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KEY CHANGES IN THE NEW OMAN COMMERCIAL COMPANIES LAW





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Introduction

On 18 April 2019, a new Commercial Companies Law (**New CCL**) entered into force in the Sultanate of Oman (**Oman**), and the previous Commercial Companies Law that had been in force since 1974 (**Repealed CCL**) was repealed.

Although the changes are unlikely to have a seismic impact, the New CCL attempts to create a stronger and more transparent corporate governance regime in Oman. It also takes some more measured modernising steps, which aim to make doing business in Oman easier. In this briefing, we provide an overview of the key changes in the New CCL, and highlight some actions that will need to be taken by companies in Oman to comply with its terms.

Note that the changes described in this briefing are not comprehensive. Many of the new provisions have also not yet been applied in practice and will likely be given more meaning and substance by an Executive Regulation which we expect to be published within the coming months.

Limited liability companies

The New CCL has introduced a new corporate vehicle: the single-shareholder limited liability company (**LLC**), whose capital is wholly-owned by a single natural or legal person. Beyond the procedures and rules that will be set out in the yet to be published Executive Regulation, a couple of restrictions apply to the establishment of these corporate vehicles. Notably, a natural person may not incorporate more than one single-shareholder LLC, and a single-shareholder LLC may not incorporate another. Notwithstanding the foregoing, given the continued application of Royal Decree No. 102 of 1994 issuing the Foreign Capital Investment Law (**FCIL**), this new corporate vehicle is likely to be available only to Omani, GCC and US natural and legal persons, and so a LLC with a foreign shareholder is likely to continue to need to have at least two shareholders.

The minimum share capital requirement of twenty thousand Omani Rials for a LLC has been removed. Instead, the New CCL merely provides that the capital with which the LLC is incorporated should be included in its incorporation documents. Note that the minimum share capital requirement of 150,000 Omani Rials set by the FCIL for LLCs that have foreign shareholders remains in place. Capital contributions in the form of services or labour are now expressly forbidden for LLCs.

The New CCL has formalised a higher standard to be met by the managers and partners of a LLC. For instance, it is now expressly forbidden for a manager or partner to benefit from a loan or guarantee from the LLC. Furthermore, the New CCL clarifies that the managers of a LLC are subject to the same duties and liabilities as the directors of a joint stock company (JSC).

The maximum number of shareholders in a LLC has been increased from 40 to 50.

Joint stock companies

Rights for minority shareholders in a JSC are better protected under the New CCL: a shareholder need only hold 10% of the share capital (as opposed to 25% in the Repealed CCL) in order to be able to call a shareholders' meeting, and just five percent (as opposed to 10% in the Repealed CCL) to be able to request the inclusion of an item on the meeting agenda.

Directors and executive management of a JSC must now notify the company of any interests they have in the company and of any change to such interests within five business days of their membership or appointment. JSCs must now also maintain a register of such interests.

The option to pay half the nominal value of the issued shares on subscription that existed in the Repealed CCL is not provided for in the New CCL.

With the approval of an Ordinary General Meeting (**OGM**), a portion of a JSC's net profits to be distributed may now be converted into shares, thus allowing such companies to retain and reinvest profits.

The board of directors (**Board**) and auditor of a JSC have been made jointly liable for damage caused by their failure to maintain the company's capital. Should the company lose 25% of its capital, the Board must take necessary steps to return the company to profitability; where 50% is lost, the Board must call an Extraordinary General Meeting (**EGM**) to review the steps to do the same.

The Board of a JSC must now be made up of an odd number of directors. With this change, the provision in the Repealed CCL that had given the chairman the casting vote has been left out.

Whilst a holding company could previously be a LLC or a JSC, under the New CCL, only a JSC may be a holding company.

Restrictions on directors and shareholders

Under the New CCL, a director of a JSC may not:

- ▶ participate in the management of another company that carries out a similar business, or carry out any business similar to the business of the company without prior approval of an OGM
- ▶ enter directly, or indirectly, into any agreement with the company for his or her own account or for the account of one of his or her relatives up to the second degree (other than in the ordinary course of business), without prior OGM approval; or
- ▶ act as a proxy for another director for more than two consecutive Board meetings, act as a proxy for a shareholder, or act as a proxy for more than one director.

Furthermore, a proxy representing more than one shareholder may not represent more than five percent of the JSC's shares.

Board meetings

Under the New CCL:

- ▶ a minimum of four Board meetings per year must be held with a maximum period of 120 days between each meeting
- ▶ the quorum for meetings of the Board has been raised from a half to two thirds
- ▶ a director is deemed to have resigned if he or she fails to attend three consecutive Board meetings, unless an excuse acceptable to the Board has been provided; and
- ▶ any party who signs minutes is liable for the validity of the content of those minutes.



Corporate governance

The New CCL appears to extend application of the Code of Corporate Governance for Public Listed Companies issued by the Capital Market Authority (CMA) in December 2015 (Code) to companies in which the Oman Government “owns a stake”, but this is not yet clear. This is an entirely new provision that will capture a large number of companies, and we have yet to see how this will be applied in practice. The CMA has also intimated that a new code will likely be drafted for companies in which the Oman Government is a shareholder.

Time limits

Time limits have been either clarified or shortened in the New CCL:

- ▶ the minutes of a JSC’s shareholders’ meeting now have to be filed within seven days (as opposed to 15 days under the Repealed CCL)
- ▶ the New CCL has clarified that

15 days’ notice is required for a shareholders’ meeting of a JSC or of a LLC (whereas the Repealed CCL stated that the notice period was two weeks for a shareholders’ meeting of a JSC and 20 days for a shareholders’ meeting of a LLC); and

- ▶ whereas under the Repealed CCL, a merger had to be announced in two newspapers for two consecutive days, with the merger taking effect three months from publication; the New CCL provides for publication within 15 days of the merger decision, failing which the merger is deemed null and void. If such a publication is made in time, the creditors may file an objection within 30 days of publication and may institute an action in court if the company fails to settle the objection within a further 15 days.

The New CCL also provides that more than two years of inactivity will result in the dissolution of a company.

Sukuk

The New CCL has introduced the concept of Islamic bonds, or sukuk, to the provisions that cover bonds. This clarifies that all provisions formerly explicitly applicable only to bonds also apply to sukuk, thereby formalising the Islamic financial instrument’s role in Oman.

Sanctions

The listed offences and potential sanctions have been substantially increased in the New CCL, with specific penalties ranging from imprisonment for a term of not less than six months and not more than three years and/or a fine of not less than 100 Omani Rials and not more than 50,000 Omani Rials.

Next steps

Omani companies have one year to make arrangements to comply with the provisions of the New CCL from its entry into force (so by 17 April 2020). The New CCL presents an opportunity for companies to update their constitutional documents and more closely align their practices with international standards.

While some companies that are not subject to the FCIL may benefit from becoming single-shareholder LLCs, others will need to amend their articles of association (for example, to incorporate the new meeting and filing time limits) and review their corporate governance processes to account for more stringent related party and conflict of interest requirements. Where changes are required, failing to comply with the provisions of the New CCL may result in the company, its authorised managers, directors and/or shareholders being exposed to sanctions.

Our team would be delighted to advise you on what the New CCL means for you and your business and any specific changes that may be required to your constitutional documents.

If you would like to discuss this briefing or the New CCL further please contact:



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