

This MoU aims to strengthen the coordination and cooperation between the two regulators.

Ian Johnston, Chief Executive of the DFSA underlined that "as regulators of financial centres, founded on common law principles", the DFSA and the FSRA "apply regulation which meets the requirements of the international standard-setters: the Basel Committee on Banking Supervision; the International Organisation of Securities Commissions; the International Association of Insurance Supervisors; and the Financial Action Task Force".

This heralds a link between the common law Court in the DIFC, and the ADGM.

### Dubai: Intellectual Property Window Launched

The Commercial Compliance & Consumer Protection (CCCP) sector in the Department of Economic Development (DED) in Dubai has

announced the launch of an "Intellectual Property Gateway", the first-of-its-kind electronic gateway in the region, for receiving complaints on trademark infringement through the DED website ([www.dubaied.gov.ae](http://www.dubaied.gov.ae)).

The gateway automates all procedures relating to intellectual property (IP) issues, starting from receiving complaints and opening files to receiving reports from field officers and submitting them to trademark owners.

The IP gateway seeks to protect the rights of trademark owners and enable businesses to grow sustainably as part of DED's increasing compliance with the directives of the Dubai Government to replace all manual procedures with smart systems.

This measure seems another first for Dubai. Many entrepreneurs have been pressing for further developments in the region.



## Oman

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### New Code of Corporate Governance for Publicly Listed Companies Comes into Force

On 21 July 2016, the Code of Corporate Governance for Publicly Listed Companies came into force in Oman. The new Code (issued by CMA Circular No. E/4/2015) replaced the previous Code issued in 2002.

As in the case of the previous Code, the new Code is legally binding and companies with shares listed for public trading (public companies) on the Muscat Securities Market (MSM) are legally obliged to follow its provisions as part of their conditions of listing on the MSM in accordance with Article 50(8) of the Capital Market Law (Royal Decree No. 80/98).

The new Code is presented in a format of 14 high-level principles of good corporate governance, with each having detailed terms that must be complied with.

A public company's Board has primary responsibility for ensuring compliance with the new Code. A public company's executive management and external auditors also have significant compliance-related obligations under the new Code.

Key changes effected by the new Code include:

- restricting Board membership to non-executive members;
- stringent qualifications for an individual's nomination as an Independent Director;
- revised rules concerning related party transactions and avoiding conflicts of interest (including restricting Board members from voting on resolutions where he/she may be an interested party and prohibiting the CEO of the public company from serving as CEO of its subsidiary);
- requiring the Board to establish a nomination and remuneration committee in addition to the pre-existing requirement for it to establish an Audit Committee;
- requiring members of the Board to undergo periodic training on corporate governance and sustainability and for their performance as directors to be assessed and reported upon by an external agency.

The regulator, the Capital Market Authority (CMA), has a track record of rigorously monitoring a public company's compliance with the previous Code through onsite inspections and compliance audits and it is anticipated that the CMA will continue to monitor compliance with the provisions of the new Code equally robustly.

The Board is required to report on the public company's compliance with the new Code in the company's annual report for the previous financial year. Boards will need to ensure that the public companies they lead are fully compliant with the new Code no later than 31 December 2016 so that they can certify compliance in the public company's next annual report.

In order to bring public companies up to speed with the requirements of the new Code, Boards and Board committees need to:

- introduce additional policies for internal and external information disclosure, delegation of authority, and ethics and professional conduct;
- establish a nomination and remuneration committee and its terms of reference;
- put in place remuneration policies that deals with payment of bonuses, allowances and incentives;
- develop a succession plan for the Board and identify suitable independent directors;
- implement a risk management plan.

We find that public companies are preparing for life under the new Code through undertaking gap analyses to assess their current position followed by developing road-maps for achieving compliance with the new Code.

The CMA has been supportive of public companies through organising seminars on the new Code and providing clarifications on its provisions. However, the CMA has been steadfast in declining waiver applications for derogation from the new Code. The CMA expects public companies to be compliant with the new Code by the end of the year.

### Radical Overhaul of Oman's Traffic Law

Royal Decree No. 38/16 published on 4 August 2016 has introduced major amendments to Oman's Traffic Law (Royal Decree No. 28/93). The 21 amendments give the Royal Oman Police (ROP) greater powers to charge drivers and vehicle owners with a range of new offences which criminalise common high-risk and anti-social driving behaviours as well as to impose more stringent penalties by way of prison terms and increased fines for existing offences.

The enactment of the Decree follows more than two years of extensive discussion and deliberation by the State Council and the *Majlis As Shura*, the upper and lower houses of the Council of Oman, as well as public debate in the press and on social media. A hashtag on twitter created by the State Council in December 2014 was flooded with suggestions from the public on the need for

more effective deterrents against dangerous driving habits in the face of the continuing high toll of road crash death and injury in Oman.

Hallmarks of the Decree are the greater clarity in defining different categories of offences and fitting the penalty to both the nature and consequences of an act. For example, a new Article 50 introduces a sliding scale of penalties based on the degree of incapacity (defined as inability to work) suffered by third parties. Driving at high speed, recklessly, dangerously or in a manner posing risk to life or property, and dangerous overtaking and overtaking where not permitted or on the hard shoulder result in penalties of 10 days to 2 months imprisonment and/or a fine of OMR 100-500. This increases to 6-24 months and/or a fine of OMR 1000-3000 where a person suffers death or permanent disability. Negligent driving is punishable by up to 1 month imprisonment and/or a maximum fine of OMR 300 rising to 3-12 months and/or a maximum fine of OMR 2000 in the event of death or permanent disability. Driving a vehicle under the influence of alcohol, drugs, or any other psychotropic substances attracts a penalty of 1 to 6 months imprisonment and/or a fine of OMR 400-800. In cases resulting in death or permanent disability of a person the penalties increase to 12-36 months imprisonment and/or a fine of OMR 1500-3000. The above penalties are doubled if the offender commits the same offence within three months of the first offence.

Press coverage of the Decree has largely focused on these more stringent penalties, in particular the introduction of a prison term and hefty fine for holding a mobile phone or other electronic device while driving. However, the expanded scope of liability that a vehicle owner/person in charge of a vehicle may face if they allow another person to drive the vehicle has largely escaped notice. New Article 41 makes it an offence for a vehicle owner/person in charge of a vehicle to allow a person to operate the vehicle without a licence, with the wrong class of licence for the vehicle, or under the influence of alcohol, drugs or psychotropic substances or impaired by reason of illness. If such an offence is committed, the vehicle owner may be found vicariously liable for any offence committed by the driver if he/she does not provide the ROP with accurate information about the identity and whereabouts of the driver and circumstances of the offence. This has wide-ranging implications for fleet managers as well as individuals.

Other notable features of the Decree are the criminalisation of common high-risk behaviours such as dangerous crossing of flowing wadis, driving down carriageways in the

wrong direction, performing stunts, forming (celebratory) convoys, souping up vehicles, throwing litter from vehicles, unsafe load shedding and various forms of obstructing the flow of traffic.

This radical and long overdue overhaul of Oman's traffic rules aims to deliver substantial road safety benefits and to ensure the smooth flow of traffic on Oman's busy and expanding road network. Although it does not incorporate the point-based disqualification system long-advocated by road safety experts, it has in the main met with public approval. Also viewed positively is the transfer of responsibility from the traffic directorate to the Inspector General of the ROP for regulating road, passenger and pedestrian safety, including road layout, architecture and signage in accordance with international standards.

### **Ministerial Decision No. 139/2016 Eases the Rules for Setting Up a Business in Oman**

In mid-May, Oman's Minister of Commerce and Industry issued a decision changing the rules relating to the registration of new companies and enterprises other than joint stock companies (Ministerial Decision No. 139/2016). Following this decision, entrepreneurs setting up business will not be required to submit a capital certificate or any other documentary evidence of the company's proposed share capital to the Ministry of Commerce and Industry (MOCI) at the time of the company is registered. Instead, details of the share capital in the business and any other information required by MOCI must be submitted within four months of the end of its financial year.

This decision aims to mitigate the difficulty posed by provisions of Oman's Commercial Companies Law which require a temporary "company under formation" bank account to be opened prior to the company being registered. A certificate issued by the bank confirming the deposit by the shareholders of their respective shares in the capital had to be issued and submitted to the MOCI as a precondition to the registration of the company. The new decision will streamline the company registration procedure, thereby enabling entrepreneurs to open a fully-fledged bank

account immediately following the issuance of the company's registration certificate. It will also avoid the bureaucratic and time-consuming process for return of capital in "under formation" accounts to shareholders in the event that company formation does not proceed for any reason.

The decision to relax the capital certificate requirement is a welcome move to ease the rules for doing business in Oman for both Omani entrepreneurs and foreign investors. However, until such time as the bank certificate is provided to the MOCI, the company's commercial registration at the MOCI will be recorded as being temporary. From an operational viewpoint, the company would be unable to enter into contracts during this potentially long period other than contracts which include the final incorporation of the company as a condition precedent.

There is a risk that third parties may contract with a new company without being aware of its temporary existence. Although the company's promoters would remain liable for contractual commitments made to third parties until final incorporation, it underlines the importance of the MOCI Company Register for a business contemplating entering into a contract with another recently-established business. The action the MOCI will take if a company with a temporary registration does not provide a certificate within the specified time period should become clear as the new policy is tested.

Oman is currently ranked 70 out of 189 economies in the World Bank's global index 2016 for Doing Business 2016 which measures the procedures and legislation which promote investment and trade and highlights obstacles to doing business. While Oman has moved up 7 spots in the ranking compared to 2015, it comes a long way behind neighbouring UAE ranked 31 (the best in the MENA region) and behind Bahrain (65) and Qatar (68). The decision, which has not yet been published in the Official Gazette and therefore takes effect as an internal ministerial order, is one of a raft of measures that the Omani Government is putting in place to overcome the obstacles that investors and entrepreneurs face in order to strengthen the private sector and diversify the economy in line with Oman's Vision 2020 development master plan.