



Private mergers and acquisitions in Oman: Overview

Published by Practical Law: December 2015

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Corporate entities and acquisition methods

1. What are the main corporate entities commonly involved in private acquisitions?

The main corporate entities commonly involved in private acquisitions are:

- Limited liability companies (LLC).
- Closed joint stock companies (*Société Anonyme Omani Close*) (SAOC).

2. Are there any restrictions under corporate law on the transfer of shares in a private company? Are there any restrictions on acquisitions by foreign buyers?

Restrictions on share transfer

The transfer of shares by a shareholder in an LLC to a third party is subject to statutory pre-emption rights vested in the other shareholders or partners by the Commercial Companies Law (*Royal Decree 4/74*).

The transfer of shares by a shareholder in an SAOC is not subject to statutory pre-emption rights under the Commercial Companies Law. However, the shareholders of an SAOC can contractually agree pre-emption rights.

There are also restrictions on transfers of shares in companies operating in certain business sectors, where approval is required from the regulator of the relevant sector.

Foreign ownership restrictions

Foreign investors can, singly or collectively, own up to 70% of an Omani company's share capital. Moreover, a foreign shareholding in an Omani Company can be increased up to 100% with the prior approval of Oman's Council of Ministers. 100% foreign investment is normally reserved for projects that are considered important for development of the national economy, or the project involves the introduction of technical knowledge or expertise that is not available in Oman.



For a foreign investor to make any investment in an Omani company, the investee company must have a minimum issued capital of OMR150,000. This minimum issued capital requirement is increased to OMR500,000 where a foreign company proposes to acquire 100% of the share capital of the company.

Despite this, an entity incorporated in the US with 100% US ownership and/or US nationals (that is, individuals) can acquire 100% of US owned entities in Oman under the US-Oman Free Trade Agreement, without the need for approval from Oman's Council of Ministers.

Foreign investors are also permitted to acquire 100% of the shareholding of companies:

- Incorporated in Oman's Free Zones under the Free Zone Law.
- Involved in Oman's power and desalinated water sector under the Sector Law (*Royal Decree 78/2004*).
- Established in Knowledge Oasis (Muscat), an information technology park established for companies involved in software, hardware, telecommunications and other information technology activities.
- Undertaking a privatisation project in Oman under the Privatisation Law (*Royal Decree 77/2004*).

3. What are the most common ways to acquire a private company? What are the main advantages and disadvantages of a share purchase (as opposed to an asset purchase)?

Share purchases are the most common way to acquire a private company.

Asset purchase transactions are also entered into, albeit less commonly. The transfer of a business as a going concern (business transfer) is normally undertaken as a transfer of individual assets and liabilities against cash consideration.

Share purchases: advantages/asset purchases: disadvantages

The advantages of a share purchase over an asset purchase (and correspondingly, the disadvantages of an asset purchase) are the following:

- A share purchase enables a direct acquisition to be made in the private company (target) without the need to have in place/set up a local (Omani) acquisition vehicle to accept a transfer of assets and liabilities from the target, which is necessary in a business transfer. Moreover, following a business transfer, the target needs to be liquidated, which can be a lengthy and relatively expensive process.
- A share purchase transaction involving an LLC target needs to be recorded at the Ministry of Commerce and Industry (MOCI), which is an expeditious, efficient and inexpensive process. Execution of a share purchase transaction involving an SAOC target is also an efficient process, albeit subject to more formalities than for an LLC. Additional formalities involve the transaction being handled by a licensed broker through the "third market" of the Muscat Securities Market (MSM) which is the local bourse. A business transfer involves an asset



purchase agreement being filed with the MOCI, followed by actual transfers of individual assets and liabilities from the target to the acquirer, which may involve additional recordation/registration.

- Approval of other shareholders/partners (waiver or opportunity to exercise pre-emption rights) is required in an acquisition involving an LLC but not required in an acquisition involving an SAOC. This is less onerous than a business transfer, where unanimous shareholder approval is required in case of an LLC target. In case of an SAOC target, the transfer of the SAOC's business as a going concern can take place on the basis of a simple majority shareholder resolution at a general meeting.
- Contracts entered into by the target are not affected by the acquisition (unless they include change of control provisions).
- Licences, permits and other government approvals are held in the name of the target itself, and remain in force following a share purchase. A business transfer does not result in an automatic transfer of the target's licences, permits and approvals, and the acquirer must have in place or apply and obtain all necessary licences, permits and approvals before using the transferred assets in its business.
- Lender(s) consent where a share pledge has been registered or the company is subject to change of control covenants for a share purchase is relatively straightforward, and involves the lender(s) issuing a no-objection letter consenting to the proposed transfer of shares. Underlying security interests remain in place despite the acquisition, and do not require re-registration. An asset transfer requires consent from each secured creditor of the transferor. This involves filings with the MOCI to release security interests over mortgaged assets before their transfer to the acquirer.
- There are no tax consequences for the target. The company transferring assets in a business transfer is subject to tax on any capital gains arising from the asset transfer.

Share purchases: disadvantages/asset purchases: advantages

The advantages of an acquisition through asset purchases over a share purchase (and accordingly the disadvantages of a share purchase) are:

- An asset purchase transaction normally involves less rigorous legal due diligence than a share purchase transaction. However, a transfer of business as a going concern normally involves a due diligence exercise of a similar level of detail. Therefore there is no clear advantage for one transaction structure over the other on this criterion.
- In an asset purchase, an acquirer can grant security to acquisition financing lenders over the assets it has acquired. However in a share purchase, any security taken over the target company's assets would be financial assistance and require shareholder pre-approvals.
- In an asset purchase, an acquirer acquires assets free from any historical tax, health, safety, and environmental liability affecting the target.



4. Are sales of companies by auction common? Briefly outline the procedure and regulations that apply.

Sales of companies by auction are not common and there is no prescribed procedure or regulations in this regard. Occasionally, a company can invite investment (or its shareholders can contemplate a divestment) on the basis of a competitive bidding process. However, such a process and the rules governing it are at the discretion of, as the case may be, the company or its shareholders.

Preliminary agreements

5. What preliminary agreements are commonly made between the buyer and the seller before contract?

In both share purchase and asset purchase transactions, the preliminary understanding of the parties is recorded in a letter of intent, transaction principles document, memorandum of understanding or term sheet (letter of intent).

Letters of intent

A letter of intent is normally non-binding except in relation to its confidentiality, governing law and jurisdiction provisions.

Letters of intent usually outline the main terms that the transaction parties have agreed relative to the share purchase or asset purchase transaction, such as the:

- Price.
- Deal structure (asset purchase or share purchase).
- Due diligence (timing and scope).
- Closing conditions (precedent).
- Completion mechanics.
- Exclusivity period.
- Governing law and jurisdiction.

In essence, letters of intent cover deal points, rather than drafting points, and important deal points rather than routine ones. The purpose of letters of intent is normally to assist in focusing the transaction parties on closing the transaction, without being drawn into detailed discussions around drafting and fine print.

Exclusivity agreements

Normally transaction parties enter into a letter of intent (with exclusivity and confidentiality clauses) or an exclusivity agreement, which grants the proposed acquirer a right for a period



of time to negotiate with the seller shareholder/target and to complete its due-diligence. An exclusivity agreement is usually entered into along with a non-disclosure agreement.

Non-disclosure agreements

Depending on the nature of the acquisition, a non-disclosure agreement can be mutual or one-sided, in that the information disclosed by one of the parties (the target) is subject to confidentiality and non-disclosure obligations.

A non-disclosure agreement normally provides blanket confidentiality/protection from disclosure in respect of information disclosed by a party (which qualifies as confidential information under the non-disclosure agreement). The non-disclosure agreement also normally restricts the receiving party from using confidential information for any purpose other than in relation to the anticipated acquisition transaction.

The confidentiality obligations of the receiving party are usually subject to standard carve outs in respect of disclosure that the receiving party both:

- Makes to its own officers/employees/advisers who are directly involved in the transaction.
- Must make to comply with laws and regulations to which it is subject.

The enforceability of a non-disclosure agreement has not been tested before the Omani courts. It should be theoretically possible to obtain an injunction against prohibited disclosure or forbidden use of confidential information and specific performance (for return of confidential information). However, the Omani courts do not grant injunctions as a matter of course and obtaining injunctions can be problematic.

While it is possible to include liquidated damages clauses in a non-disclosure agreement, the Omani courts have a track record of not enforcing such clauses on a strict basis and striking down such clauses if they are construed as penalties. On the other hand, the Omani courts have a track record of awarding an injured party compensation in respect of actual and quantifiable damages, which can be shown to be a direct consequence of the other party's default in performance or contractual breach.

Asset sales

6. Are any assets or liabilities automatically transferred in an asset sale that cannot be excluded from the purchase?

There are no assets or liabilities that are automatically transferred in an asset sale (as a matter of law) which cannot be excluded from the purchase. However, under the Oman Labour Law (*Royal Decree 35/2003*), a business transfer would oblige the acquirer to accept a transfer of all employees of the target at their current terms of employment (together



with vested benefits, that is, end of service benefits for expatriate employees and pension benefits for Omani employees).

7. Do creditors have to be notified or their consent obtained to the transfer in an asset sale?

As there is no automatic transfer of the target's liabilities, creditors to whom the target owes liabilities must be notified of the assignment of the proposed assignment of indebtedness by the target to the acquirer and the creditors must agree to the transfer. In the event that a creditor did not agree to a transfer of indebtedness, the target would remain liable for payment of the debt.

Share sales

8. What common conditions precedent are typically included in a share sale agreement?

The conditions precedent invariably included in a share sale agreement include:

- Approval from regulatory authorities that have jurisdiction over the target.
- Consents from third parties such as lenders, key clients/customers and suppliers of the target.
- No material adverse change or change of law having occurred in the business or prospects of the target between the date of the share sale and purchase agreement and closing.
- No breach of a material covenant having occurred between the date of the share sale and purchase agreement and closing.

Conditions precedent that are sometimes included involve:

- Availability of acquisition funding.
- Issuance of a legal opinion from counsel confirming satisfaction of conditions precedent.

Seller's title and liability

9. Are there any terms implied by law as to the seller's title to the shares in a share sale? Is any specific wording necessary and do buyers normally impose a higher standard than is implied by law?

There are no terms specifically implied by law as to the seller's title to shares in a share sale. The Oman Commercial Law (*Royal Decree 55/90*) and the Civil Transaction Law (*Royal Decree 29/2013*) include generic terms of sale relative to movable goods, which could be



applied in relation to the sale of shares. However, the application of such principles is unclear and buyers normally require sellers to contractually warrant that:

- The seller is the sole legal and beneficial owner of the sale shares and has good title to the same.
- The shares are not encumbered and that no consent is required by the seller from any governmental authority or third party in order to transfer the sale shares to the buyer free from all encumbrances.

Buyers also normally insist that the title warranties are:

- Not qualified by any general carve outs with regard to warranties.
- Not subject to caps on liability or affected by thresholds on warranty claims.
- Not subject to any limitation periods applicable in relation to other warranties.
- Given for a longer period than the other representations.

10. Can a seller and its advisers be liable for pre-contractual misrepresentation, misleading statements or similar matters?

Seller

The Civil Transactions Law provides that the performance of a contract is not solely restricted to the contents of the contract but must also take into account whatever is necessary to perform the obligations according to law, custom and justice. This provision is interpreted to include an implied duty of good faith. In deciding whether an act constitutes bad faith an Omani court may also look at provisions of the Civil Transaction Law which hold a person liable for unlawful exercise of rights. The exercise of a right is deemed unlawful if it does any of the following:

- Infringes the right of another person.
- Results in an illegal benefit accruing to such person.
- Exceeds the boundaries of usage and custom.
- Results in a benefit which causes disproportionate harm to another person.

These principles would imply an obligation on a seller not to make misrepresentations and/or misleading statements to the buyer. This pre-contractual relationship would exist even if the parties had not entered into a letter of intent.

Advisers

As an adviser is not a party to the transaction itself, it would not become directly liable for pre-contractual misrepresentation, misleading statements or similar matters. However, it is possible that a seller could attract liability for statements made by an adviser on its behalf.



Regulated advisers such as financial intermediaries and investment banks may also be subject to inquiries/penalties by the Omani regulators for breaches of fiduciary duties of care, if a complaint is filed by a party aggrieved by their conduct.

Main documents

11. What are the main documents in an acquisition and who generally prepares the first draft?

In a share purchase involving a transfer of shares in an LLC, the main acquisition documents are:

- A long-form share sale and purchase agreement, which includes detailed provisions concerning the transaction and includes representations and warranties, closing conditions and so on. This document is normally executed in English or bilingual form (English and Arabic). The document is normally prepared by the buyer's lawyers.
- An escrow agreement (if any) which is prepared by the buyer's lawyers.
- The disclosure letter (if any) which is prepared by the seller's lawyers,
- An Arabic language short form share sale and purchase agreement, which follows a standard form issued by the Ministry of Commerce and Industry (MOCI). This document can also be executed in bilingual form (English and Arabic). The short form share sale and purchase agreement needs to be signed by representatives of the transaction parties at the MOCI. This normally occurs once all conditions precedent have been satisfied or waived. This document is also normally prepared by the buyer's lawyers.
- An amendment deed to the target's constitutive contract to delete the name of the seller and include the name of the buyer. This document is also normally prepared by the buyer's lawyers.

In a share purchase involving an SAOC, the escrow agreement and short form share sale and purchase agreement are not necessary and are replaced by:

- A tri-partite agreement entered into among the transaction parties and a broker (this document is normally prepared by the broker).
- Share transfer forms (in the form issued by the MSM) executed separately by each transaction party.

In an asset purchase, the main acquisition documents are:

- A long-form asset sale and purchase agreement, including detailed provisions concerning the transaction, and a detailed list of assets and representations and warranties concerning the assets, closing conditions and so on. This document is normally executed in English or bilingual form (English and Arabic). The document is normally prepared by the buyer's lawyers.



- An Arabic (or bilingual Arabic and English) short form asset sale and purchase agreement recording the business sale, which is filed with the MOCI at completion.

Acquisition agreements

12. What are the main substantive clauses in an acquisition agreement?

The key substantive clauses in a share purchase agreement are:

- Definitions and interpretation.
- Sale and purchase of the shares.
- Price.
- Closing of the transaction.
- Warranties.
- Post-completion undertakings.
- Indemnities.
- Confidentiality.
- Termination.
- Governing law and jurisdiction.
- Conditions precedent (separate schedule).
- Warranties (separate schedule).

The key substantive clauses in an asset purchase agreement are:

- Definitions and interpretation.
- Sale and purchase of the assets.
- The price.
- Closing of the transaction.
- Transfer of assets and employees.
- Interim arrangements.
- Non-compete obligations (if any).
- Warranties.
- Indemnities.
- Confidentiality.
- Termination.
- Governing law and jurisdiction.
- Conditions precedent (separate schedule).
- Warranties (separate schedule).

13. Can a share purchase agreement provide for a foreign governing law? If so, are there any provisions of national law that would still automatically apply?



A share purchase agreement can provide for a foreign governing law. The Civil Transactions Law specifically recognises the right of parties to a contract to choose the governing law of the contract by providing that contractual obligations are governed by the law of the country in which the contracting parties are domiciled and, if the contracting parties are domiciled in different jurisdictions, by the laws of the country in which the contract was concluded, unless the parties otherwise agree.

However, despite the introduction of this provision in the Civil Transaction Law, the Omani courts have not yet adjudicated a dispute through application of foreign law, and we cannot state with certainty that the Omani courts would uphold the choice of a foreign governing law in all cases.

Despite the above, mandatory provisions of Omani law concerning transfer mechanics, tax, employment and pension protection of employees will still apply.

Warranties and indemnities

14. Are seller warranties/indemnities typically included in acquisition agreements and what main areas do they cover?

Warranties are typically included in an acquisition agreement and cover:

- Corporate status of the target.
- Authority and capacity of the seller to transfer the shares or of the target to transfer the assets.
- Sellers good title to the shares or the target's title to the assets.
- Veracity, completeness and validity of accounts and books and records.
- No undisclosed liabilities.
- No material adverse changes.
- Employee matters (employee benefits and no undisclosed liabilities to employees or employee disputes).
- Compliance with law.
- No breach of contractual arrangements.
- Intellectual property rights.
- Environmental matters.
- Health and safety matters.
- Tax matters.
- Legal matters.
- Employment matters.

Indemnities that are typically included in an acquisition agreement cover loss or damage arising out of breaches of warranties covering:

- Intellectual property rights.



- Environmental matters.
- Health and safety matters.
- Tax matters.
- Legal matters.
- Employment matters.

15. What are the main limitations on warranties?

Limitations on warranties

The main limitations on warranties are:

- Monetary caps and floors on warranty claims.
- Time limits within which an affected party must bring a warranty claim.
- Exclusion of warranty protection where buyer had knowledge.
- Qualifying warranties by disclosure (through a disclosure letter).

16. What are the remedies for breach of a warranty? What are the time limits for bringing claims under warranties?

Remedies

The remedy for breach of a warranty under Omani law is a claim for damages. The Omani courts normally award a party actual damages and will not enforce consequential or exemplary damages. There are past instances of parties agreeing provisions allowing a party to rescind an agreement for breach of a warranty, however the enforceability of such provisions has not been tested before the Omani courts.

Time limits for claims under warranties

The Oman Commercial Law provides for a ten year limitation period within which to bring legal proceedings for a contractual claim, unless a shorter limitation period is specifically provided for by the Oman Commercial Law or another statute in respect of a particular claim. However, parties normally agree a shorter limitation period for most warranties, equivalent to between five and seven years for warranty claims made in respect of tax, health and safety and environmental issues, and between 12 months and 24 months in other cases.

Consideration and acquisition financing

17. What forms of consideration are commonly offered in a share sale?



Forms of consideration

The form of consideration most commonly offered in a share sale is cash. It is uncommon for any other form of consideration to be offered or accepted by a seller. From a technical standpoint, it is possible for the consideration for an acquisition to comprise the allotment of shares in, or bonds issued by, the buyer.

Factors in choice of consideration

The primary factor is whether the buyer has or is able to raise sufficient cash to fund the acquisition.

18. If a buyer listed in your jurisdiction raises cash to fund an acquisition by an issue of shares, how is the issue typically structured? What consents and regulatory approvals are likely to be required?

Structure

An issue of shares by a listed acquirer (a Société Anonyme Omani General or SAOG) can be structured as a rights issue or a private placement of shares in favour of one or more specific entities (whether or not they are shareholders).

Consents and approvals

The board of directors of an SAOG acquirer has legal authority to authorise an issue of shares to existing shareholders, on a rights basis, within the limits of the SAOG's authorised share capital. However, in a private placement of shares, a special majority shareholder resolution (three quarters majority of the votes cast) at an extraordinary general meeting (three quarters of the share capital represented) of the shareholders of the SAOG is needed to authorise the issue.

Requirements for a prospectus

An issue of shares by an SAOG, whether on a rights basis or through a private placement exercise, needs to occur according to a prospectus approved by Oman's Capital Market Authority (CMA). The new shares issued need to be listed on the Muscat Securities Market (MSM) pursuant to a listing decision issued by the MSM. The issue needs to be handled by a financial intermediary licensed by the CMA to undertake issue management, supported by an Omani legal adviser.

19. Can a company give financial assistance to a potential buyer of shares in that company?

Restrictions



There are rules in the Commercial Companies Law around provision of financial assistance by an Omani company to shareholders and third parties.

If the target is an LLC, the applicable provisions of the Commercial Companies Law prohibit financial assistance, unless authorised by a unanimous resolution of the shareholders of the LLC.

If the target is an SAOC, the applicable provisions of the Commercial Companies Law prohibit the provision of financial assistance unless authorised by a simple majority shareholder resolution passed at an ordinary general meeting.

Exemptions

There are no exemptions.

Signing and closing

20. What documents are commonly produced and executed at signing and closing meetings in a private company share sale?

Signing

If the target is an LLC:

- A long-form share/asset sale and purchase agreement.
- Escrow agreement (if any).
- Disclosure letter (if any).

If the target is an SAOC, the escrow agreement would be replaced by a tri-partite agreement entered into among the transaction parties and a broker.

Closing

In a share purchase, if the target is an LLC the following documents are usually delivered and/or executed at closing, which normally takes place at the Ministry of Commerce and Industry (MOCI):

- An Arabic short form share sale and purchase agreement, which follows a standard form issued by the MOCI.
- An amendment deed to the target's constitutive contract to delete the name of the seller and include the name of the buyer.
- Resolution of the target confirming that existing shareholders have waived their statutory pre-emption rights.



- Resolutions of each of the transaction parties approving the acquisition and authorising their representatives to sign transaction documents.
- Delivery of the original commercial registration documents of the target comprising its commercial registration certificate, its computer printout and its Oman Chamber of Commerce and Industry certificate.
- Consent letters from lenders approving the share transfer (if the target has used secured financing).

In a share purchase, where the target is an SAOC, the following documents are usually delivered and/or executed at closing, which normally takes place at a broker's office:

- Resolutions of each of the transaction parties approving the acquisition and authorising their representatives to sign transaction documents.
- Share transfer forms (in the form issued by the MSM) executed separately by each transaction party.

21. Do different types of document have different legal formalities? What are the formalities for the execution of documents by companies incorporated in your jurisdiction?

For an agreement to be binding on a company, it should be signed by duly authorised signatories acting within the scope of their authority. The specimen signatures of authorised signatories of a company along with the level of their authorisation is recorded with the Ministry of Commerce and Industry.

Accordingly, an agreement should be signed by such authorised individuals or, alternatively, be signed by individuals authorised by a specific board or shareholder resolution, or power of attorney.

Following signing of the relevant document by an authorised signatory, the company's official stamp should be affixed on the document.

22. What are the formalities for the execution of documents by foreign companies?

For any document executed by a foreign company to be accepted by an Omani government authority or ministry, the document needs to be either:

- Notarised (by a notary public), legalised (by the local chamber of commerce and Ministry of Foreign Affairs) and consularised (by the Omani embassy) in the foreign company's jurisdiction of incorporation.
- Apostilled by an apostille in the foreign company's jurisdiction.

23. Are digital signatures binding and enforceable as evidence of execution?



Oman has in force a law of Electronic Transactions Law (Royal Decree 69/2008). This recognises the validity of digital or electronic signatures, and includes a legal presumption to the effect that reliance can be placed on an electronic signature that is validated by an attestation service provider. The Information Technology Authority, which is the regulatory authority under the Electronic Transactions Law, has set up Public Key infrastructure for this purpose, and has established an attestation services provider (the Oman National PKI Centre) which is a certification authority.

A digital signature that is validated by the Oman National PKI Centre or another Omani certified attestation services provider is conclusive evidence of its authenticity and enforceable as evidence of execution.

24. What formalities are required to transfer title to shares in a private limited company?

A transfer of shares in an LLC is complete once the transfer is recorded in the commercial register maintained by the Ministry of Commerce and Industry and the shares stand in the name of the buyer.

A transfer of shares in an SAOC is complete once the transfer is effected through the MSM (third market) by a broker and the shares are credited in the buyer's investor account maintained by the Muscat Clearing and Depository Company SAOC. The Muscat Clearing and Depository Company is the sole depository in Oman. Investors must open investor accounts with the Muscat Clearing and Depository Company as a pre-requisite for acquiring shares in an SAOC or SAOG.

Shares of both LLCs and SAOCs exist and are transferred in dematerialised electronic form and there are no longer any share certificates in issue.

Tax

25. What transfer taxes are payable on a share sale and an asset sale? What are the applicable rates?

Share sale

The registration of a transfer of shares at the Ministry of Commerce and Industry (MOCI) incurs payment of transfer fees, which is based on value but capped at a nominal amount of OMR100.

A transfer of shares in an SAOC needs to be undertaken by a licensed broker and incurs the payment of brokerage to the broker. A broker is permitted to charge brokerage up to 0.0035 of the value traded. The brokerage includes a commission based fee payable to the MSM, which is set at 0.001 of the value traded.



Asset sale

There are no prescribed fees payable for registering an asset transfer agreement with the MOCI. However, the registration of transfers of individual assets from the seller to the buyer incurs the payment of registration fees. The most substantial among such registration fees are real estate registration fees, which are payable for registration of land transfers and are charged at 3% of the value of the land transferred.

26. What are the main transfer tax exemptions and reliefs in a share sale and an asset sale? Are there any common ways used to mitigate tax liability?

Share sale

There are no exemptions or reliefs.

Asset sale

There are no exemptions or reliefs.

27. What corporate taxes are payable on a share sale and an asset sale? What are the applicable rates?

Share sale

Any capital gains earned by a corporate entity from a sale of shares are taxed as part of the seller's taxable income. There is no separate head of charge for capital gains.

Income tax is chargeable on the taxable income of an Oman registered corporate entity (or Omani branch of a foreign entity) at the rate of 12% of taxable profits exceeding OMR30,000 in a financial year. There is no personal tax in Oman (that is, individuals are not liable to pay tax on their income).

Asset sale

Any capital gains arising from an asset sale are taxed as part of the seller's taxable income.

28. What are the main corporate tax exemptions and reliefs in a share sale and an asset sale? Are there any common ways used to mitigate tax liability?

Share sale

Capital gains earned by a corporate entity from a sale of shares in an SAOC (not an LLC) may be exempt from tax as the Income Tax Law (Royal Decree 28/2009) exempts from tax any



capital gains arising from the sale of securities registered with the MSM. Shares of an SAOC are registered with the MSM (third market) and although not publicly tradeable, should be entitled to receive the same tax treatment in respect of their disposal. However, the position adopted by the Omani authorities on this issue is not settled.

Asset sale

There are no exemptions or reliefs.

29. Are other taxes potentially payable on a share sale and an asset sale?

There are no other taxes potentially payable on a share sale and an asset sale.

30. Are companies in the same group able to surrender losses to each other for tax purposes? For example, can interest expenses incurred by a bid vehicle incorporated in your country be set off against profits of the target before tax?

Oman's Income Tax Law does not recognise the concept of group taxation. Each company in a group is considered and treated as a separate tax assessee.

Employees

31. Are there obligations to inform or consult employees or their representatives or obtain employee consent to a share sale or asset sale?

There are no obligations to inform or consult employees or their representatives or to obtain employee consent to a share sale or asset sale.

32. What protection do employees have against dismissal in the context of a share or asset sale? Are employees automatically transferred to the buyer in a business sale?

Business sale

Under the Oman Labour Law, a business transfer obliges the acquirer to accept a transfer of all employees of the target at their current terms of employment (together with their vested benefits, that is, end of service benefits for expatriate employees and pension benefits for Omani employees).

Recent guidelines issued by the Ministry of Manpower require that the labour clearances for expatriate employees be renewed (on payment of a fee) in the event of a change of ownership or shareholding of a company that hires expatriate employees.



Share sale

There is no statutory protection for employees against dismissal in the context of a share sale.

Transfer on a business sale

Employees are not automatically transferred to the buyer in a business sale. The buyer would need to enter into a new employment contract with each transferring employee.

The employment status of Omani transferring employees needs to be registered with the government authorities and the pension authority (the Public Authority for Social Insurance).

The buyer needs to obtain new labour clearances for transferring expatriate employees from the Ministry of Manpower, and record the change of their employer with the Omani immigration authorities.

Pensions

33. Do employees commonly participate in private pension schemes established by their employer? If an employee is transferred as part of a business acquisition, is the transferee obliged to honour existing pension rights or provide equivalent rights?

Private pension schemes

Omani employers do not commonly run private pension schemes.

Pensions on a business transfer

Pensions of employees who are Omani citizens are dealt with under the Social Insurance Law. This involves pension contributions being made to PASI on a monthly basis by the employee and his employer. PASI contributions are calculated as 11.5% of salary (employer's contribution), 7% of salary (employee's contribution) and 1% of salary (government contribution, although in practice this is also paid by the employer).

In practice, each Omani employee needs to be registered with PASI and each increment or change in terms of employment needs to be recorded with PASI.

Once an Omani employee is transferred to the buyer, the buyer is obliged to pick-up and take forward the seller's former obligation to make monthly pension contributions.

Expatriate employees are entitled to receive end of service benefits at the end of their service with a particular employer. End of service payments are calculated at the rate of half



a month's basic salary for each of the first three years of employment service, and one month's basic salary for each subsequent year of service.

Unless vested benefits are suitably dealt with in the agreements that document a business transfer, a buyer automatically inherits the seller's entire obligation to pay expatriate employees their vested end of service benefits.

Competition/anti-trust issues

34. Outline the regulatory competition law framework that can apply to private acquisitions.

Oman has relatively recently introduced competition law, the Oman Competition Law (Royal Decree No. 67/2014) (Competition Law).

The Public Authority for Consumer Protection (PACP) is the competition regulator appointed under the Competition Law.

Triggering events/thresholds

At this point of time, the regulatory competition law framework that can apply to private acquisitions remains uncertain, as the Executive Regulations of the Competition Law have still not been issued.

However, the Competition Law indicates that a private acquisition may come under scrutiny by the PACP, if it results in an acquirer gaining a dominant position (defined to mean an entity's ability to exercise control or influence, which is deemed to exist if the market share of the party(ies) exceeds 35%) in the relevant market(s).

Notification and regulatory authorities

The PACP is Oman's competition authority. Notification requirements remain uncertain pending the issue of the Executive Regulations of the Competition Law.

Substantive test

The substantive test remains uncertain pending the issue of the Executive Regulations of the Competition Law.

Environment



35. Who is liable for clean-up of contaminated land? In what circumstances can a buyer inherit and a seller retain liability in an asset sale and a share sale?

Under the Environmental Law (Royal Decree 114/2001) the owner of a source (of pollution) is responsible for ensuring that all applicable environmental rules and regulations are observed and complied with. A source is defined as the process or activity which causes environmental pollution.

The owner is required to use all necessary measures to minimise pollution and failure to comply with these duties can result in significant penalties. The Environmental Law also provides that whoever causes environmental damage is required to remedy it at its own expense. If the person or entity responsible for causing environmental pollution or damage fails to remedy the same, the Ministry of Environment and Climate Affairs (MECA) has the right to step-in and remedy the environmental pollution or damage at the polluter's expense.

MECA is the principal authority for environmental protection and pollution control in Oman, and is responsible for implementing the national plan for the conservation of the environment and prevention of pollution. MECA monitors and enforces compliance with legal and regulatory obligations relative to environmental matters.

In the absence of specific provisions in the Environmental Law and regulations dealing with historic or legacy environmental liability:

- In an asset sale, it is likely that the buyer would inherit any latent environmental liability (for example, in immovable assets transferred in an asset sale) and its recourse against the seller would need to focus on breaches of warranties and indemnification provisions (if any) under the agreements.
- In a share sale, however, if the target is the polluter, the target would be responsible for the pollution and primary liability would not attach to the buyer.

Online resources

Ministry of Legal Affairs

W www.mola.gov.om/mainlaws.aspx

Description. Arabic is the official language of Oman and of legislation and regulation. The Arabic language version is always binding. There is no single website from which legislation and/or regulations referred to in this article can be obtained. However, the Ministry of Legal Affairs (MOLA) maintains a website from which legislation in its Arabic text can be obtained