

The Regulation of Electronic Transactions in Oman

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With the fast development and implementation of technology and the internet in processing operations in private and public sectors, and concluding transactions locally and internationally online or electronically on a cross-border basis, it has become essential to develop a legal framework to safeguard the rights and interests of stakeholders utilising such electronic platforms.

The Oman government has accordingly issued the Sultani Decree 69/2008 – entitled “the Electronic Transactions Law” (“the Law”). This legislation was in response to the increasing number of electronic transactions, and resulting amount of cases before Omani courts which did not have a sufficient laws to rely on when adjudicating these bespoke issues.

Electronic Transactions Law

The Law applies, pursuant to Article 3, to electronic transactions, records, signatures and to electronic messages. The Law does not however apply to transactions and matters related to personal status law, such as marriage, divorce and wills. It also does not apply to court procedures, judicial summons, proclamations, summons, arrest orders and judicial decrees. Generally, the provisions of the Law apply to transactions between the parties who agree on conducting their transactions by electronic means and the consent of each party may be inferred from his conduct. In relation to the Government as a party to such transactions, its consent shall be given expressly in writing. Any agreement between the parties to conduct any transaction by electronic means shall not be obligatory on either party to conduct other transactions by the same means.

Electronic communication including messages shall have the same legal effect and force like any other enforceable written document if the conditions provided for in this Law and its implementing regulations are observed.

Where there is a specific requirement contained in any other legislation, for instance the requirement of the Law of Commerce and Employment Law to retain any document or information for any reasons whether they relate to a transaction or an employee, then such retention shall be ascertained by retaining that document or record or information or data in electronic form. This requirement arises if the following conditions are satisfied:

- The document, record, information or data are retained electronically in the form they were originated or sent or received or in a form capable of proving accurately that the document or record or information or data originated or sent or received in its original form;
- The document, record, information or data shall remain retained in a way to render it accessible, usable and retrievable for subsequent reference; and
- The document, record, information or data shall be retained in a way to enable the identification of their origin and destination and the date and time when they were sent or received.

Where the law requires the provision of a message, record or document in its original form and provides for consequences otherwise, then the electronic message or electronic record or electronic document will be regarded as original if there exist a reliable assurance or means allowing display of the information intended to be provided in an understandable way and to verify

the integrity of the information contained in any of the documents.

For the purpose of using electronic messages, information, records or data as an evidence in any legal proceedings, nothing shall apply so as to deny the admissibility of the electronic message on the ground that it is not in its original form if the message is the best evidence that the person adducing it could reasonably be expected to obtain.

The message presented in a legal proceeding, shall have evidential weight subject to the following factors:

- The reliability of the manner in which the message was performed, entered, generated, processed, stored or presented;
- The reliability of the manner in which the integrity of the information was maintained;
- The reliability of the source of information if such source is well known;
- The reliability of the manner in which its originator was identified; and
- Any other relevant factor.

For the purpose of contract formation, an offer and acceptance could be expressed by the parties to the contract through exchange of electronic messages. This will lead to a binding contract on all parties. The validity or enforceability of the contract cannot be challenged or questioned on the ground that it was formed through exchange of electronic message if expressly or impliedly conveys the intention of each party to enter into the contract.

The application of the Law extends to the governmental use of electronic records and signatures. By way of example, the Oman government may use electronic records and signatures to carry out any of the following tasks:

- Accepting, depositing, presenting, originating or maintaining documents;
- Issuing any decision, permission, license or approval;
- Accepting fees of any payments; and
- Issuing tenders and receiving bids related to government purchases.

Although the Law regulates provision of services relating to authentication service providers in relation to electronic authentication certificates issuance or any other services relating to electronic signatures, there are not many authentication services providers licensed by the information technology authority in Oman. Further, the Law provides for the protection of the personal data not to be shared or used for any other purpose other than the purpose which was obtained for in the first place.

The Oman Government, in order to combat the information technology related crimes, has issued Sultani Decree 12/2011 (“Combating of Information Technology Crimes Law”) which criminalizes certain acts relating to the infringement of safety and confidentiality of electronic information and information systems, as well as the misuses of information technology means.

E-Government

The Information Technology Authority (“ITA”) in Oman is taking the lead in implementing the government of Oman’s strategy of converting the Sultanate into a knowledgeable and sustainable society through the implementation of information and communication technological means to promote governmental services, enrichment of the private sector and enabling individuals in digital dealings. To this end, the ITA has taken some initiatives that include:

- Setting up a unified basic infrastructure for the electronic government which includes the relevant applications and the database;
- Connecting all governmental institutions through a secured network;

- Creation of a work framework for the electronic management; and
- Provision of unique electronic services designed especially for the customers to serve the needs of individuals and private sector; and
- Development of plans and policies relating to training of individuals in the field of information technology.

Governmental bodies in Oman which have started using electronic systems for processing transactions for individuals and companies are Royal Oman Police, Ministry of Commerce and Industry, Ministry of Manpower and Ministry of Climate Affairs. In order to submit or register any transaction it must be made online through insertion of the ID card in a special reader, entering the details necessary and uploading the required documents. Any missing information or documents required to be provided or whenever the application is approved, the applicant will receive an electronic message via email or telephone confirming this.

Conclusion

The Oman Government has enacted the basic legislations which includes the Law and the Combating of Information Technology Crimes Law which regulates how the electronic transactions and contract are concluded and formed. Further, it has established bodies like ITA to ensure proper implementation of the provisions of the Law and the use of the same by other governmental bodies like Royal Oman Police and Ministry of Commerce and Industry. The enactment of the Combating of Information Technology Crimes Law has strengthened the use of information technology in Oman and provides additional protection to its users from any infringement or abuse. Recovering any damages or returns of goods represent another challenge that need to be contractually regulated and set out clearly in the terms and conditions or the contract terms if the execution takes place in different territories.

However and with the increase in the number of transactions entered into by individuals, companies and the government entered into online or electronically, there are still number of areas that the Law is silent about and need to be regulated in the contractual terms given its importance like the jurisdiction, governing law, the courts to hear the disputes. This area is problematic and challenging to determine if not expressly provided in the contract provide that parties may reside in different states with different laws.

Individuals, organisations and governmental entities soon or later will need to develop an internal regulation setting out the criteria for its employees to follow when entering transactions electronically or online starting from verification process of the other contracting party, ensuring protection of its data and processing of information up to conclusion of the contract and its enforceability.