

Oman: New code of corporate governance for publicly listed companies comes into force

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Ardeshir Patel of Al Busaidy, Mansoor Jamal & Co in Oman discusses corporate governance changes

On July 21 2016, the Code of Corporate Governance for Publicly Listed Companies (the New Corporate Governance Code or New Code) issued by Oman's Capital Market Authority (CMA) came into force in Oman. The New Code (issued by CMA Circular E/4/2015) replaced the 'Code of Corporate Governance for Muscat Securities Market Listed Companies' (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 obliged to comply with it as a condition of listing on the MSM in accordance with Article 50(8) of the Capital Market Law (Royal Decree 80/98).

When issued in 2002, the Previous Code was the first corporate governance code in the Arab Gulf Cooperation Council. It introduced corporate governance standards and guidelines to augment legal provisions contained in Omani corporate laws. The New Code builds on the framework of the Previous Code and obliges Public Companies to upgrade to higher standards of compliance, reporting and investor protection.

The New Code adopts a somewhat novel structure and is presented in a format of 14 Core (high-level) Principles of good corporate governance with each Principle underpinned by detailed terms for achievement of such Principle. The New Code opens with a 'Statement of purpose', which captures the CMA's doctrine of corporate governance. This explicitly recognises the importance of corporate governance for the macro-economy both in terms of its promotion and growth as well as serving as its guardian.

As in the case of the Previous Code, a Public Company's Board has primary responsibility for ensuring its compliance with the New Code. However, the New Code additionally places considerable compliance-related obligations on the Public Company's executive management and external auditors.

Key changes effected by the New Code include:

- Restricting Board membership to non-executive members;
- Tighter and more 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 Capital Market Authority (CMA) has a track record of rigorously monitoring compliance with the Previous Code through onsite inspections and compliance audits. It is anticipated that the CMA will continue to monitor compliance with the provisions of the New Code equally robustly.

Boards are required to report on the compliance with the New Code in the Listed Company's annual report for the previous financial year. Boards will need to ensure that the Listed Companies they lead are fully compliant with the New Code no later than December 31, 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 for inclusion in a pool, from which shareholders can elect independent directors. Moreover the pool can also be drawn on by the Board in order to fill vacancies occurring during the term of the incumbent Board;
- 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.

A key area of the New Code with which Public Companies are currently struggling is with respect to identifying and attracting suitable independent directors to the Board. Here, the reality is that stewardship in the interest of the Public Company, its shareholders, stakeholders and the macro-economy is an expense of the Public Company. Attracting suitable independent directors with the expertise and experience to perform a long term role and assume the attendant responsibilities and risks of such role is a challenge in itself for Public Companies. This challenge is compounded by restrictions contained in Omani corporate law on the aggregate remuneration and sitting fees that a Public Company may pay its Board. These are likely to result in inadequate financial incentives being available to attract the right talent.

Another area of concern for Public Companies is with regard to handling of related party transactions. The New Code requires all related party transactions entered into by a Public Company in the normal course of its business to be approved by the Board following review of the related party transaction by its audit committee. In situations where materials and/ or services need to be sourced from related parties at short notice or in emergency situations, these compliance requirements have potential to create significant operational hurdles as obtaining audit committee review and Board sign-off may be an onerous and time consuming task, even if obtained through circular/written resolutions.

During the current implementation phase, the CMA has supported Public Companies by organising seminars on the New Code and providing clarifications on its provisions. However, the regulator has been steadfast in declining waiver applications for derogation from the provisions of the New Code, an indication that it expects Public Companies to be compliant by the end of the year.

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Ardeshir Patel is a partner and heads AMJ's corporate and capital markets team. His practice focuses on capital markets transactions, public company advisory matters and mergers and acquisitions. Patel routinely advises on corporate and securities matters including Oman's corporate governance regulatory landscape, directors' duties, listing and disclosure requirements, and competition rules. He assists clients with implementing new governance statutes, rules and regulations; auditing compliance and evaluating disclosure issues. He also provides board and management continuing education programs. Patel also advises issuers and underwriters on offerings of equity and debt securities and has extensive experience in domestic and cross-border initial public offerings. He is a UK-qualified solicitor and a solicitor of the High Court of Mumbai ranked by the IFLR and Chambers Global as a leading lawyer and recommended by the Legal 500.

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