Oman’s first Civil Code came into effect on 13 August 2013. It is a very long piece of legislation including 1,086 Articles. 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 will be crucial to understanding the legal landscape of Oman post 13 August 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.

In this note we seek to provide a brief introduction to some significant features of the Code which may be of immediate relevance to businesses operating in Oman. We shall follow this with further notes in the coming weeks dealing with specific issues and sectors.

1. In spite of its name, the Code applies to commercial as well as civil transactions.

2. The Code provides that any matter that is not specifically regulated by the Code, is to be governed by reference to, first, Islamic jurisprudence, secondly, the principles of Islamic Sharia and, thirdly, custom.

3. Most provisions of the Code - including the status of Sharia law - are matters of "public order" which means that they are mandatory provisions of Oman law which will, for example, override any applicable foreign law regardless of the general Oman law principle that permits freedom of choice of law. This may be significant, for example, when the Oman courts are asked to give effect to an award relating to interest payments in the case of a loan agreement governed by English law.

4. 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.

5. 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.

6. The Code introduces the principle of "Izar" 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. Izar 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 it is possible that the party seeking to enforce may lose the right
to do so.

7. Irrevocable powers of attorney are now possible in certain circumstances. This is likely to have significant implications for certain types of security packages.

8. 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.

9. The Code seeks to bolster the remedies available for breach of contract by providing for specific performance of contractual obligations (and therefore not restricting claims to damages). If the Oman courts start to enforce non-payment contractual obligations in this way, this will be a very significant development for contract law in Oman.

10. The Code regulates the assignment of debts, but not the assignment of rights, and this should be considered whenever assignments are being proposed.

Much of the new Code mirrors the approach of the UAE Civil Code and indeed nearly one third of the Articles in the new Code are identical to Articles in the UAE 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 the Oman courts.

This note is only a very brief summary with some of our initial thoughts on some significant areas of the Code. The Code will raise many more issues as understanding of it and its implications develop through the courts and legal community in Oman. We shall be looking to provide further guidance in the coming weeks and months.

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