Chambers

GLOBAL PRACTICE GUIDE

Definitive global law guides offering comparative analysis from top-ranked lawyers

Corporate Governance

Oman: Law & Practice
and
Oman: Trends & Developments

Ardeshir D Patel
Al Busaidy, Mansoor Jamal & Co (AMJ)

chambers.com

2020

OMAN

Law and Practice

Contributed by:
Ardeshir D Patel
***Al Busaidy, Mansoor Jamal & Co (AMJ)** see p.14*

Contents

1. Introduction p.3
1.1 Forms of Corporate/Business Organisations p.3
1.2 Sources of Corporate Governance Requirements p.3
1.3 Corporate Governance Requirements for Companies with Publicly Traded Shares p.3

2. Corporate Governance Context p.4
2.1 Key Corporate Governance Rules and Requirements p.4
2.2 Current Corporate Governance Issues and Developments p.4
2.3 Environmental, Social and Governance (ESG) Considerations p.4
2.4 The Impact of COVID-19 on Governance p.4

3. Management of the Company p.5
3.1 Bodies or Functions Involved in Governance and Management p.5
3.2 Decisions Made by Particular Bodies p.5
3.3 Decision-Making Processes p.6

4. Directors and Officers p.7
4.1 Board Structure p.7
4.2 Roles of Board Members p.7
4.3 Board Composition Requirements/Recommendations p.7
4.4 Appointment and Removal of Directors/Officers p.8
4.5 Rules/Requirements Concerning Independence of Directors p.8
4.6 Legal Duties of Directors/Officers p.9
4.7 Responsibility/Accountability of Directors p.9
4.8 Consequences and Enforcement of Breach of Directors' Duties p.9
4.9 Other Bases for Claims/Enforcement Against Directors/Officers p.9
4.10 Approvals and Restrictions Concerning Payments to Directors/Officers p.10
4.11 Disclosure of Payments to Directors/Officers p.10

5. Shareholders p.10
5.1 Relationship Between Companies and Shareholders p.10
5.2 Role of Shareholders in Company Management p.10
5.3 Shareholder Meetings p.10
5.4 Shareholder Claims p.11
5.5 Disclosure by Shareholders in Publicly Traded Companies p.11

6. Corporate Reporting and Other Disclosures p.12
6.1 Financial Reporting p.12
6.2 Disclosure of Corporate Governance Arrangements p.12
6.3 Companies Registry Filings p.12

7. Audit, Risk and Internal Controls p.12
7.1 Appointment of External Auditors p.12
7.2 Requirements for Directors Concerning Management Risk and Internal Controls p.13

1. Introduction

1.1 Forms of Corporate/Business Organisations

The Commercial Companies Law (Royal Decree 18/2019)(CCL) sets out the types of corporate entities that may be incorporated and registered as Omani companies. These are as follows:

- One Person Companies (OPCs);
- Limited Liability Companies (LLCs);
- Closed Joint Stock Companies (SAOCs);
- Public Joint Stock Companies (SAOGs); and
- Holding Companies ("Holding Companies").

Holding Companies

A Holding Company must be established as a joint stock company (either as an SAOC or SAOG). The difference between a Holding Company and an ordinary SAOC or SAOG, is that a Holding Company is incorporated with a specific set of corporate objectives, which focuses on the company's anticipated role of managing and controlling subsidiary companies. A company, which is incorporated as a designated Holding Company is prohibited from pursuing operational activities itself and must focus on managing and controlling subsidiary companies.

A company incorporated as a Holding Company must include the term "Holding" in its corporate name. As a corollary an Omani company is not permitted to include the word "Holding" in its name unless it is incorporated as a designated Holding Company.

Free Zone Companies

The Free Zone Law allows establishment of free zone companies (FZCs). However, FZCs are not different types of company from a corporate perspective in that they still need to be established as LLCs, SAOCs or SAOGs. These companies may only undertake business within the free zone in which they are incorporated.

A free zone company can be distinguished from an onshore company through the inclusion of the suffix "FZC" in its corporate name to indicate that they are incorporated in a free zone. Additionally, FZCs are incorporated and registered through a process which involves both the Ministry of Commerce and Industry (MOCI) which deals with registration of all companies and the free zone regulator, which regulates the particular free zone in which the FZC is incorporated.

Other Entities

For completeness, it may be noted that the CCL permits establishment of general partnerships and limited partnerships and branches of foreign companies may be also be registered with the MOCI. However, these types of entities are not companies (ie, entities which have limited liability and have a juristic personality distinct from that of its owners) and this guide does not cover or discuss their control and governance mechanisms.

1.2 Sources of Corporate Governance Requirements

The following are the main laws and regulations that cover Corporate Governance matters in Oman:

- The Commercial Companies Law;
- The Code of Corporate Governance for Publicly Listed Companies (the "SAOG Code");
- Rules and Conditions for the Election of Directors of Public Joint Stock Companies and their Responsibilities ("SAOC Election Rules");
- Rules and Conditions for the Election of Directors of Public Joint Stock Companies and their Responsibilities ("SAOG Election Rules");
- Rules for Internal regulations for management of public joint stock companies, their business and personnel affairs;
- Rules for the constitution of audit committee and appointment of internal auditor and legal adviser;
- Rules for Remuneration and Sitting Fees of Directors and Sub Committees; and
- Rules of accreditation of the auditors of the companies regulated by Capital Market Authority.

In addition to the above, a Code of Corporate Governance for Closed Joint Stock Companies (the SAOC Code) has been issued by the MOCI. Compliance with the SAOC Code by SAOCs, is voluntary.

1.3 Corporate Governance Requirements for Companies with Publicly Traded Shares

Omani public companies (SAOGs) are required to comply with the SAOG Code. Compliance with the SAOG Code is mandatory for all SAOGs. The SAOG Code does not apply to any other types of companies.

The SAOG Code of Corporate Governance covers matters such as:

- The formation of the board of directors and the role and responsibilities of the board and its members.
- The role, responsibilities and duties of executive management of an SAOG.
- The standards of professional conduct that members of the board of directors of the SAOG and its executive management must adhere to.
- Rules concerning handling of related party transactions and reporting of such transactions to shareholders.

- The establishment of the audit committee and nomination and remuneration committee and roles and responsibilities of such committees.
- Obligations relating to corporate social responsibility.

2. Corporate Governance Context

2.1 Key Corporate Governance Rules and Requirements

The issues addressed in the chapter adequately draw out the key corporate governance rules and requirements involved under Omani law and regulations. There are no other key corporate governance rules and requirements that require coverage.

2.2 Current Corporate Governance Issues and Developments

The CCL

The CCL which came into force in April 2019, replaced the previous Commercial Companies Law (Royal Decree 4/74), which held the field for more than 45 years. The CCL provides that the Capital Market Authority (CMA), which is Oman's capital markets regulator and supervises and regulates SAOGs, will issue a set of Executive Regulations in relation to the governance and regulation of SAOGs under the new CCL.

Similarly, the new CCL provides that the MOCI will issue a set of Executive Regulations in relation to the governance and regulation of LLCs and SAOCs under the new CCL. Further, the new CCL also provides that the CMA will issue a code of governance, which must be adhered to by companies which are owned by the Government of Oman (the "Government"). It is expected that these regulations will be issued before the end of this year.

The CMA Code of Governance

The CMA has recently published a draft Code of Governance for Government Owned Companies (the "*Corporate Governance Code for Government Owned Companies*") for public consultation. The CMA's announcement (when it published the said Code for public consultation) indicates that the principles set out in the said code aims to create a minimum reference framework for governance of companies owned or controlled by pension funds, the State General Reserve Fund (Oman's sovereign wealth fund) and the companies in which the government owns shares to assist such companies to formulate their internal regulations relating to governance to include a set of specific policies, processes and procedures and to oblige them to monitor the governance of their subsidiaries.

The Corporate Governance Code for Government Owned Companies proposes that government owned companies shall disclose through the their websites and an online portal to be created by CMA, the quarterly financial statements and external auditors' reports which shall show the constitution of the board of directors, independent directors, subcommittees, remuneration of directors and senior management (five most senior executives) and the details of the fixed remuneration, performance related bonuses and the financial burden for carrying out non-economic national services.

2.3 Environmental, Social and Governance (ESG) Considerations

It is a legal requirement under the SAOG Code for SAOGs to have a board of directors approved Corporate Social Responsibility (CSR) charter or code (the "CSR Code"). The CSR Code may be developed by the executive management or an external consultant for board of directors approval.

The executive management must set out a strategy or annual plan through which to implement the SAOG's CSR philosophy, policies and community-based principles set out in the CSR Code. The strategy or plan must, at a minimum, include:

- the allocated budget for CSR;
- available support and participation means;
- the values and principles which the company seeks to disseminate through the different CSR activities; and
- community segments or social fields targeted by the company.

Additionally, the SAOG's annual report must contain a chapter on CSR, which details the activities which were undertaken in the previous year and also discloses the amounts spent on CSR activities and the impact and sustainability of such CSR activities.

2.4 The Impact of COVID-19 on Governance

Under the CCL, it is necessary for joint stock companies (both SAOC and SAOG) to have an annual general meeting (AGM) of shareholders within 90 days of the end of the concerned companies financial year (ie, by approximately March 31st in case of companies, which have December 31st as their year-end). Under the CCL, all shareholder meetings including annual general meetings must be physically held and cannot be held through electronic means or through passage of resolutions passed by circulation.

In early March, the Capital Market Authority suspended holding of shareholder general meetings based on the directives of the Supreme Committee appointed by His Majesty the Sultan of Oman, which is tasked with dealing with the developments of the breakout of COVID-19, in order to enforce social distancing.

Thereafter, the CMA in association with the Muscat Clearing and Depository Company SAOC MCDC), which is the local depository opened an electronic portal, which is designed to allow shareholders to cast their votes electronically. The CMA has also issued a set of rules (pursuant to CMA Decision E/25/2020), which allow SAOGs to convene shareholder general meetings via electronic means - "*Rules for Convening General Meetings of Public Joint Stock Companies and Investment Funds Via Electronic Means*" (the "Rules Governing Shareholder Meetings held via Electronic Means").

The Rules Governing Shareholder Meetings held via Electronic Means enable shareholders in SAOGs and unit-holders in investment funds, an opportunity to participate in, at vote at, general meetings of shareholders without the need to physically attend such meetings. The rules do not apply in case of meetings for SAOCs or other types of company.

3. Management of the Company

3.1 Bodies or Functions Involved in Governance and Management

Joint Stock Companies

Joint stock companies (both SAOGs and SAOCs) must have a board of directors. Joint stock companies are managed by the board of directors. The board of directors also supervises the executive management of the company. The board of directors of a joint stock company is not involved in day to day management of the company.

The board of directors of a joint stock company is elected by the shareholders of the company at a general meeting (usually at an annual general meeting) and holds office for a period of approximately three years (ie, until the third annual general meeting following the general meeting at which the board of directors was elected). The board of directors of a joint stock company must report to and are accountable to the shareholders of the company.

The board of directors of a joint stock company are authorised to undertake all corporate actions except those which are reserved by law or the concerned company's articles of association, for decision by the shareholders of the company.

OPCs and LLCs

OPCs and LLCs do not have a board of directors and are managed by persons called "managers". Managers can either be selected from amongst the shareholders (if the shareholders are natural persons) or can be third parties (such as employees). It is possible for an OPC or LLC to have multiple managers.

The managers of an OPC and LLC are appointed by the shareholders of the company by resolution (either at a meeting or through written resolutions passed through circulation). The managers of an OPC and LLC retain their positions as managers unless removed by the shareholder(s) of the company through passage of a resolution. Managers must report to and are accountable to the shareholders of the LLC or sole shareholder of the OPC.

The managers of an OPC and LLC are authorised to undertake all corporate actions except those which are reserved by law or the company's constitutive contract (the constitutive contract is the OPC or LLC equivalent of articles of association) for decision by the shareholders of the LLC or sole shareholder of an OPC.

3.2 Decisions Made by Particular Bodies

The managers of an OPC or an LLC are authorised to take all decisions concerning the OPC or LLC, as the case may be, unless the decision (by law or the company's constitutive contract) requires to be authorised by the sole shareholder of the OPC or the shareholders of the LLC.

In the case of an LLC, decisions on various corporate actions require majorities ranging from a simple majority to unanimity depending on the importance of the corporate action. In case of an OPC, since there is a single shareholder, voting majorities are not relevant as each resolution requiring the sole shareholder's consent needs to be approved by the sole shareholder.

However, in relation to an LLC, resolutions need to be adopted by a simple majority of votes cast unless a greater majority is required by law or the company's constitutive contract.

Types of Resolutions to be passed by the shareholders of LLC (and relevant voting majorities at a shareholders meeting) are as follows:

- to increase share capital – unanimous approval;
- to reduce capital – unanimous approval;
- to remove a manager – special (three quarters) majority approval;
- to authorise the managers of the company to:
  - (a) make donations, except for donations required by the business wherever they are small and of customary amounts;
  - (b) sell all or a substantial part of the company's assets;
  - (c) pledge or mortgage the assets of the company, except to secure the debts of the company incurred in the ordinary course of business; and
  - (d) guarantee debts of third parties, except guarantees made in the ordinary course of business for the sake of

achievement of the company's objectives – unanimous approval (for each of (a) to (d) above);

- to appoint a person to institute and pursue an action on behalf of the company against any of its managers deemed liable for damages to the company – simple majority approval;
- to appoint an external auditor – simple majority approval;
- to distribute profits, approve balance sheet and profit and loss statement, and reports of managers and auditors – simple majority approval;
- to transform the company into a general or limited partnership – unanimous approval;
- to amend the constitutive contract of the company – special (three quarters) majority approval;
- to convert the company into a joint stock company - special (three quarters) majority approval; and
- to dissolve the company - special (three quarters) majority approval.

All the above resolutions, except bullet point seven, can also be passed through written resolutions of the shareholders (circular shareholder resolutions). However, in order to be legally valid and binding, written resolutions must be unanimously passed by the shareholders.

Joint Stock Company

In the case of a joint stock company (whether a SAOC or SAOG), the board of directors is authorised to take all decisions, unless the decision (by law or the company's articles of association) requires to be authorised by the shareholders of the joint stock company. Decisions of the board of directors must be taken by simple majority (unless the company's articles of association provide for a higher threshold). In order for a board meeting to be quorate, it must be attended by two-thirds of the board.

In general, resolutions of shareholders of a joint stock company need to be adopted by a simple majority of votes cast at an ordinary general meeting (OMG), except where a greater majority is required by law or the company's articles of association. Resolutions of shareholders, which require a special majority resolution needs to be passed at an extraordinary general meeting (EGM).

Types of Resolutions to be passed by the shareholders of a joint stock company (and relevant majorities) are as follows:

- to reduce capital – special (three quarters) majority approval;
- to remove a director – simple majority approval;
- to authorise the board of directors to:
  (a) make donations, except for donations required by the business wherever they are small and of customary amounts;
  (b) pledge or mortgage the assets of the company, except to secure the debts of the company incurred in the ordinary course of business; and
  (c) guarantee debts of third parties, except guarantees made in the ordinary course of business for the sake of achievement of the company's objectives – unanimous approval;
- to appoint a person to institute and pursue an action on behalf of the company against any of its directors deemed liable for damages to the company – simple majority approval;
- to appoint an external auditor – simple majority approval;
- to distribute profits, approve balance sheet and profit and loss statement, and reports of the board of directors and auditors – simple majority approval;
- to dispose fixed assets of the company or a part thereof, the value of which amounts to 25% or more of the net value of the assets of the company – special (three quarters) majority approval;
- to amend the articles of association – special (three quarters) majority approval;
- to convert the company into a different corporate form - special (three-quarters) majority approval;
- to dissolve the company - special (three quarters) majority approval; and
- to merge the company with another company - special (three quarters) majority approval.

3.3 Decision-Making Processes

The managers of an OPC or an LLC are permitted by law to take decisions within the bounds of their authority. The authority of managers must be recorded on the Commercial Register maintained by the MOCI, and such authority is a matter of verifiable public record. There is no requirement for managers to meet or take decisions at meetings.

The board of directors of joint stock companies must take decisions at board meetings or through unanimous written resolutions. In order for a board of directors meeting to be validly constituted a quorum of directors amounting to at least two thirds of the board members must be present. Decisions of the board of directors must be passed by simple majority resolution unless the articles of association of the company prescribe a higher threshold for passing of resolutions.

4. Directors and Officers

4.1 Board Structure

OPCs and LLCs do not have a board of directors. SAOCs and SAOGs must have a board of directors. The board has a unitary (single tier) structure. There is no supervisory board structure contemplated under Omani law.

The board of directors of an SAOC or SAOG may establish one or more committees to assist it in performing its role. The board of directors of an SAOG must, at a minimum, establish an audit committee and a nomination and remuneration committee.

4.2 Roles of Board Members

Under the CCL, the chairman of a joint stock company (the "Chairman") is tasked with convening and presiding over all board of directors meetings and shareholder general meetings of the joint stock company. The Chairman is also authorised to represent the company before third parties and the courts, and to implement the decisions of the board of directors.

The CCL sets out high-level responsibilities of the board of directors as a whole (not of individual members). The board of directors is authorised to: approve the commercial and financial policies of the company and its budgets for such matters, approve the company's strategy for achieving its objectives; fulfil the company's compliance and disclosure obligations; supervise the executive management of the company; and approve the financial statements of the company and ensure that they show a true and fair view of its business activities.

In case of SAOGs, the SAOG Code goes into significant granular detail with respect to the role of the chairman, members of the board of directors, members of committees of the board such as the audit committee and nomination and remuneration committee. Briefly, the SAOG Code defines the obligations of the roles as follows.

The Chairman

A Chairman's obligations include promoting high standards of corporate governance within the board of directors; setting the agenda for board of directors meetings and ensuring all members of the board of directors receive accurate, clear and timely information; ensuring that there is efficient communication between the board of directors and shareholders and executive management; developing skills of board of directors members; and appraising their performance impartially and independently.

Members of the Board of Directors

Members of the board of directors must adopt internal bylaws for the efficient steering and management of the company; establish specialised committees of the board of directors to assist the board of directors in its functioning; appoint the key executives of the company such as the CEO, CFO and COO; evaluate the performance of the board of directors' committees; establish safeguards to prevent insider trading; and suitably delegate authority to executive management.

Members of the Audit Committee

Members of the audit committee assist the board of directors in monitoring and verifying the efficiency of executive management in implementing the board of directors' directives and policies; evaluate and monitor the company's internal control systems and establish policies for safeguarding the company's human and other resources; make recommendations to the board of directors on the choice of external auditor and monitoring their work/performance as well as finalising the annual audit plan; review and advise on related party transactions; and supervise the company's risk management function.

Members of the Nomination and Remuneration Committee

Members must prepare a succession plan for senior executives and board members; identify suitable candidates for appointment to the board of directors; and prepare remuneration and bonus plans for senior management.

4.3 Board Composition Requirements/Recommendations

The board of directors of an SAOC and SAOG must comprise of a minimum of three members, and five members, respectively. In case of both SAOCs and SAOGs, the board of directors cannot exceed 11 members.

A corporate shareholder is permitted to nominate a candidate for election to the board of directors of an SAOC or SAOG. However, a corporate shareholder cannot have more than one nominee on the board of directors.

SAOC

In order to be eligible for appointment to the board of an SAOC, an individual must fulfil the criteria set out in the SAOC Election Rules. These criteria include a minimum age of 21 years, not being convicted of any felony or serious offence (unless rehabilitated) and not being a member of the board of another company (whether SAOC or SAOG), which is engaged in the same business as the SAOC.

In the case of an SAOC, the majority of its board members must be non-executive members (ie, they are not employed by the SAOC or receive a material benefit from it).

SAOG

In order to be eligible for appointment to the board of an SAOG, an individual must fulfil the criteria set out in the SAOG Election Rules. These criteria include a minimum age of 25 years, not being convicted of any felony or serious offence (unless rehabilitated) and not being a member of the board of another company (whether SAOC or SAOG), which is engaged in the same business as the SAOG.

The entire board of directors of an SAOG must be non-executive. Additionally, one third of the board of directors (subject to a minimum of two) must comprise of independent board members (that fulfil the criteria of independence set out in the Corporate Governance Code).

4.4 Appointment and Removal of Directors/Officers

Election of Directors

Directors need to be elected to the board of directors through an election process. Once the board of directors has been elected it remains in office for a period of three years of the date of the shareholder general meeting at which the election was conducted. In the first instance any individual who wishes to stand for election to the board of directors must submit a nomination form to the company prior to general meeting at which the election is to take place.

A corporate shareholder can nominate a person of its choice for election to the board of directors.

At the shareholder general meeting at which the election is to occur, in the event that the number of candidates is less than or equal to the number of seats on the board of directors, then all candidates would stand elected, unopposed, to the board of directors. If, however, the number of candidates exceeds the number of seats on the board of directors, then an election ensues. At an election, each shareholder of the company has a number of votes equal to the number of shares held.

The shareholder may vote all their shares in favour of the election of one candidate or divide the shares they hold among two or more candidates.

Vacancy

If a vacancy arises on the board of directors during its term of office, then the vacancy must be filled by the candidate (if any) who was defeated by the fewest number of votes at the last board of directors' election. If there is no such candidate then the board of directors may fill the vacancy through appointment of a temporary director of its choice.

Removal of Board Members

The shareholders of a company may remove all or some of the members of the board of directors through passage of a simple majority resolution at an OGM. A director shall be deemed to have automatically resigned from the board of directors in case he/ she does not attend three consecutive board of directors' meetings without a valid excuse.

4.5 Rules/Requirements Concerning Independence of Directors

The board of directors of an SAOC does not need to include independent members.

At least one-third of the members of the board of directors of an SAOG (with a minimum of two independent directors) must comprise of independent directors. The SAOG Code provides that in order for a member to be independent, they:

- must not hold, or represent a corporate shareholder that holds 10% or more of the shares of the company, or its subsidiary, parent or any associated company;
- must not have, in the two years preceding his candidacy to the board of directors, been a senior executive of the company, or its subsidiary, parent or any associated company;
- must not be a first degree relative of a director or senior executive of the company, or its subsidiary, parent or any associated company;
- must not have, in the two years preceding his candidacy to the board of directors, been an employee of any party contractually engaged with the company (including external auditors, major suppliers or civil society organisations).

The CCL, the SAOC Election Rules and the SAOG Election Rules contain rules designed to deal with conflicts of interest and provide that:

- the same individual cannot act as both chairman and managing director of a joint stock company;
- a person cannot be a member of the board of another company (whether SAOC or SAOG), which is engaged in the same business, in Oman, as the company;
- an individual cannot be a member of the board of more than four SAOGs or chairman of more than two SAOGs.

The SAOG Code contains additional rules designed to deal with conflicts of interest in the context of an SAOG and contains a model Code of Conduct (COC) to be implemented by SAOGs for handling of conflict of interest. The COC provides that directors must:

- disclose all contractual interests with the company whether direct or indirect;

- not disclose material price sensitive information or trade on such information;
- not take improper advantage of their office to gain directly or indirectly or make personal benefits for themselves or any related person;
- abstain from participating in discussions or voting on matters where there is a situational conflict of interest and in case of a persistent conflict of interest consider resigning from the board of directors.

The SAOG Code also prohibits the CEO of an SAOG from serving as CEO of a subsidiary of the SAOG.

4.6 Legal Duties of Directors/Officers

The duties of directors and executive management of SAOCs and SAOGs, under the CCL, include:

- not taking advantage of their positions to obtain benefits for themselves or other persons;
- not participating in the management of another company that operates in a similar business;
- abstaining from using the assets or funds of the company for their own benefit or for the benefit of third parties;
- not having any direct or indirect interests in transactions entered into by the company; and
- diligently disclosing any conflicts of interest.

The COC sets out additional duties, which a director of an SAOG must fulfil. These duties include:

- ensuring that they have adequate skills and knowledge to perform their role and keep themselves abreast of the company's business and operations and also upgrades their skills as necessary;
- attending all board of directors' meetings and shareholder meetings (unless their presence is excused);
- acting, at all times, in good faith in the best interest of the company;
- avoiding conflicts of interest and where there is a conflict of interest abstaining from acting, or in case of a continuing conflict of interest, resigning from, the board of directors;
- insisting on obtaining full, adequate and timely information on all material developments concerning the company, and if such information is unavailable or not forthcoming, make objections and possibly refraining from voting.

As per the SAOG Code, the executive management must:

- make sure that the board of directors has sufficient information concerning the company to perform their supervisory role efficiently;
- inform the board of the risks and challenges the company faces in a timely manner;
- disclose to the board of directors all financial and commercial transactions involving the company where they or any of their first-degree relatives have an interest; and
- act in a manner designed to promote the sustainability of the company and to protect the interests of stakeholders and the community.

4.7 Responsibility/Accountability of Directors

Under the CCL, directors are liable to the company, shareholders and third parties for damage, which results from any actions they take, which are ultra vires, or in violation of law, or are fraudulent or negligent ("Illegal Actions").

Additionally, the SAOG Code provides that in addition to the interests of the company itself, shareholders and third parties an SAOG must be governed in a way, which contributes to the national economy and minimises any damage to the local community.

4.8 Consequences and Enforcement of Breach of Directors' Duties

The board of directors may itself, pursuant to a resolution, institute legal proceedings against a director who is allegedly responsible for damage sustained by the company as a result of his Illegal Actions. Equally, the general body of shareholders may pursuant to a simple majority resolution at an OGM institute legal proceedings against one or more directors or the board of directors for the same reason.

Shareholders that collectively hold at least 5% of an SAOG's share capital may complain to the CMA, and shareholders holding 5% of an SAOC's share capital may complain to the MOCI, if they are of the opinion that the business of the SAOG or SAOC is being performed in a manner which is detrimental to the interests of some or all the company's shareholders.

Upon receipt of a complaint, the CMA or MOCI may take cognisance of the complaint and if appropriate prosecute the concerned director(s) or entire board of directors through the Omani Courts.

4.9 Other Bases for Claims/Enforcement Against Directors/Officers

A third party who is negatively impacted by the actions of a director's Illegal Actions may take civil or criminal proceedings against such director in accordance with applicable law.

Insider trading, market manipulation, market abuse and other securities laws offences are punishable under Omani securities laws. Separately, in Oman, theft, fraud, forgery, bribery and oth-

er offences by directors or the board of directors are punishable under the Oman Penal Law.

The CCL invalidates any provisions whereby a company seeks to indemnify or hold harmless a director from liability for his/ her actions. However, it is permissible for a company to subscribe and pay for directors and officers indemnity insurance for the benefit of board members.

4.10 Approvals and Restrictions Concerning Payments to Directors/Officers

The remuneration payable to the board of directors must be approved by the shareholders at the AGM. The annual remuneration payable to the board of directors (inclusive of sitting fees) must not exceed the lower limit of OMR200,000 and an amount, which is the equivalent of 5% of post-tax net profit (and adjusting for actual dividend or notional dividend at a minimum of 5%). There is a sub-ceiling of OMR10,000 as aggregate sitting fees payable to each director per annum.

If a company makes losses or insufficient profit to the extent that paying an actual dividend (or adjusting for a notional dividend) is not possible, then remuneration must be determined in accordance with remuneration rules issued by the CMA.

4.11 Disclosure of Payments to Directors/Officers

The remuneration paid to the board of directors for the previous year must be disclosed to the shareholders in the notice for a company's AGM and tabled for their approval at the AGM.

The remuneration payable to the executive management for the previous year must be disclosed to the shareholders in the company's annual report. The disclosure may be made as a consolidated figure and it is not necessary for the remuneration paid to each member of the executive management to be disclosed separately.

5. Shareholders

5.1 Relationship Between Companies and Shareholders

Omani corporate laws and regulations do not specifically cover or regulate the relationship between a company and its shareholders. However, the CCL sets out the rights of shareholders, which include the right to:

- receive dividends (if declared by the company);
- subscribe proportionately in any issue of new shares;
- share in distribution (if any) on winding up;
- transfer shares (without the necessity for board approval);
- receive timely disclosure of a company's financial statements and reports and material information concerning the company;
- be invited to and participate in general meetings and vote;
- apply for annulment of any resolution made by the general meeting or the board of directors, if such resolution(s) are contrary to applicable law or the articles of association or the internal regulations of the company; and
- institute legal proceedings on behalf of the company against the board of directors or the auditors for any Illegal Actions on their part and institute complaints (if supported by shareholders holding 5% or more of share capital) to the CMA or MOCI (as the case may be).

5.2 Role of Shareholders in Company Management

Shareholders are not permitted to directly involve themselves in the management of a company. If, however, a shareholder of a joint stock company holds (or collectively with other shareholders holds) 10% or more of share capital, such shareholder can requisition a shareholder meeting. Additionally, a shareholder that holds (or collectively with other shareholders holds) 5% or more of the share capital such shareholder can insist on inclusion of items of business of its/their choice on the agenda for a shareholder meeting, which is convened by the board of directors.

In the event that a shareholder sponsored resolution is passed, then the board of directors would be obliged to implement such decision through the management of the company. The law does not contemplate the shareholders directly ordering the management of the company to take, or refrain from taking, actions.

5.3 Shareholder Meetings

In case of Omani companies, certain decisions are reserved for shareholder approval.

OPCs and LLCs

Decisions requiring shareholder approval in case of OPCs and LLCs are made through shareholder resolutions. In an OPC, since there is a single shareholder each resolution requiring the sole shareholder's consent needs to be approved by such sole shareholder. In the case of an LLC, decisions requiring shareholders' approval are also made through passage of resolutions.

In case of both OPCs and LLCs, decisions may be taken through passage of resolutions at a shareholder meeting or through unanimous written resolutions (except in the case of the following matters, which may only be decided upon at a meeting: distribution of dividends, approval of financial statements, approval of reports of managers and auditors).

A shareholder(s) meeting of an OPC or LLC must be convened on the basis of 15 days' notice. However, if the meeting is attended by shareholders representing all the shares of the company, then it may be held without observing the 15 days' notice requirement.

An annual shareholder meeting of an OPC or LLC must be held at least once a year within 180 days of the end of the financial year (this meeting cannot be substituted by written resolutions). The quorum required to convene a shareholder meeting of an LLC is shareholders representing half of its share capital.

Where the quorum requirement is not met at the first meeting, it must be adjourned, and a second meeting must be held. The second meeting will be valid regardless of the shares represented at such meeting. The second meeting must be held within 30 days of the first (adjourned) meeting.

Joint Stock Companies

Decisions requiring shareholder approval in case of joint stock companies must be taken at shareholder meetings. Shareholder resolutions cannot be passed through circulation.

SAOCs and SAOGs

A shareholder(s) meeting of an SAOC or SAOG must be convened on the basis of 15 days' notice. However, if the meeting is attended by shareholders representing all the shares of the company, then it may be held without observing the 15 days' notice requirement. An annual general meeting (AGM) of shareholders must be held at least once a year within 90 days of the end of the financial year.

AGM

The agenda for the AGM must include the following matters: approval of the board report; approval of the auditor's report, election of the members of the board (if the term of the board has expired); distribution of dividends; appointment of the auditor; and approval of remuneration payable to the board of directors.

OGMs and EGMs

In addition to the AGM, the board of directors may convene a shareholder general meeting whenever the circumstances require. The quorum required to convene a shareholder general meeting depends on whether it is an OGM or an EGM

Whether an OGM is required or an EGM is required depends on the items of business proposed for the meeting. Matters requiring simple majority shareholder approval must be dealt with at an OGM and special majority shareholder approval matters must be dealt with at an EGM. The quorum required for holding an OGM is half its share capital. The quorum required for holding an EGM is 75% of share capital.

Shareholder resolutions at an OGM may be passed by simple majority approval (majority of votes cast). Shareholder resolutions at an EGM must be passed by special majority approval (three quarter majority of votes cast with a minimum of 50% of voting shares cast in favour of the resolution).

Following promulgation by the CMA of the Rules Governing Shareholder Meetings held via Electronic Means, shareholders of SAOGs can participate in, and vote at, general meetings online without the need to be physically present at such meetings. The said rules do not apply in case of meetings for SAOCs or other types of company.

5.4 Shareholder Claims

See **4.8 Consequences and Enforcement of Breach of Directors' Duties** and **4.9 Other Bases for Claims/Enforcement Against Directors/Officers**.

5.5 Disclosure by Shareholders in Publicly Traded Companies

The threshold for disclosure in an SAOG, is when an acquirer (and persons acting in concert) acquires shares amounting to 10% or more of the total share capital of an SAOG. At this point, the acquirer must notify the CMA of the 10% limit being reached. Thereafter, the acquirer must notify the CMA of any increases above the 10% limit.

Further, the Omani Takeover Code comes into play when any person (and persons acting in concert) who holds (a) less than 25% of the share capital of an SAOG and intends to acquire 25% or more of its share capital; or (b) more than 25% of the share capital of an SAOG and intends to acquire more than an additional 2% of its share capital in a six month period.

In each of (a) and (b), the prospective acquirer is obliged to undertake the acquisition through a mandatory takeover offer (MTO), which must be open to all the shareholders of the company. The Takeover Code sets out the terms and conditions on the basis of which the acquisition and/or takeover must be undertaken.

There are additional disclosure and approval regimes applicable in relation to sensitive industries such as banks, financial intermediaries, telecommunication services providers, utility services companies, etc. These regimes apply regardless of whether or not the issuer is an SAOG.

6. Corporate Reporting and Other Disclosures

6.1 Financial Reporting

What annual and other periodic financial reporting requirements are companies subject to?

An SAOG is required to publish, in the press, a summary of its audited annual financial statements. An SAOG is also required to send its shareholders its audited financial statements at least two weeks prior to the AGM, along with the following reports:

- directors' report;
- management discussions and analysis;
- corporate governance report;
- auditors' report on corporate governance report; and
- auditors' report on audited financial statements.

An SAOG is also required to publish in the presence a summary of its un-audited quarterly financial statements along with disclosures concerning important events that affected the company's performance and financial position in the previous quarter.

An SAOC is required to send its shareholders, its audited annual financial statements, at least two weeks prior to the AGM, along with the following reports:

- directors' report; and
- auditors' report on audited financial statements.

OPCs and LLCs must provide their shareholders audited financial statements for the previous financial year within a maximum of 150 days from the end of the last financial year.

6.2 Disclosure of Corporate Governance Arrangements

SAOGs are required to include a corporate governance chapter in their annual report. The corporate governance chapter must specifically highlight any areas where the company has not complied with the provisions of the SAOG Code. The SAOG's auditor must certify that the annual report (including the corporate governance chapter) is free from misstatement or misrepresentation.

SAOCs, OPCs and LLCs are not subject to a similar requirement.

6.3 Companies Registry Filings

An SAOG is required to electronically file its audited annual financial statements with the Muscat Securities Market (MSM) at least two weeks prior to the AGM, along with the following reports:

- board of directors' report;
- management discussions and analysis;
- corporate governance report;
- auditors' report on corporate governance report; and
- auditors' report on audited financial statements.

An SAOG is also required to file its un-audited quarterly financial statements with the MSM along with disclosures concerning important events that affected the company's performance and financial position in the previous quarter.

All the above filings must be made in English and Arabic and are publicly available for viewing and download on the MSM's website.

An SAOC is required to file its audited annual financial statements with the MOCI at least two weeks prior to the AGM, along with the following reports:

- board of directors' report; and
- auditors' report on audited financial statements.

The filing must be made in Arabic. However, bi-lingual filings (Arabic and English) are allowed. Filings of financial statements made by SAOCs are not publicly available.

OPCs and LLCs are not required to file financial statements with the MOCI or any other registry in Oman.

7. Audit, Risk and Internal Controls

7.1 Appointment of External Auditors

SAOCs and SAOGs must appoint an external auditor in connection with their financial statements.

SAOG

The auditor of an SAOG must be nominated by the board of directors (on the audit committee's recommendation) and submitted to the shareholder's general meeting (usually the AGM) for approval. The term of appointment is from one AGM to the next. The auditor of an SAOG cannot hold office for more than four successive terms of office.

SAOC

The auditor of an SAOC must be nominated by the board of directors and approved by the shareholder's general meeting (usually the AGM) for approval. The term of appointment is from one AGM to the next. There is no restriction on the number of successive terms the auditor of an SAOC may serve.

OPCs and LLCs

OPCs and LLCs do not need to appoint an external auditor unless:

- the company has more than seven shareholders;
- the company's share capital exceeds OMR50,000;
- the constitutive documents provide for appointment of an auditor; or
- shareholders that hold more than one fifth of the company's share capital request the appointment of an auditor.

7.2 Requirements for Directors Concerning Management Risk and Internal Controls

The SAOG Code obliges the board of directors to ensure efficiency and adequacy of the internal control systems in all the units or divisions of the company including financial management, and its related operations, operations management and risk management.

Additionally, the SAOG Code requires the audit committee to prepare a risk management plan and obtain board of directors' approval for the same and then follow up on its implementation. The risk management plan must, at a minimum, identify the risks to which the company is exposed, determine mechanisms to measure and monitor the risk, and mitigate risks (if complete avoidance of risks is not possible). The audit committee must also monitor the adequacy of internal control systems and their efficiency.

The company's external auditors are obliged, as part of their audit procedure, to report, to the shareholders, any significant concern(s) on the adequacy and efficacy of the company's internal control systems.

Al Busaidy, Mansoor Jamal & Co (AMJ) is an independent, award-winning, full-service law firm of international quality, established in Oman over 40 years ago, and is consistently a highly ranked dispute resolution, finance and corporate/commercial practice. AMJ advises Omani public joint stock companies and closed joint stock companies in connection with compliance, regulatory and risk management assignments and provides corporate governance training, board performance evaluation, and board training services to its clients. AMJ also has a dedicated team that specialises in annual general meetings and annual reporting, and also liaising on behalf of Omani issuers with Omani capital market regulators. Recent client engagements include board and executive management training sessions for Musandam Power Company SAOG and Dhofar Generating Company SAOG and implementation of corporate governance and reporting frameworks for DGC and National Bank of Oman SAOG.

Author

Ardeshir D Patel is a partner at AMJ. He specialises in advising on cross-border M&A transactions, and private investment in public equity, including takeovers and delisting. Ardeshir also advises public companies and their board members on corporate governance (including training of boards on corporate governance, establishment of charters and terms of reference for boards, audit committees, remuneration committees and special committees). His clients include national and international corporations, private equity funds and international law firms. Ardeshir is a solicitor of the Supreme Court of England and Wales; solicitor of the High Court of Bombay; and advocate of the Bar Council of Maharashtra & Goa.

Al Busaidy, Mansoor Jamal & Co (AMJ)

Muscat International Centre
Bait Al Falaj Street
Central Business District
Ruwi, 112
Muscat
Sultanate of Oman

Tel: +968 992 383 48
Fax: +968 248 122 56
Email: adpatel@amjoman.com
Web: www.amjoman.com

Trends and Developments

Contributed by:
Ardeshir D Patel
Al Busaidy, Mansoor Jamal & Co (AMJ) ***see p.18***

Legislative Trends and Developments - Oman Developments

There have been significant developments in the last 12 to 18 months in the fields of Omani corporate, securities and economic law. The macrotrends that underpin these developments are policy moves at Government level to attract greater foreign capital investment into Oman coupled with improving the ease and efficiency of doing business in Oman by modernising corporate, securities and economic laws so as to make the regulatory environment more conducive to undertaking business and also enabling online access to a number of government services through an official Oman eGovernment services portal.

One of the key legislative changes involves the repeal of the Commercial Companies Law (Royal Decree 4/74), which held the field for more than 45 years, and its replacement by a new Commercial Companies Law (Royal Decree 18/2019)(the "New CCL"). The New CCL is not radically different from the earlier law but seeks to modernise and improve upon the old law in a number of ways.

There have been a variety of changes introduced by the New CCL, including the following.

Inclusion of a new company

Inclusion of a new type of company, the One-Person Company (OPC), which allows a limited liability company to be established by a single shareholder. Barring the fact that an OPC can be owned by a single shareholder in all other respects an OPC is a limited liability company and is required to adhere to the legal provisions applicable to limited liability companies under the New CCL.

Joint stock companies issuing different classes of shares

Provisions, which allow Omani joint stock companies to issue different classes of shares. Historically, the Omani authorities have restricted joint stock companies from issuing shares of different classes, as the old CCL insisted that all classes of shares needed to be reflected in the original articles of association of the company. This meant that following incorporation of the company it was not possible to bolt-on a new class of shares. The New CCL does away with this restriction and makes it easier for Omani issuers to issue different classes of shares and this change of law gives Omani issuers the flexibility of coming out with issues of different classes of shares in future.

Floating shares

Reduction of the requirement to float shares in an IPO of an Omani company from 40% to 25%, which is designed to assuage concerns of controlling shareholders of losing control over their company when going public.

Protections for minority shareholders

The New CCL also increases the level of protection afforded to minority shareholders by allowing shareholders that collectively own at least 10% of a joint stock company's capital to requisition a shareholder general meeting (earlier the threshold was set at 25% of share capital). Moreover, shareholders that collectively own at least 5% of a joint stock company's capital are allowed to requisition items of business on the agenda of the meeting (earlier the threshold was set at 10% of share capital).

Shareholder meetings to authorise certain corporate actions

Under the New CCL (as in the case of the previous law) it is necessary for both public joint stock companies and closed (private) joint stock company to have shareholder meetings to authorise certain corporate actions. These corporate actions include the requirement to have an annual general meeting of shareholders.

In early March, Oman's capital market regulator – the Capital Market Authority (CMA) suspended holding of shareholder general meetings based on the directives of the Supreme Committee appointed by His Majesty the Sultan of Oman, which is tasked with dealing with the developments of the breakout of Coronavirus (COVID-19), in order to enforce social distancing.

Thereafter, the CMA in association with the Muscat Clearing and Depository Company SAOC (which is the local depository) opened an electronic portal, which is designed to allow shareholders to cast their votes electronically. This innovative response has enabled public joint stock companies to proceed with their annual general meetings and other general meetings and allowed shareholders an opportunity to participate in, and vote at the said meetings.

Other Key Legislative Changes

Another key legislative change involves the issuance of a new law of foreign capital investment. The previous law (Royal Decree 102/94), which held the field for more than 25 years, allowed foreign shareholders to acquire and hold up to 70% of the issued share capital of an Omani incorporated company. On

1 January 2020, the new Foreign Capital Investment Law (Royal Decree 50/2019)(the "New FCIL") came into force.

Under the New FCIL any foreigner can own 100% of the shares of an Omani company unless the Ministry of Commerce and Industry (MOCI) does not permit the investment for some reason.

It is anticipated that the MOCI will in the coming months issue a set of executive regulations relative to the New FCIL (the "FCIL Executive Regulations"). It is anticipated that the FCIL Executive Regulations will identify business sectors in which 100% foreign ownership is not permitted). However, at the current time, the MOCI has, on a case-by-case basis, already allowed 100% foreign owned companies to be incorporated and registered in Oman.

An important change brought about by the New FCIL with a view to attracting foreign investment concerns the minimum capitalisation requirement for a company with foreign investment. The previous law stipulated a minimum share capital of OMR150,000 for a company with foreign investment. This investment threshold has been done away with under the New FCIL, and it is possible for a foreign investor to establish a company such as a limited liability company with a minimum capital of OMR20,000.

Privatisation

Oman has also issued a new Privatisation Law (Royal Decree 51/2019) and a new Public Private Partnership Law (Royal Decree 52/2019).

A new public authority, the Public Authority for Privatisation and Partnership (PAPP), has been established as body tasked with controlling privatisation projects and PPP projects. The Authority is obliged by the Privatisation Law and PPP Law to work with other Omani government ministries in implementing privatisations and PPP projects.

Implementing New Laws

While granular details concerning implementation of the above laws will be forthcoming in the executive regulations of each of the said laws, which the PAPP is obliged to issue, the laws themselves do foreshadow the possibility of fast-tracking projects through disapplying the Omani Tender Law to such projects and making provision for appointment of external experts and consultants to advise in relation to projects. Additionally, the PPP Law contemplates direct approaches by parties interested in partnering with the government on projects and direct awards (without following a tendering process) are allowed subject to the award being approved by Oman's Council of Ministers (ie, the Cabinet).

The Capital Markets Sector and the Takeover Code

In the Capital Markets sector, the CMA issued the Omani Takeover Code, which sets out the rules and regulations governing the acquisition of a significant stake in, or takeover of, an Omani public joint stock company (ie, a company which is listed on the Muscat Securities Market).

The Takeover Code comes into play, if an acquirer acting alone or in concert with others: (i) intends to acquire 25% or more of shares in an SAOG (the Target Company); or (ii) already holds 25% or more of the shares in a Target Company and intends to acquire more than 2% of the shares of the Target Company in a six month period (calculated from the date on which the first purchase of shares in the Target Company is made). In the above instances, the acquirer must make the acquisition through a mandatory takeover offer (MTO), which is open for acceptance by all the shareholders of the company.

The Takeover Code sets out principles applying to the conduct of takeovers and rules for making an MTO and also contains provisions which set out the obligations of the parties involved in an MTO including the prospective acquirer, the target company, competing offerors (if any), their respective boards of directors, and the advisers involved in the MTO. These obligations include disclosure obligations, conduct obligations and requirements to act fairly to all stakeholders. Importantly, the Takeover Code also provides for tools such as squeeze-out rights in favour of acquirers, which enables an acquirer to acquire minority shareholders once the acquirer has achieved a 90% shareholding threshold.

Historically, the absence of a structured Takeover Code has deterred acquirers from attempting takeovers of Omani public joint stock companies and the introduction of the Takeover Code is expected to spur M&A activity in public equity particularly in companies where the performance of incumbent management has been sub-par.

Economic Laws

From an economic law standpoint, the key legislation promulgated in Oman, is the Oman Bankruptcy Law (Royal Decree 53/2019)(OBL), which is a new law governing insolvency of Omani commercial enterprises. The OBL is scheduled to come into force on 7 July 2020 and looks to modernise the manner in which financially distressed Omani companies will be deal with.

The OBL introduces three main types of insolvency proceedings: protective composition, financial restructuring and insolvency liquidation and seeks to fairly balance the interests of the distressed company and its stakeholders (shareholders, employees and creditors) as well as the Omani state and the community.

Conclusion

In sum, the Government of Oman is making significant efforts to grow the Omani economy with increased participation of foreign investors and foreign investment and with particular focus on diversifying the sources of economic revenue and reducing Oman's reliance on oil and gas revenues.

Al Busaidy, Mansoor Jamal & Co (AMJ) is an independent, award-winning, full-service law firm of international quality established in Oman over 40 years ago. The firm consistently tops legal rankings for Oman for dispute resolution, finance and corporate/commercial practice. AMJ advises Omani public joint stock companies and closed joint stock companies in connection with compliance, regulatory and risk management assignments and provides corporate governance training, board performance evaluation, and board training services to its clients. AMJ also has a dedicated team, which specialises in annual general meetings and annual reporting, and also liaising on behalf of Omani issuers with Omani capital market regulators. Recent client engagements include board and executive management training sessions for Musandam Power Company SAOG and Dhofar Generating Company SAOG and implementation of corporate governance and reporting frameworks for DGC and National Bank of Oman SAOG.

Author

Ardeshir D Patel is a partner at AMJ. He specialises in advising on cross-border M&A transactions, and private investment in public equity, including takeovers and delisting. He also advises public companies and their board members on corporate governance (including training of boards on corporate governance, establishment of charters and terms of reference for boards, audit committees, remuneration committees and special committees). Ardeshir's clients include national and international corporations, private equity funds and international law firms. He is a solicitor of the Supreme Court of England and Wales, solicitor of the High Court of Bombay and member of the Advocate Bar Council of Maharashtra & Goa.

Al Busaidy, Mansoor Jamal & Co (AMJ)

Muscat International Centre
Bait Al Falaj Street
Central Business District
Ruwi, 112
Muscat
Sultanate of Oman

Tel: +968 992 383 48
Fax: +968 248 122 56
Email: adpatel@amjoman.com
Web: www.amjoman.com