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Company Policies and How they Relate to General Laws

Guiding Principle

Most companies will have developed their own "Company Policies", which may include standard terms and conditions of sale, but also HR policies, etc. Most of us will have been in a situation where the "Company Policy" allegedly overrules everything else, another company's company policies, general laws and quite often even common sense. This should be reason enough to look at "Company Policies" in a little more detail.

A. What are Company Policies?

In a nutshell, Company Policies are operational rules, which a commercial entity adopts for itself. These rules can deal with virtually everything and are most commonly aimed at streamlining certain company related processes. One of the most common types of Company Policy is probably Standard Terms & Conditions of Sale. These are the conditions based on which the company in question aims to do all of its sales. Doing so significantly streamlines the sales process, because the parameters of each sale, small or large, are the same and no time needs to be wasted (in theory, at least) on negotiating the same terms over and over again.

Not much else applies to other Company Policies, such as HR policies, for example. If such HR policy states, for example, that overtime is compensated at a certain rate or that X amount of holidays are granted in addition to mandatory public holidays, this applies to all employees equally. Hence, Company Policies are usually a pretty useful tool.

What all Company Policies have in common, however, is that they are rules, which a company puts on itself. It is the company as such, which decides to operate by those guidelines.

B. What are General Laws?

Again in a nutshell, laws are rules, which are put in place by the government of the country in which said laws will apply. Such government's task is to represent all people who are living in the relevant country, including individuals and corporate entities. That being said, laws generally apply to everybody living and operating in said country.

C. Relationship of Company Policies and General Laws

To put it very simply, no company as a mere legal construct could even exist in the absence of general laws providing the legal basis, which determines the most basic rules of operation of such company (i.e. form of company, how it will be managed, whether or not its liability is limited, etc.). Like a young child's decisions will not overrule its parents' word, Company Policies are acceptable only as long as they stay within the boundaries of liberty granted by general laws. Whenever a Company Policy contradicts any general law, the law and not the Company Policy applies, just like parents' decisions overrule their child's decision until the age of 18.

It might be helpful to also look at the topic from another angle: laws are made by persons who have been given authority to do so. Usually, such authority has been given to the lawmaker by the people of the country in question. Hence, in one way or the other, it is the people as such deciding on the rules by which the people wish to be governed.

If Company Policies are put in place by a company's management, but general laws are made by all the people in a country, it should become pretty crystal clear that general laws, by necessity, overrule Company Policies each and every time.

D. Summary

Company Policies are certainly a very useful tool to have. The widespread misconception of Company Policies overruling general laws is nothing but just that, however, a widespread misconception. Whenever there is a conflict between a Company Policy and general laws, the general laws will win. No exception.

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United Arab Emirates

UAE-Federal Law No. 2 of 2019 to Protect Health Data

Guiding Principle

On 6 February 2019, the United Arab Emirates has issued Federal Law No. 2 of 2019, Concerning the Use of the Information and Communication Technology in the Area of Health ("ICT Health Law"). The ICT Health Law applies to all methods and uses of information and communication technology ("ICT") in the UAE healthcare sector, including free zones. The text of the Law has been published in the Federal Gazette on 14 February 2019 and will come into force three months from publication.

The law is the first Federal data/privacy law of its kind in the United Arab Emirates albeit limited to healthcare data.

The law prescribes 31 articles and its application is wide both in terms of geographical spread and industry sectors. The law covers the entire United Arab Emirates (UAE) including its Free Zones and will impact on many sectors including local healthcare regulators in the different Emirates as well as all sectors dealing with healthcare data/information.

Under the law the Ministry of Health & Prevention ("Ministry") sets out to establish a central electronic health data and information exchange ("HIE") to facilitate confidential access, collection and exchange of health data and information within the UAE. The health authorities in each local emirate are empowered to establish the rules,

standards and controls for their own electronic data and health information systems, such as the methods of operation, exchange of data and information and their protection, as well as access to and copying of data and information. However, the health authorities in the UAE must join the central HIE, in accordance with the regulations and procedures that are to be specified in the subsequent executive regulations. The executive regulations are to be issued within six months of the publication of this law.

Article (5) creates a Central System for data population between the Ministry of Health & Prevention, Health Authorities and all those involved with healthcare data/information, i.e. healthcare data/information processors.

A. The basic features of this law

1. Aims to raise the minimum bar for protection of health data and to introduce certain concepts which are on a par with best international practice in information law;
2. Continues the legislative trend towards localization of sensitive categories of data;
3. Paves the way for centralized health data capture and analysis to support public health initiatives conducted by the UAE Ministry of Health.

The Ministry, in coordination with the local emirate health authorities, is to develop and implement a national strategic plan relating to the use of ICT in healthcare, as well as setting mandatory procedures for using ICT. One of the goals is to ensure compatibility and interoperability between information systems to procure valid, reliable, and accessible health data and information. The executive regulation will further set out the conditions and controls of storing health data and information within the UAE.

The Law will have far reaching consequences for UAE healthcare services and IT industries insofar as it places strict obligations for the processing and control of health data and information in the UAE. Many business and organizations will need to carry out data information audits to stress test their current systems and control to meet compliance with the new requirements.

B. Scope of law enforcement

The law applies to all entities operating in the UAE, whether onshore or from one of its free zones (including Dubai Healthcare City), which provide:

- healthcare services;
- health insurance services (including insurance brokers or providers of related administrative services);
- healthcare IT services; or
- any other services, directly or indirectly, related to the healthcare sector, or engaged in activities that involve handling of electronic health data.

C. Prohibition on storage of health data outside of the UAE

The law formalizes the longtime informal regulatory policy that health data must be processed and stored inside the UAE. Critically it provides that such data may not be transferred outside of the UAE, except where an

exception is issued by the relevant heath authority. The law also prohibits the creation of health data outside of the UAE which relates to health services provided inside the UAE. Accordingly, cloud solutions hosted out of country, outsourcing of IT services to overseas locations, remote IT support from other departments within multi-national Healthcare Service Providers and remote collection and monitoring of patient information within the UAE, such as heart rate, sleep patterns, or steps walked, from outside the UAE through apps and wearables may be significantly impacted.

D. Retention period

Health information and data must be maintained through ICT for a period of 25 years from the last healthcare interaction of the concerned patient.

E. Regulation of health data

The law regulates the processing of all electronic health data regardless of its form, including names of patients, information collected during consultation, diagnosis and treatment, alpha-numerical patient identifiers, common procedural technology (CPT) codes, images produced by medical imaging technology, and lab results among other types of data.

F. Centralized data management system

A new centralized data management system (DMS) will be established and operated by the UAE Ministry of Health to facilitate access to, storage and exchange of health data. Healthcare Service Providers are required to register to access the DMS and identify all members of personnel who are authorized to access it.

G. The exceptions of the general rules

The exceptions of the general rules which a patient's information may be used or disclosed without the patient's consent are:

- for scientific research (provided that the identity of the patient is not disclosed);
- at the request of a competent judicial authority;
- to allow insurance companies and other entities funding the medical services to verify financial entitlement;
- for public health preventive and treatment measures, for example. in the case of a public health crisis; or
- at the request of the relevant health authority for public health purposes including inspections.

H. Website blocking for advertisement or licensing violations

Article (18) permits the Ministry of Health & Prevention to instruct Ministries and Health Authorities to block websites whether in the UAE or abroad where those websites are in violation of the guidelines/standards and without the appropriate licenses and authorisations.

I. The penalties for non-compliance

As well as certain penal sanctions for breach of key requirements, such as the data localization obligations, the law

sets out a number of overarching disciplinary sanctions for breach of its provisions. Articles (22) to (26) deals with violations, penalties and disciplinary sanctions, where financial penalties can range up to one million Dirhams. The penalties and sanctions in the Law are without prejudice to other violations on other laws including the UAE Penal Code.

J. Conclusion

Important changes are coming for anyone who collects, processes or transfers electronic health data originating in the UAE. Besides a host of new data protection measures and new rules around use of a centralized database managed by the United Arab Emirates (UAE) Ministry of Health, a general prohibition on transferring health data outside the UAE may have a significant impact on healthcare service providers and life sciences companies operating locally. Cloud based health solutions which involve collection, storage and processing of health data, such as wearables and health monitoring apps, may be particularly affected. While the full extent of the new requirements is still not clear, it is imperative for companies operating in the sector to carefully monitor developments.

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United Arab Emirates

Shared Custody in the UAE

Guiding Principle

On November 26, 2018 the Dubai Court of Appeal issued the first judgment of its kind in the UAE, that grants shared custody to the divorced parents similar as it is known from European jurisdictions.

A. Facts

The parents (both have their origin in Europe) filed for divorce in 2016 at the Dubai Court. In the judgement of first instance, the judge decided, following the common Sharia pattern, that the father will be granted the guardianship and the mother custody of the common children. Both parents, for different reasons, challenged this judgement. The father's focus was to achieve a different outcome in regards to the custody.

B. Principles of UAE Law

1. Judgements, like the one mentioned above, are very common in the UAE. Unfortunately, they often lead to the situation that children grow up with only one parent being physically present. The relevant UAE law (Personal Status Law No. 28 of 2005) distinguishes between guardianship and custody. That means in particular, that the father, who is usually granted guardianship, has to take care of the financial needs of his children. In theory he is also responsible for all major decision that concern his childrens' life. The mother on the other hand is granted custody, i.e.

she has to take care of the daily needs of her children. The time frame for the mother's custody is limited to the age of 11 for boys and to the age of 13 for girls. Up to this age the children usually live in the household of the mother and the father has a right to regularly visit them. In case the children have reached the age of 11 or 13 they are supposed to transfer to the household of the father, although this is up to the discretion of the judge.

2. For the first time now, a judgement deviates significantly from old habits practiced in UAE courts. In the judgement issued by the Dubai Court of Appeal in November the judge decided, that under the application of Spanish law, the parents will be granted joint custody. The father who is originally from Spain had filed a motion in his appeal that Spanish law shall be applied, as this is the law of his home country. Non-Muslim expats who live in the UAE have the possibility to ask the court to apply the law of their home county in personal status affairs as for example divorces and its consequences. Though this seems to be an easy way to opt-out of the application of the highly Sharia infused UAE Personal Status Law, several problems can arise. First, the judge has to apply a jurisdiction he is not familiar with, what most likely may leads to problems and misunderstandings. In addition, the party claiming the application of its home jurisdiction has to provide the court with an official legal translation of the applicable law of its home country. In the case of Germany that would mean the translation of the whole civil code, as the 4th book, family law, is part of the ongoing numeration of paragraphs. If only segments are submitted, courts tend to dismiss the motion for the application of German law, as the translation is deemed not to be complete.
3. Compared to the German family law as part if the German Civil Code, the Spanish family law is isolated and not part of a voluminous civil code. This made it easier for the appellant in this case to convince the court to apply Spanish law. Beyond that, the Spanish father went public in the media which led to a lot of pressure on the court.

C. Summary

These factors have to be kept in mind, to see this judgement not as the revolution a lot of people have been waiting for. It is a move in the right direction, but it cannot be guaranteed, that this will be a precedence shifting custody issues for expats in a whole new direction. It is still recommendable to keep the childrens' needs and wellbeing as a focus in legal proceedings and to facilitate the aim of finding amicable solutions for both parents in regard to custody, even beyond a court order.

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Oman

Oman's New Companies Law

Guiding Principle

For a long time, Oman has kept one of the oldest corporate legislations in the GCC region in force. Even though multiple times amended and updated, the Sultanate recently replaced the Law 4/74 (CL74) and introduced an entire new Law on Commercial Companies (CL) enacted by Sultani Decree 18/2019 on February 13, 2019.

A. Introduction

M&P would like to shed light on this entirely new Omani piece of legislation from a number of different angles. Besides a short overview over the document and its structure itself, this article intends to outline the new forms of commercial companies established or recognized formally by the new legislation. Furthermore, changes on existing companies as far as apparent from the text of the law itself shall be outlined and finally major changes in the administrative and regulatory structures from state side shall be touched. The main focus of the article shall be on commercial companies as a vehicle for foreign investment in Oman.

B. Overview over the New Companies Law

A first look at the new CL already displays that in comparison to the CL74 it grew considerably in size and number of articles from 219 to 312.

The structure established by the CL74 however remained essentially the same. Users acquainted with the CL74 should thus find their way around the new legislation rather easily. In contrast to most other corporate legislations in the area, the CL tries to treat all matters of general importance centrally in the beginning of the law. Following the trend of all current legislations in the area it has a central part of definitions to start with. These are however limited to those definitions being used everywhere in the law. The region's legislative trend to stipulate vast parts of the regulatory content of the law in a definitions section and thus depriving those regulations of their context has been balanced. This ability to interpret large parts of the law in its context of contents strengthens the structures of the law when interpreted in coherence with civil law tradition for which Oman opted. The General Provisions Section in the beginning of the CL then generally follows the chronological structure of the "life of a company from cradle to grave", i.e. foundation, valid types and legal personality of companies, followed by provisions on capital, transformations and mergers of companies and finally the dissolution and winding up of companies. Afterwards the single types of companies are outlined headed by the personal/partnership-oriented types, followed by the capital/corporate types. The law finishes with provisions on investigations and (criminal) offenses under corporate law. A large part of the CL has been dedicated to stock corporation structures, where again the public stock corporation enjoys most legislative attendance. The amount of legislative text on this company type has clearly increased when compared

to the CL74. With regards to the large amount of capital and the frequent number and volatility of shareholders, this seems to be very welcome, as the outlined structure is most predisposed for a number of cleavages and thus legal issues. On the other hand, this should not leave the impression, that a public joint stock corporation should be the vehicle of choice for investments in Oman in a broad manner. The prediction might be reasonable that in terms of quantity other types of companies will shape Oman's corporate landscape more characteristically.

Moreover, it seems to be noteworthy that a large number of particularities and details are left to be enacted by the executive regulations of the CL.

The law is entering into force 60 days after its publication and companies subject to the law are requested to adapt to the new rules set by the law within one year.

With regards to foreign investments the Sultanate stipulates the general Rule of Art. 13 Para. 1 CL that professional companies and companies with foreign capital may be established without prejudice to the obligations of the Sultanate of Oman in its international trade agreements.

C. Reforms Concerning Types of Companies

Over time a number of company types, shapes and vehicles have evolved globally and especially in the GCC states. Oman now took the opportunity to take up these developments and integrate them into its own legal environment.

I. Single Person Companies (SPC)

In Art. 291-297 CL the law for the first time opens the possibility of incorporating a Single Person Company (*sharikat al-shakhṣ al-wāḥid*) in the Omani mainland.

Therefore, the company definition of Art. 3 CL was changed vis-à-vis Art. 1 CL74. Whereas the old definition primarily evolved around the company as a contract, the new definition focusses more on the company being a legal person. As per Art. 3 Para. 2 CL, a company can now also be founded based on a unilateral decision of one party only. This is the basic form required for the establishment of SPCs.

The Omani SPC is a limited liability company (LLC) and the general rules of the Omani SPC are the ones applicable for Omani LLCs as long as there is no deviant legislation (Art. 291 Para 1, Art. 297 CL). However, as per the CL the Omani SPC already contains a number of features different from LLC rules and partly closer to partnerships or closely bound to the shareholder as a person.

Shareholder of an SPC can be natural as well as legal persons (Art. 291 Para. 1). Although at first sight, appearing very interesting as a form of investment for foreign companies, the SPC is in general not open as a vehicle for foreign investors. This is due to the Omani Foreign Investment Law (FIL) enacted by Sultani Decree 102/94. Based on the FIL and its interpretation in the light of the WTO rules, Oman requires a local shareholder to be involved in an invest vehicle by holding at least 30% of the vehicle.

This leads to a maximum foreign shareholder ship of 70% and by nature of this provision always requires a second shareholder. Exceptions to this rule are possible and foreseen by the FIL to contribute to the national economic development and need a special approval by the development council (*majlis al-tanmiya*) upon recommendation of the Ministry of Trade and Industry as well as minimum capital invested of RO 500 000/-. Though theoretically possible, this option is of rare practical occurrence. Another possibility for foreign investors to be able to set up an SPC is if the shareholder is subject to one of the international treaties granting equal rights to foreigners in certain areas, e.g. foreign investment. This would mainly be applicable in the framework of GCC relations and thus GCC nationals should be able to set up SPCs in Oman without further restrictions. It also applies in the framework of the U.S.-Oman Free Trade Agreement (FTA). As per Art. 10.3. Para 1 FTA, Oman shall accord to US Investors treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory. In basic this gives US-Investors the possibility to incorporate companies in accordance with the same conditions as Omanis. However, the term US-Investors may be interpreted restrictively by Omani authorities in a way, that an US Investor is either a US Citizen as a natural person or a company under ultimate US control/beneficial ownership. Thus, the possibility for non-US investors to set up an Omani SPC through a US subsidiary might be limited. In the past, US citizens working for an investor have been acting as "trustees" for the investor in order to facilitate the privileged access of US-persons to investment in Oman.

Art. 291 Para 2. CL limits the possibility for natural persons to own an SPC to one. It further bars One Shareholder LLCs form owning SPCs themselves. The usage of the term One Shareholder LLCs rather than SPC could indicate that this also applies to foreign One Shareholder LLCs and not Omani SPCs only.

The legislator's intention of enabling SPCs in Oman seems to be less a perspective to stimulation foreign investment through this vehicle. As outlined by Omani media, the main perspectives of allowing SPCs is to facilitate vehicles of Islamic banking and financial transactions most notable as Special Purpose Vehicles (SPV) for Islamic Bonds *(ṣukūk)*.[1]

The procedures for the incorporation of an SPC are left to executive regulations (Art. 292 CL) and at the moment neither entirely clear nor put to test in practice. It can be expected, however, that they should not deviate too significantly from the incorporation procedures of an LLC, as here established practices exist.

The liability of the owner / shareholder is limited to the capital dedicated to the

[1] https://timesofoman.com/article/970829

SPC (Art. 293 CL). This implies that no minimum capital is required for establishing an SPC. In fact, this requirement has been dropped from the CL for most companies (see below). Furthermore, the term of dedicated (mukhaṣṣaṣ) might imply that the capital would not have to be paid up in a separate account as Art. 241 CL stipulates for an ordinary LLC. The SPC could thus be more of a company limited by shares. In this regard details of the executive regulations and the practical handling of the SPC have to be awaited.

By default, the management of the SPC is left to its owner/shareholder, although entrusting it to one or more directors responsible to the shareholder/owner is also possible (Art. 294 CL).

An interesting feature of the SPC is that is connected to the lifespan/existence of its shareholder/owner. It can continue as an SPC if all its shares are held by one heir, otherwise it must continue in another legal form. The law sets a time limit of 180 days (Art. 295 CL).

As per Art. 296 CL the law sets out certain liability standards for the shareholder/owner. This is a personal liability for obligations in cases of the badly intended liquidation of the SPC or to suspend its activities before the end of its term or the achievement of its purpose or in case of no clear separation between corporate and personal affairs.

Hence it might be interesting for foreign investors in Omani Free Zones, where company structures of SPCs will most likely be structured in a parallel fashion and not so much for foreign investments directly in Oman.

II. Offshore Companies

As per Art. 13 Para. 2 CL Oman establishes the possibility for Free Zones to establish companies working outside the Sultanate's borders (offshore), this is subject to further regulation by the cabinet.

In this context the question imposing itself is; what could be the advantages of such an offshore construction in Oman especially in relation to Free Zone companies? Oman's Free Zones - though growing in number and specialization - have significant differences to UAE Free Zones. Since Oman permits a majority foreign shareholder ship of up to 70% under its FIL, a Free Zone Company is not the exclusive vehicle for a foreign investor to obtain formal control over a company as usually is the case in the UAE with its relatively rigid 49 – 51 % rule in favor of local shareholders. Omani Free Zones rather can be seen as special economic and investment zones, where certain industries and sectors should be clustered and foreign investment is desired. Hence, only very recently licenses have been granted for general trading in Free Zones. Most Free Zones (especially those ones granting general trading licenses) are fenced and thus physically kept apart from Omani mainland territory. The requirement to restrict Free Zone activities to the geographical area of the Free Zone itself are thus kept seriously especially compared to the UAE, where a similar legal stipulation exists but is barely enforced. Thus, general trading in Free Zones is largely

beneficial in foreign transactions not with mainland Oman. What would be the additional benefit of setting up an Offshore? A reasonable answer to this could be that certain requirements for Free Zone Companies might be lowered or dropped as tradeoff for the restriction to only do foreign transactions. These might be the Omanization requirements, the requirement to rent physical properties or a discount in fees and tax exemptions from Omani corporate income Tax.

Omani Offshores could thus be an option for traders to use the neutral and calm international Omani relations for trade without willing to transact in the country itself.

Due to the regulative framework still to be established, no definitive perspectives can be assessed yet, but the options of Omani Offshores are definitely worth monitoring.

III. Branches of Foreign Companies

Art. 13 Para. 3 CL now sets out the requirement for the concerned authority to register branches of foreign companies and commercial representative offices as per the conditions to be defined by the authority. This stipulation might be noteworthy as the setup of branches of foreign companies has been very restricted in Oman so far. Only for Government projects temporary branches were generally permissible. The option to empower the concerned authority with considerable regulatory independence might be interpreted as a perspective for further opening up in this regard.

However, the regulation also imposes some new legal questions to be solved. E.g. the concerned authority (al-jiha al-mukhtaṣṣa) is defined as per Art. 1 No. 4 CL as the Ministry (of Commerce and Industry) or the (General) Authority (of the Financial Markets). Despite details, the first one is responsible for all companies apart from Public Joint Stock Corporations for which the latter one assumes responsibility. Thus, in consequence of the wording of the law the authority would regulate the registration of branches of foreign Public Joint Stock Corporations and the ministry of all other branches of foreign companies. Implied in such a regulation would be the falling apart of registers of branches of foreign companies in accordance with their legal form in their home country. These forms might not always be able to be mirrored in terms of Omani corporate forms and hence, difficult to define. Resulting regulations might split, and a transformation from one company form to another might result in re-registration and different regulatory requirements by Omani authorities, though the activity and legal form in the Sultanate itself might not be affected by the legal form change in the companies' home country. Based on the aforementioned question it is possible that branches of foreign companies might be handled by one authority only. Regulation of the matter should be carefully monitored to assess possibilities and chances for foreign companies to set up branches in Oman successfully.

With regards to foreign commercial

representative offices the law now clearly regulates their registration requirement. With regards to the concerned authority however the above-mentioned legal question becomes important in the same manner.

D. Changes to Existing Company Forms

As already outlined above, the CL has brought about a number of changes and a more detailed regulation for most companies under Omani Law. With regards to the existing company forms we would like to limit ourselves to some exemplary reforms we deem of most importance to our readers.

I. Reforms for LLCs

The most notable reform regarding LLCs is the already mentioned drop of a minimum capital. This is in line with the trend to be observed in the new Companies' Laws of the region such as those of Saudi Arabia and the UAE enacted in 2015. However, with foreign investment in focus only in the UAE foreign investors were able to profit from the new benefits of the dropped requirement of a minimum capital. In Saudi Arabia foreign investors are bound by the minimum capital imposed by the Foreign Investment Authority SAGIA. In the Omani example the previously required minimum of RO 20 000/- for Omani investors and equally treated investors has been dropped. The FIL required minimum of RO 125 000/- (1.25 mio AED) seems to remain outside Free Zones. LLC capital may generally be contributed in cash or kind. Any kind of services may not be contributable unless the LLC is an SPC used as SPV for the issue of bonds (Art. 239 CL). The capital has to be paid up on an Omani Bank account during the process of incorporation and only be released to the company after incorporation (Art. 241 CL).

The processes of pre-emption rights and procedures for other shareholders and share transfers (Art. 248 -256) and capital increase and reduction for LLCs (Art. 257-262) have been sophisticated.

A number of reforms have been brought about in the area of administration of LLCs. As before, an LLC is managed by one or more directors appointed for a limited or unlimited time either by the Memorandum of Association (MoA) directly or by a resolution of the general assembly. One of the most notable new features of the law is the release of the director by the general assembly. This was possible under CL74 as well, but the new law seems to make this distinctly more complex. Art. 273 CL now requires for such a decision a numeral majority of shareholders holding at least three quarters of the capital of the company. Art. 151 Para. 2 CL74 did not foresee any kind of specific majority for this decision. A particular problem in this context is, that it is not yet specifically clear from the wording of the CL, if LLCs can agree to a different (particularly lesser) majority or if the law is mandatory in this circumstance. The implications in relation to LLCs as vehicles for foreign investment are significant: As the FIL is usually enforced by requiring a 30% Omani shareholder ship, a mandatory interpretation of Art. 273 CL would

now practically furnish an Omani shareholder with a veto right against the release of a manager from his duties. The full control over the administrative personnel has been one of the main advantages for foreign investments in Oman. If this should be cut back by the new legislation, there should be a reaction to this trend. Firstly, it should be checked if the provision will be deemed mandatory by Omani courts or not. If so or in a preventive manner, LLCs should consider not to appoint a manager directly in its MoA and to limit the terms of their managers in Oman, requiring a new appointment by the general assembly from time to time. Since no majority therefore is prescribed, a return to start would re-establish full control of the majority shareholder again. On the downside, it would be less attractive for potential mangers to have their position confirmed in regular (and possibly short) intervals making the position of manager in an Omani LLC less calculable and attractive then today. This trend towards stabilizing management vis-à-vis shareholders seems to find its expression as well in the second component for releasing the manager as per Art. 273 CL. The aforementioned release decision for a manager will only be valid, if the resolution contains the appointment of a new manager. This has clear positive aspects as the LLC cannot be left without management in cases of discontent with a manager and responsibility will be hardly interrupted. On the other hand, if mandatory (what is as well still to be proved) and in case of a binding nature of the ¾ majority mentioned above, an Omani shareholder in a foreign dominated LLC will not only have a veto right but also be able to use this as bargaining chip in the choice of the future manager.

Furthermore, prohibited actions for the managements unless approved by the general assembly have been increased. Apart from the gifting, selling all or major parts of the assets, concluding mortgages pledges or guarantees for obligations not of the LLC, Art. 267 CL now also includes the release of the company's debtors from their debts. In logical consequence Art. 267 CL mentions also the conclusion of settlement agreements, as these usually release debtors of their obligations at least in part. In logical consequence and as per the dogmatic tradition of most Arabic legal systems Oman also sees arbitration as a way of settlement and adds arbitration to the enlisted topics in Art. 267 CL. This seemingly minor issue has a potentially large effect on foreign held LLCs in Oman. Settlements are a frequent way in Middle Eastern cultural environments in moments of debt collection. With litigation seen as a way to "loose one's" face, business relations – particularly in a small country like Oman – are usually intended as long-term relations and litigation for the aforementioned reasons to be strongly avoided. Settlement agreements are a common means of maintaining business relations and pragmatically receiving as much outstanding funds as possible. The possibility for the management to make use of these means should be upheld and at hand whenever necessary. Hence,

maintaining an open door therefore and allowing the management to settle either by default, under certain conditions or on a case to case basis should be definitively thought through in the light of the new CL. The same applies for the possibility of arbitration. Again, for a number of reasons, arbitration can be a recommended way of dispute settlement. It allows to take awards under a different legal system and resolution body to be made enforceable in Oman. This might be advantageous if dealing with large local or government entities to escape a certain local preponderance of these and potentially create another dimension at one's disposal. On the other side of the spectrum a number of "international" lawyers in the region tend to recommend it for good fee outcome, their own unfamiliarity with local law (especially in a smaller countries like Oman) and the possibility to move a conflict it into one's (especially the lawyers') home jurisdiction and the circumvention of local lawyers, who have a court monopoly. Carefully evaluating pros and cons of arbitration should be done for each transaction. A manager of the company concluding such a transaction should be enabled to conclude it and not be barred by the local law. Hence, the same as for settlements should be considered and a respective policy taken.

With regards to the aforementioned examples and to a number of further reforms each LLC in Oman should carefully check its corporate documents under the CL and make the necessary amendments.

II. Joint Stock Corporations

The major part of the reforms in the CL is a large overhaul of the regulations on joint stock corporations. This limits the following remarks to the most important information on joint stock corporations from the angle of foreign investors. As they hardly ever fit as a vehicle for foreign investment just a very brief overview shall be given.

Oman's joint stock corporations fall apart into two main categories: SAOG (Société anonyme Omanaise general), the public joint stock corporations and SAOC (Société anonyme Omanaise close) the closed joint stock corporation. Other than with regards to LLCs the minimum capital requirement for joint stock corporations has not been dropped by the Omani legislator. Genuinely a SAOC will require a minimum Capital of RO 500 000/-, whereas a SAOG requires a minimum Capital of RO 2 000 000. Any other company can be transformed into a SAOG when only having a capital of RO 1 000 000/- (Art. 91 CL). Whereas the original capital requirements remain the same as per Art. 58 CL74, the possibility to transform a company into a SAOG having just half of the capital necessary might give way to more companies transforming into SAOGs. However, founders of a SAOG would have to subscribe for 30% of the shares of an SAOG during its original founding process (Art. 100 CL). As per the definition of Art. 89 any Joint stock corporation would need at least three shareholders.

Apart from other ways of financing

itself, a joint stock corporation would be able to raise means by bonds (Art. 149 CL – Art. 159 CL).

E. Administration and Regulation of Companies from State Side

As already mentioned, and in accordance with Art. 6 CL now a clear cut is drawn with regards to the concerned state authority for supervision administration and regulation of companies. All companies are basically subjected to the Ministry of Commerce and Industry. The only exception is made for SAOGs as public joint stock companies, which are subjected to the General Authority of the Financial Market.

One of the main changes is that most publication is being switched to online now and electronic means of communication and administration have been highly recognized by the new legislation.

F. Conclusions

Oman has made an encompassing attempt to legislate a new and contemporary companies' law. It manages to assess many corporate structures in detail and thus removes the necessity of lengthy corporate documents. Certain aspects remain open such as the imperative nature of certain provisions. Certain expected provisions are not included in the law, e.g. the principle that when the LLCs value drops below 50% of its capital either the company would have to be would up or fresh capital would have to come from the shareholders. Parallel provisions do exist in the UAE and Saudi Arabia, however could not be seen in the new CL.

Another specialty is that documents are not excessively necessary to be ascended by notary publics as in the aforementioned GCC countries.

As MoAs for a number of companies are public documents, it might be expected that more confidential regulations might be moved into Shareholders' agreements.

A further positive feature is that the CL contains detailed provisions on liability of managers' shareholders etc. in the regards of factual situations triggering liability as well as standards of care to be observed by potentially liable persons and thus making liability risks for concerned persons more assessable.

All in all Oman presents a modern piece of legislation for its commercial companies. Established companies already existing in Oman must carefully check how to adopt and potential investors should be aware of the details and changes introduced by it.

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