

Setting up a business in Oman

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Legal Structures

There are three main legal structures available to companies, which will provide both a direct and indirect business presence in Oman. From a direct perspective, these are available through a sole proprietorship or through a corporate entity. From an indirect perspective, businesses can be carried out through commercial agents.

Sole Proprietorship

A sole proprietorship is a simple business method whereby an individual trades on his own account pursuant to a trade license issued in his own name. This form of business entity is referred to as an 'establishment' rather than a company and the sole proprietor is personally liable to the full extent of his assets for the liabilities of the business. The establishment will not have an independent legal entity from that of the owner.

Mainly Omani nationals and nationals of GCC countries (subject to certain conditions) are permitted to form sole proprietorships in Oman. A practice has, however, arisen in recent years whereby an Omani national obtains a trade license for a sole proprietorship and leases it to expatriates who then take on all the management functions of the business and retain all the profits. However, this type of arrangement is not recommended as it is essentially unlawful and problems can arise if the business relationship between the parties breaks down. Further, the legal holder of the license will be 100% liable for debts vis-à-vis third party, who may have no knowledge of the private arrangement.

The main procedure for establishing a sole proprietorship is to submit an application together with the relevant documents to the One Stop Shop at the Ministry of Commerce and Industry where the Chamber of Commerce and the Municipality has representation to issue relevant licenses (with the main trade license being issued by the Ministry of Commerce and Industry).

General Partnership

A general partnership is an arrangement between two or more partners whereby each partner is jointly and severally liable without limitation for the company's liabilities. Oman or GCC nationals are permitted to be partners in a general partnership. This form of business organization is therefore not appropriate for foreign investors wishing to set up in Oman.

Limited Partnership

The CCL defines a simple limited partnership or a partnership as a "company formed by one or more general partners liable for the company liabilities without limit, and one or more limited partners liable for the company liabilities to the extent of their respective shares in the capital only."

Thus, a simple limited partnership is essentially a modified general partnership. As in a general partnership, only Oman and GCC nationals may be general partners in a simple limited partnership, although foreigners may be silent partners, who essentially do not have a role in the management as opposed to the administration of the company regarding third parties. In addition, their liability is limited to the extent of their share capital in the partnership.

Silent partners should of course ensure that they do not lead third parties to believe that they are anything other than a silent partner, otherwise their limited liability will cease. The management of a simple limited partnership is vested in the general partners. As non-Oman or GCC nationals are excluded from assuming any form of business organization, this is seemingly inappropriate for foreign investors.

Joint Participation Venture

The CCL governs the establishment of joint participation ventures or consortium companies, and are defined as a “company between two or more parties to share the profits or losses of one or more commercial businesses being performed by one of the partners in his personal name. The company shall be confined to the relationship between the partners and will not be effective towards third parties.”

From the above, it is clear that the existence of such a company is restricted to the arrangement between the partners therein and must not be made known to third parties. Between the partners themselves, the arrangement is essentially a partnership. Each partner conducting business will generally do so in his own name and will not declare the interest of the other partners. The liability of the partners who are conducting business is unlimited regarding the liabilities of the company. If the liability of the other partners is disclosed, the venture will be treated for every purpose as a general partnership.

Joint participation ventures are popular with foreign companies who wish to set up in Oman on a short-term basis, for example, to carry out a specific project. They are often formed where there is some participation by government bodies.

There are no registration formalities for this type of company as it is not a distinct legal entity.

Joint Stock Company

A Joint Stock Company (JSC) is governed by the CCL, which defines a JSC as “any company whose capital is divided into equal value negotiable shares.” A shareholder’s liability is limited to the paying of the value of the shares which he has subscribed, and he shall be answerable for the debts of the company only to the extent of the nominal value of the shares which he has subscribed. JSC can be public or closed in accordance with the CCL.

Public Joint Stock Company (PJSC)

A PJSC is very similar to the public limited company in the United Kingdom. According to the CCL the shareholders of PJSC are liable only to the value of their shares in the capital of the company. The nominal value of each share of a PJSC should not be less than 100 Baiza and not more than OMR 1, and the minimum share capital requirement is OMR 2 million for a general company, OMR 20 million for a banking entity and OMR 5 million for insurance company.

Among the requirements for the establishment of a PJSC is a prospectus and an offering invitation for public subscription supported by an overall business plan/feasibility study and a bank's certificate evidencing payment of the founders contribution, the Memorandum and Articles of Association and a copy of the agreement between the company and the underwriters. Further, the name of the intended company must end with the words 'Public Joint Stock Company'.

A PJSC must have at least three founder members and its management should be vested in a board of directors consisting of a minimum of five and a maximum of twelve persons whose term of office may not exceed three years. Directors can be re-elected when their term of office has expired. A public joint stock company is required to have a chairman of the board of directors who must be elected in the first board of directors meeting following the general meeting in which the board was elected.

At least 10 percent of the net profit should be allocated to a reserve account until such reserve account amounts to half of the total paidup capital of the company.

In addition, Oman or GCC nationals should hold at least 30 percent of the share of the PJSC. The founding members must subscribe to a minimum of 30 percent and a maximum of 60 percent of the share capital of the company. If new shares are issued, the existing shareholders should be offered the opportunity to subscribe for such shares in accordance with their existing shareholdings.

There are additional requirements for the incorporation and operation of a PJSC stipulated under the CCL which should be considered by interested investors. However, given the fairly restrictive rules and controls governing the establishment and management of a PJSC and the substantial capital requirement, it is not regarded as a suitable business vehicle for most foreign investors. However, given the fairly restrictive rules and controls governing the establishment and management of a PJSC and the substantial capital requirement, it is not regarded as a suitable business vehicle for most foreign investors.

Notwithstanding that, the PJSC has become increasingly popular in the recent years and there are currently more than 150 PJSCs in Oman. In addition, as it is the only business vehicle which allows shares to be offered to the public, it enables businesses to raise substantial amounts of capital, particularly where large-scale projects are concerned. This allows small foreign and local investors to participate in such projects.

It should also be noted that, where one is contemplating a business venture which involves insurance, banking or investment of funds on behalf of third parties, the establishment of JSC

is a legal necessity and no other type of company may be established for such activities.

Closed Joint Stock Company

A closed joint stock company is essentially the same as a PJSC, with the following differences:

- The minimum capital requirement is OMR 500,000;

- The shares of a closed joint stock company cannot be offered to the public; and

- The shares of a closed joint stock company are listed on the third market, whereas the shares of a PJSC are listed on the primary market.

Considering the lower capital requirement of OMR 500,000, closed joint stock companies are popular with foreign investors.

It is worth noting that the procedures for setting up a closed joint stock company are similar in many respects to a PJSC.

Limited Liability Company

A Limited Liability Company (LLC) is governed by the CCL. LLCs are popular and often the most suitable method of establishing a business in Oman by foreign investors. LLCs are similar to private limited liability companies in the United Kingdom. However, as mentioned earlier, where the intended business involves banking, insurance and/or investment activities conducted on behalf of third parties, an LLC is not legally permitted to practice such activities. In this case, a PJSC will instead have to be established. CCL defines LLC as a company “with limited liability...where the number of partners may not exceed forty and should not be less than two. Each of the partners shall only be liable to the extent of his share in the capital. The partners’ participation should not be represented by negotiable certificates.”

In addition, the following may be noted with regards to an LLC:

- Public subscription for raising capital is not permitted;

- A foreign partner is generally permitted to own a maximum of 70 percent of the capital of the company and the day-to-day management of the company may be vested in a foreign manager;

- Managers may be one or more of the partners or any other parties (including foreigners) ;

- In practice, national partners often play no part in the operations of the company and may well give the foreign partner a power of attorney authorizing him to vote in the general assembly on his behalf on matters permitted by CCL;

- It is possible to provide in the Memorandum (called the Constitutive Contract under CCL) that profit and losses will be shared in a ratio different to the share capital ratio;

- It is necessary to appoint an auditor who must be accredited in Oman; and

- The auditor should be appointed by the general assembly (which is essentially a meeting of all the shareholders of the company).

Holding Company

Holding companies are not popular due to their structure and the high capital requirement, which is OMR 2,000,000. Further, the objects of a holding company shall include the following:

management of its subsidiary companies, or participation in the management of other companies in which it has shares;

investment of its funds in shares, bonds and securities;

provision of loans, guarantees and funding to its subsidiary and other companies; and

holding of patents, trademarks, concessions and other incorporeal rights, the exploration thereof and the leasing out of the same to its subsidiary and other companies.

There are special rules, issued by the Ministry of Commerce and Industry, which regulate holding companies and their subsidiaries. Therefore, foreign investors do not choose the legal form during their initial investment unless the business develops and there is a requirement to include one of the objects above mentioned.

Branch Office of a Foreign Company

A very popular way for foreign companies to benefit from 100 percent foreign ownership is to establish a branch office of the parent company. The Foreign Capital Investment Law, promulgated by Sultani Decree number 102/94, contains provisions regulating the establishment of branch offices of foreign companies in Oman.

A branch office is legally part of and an extension to its parent company; it does not therefore have a legal identity distinct from its parent company. Therefore, the name of a branch office will be the same as that of the company of which it is a part.

For the establishment of a branch of a foreign company it is essential that the foreign company has a contract with one of the government entities or companies wholly owned by the government. The foreign company must provide an undertaking with the registration documents, which stipulates that it undertakes to bear the liabilities of the branch and the acts of its manager of the branch.

The branch period is limited to the period of the project which shall be sufficient for its execution in Oman, and accordingly it is not permitted to carry out any other type of work for any third parties. The activities of the branch must be similar to the activities of its parent company and it is not permitted to carry out any other activity unless approved first by the parent company and registered with the Ministry of Commerce and Industry.

Representative Offices of Foreign Companies

Representative offices are governed by the Representative Office Regulatory Law, promulgated by ministerial decision number 22/2000. A representative office of a foreign company is legally distinct from a branch office of a foreign company in that it is only permitted to promote its parent company's activities. Therefore, if a parent company deals in the sale and/or production of certain products and opens a representative office in Oman, the office will only be able to promote and market the sale and/or production of such products and facilitate

contracts in Oman, as distinct from conducting the sale and production itself.

It should be noted that in addition to the above limitations, representative offices have other restrictions in that they are not allowed to obtain credit facilities or put forward offers.

In order to establish a representative office in Oman the parent company must provide a certified copy of the articles of association, a certified copy of the commercial registration certificate, authorization for the manager of the representative office to manage the office and a letter of undertaking to bear all liabilities of the office.

Commercial Agents

Foreign companies can trade in Oman through importers and traders. However, such arrangements are not particularly well suited to continuous, high volume trading. Overseas manufacturers or traders who wish to import goods into Oman in large quantities and on a regular basis may wish to appoint a local trader or commercial agent through the establishment of a commercial agency.

The commercial agency has to be registered in the commercial agency register maintained by the Ministry of Commerce and Industry.

Registered Commercial Agent

A Registered Commercial Agency is defined by the Commercial Agency Law, Sultani Decree number 26/1977 as amended, (Agency Law), as “any agreement by virtue of which a merchandise or a commercial company undertakes to sell or promote a product or provide services whether in his or its capacity as an agent or a representative or a mediator on behalf of the supplier or the principal in consideration to a commission or profit”. This in particular applies to travel and tourism agencies, international insurance agencies in the Sultanate, land and maritime transportation agencies and advertisement and promotion agencies. ”

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