



## **NEW CODE OF CORPORATE GOVERNANCE OMAN AN IN-DEPT ANALYSIS & RECOMMENDATION TO THE BOARD OF CLIENT'S COMPANIES**

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# INTRODUCTION TO THE NEW CODE

*Corporate Governance is the application of best management practices, compliance of law in true letter and spirit and adherence to ethical standards for effective management of public listed Companies and their regulation of social responsibility for sustainable development of all stakeholders.*

- **This new Code aims at defining a binding and optimal reference framework for the management, organization and control of public joint stock companies through a series of specific and well-defined policies, operations and procedures. The provisions of this Code apply to all joint stock companies.**

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## A. New Code of Corporate Governance – Our In- depth Analysis and Recommendation to the Management.

### Requirement of the New Code

### Our Analysis

A.1. A Managing Director has to choose between the membership of the Board and their work in the Company. They may not hold both positions as per Clause (3)(a) of principle 1.

After exhaustive study of New Corporate Governance Code and the Code adopted by the Board of Top turn over Companies world wide, we recommend below following analysis:-

- The Managing Director shall always be the part of the Executive Team (shall not hold promoter shares). The most senior Corporate officer, Executive, or Administrator in charge of overall operation of the Company.
- The most suitable person who is always appointed as the Managing Director shall be the CEO (Chief Executive Officer). A long trusted employee of the company since Incorporation.
- The Managing Director shall not hold promoters shares of the Company, only if the Management adopted prior guideline for allotment of Sweat Equity Shares or Performance shares. The Board with the prior approval from the Shareholders of the Company through resolution passed in General Meeting may allot performance shares or Sweat Equity Shares to the Managing Director.

## Requirement of the New Code

## Our Analysis

A.2. Board Members have to engage in training, qualification and induction programs, and to get encouraged to continuous learning and development of their skills in governance, sustainability, financing, accounting and technical and legal aspects of the company's work or business as per clause (3)(c) of principle II and clause (2) of the principle III and other clauses and principles of page 6.

This clause Code of Corporate Governance has itself been well defined and the duties of the board well established in this new Code. Capital Market authority has left no room for Legal advisor recommendation.

- However, while analyzing it is evidential that Capital Market Authority has laid full emphasis on the Board of Director to be more proactive in understanding the External Legal Advisor /Auditor role in assessing the Financial/Economic and Legal activities and their Audit process.
- The exhaustive provisions of the new Code laid arms length default guide to the day to day professional conduct for Board of Directors. Adherence to these standards by independent and Non-Independent Directors and fulfilment of their responsibilities in a professional and faithful manner which will promote confidence of the investment community, particularly minority shareholders, regulators and external stake holders in the day to affairs of the Company.

## Requirement of the New Code

## Our Analysis

3. Creating a committee for nominations and rewards along with its policies and procedure as per clause (4) of principle II page 6.

The purpose of the provisions of the new Code is to establish a well functioning Nomination Committee that will play a significant role in giving investors substantial comfort about the process of Board-level appointments. It, therefore, recommends that companies should have a Nomination Committee, comprising a majority of Independent directors.

This Committee's task should be to:

- Search for, evaluate, shortlist and recommend appropriate Independent Directors and Non- Executive Directors, subject to the Board directions, and
- Design processes for evaluating the effectiveness of individual Directors as well. The Nomination Committee should also be the body that evaluates and recommends the appointment of Executive Directors.

A separate section in the chapter on corporate governance in the annual reports of companies could outline the work done by the Nomination Committee during the year under consideration.

## Requirement of the New Code

## Our Analysis

4. Adopting modern methods in managing General Meetings for effective interpersonal communication with shareholders, especially smaller ones as per clause (5) of principle III page 10.

In light of the said provision (Principle III clause (5) of the new code and as per our understanding, CMA in order to provide larger share holder participation and reducing the shareholder cost for physically attending meeting at scheduled venue have implemented modern method of conducting General Meeting through electronic mode.

For the purpose of the said Code, we analyze that the Listed Companies in Oman may have to follow the below procedure in addition to the normal procedures required not excluding the provision of erstwhile code for holding the General Meeting of the Company:-

- i. The proposed modern method means “Electronic Mode of Conducting Meeting”. Electronic mode may be video conferencing or online audio visual mode of conferencing using various software. Audio video electronic mode of conferencing may be suitable for all shareholders who are not present in the place of venue or the registered office of the Company where the meeting ought to be held. Voting online in the meeting without any intermediary and to participate effectively in the meeting.
- ii. The notice of the meeting must inform shareholders regarding availability of participation through video conference, and provide necessary information to enable shareholders to access the available facility of video conferencing.
- iii. The Chairman of the meeting and the secretary as per normal practice shall assume the following responsibilities;
  - To ensure video conferencing equipment/software facilities.
  - To ensure that no one other than the concerned shareholders or proxy is attending the meeting through electronic mode.

## Requirement of the New Code

## Our Analysis

5. The Chairman of the Board has to measure the performance of the members impartially and independently via a third party appointed by the Annual General Meeting according to a reference frame and criteria set by the Board of Director or the General Meeting as per clause (2)(o) of principle IV.

- As per normal practices in developed nation the practicing Chartered Secretary are the statutory professionals appointed by the Governments through preset guidelines in order to regulate the top management of the Companies or Board of Directors and regulate the practices of the Conduct of the Board of Directors as per compliances of that particular Country. As we understand that in Sultanate of Oman there is no concept of licensed Chartered Secretaries alike Auditors, therefore in context of this new Code we would advise Companies in Oman to mandatorily appoint Corporate Lawyers practicing in Oman as a Third party to measure the Board performance periodically.

## Requirement of the New Code

## Our Analysis

6. The Board has to develop an internal code for professional conduct clarifying the ethics supposed to be adopted and embraced by the Board of Director and Executive Management.

This clause has itself been well defined and the duties of the board well established. Capital Market authority has left no room for Legal advisor recommendation.

However for your perusal please find below exact provisions as per clause 1,2,3,4 of Principle VII;

- (1) The Board of Directors should formulate an internal Code of Conduct that illustrates the ethics to be adopted and followed by members of the board and the executive management, similar to those explained in Annex No. (2) of this Code. The board should approve this internal Code of Conduct, disseminate it and ensure it is read by members of the board, executive management and the employees.
- (2) Members of the board of directors should adopt and abide by the professional conduct standards set forth in the Code of Conduct approved by the board of directors.
- (3) The board should follow up on the adherence of the executive management to the Internal Code of Professional Conduct.
- (4) There must be a cross reference to the Code of Professional Conduct when the Company's policies are formulated regarding complaints, suggestions and grievances, and to clarify specific procedures to put these policies into practice.

## Requirement of the New Code

## Our Analysis

7. Clause (6) of principle IX states that upon considering the transactions of stakeholders, the essence of the relation and its impact on the integrity and transactions of the Company must be considered and not to be satisfied with legal form only.

As per our brain storming analysis of this clause, we conclude that CMA wants to clarify whether or not the Related party transaction has meet the threshold limit of compliance while informing the Board or the Audit Committee or the Shareholders in General meeting, there must be a sense of understanding up to what extent the transaction may have a consequential bearing on the company ethics and market values.

(For Example :- Sharing of classified business report with material implication on the transaction of the company from One of the Board member to his or her brother in laws, friends or friends of friends shall be under the complied threshold of Related party transaction but the intention and purpose to be satisfied first for approval, if it seems to the management that the transaction shall cause future damage to purpose of the object and ethics and sustainability of the company existence may be without any immediate financial losses, then if in this situation the management shall have all option not to approve the transaction or transfer of information between the parties)

## Requirement of the New Code

## Our Analysis

8. According to Principle XI, it is required to create a Nomination & rewards Committee and to formulate a policy for the same; to submit an annual business plan and propose a rotation policy or plan of the Board or atleast the Chairman of the Board, to develop a detailed job description of the role and responsibilities of the Board Member, including the Chairman, so as to facilitate introducing the members to their jobs and roles and measure their performance.

- In light of the said requirement of the new code and our through analysis of the clause, we advise below recommendation to the management of our client Companies;
- The purpose of the clause is exclusively refereed to Independent Director retirement by rotation.
  - Executive and Non-Executive Director are not liable to retire by rotation as their purpose of Directorship in the company was by virtue of their being the promoter or employee of the company holding their part of investment in the company since inception, they are the person who have incorporated the company for fulfilling certain objective.

We recommend below method for retirement of Independent Director by Rotation;-

- i. At every subsequent annual general meeting, one- third of such of the directors for the time being as are liable to retire by rotation, or if their number is not three or a multiple of three, then, the number nearest to one- third, shall retire from office.
- ii. The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by other Directors.
- iii. At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other competent person referred by the Board or by small shareholders.
- iv. the retiring director has, by a notice in writing addressed to the company. or its Board of directors, expressed his unwillingness to be so reappointed or he is disqualified as per the Company Commercial Law of Oman.

## Requirement of the New Code

## Our Analysis

9. According to clause (5) of principle XII. The external auditor, upon discovering a gross violation or doubting the same, must provide the regulatory authority with a copy of the report of such violation without the need to take permission from the company or the Board.

The Auditors are one of the pillar in the part of corporate Governance, managing whole of the financial and economic part of the stake holders. Auditors are the statutory professional assigned as the protector of wealth of the country, indirectly regulating the whole cycle of movement of corporates to stakeholders, to retailers and consumers in a society. The well-being of a company health is regularly nourished by the process of auditing, however any part of willful or negligence in auditing process has led to disastrous consequences. Hence auditing has an important place in the hierarchy of ideal corporate governance structure. As a External Auditor they are assigned the right to detect fraud and financial irregularities in a company. Auditors no way bound by the company, they are assigned to report any material financial irregularities or gross non compliance of Code of Corporate governance to the CMA.

## Requirement of the New Code

## Our Analysis

10. According to principle XIII, regarding (Social Responsibility) it is required to draft a charter or a social responsibility policy and to set forth an annual plan to implement such policy and to address the social responsibility in a special section of the annual report

From among the senior Management of the company the Board may form the Corporate Social Responsibility Committee. The Board of the company, after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website for the purpose of openness and fairness to the society at large, if any, in such manner as may be prescribed, and ensure that the activities as are included in Corporate Social Responsibility Policy of the company.

WE INVITE REMARKS IF ANY TO THE RECOMMENDATION ABOVE