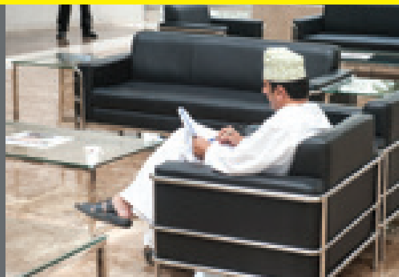
Legal Framework

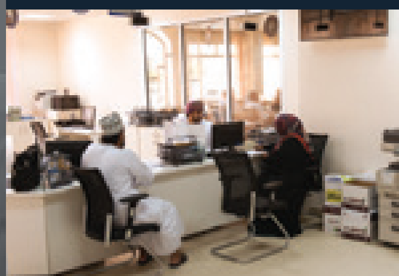
A look at the business environment for foreign investors

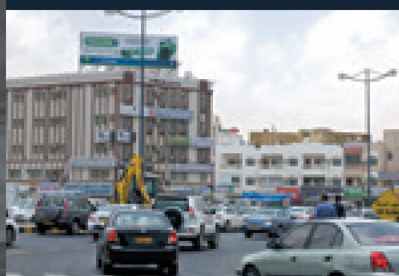
Five different types of corporate entity recognised

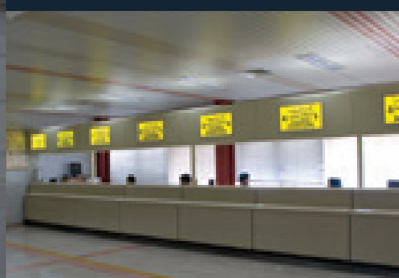
Competition law prohibits abuse of market dominance

Various incentives available for inward investment









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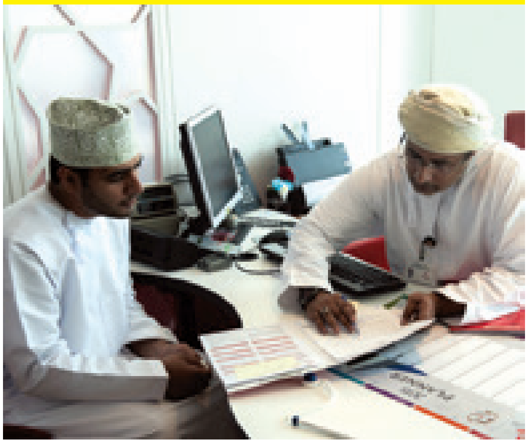

The Basic Law sets out the legal structure of the sultanate

Terms of engagement

A rundown of the legislation governing companies in Oman

The 1996 Basic Statute of the State (also referred to as the Basic Law) sets out the legal structure of Oman and the functions of the executive and the judiciary, as well as citizens' personal liberties and public obligations. It provides that Oman's basic principles include free market economics, cooperation between the public and private sectors, the protection of private property (with expropriation only in cases provided for by law and against fair compensation) and taxation in accordance with the law that shall not have retrospective effect.

The Basic Law states that "Islam is the religion of the state and the Islamic sharia is the basis of legislation", and that existing laws and regulations remain in force "provided that they do not conflict with any of the provisions of this Basic Law".

The Basic Law also provides for the establishment of a court with jurisdiction to determine whether legislation complies with the provisions of the Basic Law. Currently there is no such court, although one may be established in the future. The only area which the Basic Law states will be governed by Islamic sharia is the law related to family affairs and inheritance.

Judicial power lies with the courts, which are independent of the executive authority. The Commercial Court has jurisdiction over commercial disputes. Oman is a civil law jurisdiction, hence judges enjoy greater freedom to interpret agreements in a way that, in their opinion, correctly reflects the intention of the parties in question if the express terms of the agreement are ambiguous. A judge's interpretation can extend to amending a contract if he or she feels that doing so would reflect the original intention of the parties.

COMMERCIAL AGENCY: Any foreign producer seeking to supply goods or services to Oman on a sustained commercial basis, but which does not wish to have a presence in Oman, can appoint a commercial agent (or agents) for purposes of marketing, after-sale and servicing. The agreement under which any such appointment is made must be entered in the Register of Commercial Agencies and Agents maintained by the Ministry of Commerce and Industry (MOCI) to give it legal effect.

FRANCHISING: There is no specific legislation in Oman on franchising. The MOCI sees franchise agreements as different from commercial agency agreements, in that the franchisee is subject to a substantial measure of operational control by the franchisor and is not independent.

SPONSORSHIP: When a visit or work visa is obtained by an Omani for a foreigner, that Omani is the foreigner's "sponsor" and stands as surety for that foreigner's good conduct in Oman. Other than in this context, there is no wider legal significance to the concept of sponsorship.

Agreements whereby a sponsor also undertakes to promote and support a foreign company's business in Oman can be exposed to a number of legal hazards. For example, it would be wrong for an Omani business to lend its name and commercial registration to a foreign company, and thereby allow that company to establish and conduct a covert trading presence of its own in Oman.

GENERAL PRINCIPLES FOR THE CONDUCT OF BUSINESS: In practice, there are two ways in which a foreign company can conduct business in Oman. First, the person or company may become a shareholder in an Omani company (either by establishing a new company or by buying shares in an existing one). Second, in certain circumstances and to fulfil a particular role (as is more fully explained below), a foreign company may establish a branch office of its overseas parent company.

If the foreign company does not wish to directly conduct business in Oman through participation in an Omani corporate entity, it also may be possible to enter into a commercial agency arrangement with an Omani individual or company that is registered as a commercial agent. Although the foreign firm has no legal presence in Oman (and is not therefore "doing business in Oman"), the products or services which they produce may then be lawfully marketed and sold in Oman by the Omani commercial agent in question. The Foreign Capital Investment Law, which is being redrafted, aims to further liberalise the Omani market.

PARTNERSHIP FOR DEVELOPMENT: Additionally, the Omani Authority for Partnership for Development (OAPFD) was established in 2014 to oversee and manage Oman's offset regime, the Partnership for Development Programme (PFDP). On June 3, 2015, the OAPFD published new regulations governing this programme. At the heart of the PFDP is the promotion of Oman's social and economic development. To this end, foreign companies that contract with the Omani government, or with a company in which the government holds more than 50% of the shares, must invest part of the value of that contract back into projects that will benefit Oman. There is a strong emphasis on the need for sustainability of such projects, so that the value they add will continue after the foreign contractor has been discharged.

CORPORATE STRUCTURES: There are five types of corporate entity contemplated by the Commercial Companies Law: general partnerships; limited partnerships; joint ventures; limited liability companies; and joint-stock companies.

The partners of a general partnership have unlimited joint and several liability. In a limited partnership, the general partner has unlimited personal liability. The Omani "joint venture" referred to above is an unincorporated commercial company and thus, while referred to as a "company", it does not benefit from separate legal personality. Essentially, it is established by a contract between investors engaged in a common venture. While a joint venture cannot enter into contracts independently from its partners and cannot own property, it keeps a separate set of financial books for the venture, and is audited and taxed as a commercial company on this basis.

The partners of the joint venture may be exposed to unlimited joint and several liability, and this is the primary reason for which this form of commercial entity is not preferred.

LIMITED LIABILITY COMPANIES: The limited liability company type of corporate entity is commonly used by foreign individuals and companies wishing to establish a legal presence in Oman. It combines limited liability with a number of features normally associated with partnerships. Members of the limited liability company are usually referred to as "partners" or "members", and not "shareholders" as the company issues no shares as such. Rather, the investors have a percentage interest in the company's registered capital. The liability of individual members is limited to the nominal value of their contribution to the limited liability company's capital. The minimum number of partners is two and the maximum is 40.

The Foreign Capital Investment Law, which is currently being redrafted, aims to further liberalise the market

The capital of a limited liability company with up to 70% foreign ownership must be at least OR150,000 ($388,000). The capital of a limited liability company with 100% foreign ownership must be at least OR500,000 ($1.3m). Capital, whether in cash or in kind, must be contributed in full upon incorporation. Limited liability companies that are wholly Omani-owned must have capital of at least OR20,000 ($52,000).

The Commercial Companies Law provides that a limited liability company is to be managed by one or more managers (statutory managers) that are appointed by the partners of the limited liability company. Statutory managers may perform all acts in pursuit of the limited liability company's objects as they see fit and are not required to pass resolutions as evidence of such acts.

However, certain corporate acts (provided that they act within the scope of their authorisation, which is required by the MOCI) are reserved by law to the partners alone, and there may be other acts which the partners choose to reserve to themselves, either by specific provision in the constitutive contract of the limited liability company, or by subsequent partners' resolution.

The names of the statutory managers are recorded in the Commercial Register at the MOCI. The statutory managers have liability to the company, to the partners and to any interested third parties for *ultra vires* acts, wilful misconduct and negligence.

Before distributing profits, 10% of after-tax profits must be appropriated to a "legal reserve" until the reserve reaches the level of one-third of the company's capital. Companies undertaking

Tax is payable by Omani companies and by foreign entities that have a permanent establishment in Oman

certain activities may not be allowed to take the form of a limited liability company, such as banks and insurance businesses.

JOINT-STOCK COMPANIES: The structure of joint-stock companies (SAOs) is derived from the French *société anonyme* model. Its formation must have specific prior approval from the MOCI. Certain activities – such as banking, insurance and maritime – are reserved for joint-stock companies and require further approvals and licensing. There are two types of SAO:

- The public joint-stock company (SAOG), an SAO which has offered its shares to the public and is listed on the Muscat Securities Market; and
- The closed joint-stock company (SAOC), an SAO which has not offered its shares to the public.

The minimum number of shareholders in an SAO is three (unless it has been formed by the government). There must be at least three founders (or promoters) in an SAOG. They are required to subscribe for between 30% and 60% of the capital, with no single founder subscribing for more than 20% (subject to limited exceptions). In general, at least 40% of the capital of an SAOG must be offered to the public, and there can be different classes of shares provided these are included in the articles of association on incorporation.

Minimum issued capital is OR2m ($5.2m) for an SAOG and OR500,000 ($1.3m) for an SAOC. The Commercial Companies Law allows for the payment of up to 50% of this capital to be deferred for up to three years from the date of incorporation.

SAOs are managed by a board of directors (the board) who are appointed from time to time by the SAO's shareholders. The board conducts the SAO's business by passing resolutions in accordance with the SAO's articles of association. The minimum number of members of the board is three for an SAOC and five for an SAOG, with a maximum of 12 in both cases. The normal term of office for board members is three years on a renewable basis.

Shares in SAOs are freely negotiable, they are subject to restrictions placed on the founders (a founder shareholder cannot dispose of his or her shares before the firm has published two balance sheets for two consecutive financial years), and a shareholder may pledge his or her shares as a security for the shareholder's own loans and other financial obligations.

BRANCHES OF FOREIGN COMPANIES: By way of exception to the general rule of the Foreign Capital Investment Law, a foreign firm may conduct business in Oman by means of an Oman branch of the company if it is the counterparty to a contract with the Oman government. For these purposes companies with certain levels of government ownership may also qualify, although this depends on practice, which changes from time to time.

An Oman-registered branch of a foreign company may contract, own assets and incur liabilities, submit its own tax returns, obtain visas and work permits for its personnel, open and operate bank accounts, and effect imports, all in connection with its government contract(s).

COMMERCIAL REPRESENTATIVE OFFICES: Foreign firms may also open commercial representative offices or trade offices in Oman. These offices are restricted to engaging in marketing and promotional activities for the foreign head office. Marketing is limited to retailers, not individual consumers. Furthermore, representative offices cannot engage in any sales activities.

TAX CONSIDERATIONS: Tax is payable by Omani companies and by foreign entities that have a "permanent establishment" in Oman. The income which is taxable is that which has been realised or has arisen in Oman. The tax treatment of a taxable company does not depend on its corporate form – the law applies equally to all corporate entities registered in Oman (and foreign entities operating in Oman through a dependent agent).

There is tax parity between all income-generating Omani corporate entities, including unincorporated joint ventures, foreign parties who establish permanent establishments operating in Oman through an Omani dependent agent, branches of foreign companies, and all Omani companies regardless of the nationality of the shareholders or the percentage of foreign shareholding. Specifically, they are all subject to a 12% rate of tax on net profit over OR30,000 ($78,000).

Withholding tax is payable at a rate of 10%, although Oman has double taxation treaties in place with 29 other countries (including the UK but not the US) under which this rate may be reduced.

There are tax exemptions and other incentives granted to specific industries engaged in the development of tourism, certain manufacturing businesses and projects of strategic economic importance with substantial export and employment potential. These industries are perceived to provide economic growth.

Company accounts must be prepared in accordance with international accounting standards and tax returns filed with the authorities on an annual basis. There is currently no personal income, sales or value-added tax, though the introduction of a sales tax is being considered. Recent amendments to the Capital Market Law provide exemptions from all taxes on special purpose vehicles that issue *sukuk* (Islamic bond) instruments.

INCENTIVES FOR INWARD INVESTMENT: The current legislation affirms the foreign investor's right to repatriate his or her profits. The Omani rial is a freely convertible currency. It is pegged to the US dollar at a fixed rate of OR1:$2.60.

Expropriation is precluded, except in cases of public benefit schemes regulated by law and conferring a right to fair compensation. While corporate income tax is payable in Oman, unlike some other GCC states, tax holidays and Customs exemptions are available for an initial five-year period, with the possibility of a further renewal. Customs exemptions are available on imports of plant and equipment for setting up a production facility, and are also in principle available in respect of extensions to the original investment project. For industrial projects, tariff protection may be available for local production. Export credit insurance against commercial and political risk is available, where the project generates exports.

COMPETITION LAW: Oman's new Competition Protection and Monopoly Prevention Law published in December 2014 raises important compliance issues for companies doing business in Oman. The law introduces a new merger control regime as well as prohibiting restrictive agreements and abuse of market dominance. It also bans agreements or arrangements that are aimed at the monopolisation of markets.

The merger control provisions mean that the Public Authority for Consumer Protection (PACP) must be notified of a broad range of transactions, including share or asset transfers, the creation of consortiums, mergers or the consolidation of two managements into one that would place a person, or group of persons, directly or indirectly in a position of dominance (as defined below). The transaction cannot then proceed until approval is received, or until the expiration of a 90-day period.

The law provides for implementing provisions to be adopted by the PACP, which have not yet been issued, but there is a risk that the law's provisions may nevertheless be considered to be active since it entered into effect on December 8, 2014.

In view of the potential risks, businesses should take a cautious approach and look carefully at how the new law could apply to their agreements and business practices. Apart from reviewing existing and new commercial arrangements, it may be appropriate for businesses to conduct a full

While corporate income tax is payable in Oman, tax holidays and Customs exemptions are available

compliance review, which can include producing a compliance manual and setting up a training programme for key employees (see analysis).

BANKRUPTCY & INSOLVENCY: Oman currently has no insolvency law. Bankruptcy is regulated by provisions in the Law of Commerce, while liquidation is regulated by the Commercial Companies Law. These statutory regulations are not, however, sufficient for the purpose of insolvency, which may not always lead to bankruptcy or liquidation.

The Capital Market Authority and the Ministry of Commerce and Industry are considering introducing a new bankruptcy and insolvency law to provide a legal framework and install a corporate legal infrastructure to support insolvent companies. This could be a long process and it is not known when the new regulations will be introduced.

BANKING: The Omani banking system comprises the spectrum of commercial banks, specialised banks, Islamic banks and windows, non-bank finance and leasing companies, and money exchange establishments. The commercial banks operating in Oman are either locally incorporated or branches of foreign banks.

The Central Bank of Oman is responsible for regulating and supervising Oman's commercial banks, specialised banks, Islamic banks, and finance, leasing and money exchange companies. Omani banks are subject to the Banking Law, promulgated by Sultani Decree 114/2000 (as amended) (the Banking Law), and banking regulations issued by the Central Bank of Oman. Banks are also required to comply with other laws of general application.

In December 2012, the Banking Law was amended by Sultani Decree 69/2012 (promulgated on December 6, 2012) to allow the Central Bank of Oman to license the conduct of banks to carry out Islamic banking services through either fully fledged Islamic banks, or windows of conventional

Ownership of real estate by non-GCC nationals is permitted in integrated tourism complexes

banks. In addition, the Islamic Banking Regulatory Framework was issued to provide detailed and comprehensive guidance on all aspects of Islamic banking, including the requirements for obtaining an Islamic banking licence from the central bank, and the various accounting and reporting standards that are to be complied with.

Oman is the last of the GCC countries to introduce Islamic banking, and its introduction has diversified and widened the pool of banking products available to retail and corporate customers. It also brought about the addition of new entrants to the banking system in the form of two fully fledged locally incorporated Islamic banks. A number of conventional banks have established windows for Islamic banking, further enhancing the competitive banking environment in Oman.

Following the introduction of Islamic finance in Oman, the ability for corporations (other than Omani-licensed banks) to engage in Islamic financing or to issue sukuk instruments is still subject to further clarification when the draft Sukuk Regulations (issued by the Capital Market Authority) come into force. The date for their promulgation is unknown but believed to be imminent.

In the meantime, there has been an amendment to the Capital Market Law in November 2013 to facilitate the issue of sukuks by Omani corporations and which is believed to be an interim step to the enactment of the Capital Market Authority's Sukuk Regulations in due course.

REAL ESTATE: Ownership of real estate by non-GCC nationals, as a general rule, is not permitted. The notable exception to this is that foreigners may own real estate in what are known as integrated tourism complexes (ITCs). Examples of these include Al Mouj and Muscat Hills Golf and Country Club. ITCs are specific areas set up by the government for the development of tourism.

Commercial and residential leases tend to be granted in a standard form for an initial one-year term, though the term is automatically renewed unless three months' notice is served on the landlord. Except in specified circumstances a landlord may not terminate (or not renew) a residential lease for the first three years or a commercial lease for the first five years (rent may not be increased in these periods either unless there have been improvements made to the premises). Broadly speaking, the rights between landlords and tenants under the law are well balanced.

Real estate can be owned by corporate entities registered in Oman regardless of the level of foreign ownership, provided it is required for carrying out its commercial activities. Trust arrangements in relation to land are not recognised by the law.

EMPLOYMENT: Business operations in Oman have traditionally relied on skilled and semi-skilled workers from abroad. While there remains a need for expatriate workers with specialised skills, the government has taken steps to increase the number of Omanis working in the private sector.

Foreign nationals are prohibited from employment in certain positions and companies must employ specific numbers of Omanis, defined as a percentage of their total workforce. Part-time Omani employees are taken into account when calculating the percentage, depending on the type of company and the sector it is engaged in.

The government has established a register for the national workforce. No organisation is permitted to employ an applicant unless the applicant first proves that he or she is registered with the National Workforce Register, and all employers are required to report new employees for registration.

The comprehensive Omani Labour Law issued in 2003 applies to Omani and foreign employers and employees. The law governs work contracts, wages, overtime pay, leave, work hours, industrial safety, labour disputes, vocational training, and the employment of Omani and foreign nationals.

The government has set the minimum monthly wage for Omani employees at OR325 ($841), divided into a basic salary of OR225 ($583) and allowances of OR100 ($259). Omanis are entitled to a mandatory 3% increase in basic salary each year after working for an employer for six months (and so long as they have not received a poor performance review). There is no minimum wage or mandatory increase for expatriate employees.

CORPORATE GOVERNANCE: The Corporate Governance Code provides mandatory guidelines for the governance of SAOGs in Oman.

In July 2015 a new code of corporate governance was published, focusing on the independence of directors. It includes provisions that all members of the board of directors must be non-executive (previously the requirement was that it should be a majority only); that the CEO of an SAOG cannot be a CEO of a company that is a subsidiary of the public joint-stock company; and that no two sub-committees can be chaired by the same person.

SOCIAL SECURITY: The Social Security Law introduced a system to insure employees against old age, disability, death, and occupational injuries and diseases. The law currently applies only to Omanis who are working in the private sector. Under the law, private sector employers must make monthly contributions to the Public Authority for Social Insurance (PASI) at a rate of 9.5% of each Omani employee's gross monthly wage. Employees contribute 6.5% of their gross monthly wages. Employers contribute an additional 1% of each Omani employee's monthly wage as security against occupational injuries and diseases.

PASI invests all funds received, and it pays out sums due to employees on their retirement, and as compensation for injuries and diseases. In accordance with the Labour Law, employers must pay an end of service benefit (ESB) to their foreign employees. ESB is calculated on an employee's final wage and paid according to the following guidelines: for the first three years of service, the equivalent of 15 days' basic pay for each year worked; and for each subsequent year, the equivalent of one month's basic pay.

VISA PROCEDURES: The government of Oman has issued visa procedures that are aimed at liberalising the entry regulations into Oman. The salient features of the visa procedures are as follows:

- Citizens from countries on list "Number One", including nations like Austria, France, Germany, Italy, the UK and the US, will be eligible to obtain single-entry tourist visas on arrival on all ports of entry into the country.
- Citizens from countries on list "Number Two" such as India, Iran, Egypt, Tunisia and Morocco will also be able to obtain single-entry visas by applying at Oman's diplomatic missions in the respective country. If an individual overstays he or she is subject to a penalty of OR10 ($25.90) per day beyond the validity of the visa.

Employers wishing to employ foreign nationals must obtain labour clearances from the Ministry of Manpower and employment visas from the Royal Oman Police. An employer may engage a foreign employee only in the role specified on the labour clearance obtained for that individual.

Certain labour clearances are more difficult than others to obtain, and there may be restrictions imposed on the number of foreign labour clearances that a given company may obtain in a certain category.

Employees are permitted to form trade unions in Oman, and both Omani and expatriate employees can join trade unions. The administrative officials of a trade union must be Omani nationals. Trade unions are permitted to engage in peaceful strikes provided they give three weeks' notice.

Oman's new Civil Code has introduced some new law relating to the employment relationship.

Residents of some countries receive visas on arrival, while others must apply at Oman's foreign missions

For example, definite-term contracts are now limited to five-year terms. Also, as an exception to the employer's general entitlement to new inventions/discoveries made by an employee in the course of work or using the employer's resources, if the invention is of "major economic importance" then the employee can seek payment from the employer if "justice requires".

There are also two particularly interesting provisions in the Civil Code which have both clarified and developed the existing law. First, commissions, gratuities and service charges, if customarily given, are now considered to be part of an employee's remuneration, and this is to be taken into account when determining entitlements. The Labour Law has provided, since amendments were made in 2011, that employees are entitled to receive a gross salary during periods of annual leave. It is not yet clear how this new provision will apply in practice, but it might potentially be used to argue that gross salary should include, for example, service tips customarily earned and therefore payable during annual leave.

Second, restrictive covenants were expressly prohibited prior to the promulgation of the Labour Law in 2003, which is itself silent on the issue. In the absence of an express prohibition the courts have enforced such provisions in employment contracts subject to a requirement of reasonableness on the part of the employer. The Civil Code makes it clear that restrictive covenants are permitted, but it sets out strict parameters.

For a restrictive covenant to be enforceable the employee must (i) be privy to confidential information, or (ii) know the customers of the business. In addition to satisfying one of these criteria, the covenant must be limited as to time, place and type of work to the extent necessary to "protect the legitimate interests of the employer".

The sultanate's first civil code came into effect on August 13, 2013 as the Civil Transactions Law

Restrictive covenants are not enforceable if employment is terminated without cause or if the employer acts in a way to justify the employee resigning. If compensation is provided for breach of the covenant and it is considered to be an unreasonable amount, it is void if the reason for it is to compel the employee to stay with the employer.

CIVIL CODE: Oman's first Civil Code came into effect on August 13, 2013 as the Civil Transactions Law, promulgated by Sultani Decree No. 29 of 2013. It is a very long piece of legislation including 1086 articles, and it has major implications for businesses operating in the sultanate.

Compared to other civil law jurisdictions where the Civil Code has been the foundation that sets out the legal principles upon which subsequent legislation is issued, in Oman the code is preceded by a considerable body of existing legislation dating back to 1970, each governing a specific sector such as commerce, employment, etc.

The code is intended to influence the future legislative framework without prejudicing the existing body of legislation. The interplay between this existing legislation and the code is crucial to understanding the legal landscape of Oman after August 13, 2013. Article 1 provides that the code shall not apply to matters regulated by "special" laws; in other words, matters that are already governed by a specific body of law. Key features of the Civil Code are as follows:

- Despite its name, the code applies to commercial as well as civil transactions.
- The code provides that any matter that is not specifically regulated by the code is to be governed by reference to, first, Islamic jurisprudence, second, the principles of Islamic sharia and, third, custom.
- Most provisions of the code – including the status of sharia law – are matters of "public order", which means they are mandatory provisions of Omani law that will, for example, override any foreign law regardless of the general Omani principle that permits freedom of choice of law. This may be significant, for example, when Omani courts are asked to give effect to an award relating to interest payments in the case of a loan agreement governed by English law.
- Although existing "special" laws will continue to apply, there will undoubtedly be conflicts between provisions in these laws and provisions in the code that relate to the same or similar issues. In such cases we believe that existing laws will continue to take priority; however, there are bound to be areas of uncertainty.
- The code introduces many new statutory limitation periods, with 15 years being the most significant; however, all must be considered in the context of the relevant facts.
- The code introduces the principle of *Izard*, which translates as "notification to remedy a breach as a pre-condition for exercising a legal right". This is relevant where one party to a contract wishes to enforce its contractual rights against another party. Izard is a statutory requirement to give notice to a counterparty prior to taking action to enforce the provisions of a contract. If this notice is not given, the party seeking to enforce may lose the right to do so.
- Irrevocable powers of attorney are now possible in certain circumstances. This is likely to have significant implications for certain types of security packages.
- The code provides that contractors are liable for all damage and loss arising out of their works, and this has potentially significant implications for claims for liquidated damages.
- The code seeks to bolster the remedies available for breach of contract by providing for specific performance of contractual obligations, therefore not restricting claims to damages. If Oman's courts start to enforce non-payment contractual obligations in this way it will be a significant development for contract law in Oman.
- The code regulates the assignment of debts, but not the assignment of rights, and this should be considered when assignments are being proposed. Much of the content of the new code mirrors the approach of the UAE's Civil Code, and indeed nearly one-third of the articles in the new code are identical to articles in the UAE's code. It is likely, therefore, that decisions of the UAE courts should be considered when it comes to forming opinions on how these provisions will be interpreted by Omani courts.

COMBATTING CORRUPTION: Over the past two years Oman has witnessed various corruption cases being brought against various executive managers both in the private and public sector. This shows that the government is taking a serious initiative to combat corruption at every level.

Penalties have been outlined for anti-competitive practices

Divide and rule

A new set of competition regulations have come into force

The new Competition Protection and Monopoly Prevention Law (the Competition Law), which was published in December by Sultani Decree No. 67 of 2014, raises important compliance issues for companies doing business in Oman.

The law introduces a new merger control regime, as well as prohibiting restrictive agreements and abuse of market dominance. It also bans agreements or arrangements that are aimed at the monopolisation of markets.

PENALTIES: Distinct penalties have been outlined for non-compliance. For example, non-compliance with the bans on monopolisation, restrictive agreements and abuse of dominance can result in imprisonment for a term of between three months and three years, and a fine equal to the profit obtained from selling the products that are the subject of the violation. Alternatively, it can result in any one of those penalties in addition to a fine of 5-10% of total annual sales of the relevant products made by the infringing party in the previous fiscal year. Failure to comply with the obligations relating to merger notification can result in imprisonment of one month to three years, and a fine of OR10,000-100,000 ($25,900-259,000).

It is clear that the penalties under the law apply not only to businesses but also to individuals who manage the offending companies or legal entities, including the chairman, members of the board of directors, the chief executive officer, authorised managers or officers of the offending legal entity, where it can be shown that they were aware of the violation and that their failure to fulfil their duties contributed to the perpetration of the crime.

ENFORCEMENT & APPLICATION: The Public Authority for Consumer Protection is tasked with enforcing the law and breaches of the law are to be referred to the Public Prosecution. The law applies to all activities of production, trade, services and other economic activities, as well as the use of intellectual property rights that could have a damaging effect on competition. It applies to all sectors of the economy but not to public utilities wholly owned and managed by the state, or research and development activities.

The law prohibits a wide range of activities, including fixing prices, discounts, conditions of sale or purchase or provision of services, limiting output or supply to the market, flooding the market with large quantities of products leading to unrealistic prices, and market sharing on the basis of geography, customers or time, among others.

This could potentially capture a wide range of activities and agreements. Not only does it mean that companies must on no account engage in obviously infringing activities, such as cartel arrangements or bid-rigging, but it also means that commercial agreements will have to be carefully reviewed for compliance.

MARKET DOMINANCE: Businesses with a position of dominance in the market must not engage in any practices that would undermine, curtail or prevent competition. Dominance is defined as the ability of a person, or group of persons together, to directly or indirectly control or influence the market, and includes the acquisition of more than 35% of the market volume.

The prohibited practices include predatory pricing, constraining supply to increase prices of a product, imposing restrictions on the sale or purchase process or on dealing with others which weakens their competitive provision compared to competitors, and refusing to deal without justification in order to restrict entry to the market or exclude others from the market, among others.

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Paul Sheridan, Managing Partner, Dentons

Room for reform

Paul Sheridan, Managing Partner, Dentons, on foreign direct investment in Oman

The goals of Oman's current long-term strategy, Vision 2020, are to support growth, diversify away from oil and gas, and create employment opportunities for Omanis. Attracting inward foreign investment is a major factor in achieving these goals. Oman's current legislation on foreign investment (the Foreign Capital Investment Law, or FCIL) was enacted by Sultani Decree 102/1994, although its roots go back to predecessor laws dating from the 1970s. Certain aspects of the FCIL were amended in 1996, 2003 and 2010, but its basic regime of foreign investment control has remained unchanged, in fact for longer than the lifetime of the young Omani job-seekers now competing for opportunities in the private sector.

Essentially this regime requires that any foreign investment be approved in advance, and carried on through an Omani commercial company that serves as the investment vehicle. This approval – known as the *tarkhis* – confers simply the right to make the foreign investment, and, even when it is granted, the investment project still has to obtain registration on the commercial register and as well as any other licences, permits, registrations and clearances specific to the economic activity proposed to be carried on. In some cases, the basic regime can be by-passed in whole or in part, for instance by locating the investment project in one of the special economic or free zones, or by investment on the basis of treaty rights under the GCC agreements or Oman's other bilateral investment or free trade agreements. However, the basic feature of the ordinarily applicable regime is *ex ante* approval on what is effectively a case-by-case basis, at the discretion of the authorities.

Historically the purpose of this regime was paternalistic: to protect Omanis and the resources of their country from foreign exploitation. With the present-day sophistication of the Omani commercial community, the need for this degree of protection has significantly diminished, and the *ex ante* approval process is now seen as a positive disincentive to potential foreign investors. Here, Oman suffers particularly by comparison with its neighbours in the UAE. The government is accordingly consulting on reform of the FCIL.

A major proposal now being canvassed is the reversal of this basic regime: the *ex ante* approval process for entry to the Oman market would be abolished, and a foreign investor would instead be entitled to market entry on the same basis as a national investor – other than in respect of any economic activity specifically reserved for Omani nationals exclusively, or reserved for entities with a stated minimum Omani participation. This reserved list of activities would be determined by the Council of Ministers, and publicised with full transparency. Mandatory Omani participation in foreign investment project companies would therefore become the exception and no longer the norm. The door would be open generally to wholly foreign-owned businesses in Oman. The significantly higher rates of minimum capitalisation levels hitherto required for project companies with foreign investment would be a thing of the past.

A reform of the rules on market entry would also provide the opportunity to enact a modern foreign direct investment law along the lines dictated by international best practice and expected by international investors. There could, for instance, be explicit statutory acknowledgement of customary international law principles such as "fair and equitable treatment", and "full protection and security" provisions on how the right to compensation for expropriation is to be put into effect in practice. Liberalisation of market entry to Oman would need to be accompanied by supporting developments in related areas. One would be to improve the processes for obtaining commercial registration and activity-specific permits. There are current proposals for an enhanced one-stop shop, with substantial use of online processing.