

# Guide on Commercial Companies Law in Oman 2020-2021

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The new *Commercial Companies Law (CCL)* in Oman was enacted by the Royal Decree Number 18 of 2019, (the *Law*) and published in the official gazette on 17 February 2019. The Law came into effect within 60 days of its publication on 17 April 2019, and repealed the previous Commercial Companies Law in Oman (Law Number 4 of 1974, as amended). The current *Law* is seen as one of the modern-day companies' enactment and has attempted to do away with complex and cumbersome governance and other related procedures. For the first time, the *Law* also paves way for a natural/legal person to set up a single person company and lays down an extensive set of provisions dealing with manager's liability and that of the corporate shareholders. **Article 3** of the new *CCL* defines a commercial entity as a 'for profit' business established by two or more persons. In line with **Article 13** of the *Law*, investors can form a company provided that their principal place of business is in the mainland. With respect to free zones, it is stated that such free zone entities shall be governed by the regulations of respective free zone as approved by the Council of Ministers. In the absence of any such legislation governing the free zone companies, it is safe to say that such a company shall be governed by the *CCL*. Companies that are fully owned by nationals of Oman shall enjoy all the rights that are limited by the Companies law of Oman. In the previous law, commercial companies could adopt any of the 6 forms of a company including a general partnership, limited partnership, joint venture, joint stock company and limited liability company. The new *Law* provides for a seventh form, a one-person company under **Article 4** of the *Law*. In this Article, we aim to discuss the changes brought about in mainly three forms of companies which are joint stock companies, limited liability companies and joint venture companies.



## Joint Stock Companies

Significant changes have been introduced in joint stock companies (JSC) in the Oman's *CCL* and have been summarized and discussed below:

- I. **Uneven Number of Members** - In the old law, the the board of members in a JSC had to consist of a maximum of 12 members, whereas under the new *CCL*, the board has to consist of an odd number of members and the maximum number of members would be 11. In order to comply with the provisions under the new law, an existing company with an even number of board of directors will have to either remove or add new directors to get the total number of such director's equivalent to an odd number of members (**Article 179**).
- II. **Quorum Of Board Meetings** – A quorum of one half of the members (50%) was needed to pass any decision which implies that a relative majority was need under the old law. This has been increased to two- thirds of members that are required to be present in a meeting under the new *CCL*. Resolutions in such meetings shall be approved by an absolute majority unless the articles of association provide for a higher percentage (**Article 192**). However, what would constitute an 'absolute majority' has not been defined on which further guidance is needed by the law.

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*"Companies that take a long-term view and consider a wide range of stakeholders — such as customers, employees, partners, the environment, and the communities in which we serve — have been shown to be more sustainable, innovative, and profitable."*

*– Zvika Krieger*

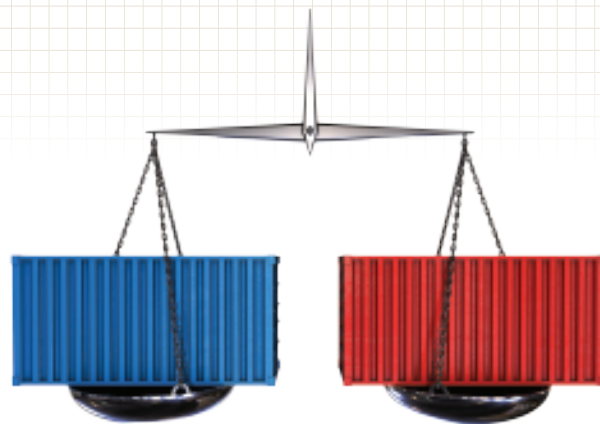
- III. **Minutes of Board Meetings**- The minutes of the board meetings shall be prepared by the secretary of board of directors and shall be signed by the secretary and all the members who attended the meeting. An objection by any member towards any resolution passed shall be recorded in the minutes and the signatories of these minutes shall be accountable for the data laid down in the minutes of the meeting (**Article 194**)
- IV. **Board Members Resignation**- If any board member fails to attend three consecutive board meetings without a reasonable and valid excuse, then such a person shall be considered to have 'resigned as a matter of law' (**Article 195**). Hence, a board member will need a valid excuse that is required to be accepted by the rest of the members of the board in order to skip three consecutive meetings. Failure of attending three back to back meetings shall deem fatal for a member, as the company shall imply that such a person has resigned from the company.
- V. **Means of Communication in Meeting** - A maximum of two board meeting could be held via video conferencing in each financial year under the old law. Whereas under the new **CCL**, no such restriction has been imposed on the number of meetings that can be held via video conferencing. **Article 191** of **CCL** mandates that the board of directors may collectively decide to convene meetings through the use of correct means of communications as they deem necessary. Any verbal or visual communication can be facilitated between members of the company not present in one place, as long as the secretary of board is able to identify and record such discussions.
- VI. **General Meeting** - Earlier, shareholders were required to meet a minimum of 25% shares in a company to call for a general meeting. The same has been reduced to 10% under the new law (**Article 164**), thus, providing shareholders with increased protection.
- VII. **Agenda of General Meeting** - In the old law, shareholders owning 10% of the company's shares could request to include an agenda item for a general meeting, whereas, under the new law this has been reduced to 5% (**Article 165**).
- VIII. **Minutes of General Meeting** – The minutes of a general meeting were required to be signed within 15 days from the date of the commencement of meeting pursuant to the old law. Whereas, under the new **CCL**, board minutes need to be signed and lodged by all board members within 7 calendar days from the date of the commencement of the meeting. However, the new law does not clarify the implication of failure to obtain such signatures of board members and further guidance is required on the same (**Article 167**)
- IX. **Chairman of General Meeting** – The chairman of the board of directors shall manage the general meetings. The absence of such a chairman shall put the chairman's deputy in charge and further, the absence of the deputy will put the person appointed by the board in charge. If the board fails to appoint such a person, then the auditor shall have the authority to appoint a person and put him in charge of the general meeting (**Article 171**).
- X. **Quorum of General Meetings** – A general meeting shall be attended by shareholders or by proxies (proxy has to be in writing) with a minimum ownership of at least one half of the shares in the company.

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*"That a joint stock company should be able to carry on successfully any branch of foreign trade, when private adventurers can come into any sort of open and fair competition with them, seems contrary to all experience."*

– Adam Smith



The failure to establish such a quorum shall lead to the adjournment of such a meeting and the same shall be reconvened any time within 7 days of such adjournment. The second meeting shall be valid irrespective of the number of shares owned by persons attending the meeting and all resolutions passed shall be adopted by a simple majority of the shares represented in the meeting (**Article 173**).

**XI. Increased Shareholder Protection** - Pursuant to **Article 148**, the shareholder's interests are protected by providing them increased protection in a JSC. A regulator can be appointed to take care of shareholders if the company acts against the interests of the shareholders or creditors. Following a warning, the regulator will be entitled to eliminate any work by the company causing any damage to any of the shareholders or creditors of the company. A board observer can be appointed to overlook the meetings of the company and can obligate the chairman to convene a general meeting for taking any necessary action required to remedy any risks arising against the shareholders. Such a regulator can also dissolve the board and instead appoint a temporary board to overlook matters of the company. The regulator will hold full authority to prohibit the company from effecting any activity causing danger to the shareholders of the company.

**XII. Voting Rights For Articles of Association of Company**- **Article 122** of CCL provides that the Articles of Association of a JSC may establish privileges, rights and limitations for any class of shares of the company and such information can be amended, provided that a minimum majority of two-thirds of the owners of such class of shares, vote for such an amendment at a general meeting.

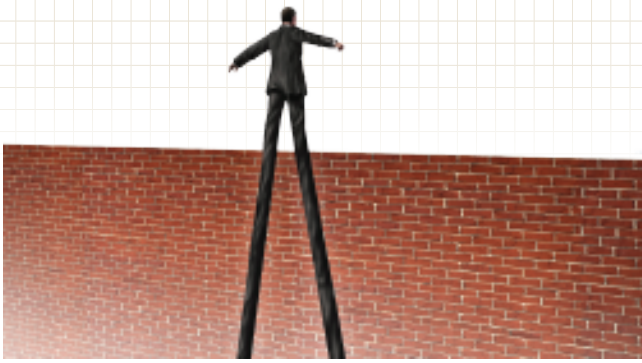
**XIII. Voting Rights for Securities and Bonds** - Pursuant to **Article 158** of CCL, a general meeting in a JSC can be convened for the holders of securities and bonds shall require a voting majority of two-thirds of such holders present at the meeting. Such a meeting shall be convened if holders representing at least two-thirds of the securities or bonds attend such a meeting, failing which holders representing one-third of the securities and bonds shall hold a second general meeting within 30 days of the commencement of the first general meeting.

#### **Limited Liability Company**

Significant changes have been introduced in limited liability companies in the Oman's CCL and have been summarized and discussed below:

- I. Minimum Share Capital** - The minimum share capital requirement has been removed for LLC's. According to **Article 238**, the share capital shall be specified in the Constitutive documents of the company and will be divided into shares of equal nominal or on face value. Earlier a minimum of OMR 20,000 was required as a minimum share capital requirement but this has been removed under the new CCL.
- II. Number of Shareholders** The minimum number of shareholders in an LLC shall be 2 and the maximum number of shareholders in an LLC was earlier 40, which has now been increased to a maximum of 50 shareholders. This number can further be increased if it is approved by the minister following public interest (**Article 234**).
- III. One-Person Company** – A minimum requirement of only 1 shareholder is required to set up a one-person company as an LLC. This would constitute as a sole shareholder LLC (**Article 291**).

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*"Joint undertakings stand a better chance  
when they benefit both sides."  
-Euripides*

- IV. **Conflict of Interest** – If the managers of the company have any conflict of interest between their personal interests and that of the company's interests, then such managers shall be obligated to inform the shareholders of such conflict (**Article 266**).
- V. **Shareholder Information Rights** - The new **CCL**, grants to the shareholders of a LLC access to a wide range of company documents which had not been provided under the old law. **Article 270** of the new law provides that any partner who is not a manager may request at any time, any information about the company and may examine (either by himself or by appointing a specialist expert), the company's books, accounts, records and other documents. Under the old law, the right to inspection was limited to go back within five financial years from the date of inspection. Whereas, **Article 277** of the new **CCL** lays down that every partner in an LLC may request as per his/her wishes, to inspect records and documents related to the business of the company conducted for the previous 10 financial years, and any provision in the Constitutive documents or any subsequent agreement that is inconsistent with the provisions of this article shall be deemed to be void.
- VI. **Lending Facility** – Pursuant to **Article 272**, all the managers and shareholders of a company are forbidden from granting loans that are obtained from the company, to their spouses or relatives up to the third degree. Such a loan from the company is prohibited from being obtained for their own personal interests as well and any action contrary to the same shall be null and void.
- VII. **Removal of Managers** - In an LLC, one or more managers may be removed with the voting majority required by shareholders owning three quarters of the share capital of such a company.

Such a resolution will also have to appoint a new manager as a replacement for the LLC and the manager subject to removal shall not be entitled to vote in the meeting. The manager can also be removed if one or more shareholders submit a petition to the court for such removal (**Article 273**).

- VIII. **Liability of Managers** – The liability of the managers in a Limited Liability Company shall be identical to the liability of directors of Joint Stock Companies under the new **CCL** (**Article 265**). A detailed discussion on the liabilities and responsibilities of the managers of these companies can be read here.

### Other Changes

- I. **Joint Venture Company** - A Joint Venture need not acquire a legal personality under the Oman's **CCL**, and the same has been laid down in **Article 14** of the law. **Article 29** also exempts joint venture companies from adhering to the restriction laid down in this clause on commercial companies. This restriction prohibits any members of the company from performing for their personal benefit or for a third party's benefit any business similar to that of the company (unless prior approval of all partners is acquired). However, partners in Joint Ventures shall be exempt from this restriction and can engage in similar businesses carried outside the company.
- II. **Removal Of Managers** - Under **Article 273** of Oman's **CCL**, a manager or managers may be removed by resolution adopted by the shareholder's meeting. The voting rights pursuant to this Article require an approval of majority of shareholders who own three quarters of the share capital for the resolution to pass.

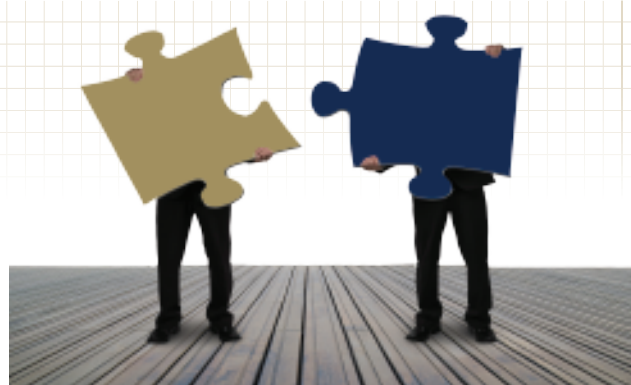
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*"The Limited Liability Corporation is the Greatest Single Discovery of Modern Times. Even steam and electricity are far less important than the limited liability corporation, and they would be reduced to comparative impotence without it."*

*- Nicholas Murray Butler*

Such a resolution will also have to appoint a new manager as a replacement for the LLC and the manager subject to removal shall not be entitled to vote in the meeting. The old CCL did not foresee any specific majority for the same decision. This is of great significance for LLCs that are established for foreign investment. Foreign investors can hold 70% of the shares in an LLC in Oman and an Omani national would require a 30% ownership in such a company. The requirement of a shareholder owning three quarters of share capital of the company to have a voting right for removal of the manager, would furnish such a shareholder with a veto right against the removal of a manager. The main objective of establishing a company with 70% ownership by a foreign company in Oman is to establish control over such decisions which provides an advantage to the foreign company. However, due to the new legislation, there will be a restriction at this end. LLCs can also try to prevent this by considering not to appoint a manager directly in the constitutive documents of the said company and require a new appointment of manager by the general assembly from time to time. However, this would make the position of the manager look less attractive to the potential investors in the company. The new law clearly states that the LLC cannot at any time be left without management in cases of any dispute with the manager and an Omani shareholder can use this as a bargaining chip in the choice of appointing a future manager.

- III. **Minimum Share Capital Requirement** - Under the new **CCL**, the minimum share capital requirement of OMR 20,000 for limited liability companies (LLC) has been removed.



If a public joint stock company (PJSC) will be created by converting another type of company, then the minimum share capital requirement for such a company will be OMR 1 Million. A holding company in the form of a LLC, whose object is to conduct the business of a holding company, must be converted into a joint stock company with a minimum paid up share capital of OMR 2 Million. The founders of a PJSC are entitled to subscribe to no less than 30% and no more than 60% of the shares of the company. In the event of a company being converted into a public joint stock company, such subscription of shares can be a maximum of 75%.

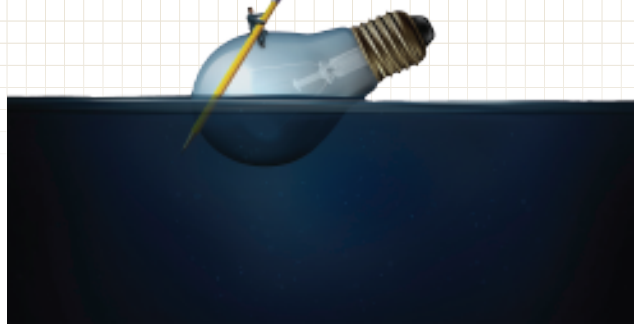
### **Foreign Ownership In Oman Companies**

Foreign Capital Investment Law (**Royal Decree 102 of 1994**) (**FCIL**), permits foreign companies wishing to conduct commercial activities or business activities in the Sultanate of Oman after being licensed and registered in Oman. A foreign company cannot hold more than 70% of shares in a company in Oman and a minimum of 30% ownership of shares is required to be held by nationals of Oman. This excludes certain exceptions in water and electricity related areas. Pursuant to the USA and Oman Free Trade Agreement (FTA), USA citizens and entities may own 100% of the shares in LLC's and JSC's without fulfilling the requirement of having an Omani National as a partner. The FTA came into force on January 1 2009. Another area where the threshold of the 70% ownership by foreign persons or entities can be increased is when an approval is received by the Council of Ministers of Oman and if they deem fit that such an increase is crucial and of critical importance.

### **One Person Company**

The new **CCL** in Oman gives for the first time the right to a company to be founded, based on a unilateral decision of one party only and the same has been addressed under **Article 4** of the new law.

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*"Traditional companies have to start looking into themselves to offer more opportunities in their companies by starting new subsidiaries and joint ventures."*

*- Masayoshi Son*

Chapter 7 of the new **CCL** lays down the provisions for governing a one-person company as a limited liability company under **Articles 291 to 297**. Consistent with the provisions laid out in the new law, an LLC can be established as a one-person company where the share capital in such a company will be wholly owned by one natural/juristic person and shall be done in accordance with the procedures and rules specified in the regulations (**Article 291** of the new **CCL**). However, one person will only be allowed to establish a one-person company only one single time which means that a sole shareholder company cannot incorporate another sole shareholder company. The liability of such a person shall be limited to the extent of the share capital allocated in such a company. The management of such a company shall be undertaken by the owner of the share capital who may further appoint one or more managers for the company to represent it before the courts and third parties. This person shall be directly answerable to the owner for its management. In the event of death of the natural/juristic owner of the share capital, the company shall cease to exist unless the shares of the heirs are held by one person, or the heirs opt for its continuity in another legal form within a maximum period of 180 days from the date of the death of such an owner. The owner of the company shall be liable for his/her obligations to the extent of his/her private property in case it discontinues the activity of the company before the expiry of its duration or before achieving the objective of its establishment or in case he/she does not separate the company's business from his/her private business.

### **Similarities between Companies Law of UAE and Oman**

The United Arab Emirates (UAE) introduced a new Commercial Companies Law (**Federal Law Number 2 of 2015**) (the **New CCL**), which replaced the previous Commercial Companies Law (**Federal Law Number 8 of 1984**, as amended) (the **previous CCL**).

There are many provisions laid out in the new CCL of Oman that are similar to the provisions laid out in the new CCL of UAE and one can assume that such an effort has been correctly made to modernize the Companies Law in Oman. These similarities are discussed below:

- I. Under new CCL of UAE, the incorporation of a 'single person' LLC has been laid out under **Article 71** of the law. Under the new Oman CCL, a one-person company as an LLC can be established under **Article 291** of the law.
- II. The quorum for general assembly meetings has been raised from shareholders representing 50% of the capital to shareholders representing 75% of the capital (**Article 96 of UAE CCL**). The quorum for general assembly meetings has also been raised from one half to two-thirds in the new CCL of Oman (**Article 158 of Oman CCL**).
- III. The maximum number of board members has been reduced from 15 to 11 with the requirement that the total number of directors must be an odd number and the same has been laid out under **Article 143** of the UAE CCL. The board has to consist of an odd number of members and the maximum number of members has been reduced from 12 to 11 under the new CCL of Oman as addressed in **Article 179** of the Oman CCL.
- IV. Under the UAE CCL, companies can operate in free zones of the State and the Cabinet shall have the authority to issue a decision determining the applicable conditions to enter and register such companies operating in the free zones (**Article 5 of UAE CCL**). The same has been provided under the Oman CCL, stating that companies may be established to carry out business outside the boundaries of the Sultanate (offshore) in the free zones, and the regulations of such companies and the rules and procedures that govern their performance shall be approved by the Council of Ministers (**Article 13 of Oman CCL**).

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