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CORPORATE GOVERNANCE IN EMERGING ECONOMIES: A STUDY OF THE SULTANATE OF OMAN

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Introduction

Corporate governance is the internal structure of a corporation from its lowest level workers all the way up to its executives. The term is also used to describe how a corporation makes its decisions regarding business-related activities from reaching its short-term and long-term goals to communicating with shareholders (Lister, J.,2017) Governance structures and principles identify the distribution of rights and responsibilities among different participants in the corporation (such as the board of directors, managers, shareholders, creditors, auditors, regulators, and other stakeholders) and includes the rules and procedures for making decisions in corporate affairs Corporate governance has far-reaching effects not only for the business itself but for the financial market as a whole.

Corporate scandals of various forms have maintained public and political interest in the regulation of corporate governance. In the U.S., these include Enron and MCI Inc. (formerly WorldCom). Their demise led to the enactment of the Sarbanes-Oxley Act in 2002, a U.S. federal law intended to restore public confidence in corporate governance. The financial crisis of 2008 further highlighted the need to have corporate governance guidelines in place. In India, we witnessed the financial fraud that led to the collapse of Satyam Computers. Hence, there is a pressing need to have corporate governance guidelines that promote and safeguard the rights of all concerned stakeholders in order to ensure trust and compliance. Oman has been at the forefront of bringing legislations and laws concerning CG and has been consistently ranked ahead of other countries in the Middle East in this respect.

The Cadbury Report (UK, 1992), the Principles of Corporate Governance (OECD, 1999, 2004 and 2015), the Sarbanes-Oxley Act of 2002 (US, 2002) have highlighted some basic principles which businesses are supposed to follow in order to ensure adequate governance . They are as follows:

1. **Rights and equitable treatment of shareholders**: Organizations should respect the rights of shareholders and help shareholders to exercise those rights. They can help shareholders exercise their rights by openly and effectively communicating information and by encouraging shareholders to participate in general meetings.
2. **Interests of other stakeholders**: Organizations should recognize that they have legal, contractual, social, and market driven obligations to non-shareholder stakeholders, including employees, investors, creditors, suppliers, local communities, customers, and policy makers.
3. **Role and responsibilities of the board**: The board needs sufficient relevant skills and understanding to review and challenge management performance. It also needs adequate size and appropriate levels of independence and commitment.
4. **Integrity and ethical behavior**:Integrity should be a fundamental requirement in choosing corporate officers and board members. Organizations should develop a code of conduct for their directors and executives that promotes ethical and responsible decision making.
5. **Disclosure and transparency: Organizations** should clarify and make publicly known the roles and responsibilities of board and management to provide stakeholders with a level of accountability. They should also implement procedures to independently verify and safeguard the integrity of the company's financial reporting. Disclosure of material matters concerning the organization should be timely and balanced to ensure that all investors have access to clear, factual information.

Ways in which Corporate Governance Affects Stakeholders

Shareholder Confidence

Effective corporate governance can have a positive effect on shareholder confidence by reassuring them that the company is making smart business decisions and is well organized internally. Confident shareholders are likely to invest larger amounts of money in an effectively governed company because a positive return on the investment is likely. This can lead to increased market confidence in the company, which can serve to increase its overall stock value. When the stock value of a company rises, so does its overall value.

Business Growth and Development
As the value of a corporation increases, so does its ease in generating capital to make purchases aimed at sustaining growth. Corporate governance can have a positive effect on business growth by making it easier for a corporation to raise the necessary capital to acquire new territories or develop new products. Raising capital is easier because investors believe they are extending money to a well-run company with the secure infrastructure necessary to make smart financial decisions.

Economic Effects
A corporation with poor corporate governance strategies can have a negative influence on the business market and the larger economy. A lack of effective corporate governance at the executive and management level can lead to bad business decisions, which can lower the overall value of the company and make it more difficult for the business to meet its financial obligations. This was seen during the economic crisis of 2009 when poor corporate decisions lead to cascading failures in the real estate and automobile markets, which in turn caused large-scale job layoffs and economic slowing.

Public Perception of Business
Corporate governance strategies can have an impact on the public perception of a corporation. A company with strong corporate governance strategies relating to responsible spending, treatment of workers and environmental concerns can generate a large amount of good will among the people. Likewise, a company with little concern for the environmental impact of its business practices or the health of its workers can generate a large amount of public distrust. This lack of faith also can manifest itself as increased government oversight of a company as federal and state departments closely monitor the corporation to ensure it is adhering to all appropriate regulations.

Literature Review
The term corporate governance describes the system by which companies are directed and controlled. The overall objective of good governance is to ensure sustained growth or survival of companies and the attainment of multiple goals of corporate stakeholders, that is, investors, employees, and society in general (Charkham, 1994). It is defined as the system by which companies are controlled, directed and made accountable to shareholders and other stakeholders; control being understood as including indirect influences of financial markets (Demirag, 1998). Hence control is a major element of corporate governance, both in terms of environment and organizational activities (Committee of Sponsoring Organizations of the Treadway Commission (COSO), 1992; Public Oversight Board (POB), 1993; Cohen and Hanno, 2000).

Corporate governance has assumed a central place in the continued effort to sanitize corporate reporting and shore up public confidence in financial markets around the world. The issue seems to revolve around putting the right rules, regulations and incentives in place to ensure transparency and accountability in the management of the affairs of corporate entities (Cadbury Report, 1992). While a lot of research attention is being focused on the subject, relatively few studies providing evidence of the practice in GCC countries are currently in the public domain. Given the emerging nature of the economies of these nations, the installation of effective corporate governance mechanisms is arguably more pertinent for them, if they are to become full and active participants in the global financial marketplace. It is therefore important that relevant and vigorous academic enquiries be pursued on the subject in these countries.

Comparative studies of corporate governance, performance pressures, and accountability of management reveal significant variations among countries (Charkham, 1994). Cultural differences between countries, industries, and companies can explain a great deal of the diversities in corporate governance structures and processes in different countries (Kuada and Gullestrup, 1998). For example the extent to which corporate governance is legally regulated will depend on the degree of uncertainty avoidance in a society. To avoid uncertainty, societies may institute formal and/or informal rules, which are used as regulatory mechanism to ensure that deliberate steps are taken to guard against unacceptable future conditions. Despite the impact of cultural differences on corporate governance, there is evidence suggesting that most of the issues and challenges of corporate governance in a rapidly changing global business environment are similar, irrespective of geographical locations. Byrne (1996; 1997), for example, found that too few people were constantly appearing on the same boards, and consequently, attending too few board meetings, and that many board members had vested interest in the companies and hence could not devote their full attention to management and control issues that require objectivity and independence. Despite cultural differences, this is common in many other countries, and notably so in GCC countries.

Despite the existence of different corporate governance structures, the basic building blocks of the structures are similar. They include the existence of a company, directors, accountability and audit, directors' remuneration, shareholders and the annual general meeting (AGM). Cadbury (1992), Greenbury (1995) and Hampel (1998) called for greater transparency and accountability in areas such as board structure and operation, directors' contracts and the establishment of board monitoring

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committees. In addition, they all stressed the importance of the non-executive directors' monitoring role. Cleghorn (1997) argues that there is no one system of corporate governance that is suitable for all organizations, or even the same organization at all times.

Kyereboah- Coleman (2007) in his study on corporate governance and firm analysis in Africa found that large and independent boards enhance firm value and that combining the positions of CEO and board chair has a negative impact on corporate performance and that CEO's tenure in office enhances a firm's profitability whiles board activity intensity affects profitability negatively. The size of audit committees and the frequency of their meetings have positive influence on market based performance measures and that institutional shareholding enhances market valuation of firms.

While corporate governance is often considered to be the purview of large companies listed on stock exchanges, corporate governance also provides a valuable framework to address issues of sustainability and succession for small and medium-sized enterprises and for family-owned businesses. For those companies, which comprise the majority of companies in the Middle East and North Africa (MENA) region, corporate governance procedures can help facilitate a smooth intergenerational transfer of wealth and reduce conflicts within families. Good governance is an essential component for ensuring the integrity of financial reporting and effective business management. The benefits of good corporate governance are increasingly recognized in the region. In the past several years, at least four new institutes of corporate governance or institutes of directors have been established, demonstrating the growing demand for corporate governance information, training, and guidance for companies to improve their practices. Many countries — including Algeria, Egypt, Bahrain, Lebanon, Morocco, Oman, and Tunisia — have issued corporate governance codes. However, for many companies, full code implementation can appear daunting. Whether standards are obligatory or voluntary, the key to success is to understand that even incremental progress towards such principles can help companies reap outsized benefits.

Corporate Governance in Sultanate of Oman

On July 21 2016, the Code of Corporate Governance for Publicly Listed Companies (the New Corporate Governance Code or New Code) issued by Oman's Capital Market Authority (CMA) came into force in Oman. The Capital Market Authority (CMA) has a track record of rigorously monitoring compliance with the Previous Code through onsite inspections and compliance audits. It is anticipated that the CMA will continue to monitor compliance with the provisions of the New Code equally robustly. The New Code (issued by CMA Circular E/4/2015) replaced the 'Code of Corporate Governance for Muscat Securities Market Listed Companies' (the Previous Code) issued in 2002. As in the case of the Previous Code, the New Code is legally binding and companies with shares listed for public trading (Public Companies) on the Muscat Securities Market (MSM) are obliged to comply with it as a condition of listing on the MSM in accordance with Article 50(8) of the Capital Market Law (Royal Decree 80/98).

When issued in 2002, the Previous Code was the first corporate governance code in the Arab Gulf Cooperation Council. It introduced corporate governance standards and guidelines to augment legal provisions contained in Omani corporate laws. The New Code builds on the framework of the Previous Code and obliges Public Companies to upgrade to higher standards of compliance, reporting and investor protection. The New Code adopts a somewhat novel structure and is presented in a format of 14 Core (highlevel) Principles of good corporate governance with each Principle underpinned by detailed terms for achievement of such Principle. The New Code opens with a 'Statement of purpose', which captures the CMA's doctrine of corporate governance. This explicitly recognises the importance of corporate governance for the macroeconomy both in terms of its promotion and growth as well as serving as its guardian.

As in the case of the Previous Code, a Public Company's Board has primary responsibility for ensuring its compliance with the New Code. However, the New Code additionally places considerable compliancerelated obligations on the Public Company's executive management and external auditors. Key changes effected by the New Code include:

1. Restricting Board membership to nonexecutive members;
2. Tighter and more stringent qualifications for an individual's nomination as an Independent Director; Revised rules concerning related party transactions and avoiding conflicts of interest (including restricting Board members from voting on resolutions where he/ she may be an interested party and prohibiting the CEO of the Public Company from serving as CEO of its subsidiary);
3. Requiring the Board to establish a nomination and remuneration committee in addition to the preexisting requirement for it to establish an Audit Committee;
4. Requiring members of the Board to undergo periodic training on corporate governance and sustainability and for their performance as directors to be assessed and reported upon by an external agency. (Patel, A., 2017)

5. The board of directors is required to develop a charter addressing social responsibility requirements, which will inform a policy to be implemented throughout the company. The executive management should develop an annual plan or strategy to address corporate social responsibility. The company's annual report should include a separate statement of the social responsibility activity of the company.
6. The New Code has made it compulsory for publicly listed companies to have a compliance officer who should be mainly responsible for supervising and managing regulatory compliance issues within the company. This is in line with international standards. This position has always existed, especially in financial services companies. The fact that this has now been introduced in Oman through the New Code shows that the CMA has now taken steps to align Oman with international corporate governance standards.

Challenges facing Companies in Implementing New Code of Corporate Governance and Suggested Solutions

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

Another area of concern for Public Companies is with regard to handling of related party transactions. The New Code requires all related party transactions entered into by a Public Company in the normal course of its business to be approved by the Board following review of the related party transaction by its audit committee. In situations where materials and/ or services need to be sourced from related parties at short notice or in emergency situations, these compliance requirements have potential to create significant operational hurdles as obtaining audit committee review and Board signoff may be an onerous and time consuming task, even if obtained through circular/written resolutions. (Patel, A. ,2017).

In order to overcome these challenges, it has been suggested by the researcher that all MSM listed companies should:

1. Obtain a clear understanding of the provisions of the New Code.
2. Complete a comprehensive gap analysis in order to understand the current position and develop a governance framework under the New Code.
3. Report on the findings of the gap analysis and recommend actions to be implemented.
4. Prepare the requisite governance framework.
5. Be in compliance with the New Code as of the 22nd of July, 2016.
6. Every board of directors should have an Audit Committee. This committee would be formed from the independent directors. It has been suggested that at least one of the members should be a qualified accountant. The Audit Committee would recommend to the Board of Directors the appointment of the external auditors and such appointment would be reviewed regularly. The external auditors and the internal auditors would report direct to the Audit Committee.
7. In addition to its statutory functions, the Audit Committee should assist in the oversight of the integrity of the company's financial statement, compliance with legal and other regulatory requirements, assessment of qualification and independent of external auditors, and performance of the company's internal audit function as well as that of external auditors.
8. In their report to the CMA, public companies should indicate their level of compliance with the code of corporate governance.

Conclusion

The Code of Corporate Governance for Publicly Listed Companies (the New Corporate Governance Code or New Code) issued by the Capital Market Authority (CMA) of Oman is a significant improvement over the older code of corporate governance and addresses several key issues such as composition and remuneration of board of directors, setting up of audit committees, appointing a compliance officer and addressing issues of corporate social responsibility. Oman has been a pioneer in Corporate Governance initiatives among the member nations of the Gulf Cooperation Council (GCC). The New Code has resulted in greater transparency and compliance of Omani public listed companies to the norms of corporate governance. However, a lot remains to be done to catch up with the governance standards of western nations. Issues like disclosure of financial performance, duties and responsibilities of board members and independent directors (especially in family held conglomerates) have to be investigated further in order to ensure more stringent compliance with global

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standards. However, the study has found that Oman is on the right path to setting up more effective and stronger mechanisms to enable the country to fully participate in the global financial marketplace.

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