

Oman merger control (2018)

A conversation with **Ardeshir Patel, partner at Omani law firm Al Busaidy Mansoor Jamal & Co.** on key issues on merger control in Oman. This is part of our collection of over 115 maintained national merger control guides.

NOTE—to see whether notification thresholds in Oman and throughout the world are met, see [Where to Notify](#).

1. Have there been any recent developments regarding the Omani merger control regime and are any updates/developments expected in the coming year? Are there any other 'hot' merger control issues in Oman?

The Competition and Anti-Monopoly Law enacted by Royal Decree 67/2014 (the Competition Law) brought into force a formal law regulating competition for the first time. The Competition Law tasked the existing Public Authority for Consumer Protection (PACP), which was the consumer protection authority, with the additional responsibility for regulating competition in Oman.

In 2018, His Majesty the Sultan of Oman issued Royal Decree 2/2018 bringing into force the Competition and Monopolies Prevention Centre Law (the CPMP Law), which established a dedicated competition regulator, the Competition Protection and Monopoly Prevention Centre (the CPMP Centre), to regulate competition in Oman; jurisdiction over competition related matters was transferred from the PACP to the CPMP centre.

The Competition Law anticipates the issuance of implementing regulations (the Regulations) to clarify provisions of the Competition Law such as asset/turnover/market share based thresholds for merger control filings. However, during its tenure as competition regulator, the PACP did not issue implementing regulations. It is anticipated that the Regulations will be issued by the CPMP Centre in due course.

As the Regulations have not been issued to date, it makes it important, given the CPMP Centre's authority with regard to merger control, to consult closely with the CPMP Centre in relation to any prospective notifiable merger.

2. Under Omani merger control law, is the control test the same as the EU concept of 'decisive influence'? If not, how does it differ and what is the position in relation to minority shareholdings?

The Competition Law does not contain a definition of 'control'. The definition of 'economic concentration' refers to 'whole or partial' transfer of ownership and creation of joint managements but does not specify what 'ownership' would mean in this context. The Regulations may shed further light on the definition of 'control'.

3. Are joint ventures caught by the national merger control provisions (including non-structural, cooperative joint ventures)?

The notification requirement applies to any 'economic concentration' defined as any action resulting in the whole or partial transfer of ownership of assets, stocks, shares, benefits, rights or obligations from one person to another, or in the creation of a union or a merger or the merging of two or more managements into a joint management, so as to place a person in a dominant position.

In our view, the definition of 'economic concentration' is wide enough to include joint ventures in only non-operational, co-operative joint ventures.

4. What are the merger control thresholds and would a purely foreign-to-foreign transaction be caught (commenting on any 'effects' doctrine/policy if relevant)?

Mergers, acquisitions and joint ventures resulting in the creation of a dominant position for a person or group of persons are notifiable. Dominant position exists where a person or group of persons acting jointly have the power to control or influence a relevant market such as by acquiring 35% of the market share.

The Competition Law will apply to a foreign-to-foreign transaction if it has an effect on a relevant market in Oman.

To see whether thresholds in Oman are met, see [Where to Notify](#).

5. Are there any specific issues parties should be aware of when compiling and calculating the relevant turnover for applying the jurisdictional thresholds?

The Competition Law does not prescribe any asset/turnover/market share based thresholds. Currently, any transaction that will result in a creation of a dominant position will be notifiable to the CPMP Centre.

6. Where the jurisdictional thresholds are met, is notification mandatory and must closing be suspended pending clearance?

It is mandatory to notify the CPMP Centre of any transaction which will result in the creation of a dominant position.

The transaction cannot be completed until either the CPMP Centre has issued a decision or the 90 day review period has elapsed without a decision.

7. Is there any discretion to review transactions that fall below the notification thresholds?

No, the Competition Law does not give the CPMP Centre discretion to review a foreign-to-foreign merger where it falls below the notification threshold.

8. Is it possible to close the deal globally prior to local clearance?

Closing in Oman cannot take place unless the CPMP Centre has issued its decision or the 90 days period has elapsed. However, if the Oman part of the transaction can be carved out of the global closing then a global closing prior to Oman clearance may be possible.

9. Is there a deadline for filing a notifiable transaction and what is the timetable thereafter for review by the CPMP Centre?

There are no deadlines for filing. The filing must be made prior to the completion of the transaction.

The CPMP Centre has 90 days from the date of filing of the application to issue a decision.

10. Who is responsible for filing a notifiable transaction (noting also whether there is a specific form/document used and an applicable filing fee)?

The Competition Law does not specify which party is responsible for making a filing. However, the presumption is that it is the acquirer.

Save that the application be in writing, there are no prescribed filing requirements or fees.

11. Please comment on the penalties for failing to notify or suspend transactions pending clearance and the record/stance of the CPMP Centre in terms of pursuing parties for failing to notify relevant transactions (commenting, if relevant, on any statute of limitations regarding sanctions for infringements of the applicable law).

Failure to notify the CPMP Centre under the Competition Law is punishable by imprisonment (between one month and three years) and/or a fine of between OMR 10,000 and OMR 100,000.

12. Are there any other 'stakeholders' other than the CPMP Centre (for example, any 'sector regulators' who might have concurrent powers)?

Under the Capital Market Law an acquisition of shares in a listed company is notifiable to the Capital Markets Authority (CMA) in the event that it results in an acquirer:

- acquiring a stake equivalent to, or exceeding 10%, or
- that already holds 10% or more of the share capital of a listed company, increasing its stake in the company.

An acquisition of shares in a listed company that is equivalent to or exceeds a 25% stake needs the advance approval of the CMA.

Other sector-specific regulators to whom notification/pre-merger approval applications need to be made include the Central Bank of Oman for banking and finance companies, the CMA for brokerage and investment management and insurance companies, the Authority for Electricity Regulation for power and water sector companies and the Telecommunication Regulatory Authority for telecommunication service providers.

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