

Jurisdiction: Oman

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— BARRISTERS & LEGAL CONSULTANTS —

1. What are the key laws and regulations that govern mergers and acquisitions in your jurisdiction?

Merger and acquisition transactions in Oman fall within three main categories: (a) acquisition of shares in a target company; (b) asset purchases; and (c) acquisition of shares through a private placement exercise, involving the target company issuing new shares to an acquirer pursuant to a capital increase.

The application of laws and regulations to a merger or acquisition depends on which of the three main categories the transaction falls into and, in the case of a share purchase transaction, also on the legal status of the target (i.e. whether it is a limited liability company ('LLC'), a closed joint stock company ('Private Joint Stock Company'), or a public joint stock company ('Listed Company').

The following laws are relevant to all merger and acquisition transactions:

- (a) The Commercial Companies Law (Royal Decree 4/74) ('CCL');
- (b) The Oman Commercial Law (Royal Decree 55/90);
- (c) The Competition and Anti-Trust Law (Royal Decree 67/2014) ('Competition Law'); and
- (d) The Civil Transaction Law (Royal Decree 28/2013).

The following laws and regulations come into play only when the target involved is a Listed Company:

- (a) The Capital Market Law (Royal Decree 80/98) ('CML');

- (b) The Law Establishing the Muscat Securities Depository and Registration Company (Royal Decree 82/98);
- (c) The Executive Regulations of the Capital Market Law (CMA Decision 1/2009); and
- (d) The CMA Regulations Governing Acquisition of 25% or more of the shares of a public joint stock company ('Significant Acquisition Rules').

In the event that a share purchase transaction involves an acquisition of shares by foreign acquirer(s) in a target company, the Foreign Capital Investment Law (Royal Decree 102/94) also applies.

The provisions of industry-specific laws and regulations also become relevant in the context of merger and acquisition transactions involving companies operating in certain business sectors (see question 14 for further detail).

2. What are the government regulators and agencies that play key roles in mergers and acquisitions?

In connection with transfers of shares in an LLC and asset purchase transactions, filings need to be made with the Ministry of Commerce and Industry ('MOCI').

A transfer of shares in a Private Joint Stock Company or Listed Company involves the Muscat Securities Market ('MSM') and the Muscat Clearing and Depository Company SAOC ('MCDC').

In the case of a significant acquisition of shares (25% or more of the issued share capital) in a Listed Company, the prior approval of the market regulator, the Capital Market Authority

(‘CMA’), is required under the CML and Significant Acquisition Rules.

If the transaction requires competition approval, then a filing needs to be made with the Public Authority for Consumer Protection (‘PACP’).

Industry-specific regulators and agencies also play a role where a transaction involves a target which is regulated by such a regulator or agency (see question 14 for further detail).

3. Are hostile bids permitted? If so, are they common in your jurisdiction?

The concept of a hostile bid is not covered by Omani legislation at present. We understand that the CMA is contemplating issuing a take-over code, applicable to significant acquisitions of shares in a Listed Company, which includes provisions concerning hostile bids. However, it is not clear at present when and in what final form the code is likely to be issued.

4. What laws may restrict or regulate certain takeovers and mergers, if any? (For example, anti-monopoly or national security legislation).

Article 7(b) of the CML prohibits one or more persons who/that are closely related from owning 25% or more of the shares in a Listed Company unless such shareholding is held in accordance with the Significant Acquisition Rules. The Significant Acquisition Rules require the CMA to accept or reject an acquirer’s application to acquire or increase its stake in a Listed Company to or above the 25% threshold within a week from the date on which a written application, explaining the case for the acquisition, is submitted to the CMA.

Foreign investors can, singly or collectively, own up to 70% of an Omani company’s share capital. However, if a foreign investor wishes to acquire more than 70% of the issued share capital of a target, the approval of Oman’s Council of Ministers is required.

For a foreign investor to make an investment in an Omani company, the investee company must have a minimum issued capital of OMR 150,000. This minimum issued capital requirement is increased to OMR 500,000 where a foreign investor proposes to acquire more than 70% and up to 100% of the share capital of the investee company.

Under the Competition Law, merger and acquisition transactions which involve economic concentration (defined as a transfer of shares or assets resulting in ‘dominance’ in a relevant market) must seek and obtain the approval of the PACP prior to closing a transaction. Dominance is defined as directly or indirectly controlling 35% or more of the market share of a particular market.

The acquisition of shares in an LLC through a share purchase is subject to statutory pre-emption rights vested by law under the CCL in other shareholders of the LLC.

There are also restrictions on the transfers of shares under industry-specific laws (see question 14 for further detail).

5. What documentation is required to implement these transactions?

In a share purchase involving a transfer of shares in an LLC, the main acquisition documents are:

- (a) a long-form share sale and purchase agreement, which includes detailed provisions concerning the transaction and includes representations and warranties, closing conditions and so on. This document is normally executed in English or in bilingual form (English and Arabic), and is normally prepared by the buyer’s lawyers;
- (b) an escrow agreement (if any) which is prepared by the buyer’s lawyers;
- (c) a disclosure letter (if any) which is prepared by the seller’s lawyers;
- (d) a short-form share sale and purchase agreement in the Arabic language which follows

a standard form issued by the MOCI. This document can also be executed in bilingual form (English and Arabic). It needs to be signed by representatives of the transaction parties at the MOCI. This normally takes place once all conditions precedent have been satisfied or waived. This document is also normally prepared by the buyer's lawyers;

- (e) an amendment deed to the target's constitutive contract to delete the name of the seller and include the name of the buyer. This document is also normally prepared by the buyer's lawyers.

In a share purchase involving a Private Joint Stock Company or Listed Company, the escrow agreement and short-form share sale and

purchase agreement are not necessary and are normally replaced by:

- (a) a tri-partite agreement entered into among the transaction parties and a broker (this document is normally prepared by the broker);
- (b) share transfer forms in the form issued by the MSM executed separately by each transaction party.

In an asset purchase transaction, the main acquisition documents are:

- (a) a long-form asset sale and purchase agreement, including detailed provisions concerning the transaction, and a detailed list of assets and representations and warranties concerning the assets, closing



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Omani banks, investment houses, issuers, asset managers, funds, private equity participants, multinationals, publicly-listed companies, and trading houses. He routinely advises on corporate and securities matters including corporate governance, directors' duties, listing and disclosure requirements, and competition rules. Recently Patel advised Italy's energy and telecom cable giant, Prysmian on its €100mn acquisition of a majority shareholding in Oman Cables Industry, and the divestment of a majority stake in Oman's leading cinema company to Majid Al Futtaim Cinemas. Other recent transactions include advising the government on its US\$2.5 billion international bond issue and its 'first of a kind' US\$-denominated sovereign sukuk (US\$500mn) by way of private placement.

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conditions and so on. This document is normally executed in English or bilingual form (English and Arabic), and is normally prepared by the buyer's lawyers;

- (b) an Arabic (or Arabic and English) short-form asset sale and purchase agreement recording the business sale, which is filed with the MOCI at closing.

In a transaction involving the acquisition of shares through a private placement exercise and the target company issuing new shares to an acquirer pursuant to a capital increase, the main acquisition documents are:

- (a) a long-form share subscription agreement, including detailed provisions concerning the transaction and conditions precedent to subscription;
- (b) an information memorandum;
- (c) minutes of the extraordinary general meeting of the target's shareholders approving the private placement of new shares;
- (d) amendments to the articles of association of the target company to reflect the increase in share capital;
- (e) filings on the commercial register maintained by the MOCI to record the increase in share capital.

In the event that the private placement exercise concerns a Listed Company, the transaction documents also include a prospectus to be filed with the CMA.

6. What government charges or fees apply to these transactions?

The registration of a transfer of shares in an LLC at the MOCI requires the payment of a transfer fee, which is based on value but capped at a nominal amount of OMR 100.

A transfer of shares in a Private Joint Stock Company or Listed Company needs to be undertaken by a licensed broker and requires the payment of brokerage. A broker is permitted

to charge brokerage of up to 0.35% of the value traded on each side of the trade (i.e. on the buy-side as well as on the sell-side). The brokerage includes a commission-based fee payable to the MSM, which is set at 0.1% of the value traded.

There are no prescribed fees payable for registering an asset transfer agreement with the MOCI. However, the registration of transfers of individual assets from the seller to the buyer incurs the payment of registration fees, the most substantial of which are real estate registration fees. Real estate registration fees are payable for registration of land transfers and are charged at 3% of the value of the land transferred.

There is no fee payable for recording a capital increase consequent upon a private placement exercise. However, in the case of a Listed Company, the MCDC charges Listed Companies an annual ad valorem fee that is calculated based on its issued share capital. A capital increase resulting from a private placement of shares results in the Listed Company being required to pay additional depository fees on account of the increased capital.

7. Do shareholders have consent or approval rights in connection with a deal?

The acquisition of shares in an LLC through a share purchase is subject to statutory pre-emption rights vested by law under the CCL in other shareholders of the LLC. In order for a transfer of shares in an LLC to go through, the shareholders of the LLC would need to waive their statutory pre-emption rights.

Shareholders do not have consent or approval rights in connection with a merger or acquisition involving a bilateral sale and purchase of shares in a Private Joint Stock Company or Listed Company.

An asset purchase transaction involving the sale by an Omani company (whether an LLC, a Private Joint Stock Company or a Listed

Company) of all, or a significant part, of its assets requires the approval of the shareholders of the company through a simple majority resolution (more than 50% of votes cast) at an ordinary general meeting.

An allotment of shares in favour of an acquirer, pursuant to a private placement exercise, involving the target company issuing new shares to the acquirer pursuant to a capital increase, needs to be approved: unanimously by shareholders where the target is an LLC; and through a special majority resolution (more than 75% of votes cast) at an extraordinary general meeting where the target is a Private Joint Stock Company or Listed Company.

8. Do directors and controlling shareholders owe a duty to the stakeholders in connection with a deal?

Directors of an Omani company owe fiduciary duties to the company itself and not directly to the shareholders of the company, or other stakeholders such as management, employees or creditors.

9. In what circumstances are break-up fees payable by the target company?

Break-up fees can be paid by the target company if the payment of such fees is approved by the shareholders of the target company. The approval needs to be: unanimous by the shareholders where the target is an LLC; and through a simple majority of votes cast at an ordinary general meeting where the target is a Private Joint Stock Company or Listed Company. It is not common for an Omani target company to agree on payment of break-up fees with an acquirer.

10. Can conditions be attached to an offer in connection with a deal?

Oman does not have takeover legislation in place, and consequently restrictions on conditional offers (e.g. as is often the case in tender offer regulations) do not apply.

Conditions normally included in a share purchase agreement include:

- (a) approval from regulatory authorities that have jurisdiction over the target company;
- (b) consents from third parties such as lenders, key clients/customers and suppliers of the target company;
- (c) no material adverse change or change of law having a material adverse effect on the business or prospects of the target occurring between the date of the share sale and purchase agreement and closing;
- (d) no breach of a material covenant having occurred between the date of the share sale and purchase agreement and closing.

Conditions precedent that are sometimes included involve:

- (a) the availability of acquisition funding;
- (b) the issuance of a legal opinion from counsel confirming satisfaction of the conditions precedent.

11. How is financing dealt with in the transaction document? Are there regulations that require a minimum level of financing?

There is no legal requirement on the level of financing. As mentioned above, Oman does not have takeover legislation in place which could be expected to prescribe such requirements.

12. Can minority shareholders be squeezed out? If so, what procedures must be observed?

There is no legal provision for minority shareholders to be squeezed out. However, it is possible for an acquirer to take a Listed Company private by moving for its conversion into an LLC or a Private Joint Stock Company and seeking its delisting.

As part of any such conversion and delisting process, the CMA would impose an exit offer obligation, which enables minority

shareholders to exit the company. However, in the event that minority shareholders do not participate in the exit offer, they would continue to remain shareholders of the delisted company, and they would not be subject to being squeezed out.

13. What is the waiting or notification period that must be observed before completing a business combination?

In transactions requiring clearance from the PACP under the Competition Law, the PACP is granted a period of up to 90 days, from the date of filing an application for merger clearance, to provide a response.

In the event that the PACP does not reply to the application within the stipulated 90 days, this is deemed an implied consent for the transaction to proceed.

In practice, the PACP normally replies to an application for merger clearance within a fortnight of the application being filed.

14. Are there any industry-specific rules that apply to the company being acquired?

The provisions of industry-specific laws and regulations also come into play in merger and acquisition transactions involving companies operating in certain business sectors. These are summarised below:

- (a) banking: for any entity to acquire more than 10% of the shares of any Omani bank, approval of the Central Bank of Oman is required;
- (b) securities business: for any person to own more than 15% of the shares of an Omani company which is licensed by the CMA to engage in securities related business, approval of the CMA is required;
- (c) electricity and desalinated water: investors wishing to acquire 20% or more of the voting capital of an electricity generation/desalination company supervised by

the Authority for Electricity Generation in Oman ('AER') must obtain the prior approval of the AER;

- (d) insurance: investors wishing to acquire control over an insurance company licensed to undertake insurance business in Oman must obtain the prior approval of the CMA, which is also the insurance regulator; and
- (e) telecommunications: investors wishing to make material acquisitions of shares of a telecommunications services provider licensed by the Telecommunications Regulatory Authority ('TRA') must obtain the prior approval of the TRA prior to any shareholding being acquired in such target company which would result in any of the following shareholding thresholds being exceeded: 5%, 10%, 20%, 33.3%, 50% and 66.6%.

15. Are cross-border transactions subject to certain special legal requirements?

There are no special legal requirements under Omani law for out-bound transactions.

However, in relation to in-bound transactions, there are restrictions on foreign ownership in Omani companies (see question 4 for further detail).

Additionally, there are restrictions on foreign investment in companies operating in certain business sectors. These are summarised below:

- (a) defence: the Omani defence sector (manufacturing and trading of weapons and munitions including armaments and military equipment) is exclusively government-controlled. Private sector investment in this sector is not permitted;
- (b) media: foreign ownership is not permitted in publication houses which publish newspapers. Such organisations must be wholly Omani-owned and controlled. There are no specific disclosure obligations or approvals imposed on media companies. However, the sale or transfer of ownership

in an enterprise that operates a newspaper, including a transfer of shares therein, would need to be pre-approved by the Ministry of Information;

- (c) mining: new mining licences may only be granted to establishments and companies having foreign investment equivalent to 30% or less of the mining company's share capital.

16. How will the labour regulations in your jurisdiction affect the new employment relationships?

There are no obligations for a target to inform or consult its employees or their representatives or obtain employee consent to a share sale or asset sale. However, in the event that employees are to be transferred to an acquirer following an asset sale, then the prior consent of each transferring employee is required. Moreover, employees are not automatically transferred to the buyer in a business sale, and the acquiring entity would need to enter into a new employment contract with each transferring employee.

Under the Oman labour law, a business transfer obliges the acquirer to accept a transfer of all employees of the target on their current terms of employment (together with their vested benefits, i.e. end of service benefits for expatriate employees and pension benefits for Omani employees). There is no statutory protection for employees against dismissal in the context of a share sale.

Recent guidelines issued by the Ministry of Manpower require that the labour clearances for expatriate employees are renewed on the payment of a fee in the event of a change of ownership or shareholding of a company that hires expatriate employees.

The employment status of Omani transferring employees needs to be registered with the government authorities and the pension authority (the Public Authority for Social Insurance ('PASI')).

The buyer needs to obtain new labour clearances for transferring expatriate employees from the Ministry of Manpower and record the change of their employer with Omani immigration authorities.

The pensions of the employees who are Omani citizens are dealt with under the Social Insurance Law. This involves pension contributions being made to PASI on a monthly basis by the employee and the employer. PASI contributions are calculated as 11.5% of the employee's salary (employer's contribution), 7% of the employee's salary (employee's contribution) and 1% of the employee's salary (government contribution, although in practice this is also paid by the employer).

In practice, each Omani employee needs to be registered with PASI, and each increment or change in the terms of employment needs to be recorded with PASI.

Once an Omani employee is transferred to the buyer, the buyer is obliged to pick up and take forward the seller's former obligation to make monthly pension contributions.

Expatriate employees are entitled to receive end-of-service benefits at the end of their service with a particular employer. End-of-service payments are calculated at the rate of half a month's basic salary for each of the first three years of employment service and one month's basic salary for each subsequent year of service.

Unless vested benefits are suitably dealt with in the agreements that document a business transfer, a buyer automatically inherits the seller's entire obligation to pay expatriate employees their vested end-of-service benefits.

17. Have there been any recent proposals for reforms or regulatory changes that will impact M&A activity?

We understand that the CMA is contemplating issuing a takeover code at some point in time. However, the final form of the code and the timeline for such issue are unclear at present.

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1. 您所在管辖区有哪些主要适用的并购法律法规？

阿曼的企业并购交易可分为三大类：(a) 收购目标公司的股份；(b) 购买资产；以及 (c) 通过私人配售的方式收购股份，包括目标公司依据增资的情形向收购者发行新股。

企业并购法律法规的适用取决于交易的类型，对于购买股份交易，还要取决于目标公司的法律地位（即目标公司是一家有限责任公司、封闭股份公司（私人股份公司）还是上市股份公司（“上市公司”））。

与企业并购交易相关的法律有：

- (a)《商业公司法》(王室法令 4/74) (“CCL”)；
- (b)《阿曼商法》(王室法令 55/90)；
- (c)《竞争与反垄断法》(王室法令 67/2014) (《竞争法》)；
- (d)《民事交易法》(王室法令 28/2013)；

以下法律法规适用于目标公司系上市公司的情形：

- (a)《资本市场法》(王室法令 80/98) (“CML”)；
- (b)《马斯喀特证券存托与登记公司设立法》(王室法令 82/98)；
- (c)《资本市场法实施细则》(CMA 决定 1/2009)；
- (d)《CMA 关于收购上市股份公司 25% 或 25% 以上股份的规定》(重大收购规定)。

倘若股份收购交易涉及外国收购者收购目标公司的股份，则《外资投资法》(王室法令 102/94) 也适用。

此外，当企业并购交易涉及特定行业的公司时，特定行业的法律法规也适用（详见问题 14 的答复。）。

2. 有哪些主要的并购政府监管机构？

有限责任公司的股份转让和资产购买交易需向工商部 (“MOCI”) 备案。

私人股份公司或上市公司的股份转让需经马斯喀特证券市场 (“MSM”) 和马斯喀特结算与存托公司 SAOC (“MCDC”)。

上市公司的重大股份收购 (25% 或 25% 以上已发行股本)，需根据 CML 及重大收购规定获得市场监管机构资本市场管理局 (“CMA”) 的事先批准。

倘若交易需获得竞争审批，则需向消费者保护局 (“PACP”) 备案。

当交易的目标公司受特定行业监管机构的监管时，此等监管机构也发挥一定的作用（详见问题 14 的答复。）。

3. 是否允许恶意收购？如果允许，恶意收购在您所在的管辖区很普遍吗？

阿曼现行法律并没对恶意收购作出规定。据悉，CMA 目前正考虑对上市公司的重大股份收购颁布一项收购条例，其中包括恶意收购相关条款。但条例的颁布时间和最终形式目前尚不明确。

4. 有没有哪些法律对某些收购和合并具有限制或监管作用？(例如，反垄断或国家安全法)

CML 第 7 条 (b) 禁止一人或者关系密切的多人持有上市公司 25% 或 25% 以上股份，依照重大收购条例持股的情况除外。重大收购条例要求 CMA 必须在收到说明收购案例的书面申请后一周内，接受或拒绝收购者收购或者增股至上市公司 25% 或 25% 以上股份的申请。

外国投资者最多可以单独或者共同持有阿曼公司 70% 股本。如果外国投资者希望收购目标公司超过 70% 的已发行股本，则应获得阿曼部长会议的批准。

外国投资者有意投资阿曼公司的，被投资公司的发行股本必须至少达到 150,000 阿曼里亚尔。外国投资者有意收购被投资公司 70%-100% 股本的，则最低发行股本要求增至 500,000 阿曼里亚尔。

根据《竞争法》，涉及经济集中（是指导致相关市场具有“支配”地位的股份或资产转让）的企业并购交易必须获得 PACP 的批准后，才能达成交易。所谓“支配”是指直接或间接控制特定市场 35% 或以上市场份额。

如果是通过股份购买的方式收购有限责任公司股份的，根据 CCL 有限责任公司其他股东享有法律赋予的法定优先购买权。

特定行业法律也有股份转让限制（详见问题 14 的答复。）。

5. 进行这些交易时需要哪些文件？

有限责任公司股份转让的主要收购文件包括：

- (a) 长式股份买卖协议，包括详细的交易条款、声明与保证、成交条件等。该文件一般由买方律师用英语或双语（英语和阿拉伯语）制定；
- (b) 买方律师制定的托管协议（如有）；
- (c) 卖方律师制定的披露函（如有）；
- (d) 简式的阿拉伯语股份买卖协议，参照 MOCI 印发的标准格式。该文件也可用双语（英语和阿拉伯语）制定。需在 MOCI 由交易各方代表签署。一般必须满足或免除设定的所有条件后才能签署该文件。文件一般也由买方律师制定；
- (e) 删除卖方名称并加入买方名称的目标公司组建合同修订本。该文件一般也由买方律师制定。

若是私人股份公司或上市公司的股份购买，则无需托管协议和简式股份买卖协议，取而代之的一般是以下文件：

- (a) 交易双方以及经纪人达成的三方协议（该文件一般由经纪人制定）；
- (b) 各交易方按 MSM 公布的格式分别制定的股份转让表。

资产购买交易的主要收购文件包括：

- (a) 长式资产买卖协议，包括详细的交易条款、资产清单、有关资产的声明与保证、成交条件等。该文件一般由买方律师用英语或双语（英语和阿拉伯语）制定；
- (b) 简式的阿拉伯语（或者阿拉伯语与英语双语）资产买卖协议（记录业务出售），成交时该文件应当向 MOCI 备案。

若是通过私人配售以及目标公司依据增资的情形向收购者发行新股的方式进行股份收购交易，则主要收购文件包括：

- (a) 长式股份认购协议，包括详细的交易条款和认购的先决条件；
- (b) 信息备忘录；
- (c) 目标公司批准私人配售新股的临时股东大会会议记录；
- (d) 反映目标公司股本增资的公司章程修订本；
- (e) MOCI 保留的记录股本增资的商业登记册备案文件；

若是上市公司的私人配售，则交易文件还包括向 CMA 备案的招股说明书。

6. 这些交易须缴纳哪些政府费用？

在 MOCI 登记有限责任公司的股份转让需缴纳转让费，转让费一般根据转让价值，但不超过象征式的 100 阿曼里亚尔。

私人股份公司或上市公司转让股份应由持牌经纪人进行，需缴纳佣金。经纪人可以向交易各方（即买卖双方双方）收取最高不超过交易价值 0.35% 的佣金。佣金包含了应向 MSM 缴纳的手续费，一般为交易价值的 0.1%。

在 MOCI 登记资产转让协议无需缴费。但如果卖方向买方转让个人资产，则需缴纳登记费，其中大部分是房地产登记费。登

记土地转让也应缴纳房地产登记费，一般为所转让土地价值的 3%。

登记私人配售增资无需缴费。但如果是上市公司，则 MCDC 会向上市公司按年收取从价费，该费用根据已发行股本计算。上市公司私人配售增资需对增资部分缴纳额外的存托费。

7. 交易是否需要股东的同意或批准？

如果通过购买股份的方式收购有限责任公司的股份，有限责任公司其他股东根据 CCL 享有法律赋予的法定优先购买权。为了通过有限责任公司的股份转让方案，有限责任公司股东需放弃法定优先购买权。

私人股份公司或上市公司股东通过双方股份买卖的方式实现合并或收购的，股东不享有同意或批准权。

如果资产购买交易涉及阿曼公司（包括有限责任公司、私人股份公司和上市公司）

出售所有或大量资产，则需通过普通股东大会上的简单多数决议（超过半数投票），获得公司股东的批准。

如果私人配售涉及目标公司以增资的形式向收购者发行新股，需按以下规定获得批准：若目标公司是有限责任公司，则需股东一致批准；若目标公司是私人股份公司或上市公司，则需在临时股东大会上通过特别多数决议（75% 以上投票）的方式批准。

8. 董事和控股股东是否对交易相关利益者负有任何责任？

阿曼公司董事向公司本身承担诚信义务，但不对公司股东或管理层、雇员或债权人等其他利益相关者直接承担诚信义务。

9. 哪些情况下，目标公司须支付分手费？

如获得目标公司股东的批准，则目标公司可支付分手费。批准方式如下：若目标公



Ardeshir D Patel

合伙人, Al Busaidy, Mansoor Jamal & Co.

Ardeshir Patel 是公司的合伙人，领导 AMJ 的公司和资本市场团队。他是私人与上市企业并购、合资企业、债务与权益资本市场交易方面的专家。这些交易涵盖各行各业，特别是能源与水资源、投资与金融服务、零售及制造业。Patel

一般担任政府机构、国际银行、海湾合作委员会银行、阿曼顶尖银行、投资公司、发行人、资产管理人、基金、私募股权参与者、跨国公司、公开上市公司和贸易商行的代表。经常就企业与证券事宜提供咨询，包括企业治理、董事职责、上市与披露要求、竞争条例等。最近，Patel 曾建议意大利能源与通信电缆巨头普睿司曼集团以 1 亿欧元收购阿曼电缆行业多数股权，并将阿曼一家顶尖电影公司的多数股权转移至 Majid Al Futtaim 电影公司。近期其他的交易包括政府发行 25 亿美元国际债券以及通过定向发行的方式第一次发行美元伊斯兰政府债券（5 亿美元）。

Patel 是英国合资格律师，是孟买高等法院的律师。他获《钱伯斯》及《IFLR》杂志评为顶级律师，并受到《Legal 500》的推荐。

司是有限责任公司，则需股东一致批准；若目标公司是私人股份公司或上市公司，则需在普通股东大会上通过简单多数决议的方式批准。一般阿曼目标公司不会同意向收购者支付分手费。

10. 要约可否附加交易相关的条件？

阿曼没有收购法律，因此条件性要约限制（常见于要约收购条例）不适用。

股份购买协议所含条件一般包括：

- (a) 取得对目标公司具有管辖权的监管机构的批准；
- (b) 取得目标公司贷款人、关键客户及供应商等第三方的同意；
- (c) 股份买卖协议生效日与成交日期间目标公司的业务或前景没有重大不利变化或者相关法律没有发生对业务或前景造成重大不利影响的变化；
- (d) 股份买卖协议生效日与成交日期间未发生对实质性条款的违约。

有时还包括以下先决条件：

- (a) 收购资金是否足够；
- (b) 法律顾问出具法律意见，确认先决条件得到满足。

11. 在交易文件中，如何处理融资问题？是否有要求达到最低融资水平的规定？

没有融资等级的法律要求。如上所述，阿曼没有收购法律，所以不会提出此等要求。

12. 少数股东是否会被挤出？如果会，必须遵守哪些程序？

没有少数股东可以被挤出的法律规定。但收购者可以将上市公司变更为有限责任公司或私人股份公司并寻求公司退市，从而将上市公司私有化。

CMA 会提出退出要约义务，作为上述变更和退市程序的一部分，让少数股东退出公司。但如果少数股东不参与退出要约，他们将继续是退市后公司的股东，不会被挤出。

13. 什么是完成业务合并之前必须遵守的等待期或通知期？

如果交易需根据《竞争法》接受 PACP 的审查，自合并审查申请提交之日起 PACP 有最长 90 天的期限给予答复。

倘若 PACP 未在规定的 90 天内回复申请，应视作默许交易进行。

实践中，PACP 一般会在提交申请后两周内答复并购审查申请。

14. 是否有适用于被收购公司的行业特定规则？

当并购交易涉及特定行业部门时，还应遵守特定行业的法律法规条款。现综述如下：

- (a) 银行：任何实体拟收购任何阿曼银行 10% 以上股份，须获得阿曼中央银行的批准；
- (b) 证券业：任何人士拟持有经 CMA 许可参与证券有关业务的阿曼公司 15% 以上股份的，应获得 CMA 的批准；
- (c) 电力和海水淡化：投资者拟收购受阿曼电力局（“AER”）监管的发电 / 海水淡化公司 20% 或以上有表决权资本的，须获得 AER 的事先批准。
- (d) 保险：投资者拟收购经许可在阿曼从事保险业务的保险公司的控制权，须获得保险业监管机构 CMA 的事先批准；
- (e) 电信：投资者拟对经电信监管局（“TRA”）许可的电信服务提供商进行重大股份收购，则对此等目标公司的股份收购超过 5%、10%、20%、33.3%、50% 和 66.6% 门槛时，都需获得 TRA 的事先批准。

15. 跨境交易是否受任何特殊法律要求的制约？

阿曼对境外交易没有特殊的法律要求。

但对于境内交易，外资对阿曼公司的所有权是有限制的（详见问题 4 的答复。）。

另外，部分行业公司的外商投资也有限制。现综述如下：

- (a) 国防：阿曼国防产业（武器和军需品的制造和贸易，包括武器和军事装备）受政府独家控制。该行业禁止私人投资；
- (b) 媒体：新闻出版社禁止外资持有。此类机构必须是阿曼全资和控制。媒体公司没有特定的披露义务或审批要求。但新闻企业所有权的出售或转让，包括其股份的转让，必须获得信息部的事先批准。
- (c) 采矿：只有外资不超过采矿公司股本30%的机构和公司才有可能被授予新的采矿许可证。

16. 您所在管辖区的劳动法规对新的雇佣关系有何影响？

目标公司没有义务向其雇员或代表告知或咨询股份或资产的出售、或就股份或资产出售获取员工的同意。但倘若资产出售后，雇员也随之被转移至收购者，则须获得每位被转移雇员的事先同意。另外，出售业务时，雇员并非自动转移至买方，收购实体必须与各被转移雇员达成新的雇佣合同。

根据阿曼劳动法，发生业务转让时，收购者必须按当前的雇佣条件（以及既定的福利，比如驻外雇员工作结束福利和阿曼雇员退休金）接受目标公司所有雇员的转移。倘若为股份出售，雇员就没有法定的解雇保护措施。

人力部最近发布指南，倘若雇用驻外雇员的公司发生所有权或持股变动，则需付费重新申请外派雇员审批。

阿曼被转移雇员的雇佣必须向政府机构和退休金机构（社会保险局（“PASI”））登记。

买方转移驻外雇员需重新接受人力部的劳动人员审批，并向阿曼移民局登记雇主的变动。

阿曼公民身份雇员的退休金依照《社会保险法》处理。雇员与雇主须按月向 PASI 认缴退休金。PASI 缴费分别按雇员工资的11.5%（雇主缴纳部分）、7%（雇员缴纳部分）

和1%（政府缴纳部分，但实际上这部分还是由雇主缴纳）计。

实际操作中，每一位阿曼雇员都必须向 PASI 登记，雇佣需求每次发生增加或变动都需向 PSAI 备案。

一旦阿曼雇员转移至买方，买方则有义务承接卖方以前的义务，按月缴纳退休金。

驻外雇员在结束与雇主的工作关系后有权享受完工福利。完工酬金金额按每雇佣期的月基本工资的一半计，随后按雇佣期头三年月工资计。

除非按业务转移协议妥善处理既定福利，否则买方将自动继承卖方向驻外雇员提供既定完工福利的所有义务。

17. 近期是否有任何影响并购活动的改革或监管调整提案？

据悉，CMA 正计划在未来的时间发布一项收购条例。但条例的最终形式和发布时间目前尚不明确。

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