



Oman

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Changes to the Rules Concerning the Election of Directors in Public Companies

Regulations for the Election of Directors in Public Joint Stock Companies (Ministerial Decision No. 137/2002 - Directors' Election Rules) is a key component of Omani regulation governing the election of Directors to the Board of Directors of a public joint stock company (public company).

The Directors' Election Rules:

- establish the structure of the Board by determining the minimum number of non-executive Directors and independent Directors;
- provide the eligibility criteria for Directors;
- outline the nomination and election processes underpinning the nomination and election of Directors;
- identify key responsibilities of the Board and its chairperson including the establishment of committees; and
- set out the consequences of a Board being improperly constituted or a Director ceasing to be eligible to hold office.

Separately, on 21 July 2016, the Code of Corporate Governance for Publicly Listed Companies issued by the Capital Market Authority (CMA) came into force in Oman. The New Code (issued by CMA Circular No. E/4/2015) replaced the Code of Corporate Governance for Muscat Securities Market Listed Companies issued in 2002.

As the Directors' Election Rules were designed to complement the previous Code, certain provisions of the new Code resulted in conflicts with provisions of the Directors' Election Rules. Conflicting provisions included:

- the structure of the Board, where the New Code requires all Directors to be "non-executive" i.e. not holding an executive position and drawing a monthly/annual salary from the public company;
- the criteria for categorisation as an "independent director";
- eligibility criteria for nomination as a Director; and
- appointment of a "Managing Director".

To eliminate conflicts between the provisions of the new Code and the Directors' Election Rules, the Omani authorities have issued Ministerial Decision No. 201/2016 to amend the Directors' Election Rules. MD No. 201/2016 amends the Directors' Election Rules in order to:

- align the structure of the Board with the Board structure the new Code provides for, i.e., for the Board to be comprised, exclusi-

vely, of non-executive members;

- mirror the definition of "independent Director" with the definition contained in the new Code;

- replicate the same eligibility criteria (as contained in the new Code) that an individual needs to meet in order to be nominated to the Board; and

- rescind provisions in the Election Rules that allow for appointment of a Managing Director, bringing its provisions in line with the new Code.

A noteworthy amendment to the Directors' Election Rules concerns Article 2(8). Article 2(8) of the Directors' Election Rules disqualified an individual from nominating himself to the Board of a public company, if the individual is a member of the Board of a public, or closed, joint stock company headquartered in Oman, which was involved in a similar business as that of the public company. MD No. 201/2016 expands this restriction by also disqualifying an individual from nominating himself to the Board of a public company, if the individual is an employee of a public, or closed, joint stock company headquartered in Oman.

In practice, the amendment to Article 2(8) has created difficulties for Boards. We have made representations to the CMA on behalf of corporate shareholders whose nominees have been affected by this amendment and have been successful in obtaining case-specific, time-bound waivers from the application of amended Article 2(8) of MD No. 201/2016. In such cases, when assured of the negative impact on a public company, the CMA has agreed to defer the application of amended Article 2(8) during the current term of the Board and apply it following the next Board election.

CMA Issues Disclosure Guide for Public Listed Companies

In recent years, the CMA has issued numerous decisions, circulars and guidance notes concerning the disclosure of material information by companies with shares listed for public trading (public companies) on the Muscat Securities Market (MSM).

In a move welcomed by compliance and disclosure officers in public companies who are responsible for ensuring adherence to the directives, the CMA has issued a guide, entitled the "Disclosure Guide for Public Listed Companies". The Guide is divided into four main sections as follows:

- General: this lists public companies' disclosure obligations and provides high-level guidelines with respect to the timing,

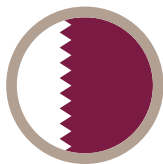
responsibility and manner of disclosures. Importantly, the CMA emphasizes that a failure of electronic data transmission systems or network failures would not absolve public companies from liability for failing to make timely disclosure of material information;

- Specific requirements for Disclosure of Financial Information: this sets deadlines for disclosure of quarterly and annual audited and unaudited financial statements;

- Precedents: this provides templates which public companies may use in order to present their disclosures concerning financial matters, corporate actions, corporate events and other material information; and

- Disclosure Timing Model: this is a one-page infographic of a public company's disclosure obligations.

Essentially, the Guide consolidates in a single, user-friendly publication the earlier disclosure requirements contained in the Commercial Companies Law (Royal Decree No. 4/74), which remain in force, as well as the directives issued by the CMA over the last ten years. The Guide is published in Arabic and English and includes useful cross-references to extant legislation, circulars and directives



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Upcoming Changes for Expatriates in Qatar

Since its award of the 2022 FIFA World Cup, Qatar's labour practices and the rights of expatriate workers have come under increasing scrutiny by the international community. In response to this scrutiny, Law No. 21/2015 (new Expatriate Law) was promulgated to address the various issues associated with the *kafala* system established under Law No. 4/2009 (Sponsorship Law). Expatriates in Qatar and foreign commentators have generally regarded any update of the Sponsorship Law as a step in the right direction. However, the question remains: what changes are introduced by the new Expatriate Law?

The Kafala System: in order to identify the changes the new Expatriate Law was expected to introduce in mid-December 2016, it is necessary to consider the current system pursuant to the Sponsorship Law. According to the Sponsorship Law each expatriate seeking to work and/or reside in Qatar must have a sponsor (families and certain dependants may be sponsored by the head of the household). Additionally, an expatriate is not permitted to leave the country unless an exit permit has been signed by his sponsor. The exit permit concept has been one of the primary sources of concern for numerous human rights groups. Furthermore, the Sponsorship Law included a two-year prohibition period during which a

formerly sponsored expatriate was not permitted to re-enter Qatar for employment without a "no objection certificate" from his former sponsor (NOC).

The Changes of the New Expatriate Law: although an "exit permit" is still required in order for an expatriate to depart the country, expatriates are now permitted to apply directly to the "competent body" at the Ministry of Interior (MOI) for exit permits at least 3 days prior to the intended date of departure. While this is an improvement over the previous practice, the text of Article 7 of the new Expatriate Law makes clear the employer's ability to object to and block the expatriate's application, in which case the expatriate will then have to seek permission from the Expatriate's Exit Grievance Committee.

Regarding changing employers, the new Expatriate Law introduces provisions to make such changes easier in certain specific circumstances. For example, an expatriate employed on the basis of a fixed term contract will be permitted to change employers at the expiration of his employment. Similarly, employees who have been employed on an "indefinite term" contract but have worked for an employer for more than five years will also be permitted to change employers without the need for an NOC. However, a NOC will still be required where the expatriate seeks to transfer to a new employer prior to the expiration of his fixed term contract, or if he has an indefinite