

Oman's New Commercial Companies Law

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Summary of the Key Changes

Oman's new commercial companies law ('CCL') is now in force and repeals in full the previous law that was passed in 1974. Al Tamimi & Company's corporate team has reviewed the CCL and a number of progressive changes to the rules governing legal entities in Oman have been noted, including the changes that will require companies to take action over the coming months.

The key structural highlight of the CCL is that limited liability companies, the entry level incorporation vehicles that are commonly used to conduct business in Oman, can now be incorporated with a single natural person or corporate shareholder. It is pertinent to highlight that this single shareholder option is not an explicit repeal of the Foreign Capital Investment Law of Oman and the option to incorporate a legal entity with a single shareholder is likely to be available only to pure GCC companies, GCC citizens and/or the investment arms of the Omani Government.

A number of other key modifications have been introduced by the CCL. While many of those changes are subtle, modernising provisions, others have been designed clearly with the aim of enhancing corporate governance and transparency. This article looks at some of the key changes introduced along with some suggested guidance for companies.

Limited liability companies (L.L.C.)

1. **Single shareholder companies:** as described above, the CCL now permits companies to be incorporated with a single natural person or single corporate shareholder. This is an helpful addition to the existing suite of available corporate vehicles and eliminates the need driven by the old law to create private contractual arrangements between shareholders, particularly where one of the shareholders holds a minority of the share capital. This new structural change may also assist in mitigating inheritance risks where one of the shareholders is a natural person and the other shareholder is a corporate entity;
2. **Minimum share capital:** the CCL is now silent on the minimum share capital required to establish a limited liability company and we expect that this area will be clarified by the Ministry of Commerce and Industry in due course. The old law stipulated a minimum of OMR 20,000 (USD\$ 52,000);
3. **Liability of authorised managers:** the CCL expressly stipulates that the liability of authorised managers is identical to the liability of directors who own joint stock companies. This now settles the argument that authorised managers operate under a lighter touch enforcement regime than directors of a joint stock company;
4. **Conflicts of interest:** authorised managers must now make a formal notification at shareholders' meetings of any conflict between the interests arising from transactions involving an authorised manager and the company which he or she serves;
5. **Related party loans:** the CCL now completely prohibits a company from providing any form of lending facility to its authorised managers and shareholders. The CCL now views such arrangements as void and unenforceable and makes the recipient of the loan liable to compensate the company. This is an important development particularly as related party arrangements involving shareholders of limited liability companies are ubiquitous; and
6. **Shareholder information rights:** shareholders may now request documentation relating to companies in which they hold shares going back ten years. This right is designed to provide shareholders with greater visibility on specific operational matters that have an impact on decision making.

Joint stock companies (S.A.O.C./S.A.O.G.)

i. Board meetings

- the CCL now sets a minimum quorum for meetings of the board of directors at two thirds of the board (under the old law, only a majority of the board was required to be in attendance) with decisions being validly passed by an absolute majority. The company's articles may require a higher majority;
- decisions of the board can now be circulated in advance in the form of draft minutes and ratified by the board (exceptions will apply). The concept of circulating minutes in advance for later ratification was not covered by the old law;
- any person who signs the minutes of the meeting will be liable for the content of those minutes. The CCL does not expressly state as such but such liability could extend to advisers who attended the meeting for which the minutes were prepared;
- board members may appoint a proxy to attend the meeting in the appointing director's place, however the proxy may not attend more than two consecutive meetings for the same director; and
- the chairperson no longer has a statutory casting vote. The old law provided that in case of equality of votes, the chairperson's vote would decide the resolution.

ii. Shareholder meetings:

- one or more shareholders holding at least 10 percent of the share capital can now call a general meeting.

- The old law gave this right only to those holding 25 percent or more of the share capital;
- one or more shareholders holding at least five percent of the share capital can now request the board of directors to include an item on the agenda at the general meeting. The old law gave this right to those holding at least 10 percent of the share capital;
 - a person appointed as a proxy for more than one shareholder may only attend the general meeting if that proxy represents shareholders holding more than five percent of the share capital, in aggregate;
1. **Director interests:** the company must now maintain a register of interests that records direct/indirect interests in transactions involving a director. Interested directors are under an obligation to notify the company of such interests within a short period following appointment;
 2. **Dividend to equity:** cash distributions that are declared for payment to shareholders can now be partly converted into equity instead of receipt of a cash dividend. This is particularly helpful for companies that wish to retain profits in order to fuel expansion;
 3. **Global depositary receipts:** the shares of joint stock companies can now be converted into global depositary receipts to enable investors outside Oman to trade the equity of companies that are listed on the Muscat Stock Market ('MSM'). This provision is likely to have the effect of increasing foreign direct investment and providing the ability to raise funds in a different currency;
 4. **Loss making companies and officer liability:** the board of directors and auditors are now stated to be jointly liable for damage caused by them in failing to preserve the company's available share capital. The practice undertaken by the Ministry of Commerce and Industry has now been written into the law so that if a company's accumulated losses exceed its registered share capital by 25 percent or more, the board is under an obligation to turn the company around. If the differential exceeds 50 percent, an extraordinary general meeting must be held to determine the progress of the company;
 5. **Reduction of capital:** the time period for creditors to raise objections to a reduction of capital has been reduced from 60 to 15 days, following publication of the notice in the daily press. This is a significant change and will reduce the time taken to make the reserves available that commonly arise from a reduction.

What must Companies now do to Comply?

Companies have twelve months to comply with the requirements of the CCL and the regulations that flow from the CCL, once those regulations have been passed by the Ministry of Commerce and Industry and the Capital Markets Authority.

Many companies in Oman will have adopted constitutional documents a number of years ago without subsequent amendment to reflect international practice and corporate governance improvements. As a consequence of the changes introduced by the CCL, limited liability companies and joint stock companies will undoubtedly require adjustments to their articles of association and will need to implement provisions and adopt systems that deal with conflicts of interests and related party transactions. Resolutions and other documents that are required to be filed with the Ministry of Commerce must now be filed within seven days. Failure to implement some of the changes may expose companies, authorised managers, directors and/or shareholders to criminal and/or civil sanctions.

Other companies may benefit from the ability to form single person companies and should consider moving ownership of the share capital from the minority to the majority shareholder, with consent from the Ministry of Commerce and Industry. As highlighted above, this option is unlikely to be available for companies that are subject to the Foreign Capital Investment Law of Oman, which remains in force.

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