

## Setting up a business in Oman

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Oman's legal system is designed to make Oman an attractive investment destination for investors and lenders alike. Foreign investment in Oman is primarily governed by the Commercial Companies Law (CCL) and the Foreign Capital Investment Law. Banks are licensed by the Central Bank of Oman (CBO) to finance projects and other commercial activities, and to provide investment banking and corporate finance services to listed and non-listed companies.

The CCL provides for five types of business entity, the most commonly-used forms being limited liability companies (LLCs) closed and public joint stock companies. A closed joint stock company (SAOC) does not offer shares to the public for subscription and its shares are not traded on the Muscat Securities Market (MSM). A public joint stock company (SAOG), must upon its incorporation or conversion from a SAOC to SAOG, offer at least 40% of its issued share capital for public subscription through a initial public offering for listing and trading on the MSM. Sector-specific laws may reduce the general 40% minimum public offering requirement contained in the CCL. For example, the Public Authority for Electricity and Water is empowered to decide the percentage of shares to be offered for public subscription for a company licensed under the Electricity and Water Sector Law (Sector Law) upon conversion to a SAOG. Certain activities may only be undertaken by SAOCs or SAOGs under sector-specific laws; for example, insurance companies and banking institutions must take the form of SAOGs under Oman's Insurance Companies Law (ICL) and Banking Law (OBL) respectively. Companies licensed under the Sector Law, the Telecommunications Law or set-up to conduct an activity which has been privatised under the Privatisation Law, in general, must be set-up as SAOGs. However, if so authorised by royal decree, privatised companies may be established initially as SAOCs provided that they convert to SAOGs through a public offering within a specified timeframe.

The minimum capital requirements are OR150,000 for an LLC with foreign participation; OR500,000 for an SAOC; and OR2 million for an SAOG. These minimum capital requirements may be increased depending on the nature of the business or projects to be undertaken by the company, and whether or not it is 100% foreign-owned. Companies operating under the OBL, ICL and/or the Capital Markets Authority Law (CMAL) to provide banking, investment banking, insurance, brokerage or other financial services are obliged to maintain the applicable minimum capital as provided as may be raised from time to time.

The CCL allows joint stock companies to issue partly-paid shares; paying 50% upon incorporation with the balance being paid within three years of the date of incorporation. The CCL also provides for the issue of both ordinary and preference shares although, in practice, the authorities rarely allow this. A subsequent increase in the share capital of a joint stock company may only occur through a rights issue or a private placement of shares in favour of an investor who satisfies the relevant conditions in the CCL and

subject to the approval of the shareholders of the company in extraordinary general meeting (EGM).

The entire capital of an LLC must be paid upon incorporation. An LLC may not have different classes of shares and the law does not expressly provide for a private placement of shares in an LLC in favour of a specified investor through the issuance of new shares.

Consolidation and/or expansion of businesses in Oman may occur through mergers and acquisitions in accordance with the applicable regulatory framework. In general, the CCL allows for mergers through incorporation or absorption with the approval of a company's EGM. Mergers require regulatory consents and are subject to the maximum threshold of shareholdings to be held by individual shareholders (or persons acting in concert) in the merged or the acquired company not exceeding the limits set down in the relevant law. By way of example, the CMAL requires any shareholder (or persons acting in concert) in a SAOG seeking to increase his shareholding above 25% first to obtain the approval of the Capital Market Authority. Similarly, a shareholder intending to increase his shareholding in a banking company above 10% may do so only after obtaining CBO approval. An investor seeking a share in the electricity and water or telecommunication sectors, which may result him (or persons acting in concert) owning an equity stake in excess of the maximum individual shareholdings specified for such sectors, requires the prior approval of the relevant regulators. Currently Oman does not have a take-over code governing hostile takeovers, tender offers, competing bids and squeeze out provisions. The absence of such provisions can present challenges in a takeover scenario.

SAOGs may, with the approval of an EGM, in accordance with the CCL and subject to the provisions of the CMAL, issue, through a public offering or a private placement, convertible or non-convertible bonds. All bonds within an issuance must be of the same nominal value and offered on the same terms and conditions. The total value of the bonds issued may not exceed the issued share capital of the company and must be paid in full on subscription. Secured bondholders will have priority over all other unsecured creditors of the company.

Additionally companies may raise funds in accordance with their bylaws from local and international banks on a project-finance, with or without recourse, basis. Typically, corporate borrowers will provide lenders with security packages in the form of commercial mortgages, legal mortgages, and share pledges registered with the relevant authorities. For example, commercial mortgages are registered at the Ministry of Commerce and Industry, legal mortgages at the Ministry of Housing and share pledges at the Muscat Clearing and Depository Company. Borrowers have to ensure that all relevant consents and permits required for the conduct of the business activity with respect to which security interests are created, are kept current. Failure to do so may result in the company no longer having the capacity to conduct its business activities. A security interest may only be enforced through court proceedings. At the present

time, Omani law does not provide for self-help enforcement remedies.

Joint stock companies are required to file annual audited accounts to the MOCI, and the CMA in the case of SAOGs, and the Ministry of Finance (MOF) within three months of the end of their financial year. The requirement to produce accounts is now governed by the CCL, CMAL and the MOF acting through the Department of Taxation Affairs in order to ensure that companies pay taxes in accordance with the Tax Law. The tax rate for the financial year beginning January 2017 is set at 15% of the taxable income. Small and medium enterprises with a share capital of OR50,000 or less, having annual revenue of OR100,000 or less and who employ fewer than 15 employees are taxed at 3%. Companies which satisfy certain criteria under the Tax Law and the Encouragement of Industry Law may be eligible for tax exemptions for a set period. A recent amendment to Oman's Tax Law introduced a withholding tax payable on royalties, remuneration for conducting research and development, and using or the right to use computer programs, fees for management or performance of services and distribution of dividends or interest.

Oman's legislative authorities continue to work closely with stakeholders to ensure that the country's legal framework evolves in line with best international practice with the objective of providing a transparent and well-regulated investment environment for foreign investors.