stage of development when it can lay claim to having legislation which recognises the validity of contracts made electronically and the Electronic Transactions Law does no less than that. As the age of wet ink drifts even further away, more and more contracts are now being concluded electronically. Oman's Government has long recognised the potential of information technology, its importance to the growth of an economy and the explosion of the internet and social media. For this reason it gave validity – and accordingly certainty – to online transactions made between individuals. Companies offering products and services online had to abide by a minimum standard with respect to collection and processing of personal data and employ minimum standards to protect the security of their systems. Together with the Cyber Crimes Law, Oman has made a good start in building up a legislative repository of laws which govern some of the issues arising out of doing business on the worldwide web.

The Future

Legislative activity in Oman has been pronounced during the last ten to fifteen years. How this legislation copes not only with adaptation inside Oman's economy but also with the changing global economy will be a true indicator of its success because with each new law comes expectation of change but also uncertainty in how it will be applied and interpreted.