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Abstract
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Keywords
corporate governance in Qatar; Qatar Financial Market Authority; Qatari Corporate Governance Code; directors' duties in Qatar; Qatari Companies Law

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CORPORATE GOVERNANCE IN QATAR: A COMPARATIVE ANALYSIS

Dr Zain Al Abdin Sharar*

This article offers an overview and brief comparative analysis on the degree of compliance of Qatar's corporate governance framework with the OECD *Principles of Corporate Governance 2004*. It also formulates a number of specific recommendations to the QFMA for strengthening the corporate governance framework in Qatar.

In 2009 the Qatar Financial Market Authority (QFMA) introduced the Corporate Governance Code (the QFMA Code). Driving the introduction was the importance of having a well-structured and mandated corporate governance framework to provide a platform for market integrity and efficiency as well as to facilitate economic growth.[1] While the QFMA Code is not yet prescriptive, it encourages listed companies to consider and voluntarily implement the policies to the extent appropriate, having regard to the company's particular circumstances.[2]

This article compares the QFMA Code with the international benchmark of the *OECD Principles of Corporate Governance 2004* (OECD Principles), to develop recommendations to the QFMA on how to strengthen their corporate governance framework. First, there is a brief overview of the QFMA Code, particularly with respect to key issues of directors' duties, control mechanisms, disclosure, shareholders' rights, corporate governance, and compliance. These key areas are compared with the benchmarks in the OECD Principles. Finally, there are recommendations for how the QFMA Code can meet benchmarks set by the OECD Principles and strengthen the Qatari corporate governance framework.

Overview of the QFMA Code

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1 See the annotation of the Corporate Governance Code for Companies Listed in Markets regulated by the Qatar Financial Markets Authority issued by the Board of directors in its first Meeting for the year 2009, 6.

2 Article 2.2 of the QFMA Code of Corporate Governance stipulates that the Code is based on the principle of comply, or explain the reason for non-compliance. Companies are required to disclose the extent which they comply with the provisions of the Code. Where a company does not comply with any particular provision, it must justify and explain the reasons and rationale behind its non compliance.

The QFMA Code is applicable to all listed companies on the Qatar Exchange.[3] The preamble states that the Code addresses existing corporate governance deficiencies and provides a comprehensive corporate governance framework for the companies subject to the authority of the QFMA, to strengthen the internal controls.[4]

The Code is therefore aimed at enhancing the legal framework of corporate governance, standardizing the operation of listed companies and encouraging the healthy development of the securities market.[5] In particular, it provides direction on issues such as the role of the board of directors, control mechanisms, disclosure, shareholders and stakeholders' rights, corporate governance, and enforcement.

Powers and responsibilities of the board of directors

The QFMA Code provides extensive guidelines to ensure the integrity and independence of a company's board of directors. For example, the Code introduces the independent director system which requires at least one-third of the board of directors of a listed company to be independent, and a majority of the board to be non-executive.[6] The provisions of the QFMA Code concerning directors are outlined:

Board Charter[7]

The various duties and responsibilities of the board of directors of a listed company are set out in Articles 4-8 of the QFMA Code. The most critical of the requirements is that the board must adopt a charter detailing the board's functions, responsibilities and duties. The charter must be drafted to comply with the provisions of the Code.[8]

Board mission and responsibilities[9]

The QFMA Code requires that a company be managed by an effective board of directors, who are jointly and severally liable for the proper management of the company.[10] In particular, the duties and responsibilities of the directors include:

- Approving the company's strategic objectives;[11]

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3 *QFMA Code of Corporate Governance* 2009, Article 2/1.
4 Ibid.
5 See the annotation of the Corporate Governance Code for Companies Listed in Markets Regulated by the Qatar Financial Markets Authority issued by the Board of Directors in its first Meeting for the year 2009.
6 *QFMA Code of Corporate Governance* 2009, Article 9/2.
7 Ibid, Article 4.
8 Ibid.
9 Ibid, Article 5.
10 Ibid.
11 Ibid, Article 5/2/1.

- Appointing and replacing management;[12]
- Setting management compensation;[13]
- Reviewing management performance;[14]
- Ensuring succession planning concerning the company's management;[15]
- Ensuring compliance with applicable laws, regulations, rules and articles of association;[16] and
- Delegation for action on specific matters.[17]

Fiduciary duties[18]

The board of directors owes the company fiduciary duties of care, loyalty and compliance with the rules set out in laws and regulations, including the QFMA Code and the board charter. Directors must perform their duties faithfully, honestly and diligently, in the best interests of the company and all shareholders.[19]

Chairman of the board of directors[20]

The Code emphasizes the importance of separation of power within an organization, and thus requires a clear division of management responsibilities between the Chairman and the chief executive officer (CEO).[21] In particular, Article 8 prohibits the Chairman from participating in the company in any other capacity, such as a member of another board committee. Article 8 codifies additional duties of the Chairman, including the following:[22]

- Responsibility for leadership, efficient organization, conduct and functionality of the board;[23]
- Ensuring effective discussion of significant issues impacting the company in an effective and timely manner, including granting approval where relevant;[24]
- Encouraging the effective contribution of all directors to ensure that the board is working in the best interests of the company;[25]

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12 Ibid.
13 Ibid.
14 Ibid.
15 Ibid.
16 Ibid, Article 5/2/2.
17 Ibid, Article 5/2/3.
18 Ibid, Article 6.
19 Ibid, Article 6/1.
20 Ibid, Article 7, 8.
21 Ibid, Article 7.
22 Ibid, Article 8.
23 Ibid, Article 8/1.
24 Ibid, Article 8/3/1.

- Providing channels for effective communication between management and shareholders, including providing an open forum for shareholders to express their concerns and opinions regarding the board;[26]
- Allowing effective participation of the non-executive board members and promoting constructive relations between non-executive and executive board members;[27] and
- Ensuring and, where appropriate, carrying out an annual evaluation of the board's performance.[28]

Board composition[29]

To assist companies in implementing the most efficient and effective board, the QFMA Code recommends that the board be structured such that:

- The board consists of executive, non-executive and independent directors, to avoid domination by or alienation of an individual or small group;[30]
- At least one-third of the board members are independent, meaning non-executive directors;[31] and
- The board members have adequate expertise and knowledge to perform their duties in the best interests of the company.[32]

Article 10 specifically provides the responsibilities of non-executive directors as:[33]

- Participation in the board meeting and providing an independent opinion on strategic matters, policy, performance accountability, resources, key appointment and operation standards;[34]
- Participation in the Audit Committee as provided by the Code;[35]
- Monitoring the company's performance in light of the company's regulatory framework and stated goals and objectives;[36] and
- Development and implementation of corporate governance procedures.[37]

Board meetings[38]

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25 Ibid, Article 8/3/3.
26 Ibid, Article 8/3/4.
27 Ibid, Article 8/3/5.
28 Ibid, Article 8/3/6.
29 Ibid, Article 9.
30 Ibid, Article 9/1.
31 Ibid, Article 9/2.
32 Ibid, Article 9/3.
33 Ibid, Article 10.
34 Ibid, Article 10/1/1.
35 Ibid, Article 10/1/3.
36 Ibid, Article 10/1/4.
37 Ibid, Article 10/1/5.
38 Ibid, Article 11.

Article 11 provides that the board of directors shall meet at least six times during a year to ensure the board is effectively performing its duties. In addition, the board shall meet when convened by its Chairman or upon the written request of at least two board members.[39]

Board secretary[40]

The board secretary plays an important monitoring and supporting role for the board of directors by ensuring that policies and procedures are followed, and by coordinating the timely completion and dispatch of board agenda and briefing materials.[41] The appointment and removal of the company secretary can only be decided by resolution of the board.[42] The QFMA Code suggests that the company secretary should preferably be a member of a recognized body of professional accountants, chartered body of corporate secretaries or a lawyer from a recognized university, and additionally should have at least three years experience in handling the affairs of a public listed company in the market.[43]

Conflict of interest[44]

Articles 13 and 14 of the Code concern directors trading in their own company's securities and discuss methods by which a company may resolve potential conflicts of interest.[45] Article 14 also sets out requirements for the board:[46]

- To be provided with the necessary information required for the board to discharge its responsibilities effectively; [47]
- To ensure that the nomination and recommendation of the Audit Committee, internal auditor and representative of the external auditors attend the general meeting;[48]
- To provide an induction program for newly-appointed directors to enhance their skills and knowledge; [49]and
- To ensure that the board members are kept up-to-date about the latest developments in corporate governance. [50]

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39 Ibid, Article 11/1.
40 Ibid, Article 12.
41 Ibid, Article 12/1.
42 Ibid, Article 12/4.
43 Ibid.
44 Ibid Article 13.
45 Ibid Article 13-14.
46 Ibid Article 14.
47 Ibid Article 14/1.
48 Ibid Article 14/2.
49 Ibid Article 14/3.
50 Ibid Article 14/5.

Board committees[51]

Articles 15 – 17 recommend that the board of a listed company establish a Nomination Committee, a Remuneration Committee and an Audit Committee that should be solely comprised of directors.[52] The Code specifies that the Nomination Committee should be comprised of, and chaired by, independent directors;[53] the Remuneration Committee should be comprised of at least three non-executive board members, the majority of whom should be independent;[54] and the Audit Committee should be comprised of at least three members, the majority of whom should be independent.[55]

Control systems

Internal Control

Article 18 provides that a company should adopt internal control systems approved by the board to evaluate the methods and procedures for risk management, implementation of the company's corporate governance code and compliance with related laws and regulations.[56] The QFMA Code indicates that a key component of achieving such internal control is the appointment of an internal auditor with a clearly defined role and functionality.[57] The internal auditor should be independent from management and free from conflicts of interest. This helps avoid bias or dilution of the auditor's reporting on the company's internal control systems.

External Auditors

Article 19(1) establishes procedures for the appointment and removal of the external auditor.[58] The Code additionally stipulates that the external auditor must comply with the highest professional standards and retain independence from the company and its board members, including avoiding conflicts of interest.[59]

Disclosure

The QFMA Code emphasizes that management must, with the assistance of internal control systems and auditors, ensure that their financial reports truthfully, accurately and completely disclose information as required by

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51 Ibid Article 15–17.
52 Ibid Article 16/1, 17/1.
53 Ibid Article 15/2.
54 Ibid Article 16/1.
55 Ibid Article 17/1.
56 Ibid Article 18.
57 Ibid Article 18/4.
58 Ibid Article 19/1.
59 Ibid.

laws, regulations and the company's articles of association.[60] These disclosure requirements are ongoing for listed companies.

Also, management must disclose the presence of any dominant or controlling shareholders.[61] A 'controlling shareholder' is defined as a shareholder who owns a comparatively large percentage of the shares of the company, or who has control of the management of the company.[62] A listed company must disseminate the company's audited financial reports to all the company's shareholders.[63]

Finally, management is required to obtain an external auditor's report affirming that their financial reports are a fair and accurate reflection of their financial position in accordance with a set of accounting standards. The financial reports must also disclose the standards with which their external auditor was required to comply.[64]

Rights of shareholders and stakeholders

Shareholders

The QFMA Code requires that listed companies should allow full exercise of shareholders' rights as stipulated in the Code.[65] In this respect, the Code explains that shareholders, as the owners of a company, have the legal rights stipulated by laws, administrative regulations and the company's articles of association.[66] This includes the right to access and review information contained in the company's shareholder registry.[67] For ease of compliance, listed companies often maintain internet portals as a forum for communication with shareholders, and to upload relevant information.[68] Companies are also required to maintain a register which records the names of all shareholders.[69]

The most prominent display of shareholders' rights occurs at the general assembly meetings, in which shareholders may discuss and make informed decisions in relation to items on the agenda.[70] Shareholders have a right to call such a general meeting. With respect to voting, the Code establishes that

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60 Ibid Article 20/2.

61 Ibid Article 20/1.

62 See also Zain Sharar, 'Minority Shareholders' Remedies In Public Shareholding Companies: Comparing The State of Qatar and Australia' (2010) *Corporate Governance eJournal* <http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1017&context=cgej>.

63 *QFMA Code of Corporate Governance* 2009, Article 20/4.

64 Ibid Article 20-20/4.

65 Ibid Article 21.

66 Sharar, above n 62.

67 *QFMA Code of Corporate Governance* 2009, Article 22/2 and 23/1.

68 Ibid Article 23/2.

69 Ibid Article 22/1.

70 Ibid Article 24.

shares of the same class have equal rights.[71] If absent from the meeting, a shareholder may exercise his or her rights by way of a proxy (often given to another shareholder or third party) who will attend the meeting on behalf of the shareholder and participate in voting in accordance with relevant laws and regulations and the directions of the shareholder.[72]

A listed company is required to include in its articles of associations and by-laws, provisions pertaining to the educational and technical skill requirements of board members. Additionally, the by-laws will contain provisions that ensure that information is given to shareholders regarding board members' professional and technical experience and other qualifications.[73]

Various other rights of shareholders include the right to elect members of the board by cumulative voting[74] and the right to receipt of dividends.[75]

Finally, companies must disclose their capital structure and must determine the type of shareholders' agreements that should be disclosed.[76] This includes incorporation of provisions in their articles of association and by-laws that operate to protect minority shareholders, particularly in the event of approval of major transactions where minority shareholders have voted against such major transactions.[77]

Other stakeholders

While listed companies are generally required to consider the legal rights of the board, creditors, employees, consumers, suppliers, the community and other stakeholders, the focus of the QFMA Code is on the employee.[78] Important protective mechanisms incorporated in the QFMA Code in relation to employees include those on the right to equitable treatment and remuneration. There are also whistle-blower policies.[79]

Corporate governance

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71 Ibid Article 25/1.

72 Ibid Article 25/2.

73 Ibid Article 26/1.

74 Ibid Article 26/2. Cumulative voting is defined by the Code as the voting process for election of Board members: for the election of Board Members, every shareholder shall hold a total number of votes equal to the shareholder's total number of voting shares multiplied by the number of seats to be filled on the Board. The shareholder shall have the right to allocate the total number of votes to a single Board candidate or distribute his/her votes amongst such number of candidates as decided by the shareholder.

75 Ibid Article 27.

76 Ibid Article 28/1.

77 Ibid Article 28/2.

78 The QFMA Code of Corporate Governance 2009 neglects to define stakeholders and give them the requisite attention and protection that they are afforded in many other countries.

79 *QFMA Code of Corporate Governance* 2009, Article 29-29/4.

Public companies are required to prepare an annual corporate governance report that includes, but is not limited to, the following:[80]

- Procedures followed by the company in relation to corporate governance;[81]
- Instances of violation of corporate governance procedures, including justified reasoning for deviations and measures adopted to avoid similar instances in the future;[82]
- The members and structure of the board of directors;[83]
- The performance and evaluation of the board of directors;[84]
- The composition of, and tasks undertaken by, specialized committees of the board of directors;[85]
- Internal control procedures, including their effectiveness, failures or deficiencies,[86] reasons for such failures, and measures adopted to avoid similar failures in the future; and
- Compliance with market listing, disclosure and other regulatory requirements.[87]

1. Compliance

The QFMA Code grants discretionary authority to the QFMA to enforce various provisions of the Code using the 'comply or explain why' approach similarly employed by the OECD and leading international institutions.[88] This approach involves:

- Identifying the provisions the company has not followed;
- Explaining why the company has not followed the relevant provision; and
- Explaining how its practices accord with the spirit of the relevant provision.

The 'comply or explain why' approach offers Qatari companies a robust and flexible structure for governance, while balancing the genuine governance interests of the public capital market.[89] This directive, rather than prescriptive,

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80 Ibid Article 30.
81 Ibid Article 30/1.
82 Ibid Article 30/2.
83 Ibid Article 30/3.
84 Ibid Article 30/5.
85 Ibid Article 30/6.
86 Ibid Article 30/7.
87 Ibid Article 30/9.
88 Article 2/2 of the *QFMA Code of Corporate Governance* 2009 clearly states that the Code is based on the principle of comply, or explain the reason for non-compliance. Basically, the Code's provisions are not prescription. They are guidelines, designed to produce an outcome that is effective and of high quality and integrity. If a company considers that a particular provision is not suitable to its needs, it has the flexibility not to adopt it.
89 Corporate Governance in Qatar, The Institute of Corporate Governance, 2.

approach is designed to produce an outcome that is effective and of high quality and integrity.[90]

An example of the 'comply or explain why' approach can be found in the QFMA Code's suggestions for corporate governance practices that optimize a firm's corporate performance and accountability, in the interests of shareholders and broader economy.[91] Allowing due regard to the firm's circumstances, the QFMA Code grants the flexibility for management not to adopt such practices.[92] The QFMA nevertheless encourages companies to use the guidance provided by the Code as a focus for re-examining their corporate governance practices, and to determine whether and to what extent the company may benefit from a change in approach.[93]

The board of directors is required to regularly review and update the firm's corporate governance practices.[94] This is particularly important in the face of changing circumstances surrounding the company's assumptions and assertions with respect to the implementation of corporate governance procedures.[95]

Notwithstanding the flexible nature of the QFMA Code, Article 2.2 of the Code requires companies to indicate, in a well-reasoned and justifiable statement in their annual corporate governance report, the extent to which the firm has not followed the Code, accompanied by the appropriate reasoning.[96] Accordingly, each provision of the Code clearly contains disclosure obligations. The guidelines to reporting, which are contained in Annexes (1) & (2), highlight the relevant considerations for firms in choosing to adopt the Code's provisions, and make suggestions as to how to implement various provisions.[97] Additionally the QFMA supports companies seeking to meet the

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[90] This approach was developed in light of international corporate best practices developed by leading institutions focused on corporate governance, including the Organization for Economic Cooperation and Development (OECD), the International Finance Corporation (IFC), the Bank for Governance Network (ICGN), the World Bank Global Governance Forum (GCGF) and the International Institute of Finance (IIF).

[91] See the annotation of the Corporate Governance Code for Companies Listed in Markets regulated by the Qatar Financial Markets Authority issued by the Board of Directors in its first Meeting for the year 2009.

[92] Like many other jurisdiction, the code would operate on a semi voluntary basis. Whilst companies may publicly disclose which articles of the Code they do not follow and reason for doing so, the Code grant the QFMA a discretionary authority to enforce provisions of the Code under Article 31.

[93] *QFMA Code of Corporate Governance* 2009, Article 31.

[94] Ibid Article 3/2.

[95] Ibid.

[96] Ibid Article 2/2.

[97] Ibid Annexes 1 and 2.

spirit of the Code through whatever means they believe are most appropriate to their business.[98]

The QFMA may also issue decisions, guidelines and principles that are necessary to enforce the provision of the QFMA Code.[99] In addition, the QFMA may amend the Code in the future as appropriate. Finally, the Code shall come into force after its publication in the official gazette.[100]

Comparison of QFMA Code to OECD Principles

2. Background

The OECD plays a vital role in promoting good governance practices in public services and corporate activities.[101] In May 1999, the OECD Ministerial Council agreed upon and adopted a number of key principles, known as the OECD Principles of Corporate Governance 1999 (OECD Principles 1999).[102] The OECD Principles 1999 were the first international standard in the area of corporate governance and were established to provide guidance and international benchmarks for regulators and participants in financial markets.[103] The OECD Principles 1999 were non-binding, to accommodate different legal, economic and cultural circumstances. They were drafted in such a way as to strike a balance between various international models that would be attractive to the global investment community, rather than one single model of corporate governance. They have since been adopted by the Financial Stability Forum as one of the Twelve Key Standards for Sound Financial Systems.[104]

The 2004 OECD Principles, the revised corporate governance principles that replaced the OECD Principles 1999, retained the substantially the same underlying theme for corporate governance. The 2004 OECD Principles

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98 See the annotation of the Corporate Governance Code for Companies Listed in Markets regulated by the Qatar Financial Markets Authority issued by the Board of Directors in its first Meeting for the year 2009.

99 *QFMA Code of Corporate Governance* 2009, Article 30/1.

100 Ibid Article 30/2.

101 L Chee, *Corporate Governance: An Asia-Pacific Critique* (2002) 55. See also G Kirkpatrick, *Improving Corporate Governance Standards: The Work of the OECD and the Principles* (2005).

102 F Jesover and G Kirkpatrick, *The Revised OECD Principles of Corporate Governance and their Relevance to Non-OECD Countries* (2004) 2.

103 H Gregary, *The Globalisation of Corporate Governance* (2000) 2.

104 The Financial Stability Forum was established in 1999 to promote international financial stability through information exchange and international cooperation in financial supervision and surveillance. The Forum brings together, on a regular basis, national authorities responsible for financial stability in significant international financial centres, international financial institutions, sector-specific international groupings of regulators and supervisors, and committees of central bank experts. The Forum seeks to coordinate the efforts of these various bodies in order to promote international financial stability, improve the functioning of markets, and reduce systematic risk. See also www.fsforum.org.

comprise six chapters, each headed by a single statement of principle followed by a number of supporting recommendations and commentary.

The first chapter calls on governments to develop effective institutional and legal frameworks to support good corporate governance practice. Chapters Two to Four address the rights and equitable treatment of shareholders and stakeholders.[105] Chapter Five sets the benchmark for disclosure and transparency.[106] Finally, Chapter Six introduces the structure, responsibilities and procedures of the board of directors.[107]

The two corporate governance frameworks are compared and contrasted below.

3. Similarities

The QFMA drafted the QFMA Code for listed companies in light of the OECD Principles and other standards of international organisations.[108] There are many similarities between the international benchmarks set by the OECD Principles and the framework of the QFMA Code. Areas with significant similarity include the role of directors, the rights of shareholders (though some shareholders rights and most stakeholders rights contained in the OECD Principles are absent from the QFMA Code), and disclosure obligations.

3.1. Board of directors

Chapter Six of the OECD Principles establishes the accountability of the board of directors to the company and its shareholders, as well as burdens the board with the duty of providing strategic guidance for the company.[109] It also highlights the importance of implementing internal controls to effectively monitor the performance of management.[110]

Article 3/1 of the QFMA Code demonstrates a similar spirit to that embodied in Chapter Six above, as well as addresses matters such as the board charter, duties and responsibilities of directors, composition of the board, meeting of the board, conflict of interest and insider trading.[111]

On the board of directors, both the QFMA Code and the OECD Principles emphasize the following responsibilities:

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[105] Equivalent to Chapters 1, 2 and 3 of the OECD Principles 1999.

[106] Equivalent to Chapter 4 of the OECD Principles 1999.

[107] Equivalent to Chapter 5 of the OECD Principles 1999.

[108] The annotation of the Corporate Governance Code for Companies Listed in Markets regulated by the Qatar Financial Markets authority issued by the Board of directors in its first Meeting for the year 2009, 4.

[109] *OECD Principles* VI.

[110] Ibid.

[111] *QFMA Code of Corporate Governance* 2009, Article 3/1.

- To act in good faith, with due diligence and care, in the best interest of the company and all shareholders; [112]
- To ensure compliance with applicable law; [113]
- To treat all shareholders equally and take into account the interest of stakeholders;[114]
- To devote sufficient time to their responsibilities;[115]
- To include non-executive directors in the Board of Directors;[116] and
- To exercise objective judgment independently.[117]

Both the QFMA Code and the OECD Principles acknowledge the importance of introducing a sufficient number of non-executive and independent board members who are capable of exercising independent judgment where there is a potential conflict of interest. In particular, both documents raise concern about independent judgment on director nomination and executive and board remuneration.

3.2. Rights of shareholders

Shareholders, also referred to as equity investors, have a number of property rights that should be protected by law. Under s 7 of the QFMA Code, these rights are conferred upon shareholders by domestic laws and regulations and the company's by-laws. In particular, these include the right to buy, sell and transfer shares without restriction, the right to participate in the profits of a corporation with liability limited to the amount of investment and the right to vote and influence the corporation on important business issues.[118]

Chapter Two of the OECD Principles states that the corporate governance framework should protect and facilitate the exercise of shareholders' rights.[119] Most importantly, this requires protection by the board of directors to ensure that shareholders' rights are respected in a fair and equitable manner.[120]

Examples of shareholders' rights which are protected in both the OECD Principles and the QFMA Code are the right to participate and vote at general meetings and the right to access company information. The former recognizes the importance of shareholders' involvement and influence over fundamental business issues, bearing in mind that management of a public company is vested with the board of directors and management team. Similarly, the

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[112] *OECD Principles* VI. A; QFMA Code, Articles 6/1 and 6/2.
[113] *OECD Principles* VI. C; QFMA Code, Article 5/2/2.
[114] *OECD Principles* VI. B; QFMA Code, Articles 25, 29/1 and 29/2.
[115] *OECD Principles* VI. E.2; QFMA Code, Articles 9/3.
[116] *OECD Principles* VI. E.1; QFMA Code, Articles 9.
[117] *OECD Principles* VI. E; QFMA Code, Articles 10/1/1.
[118] *QFMA Code of Corporate Governance* 2009, s 7.
[119] *OECD Principles* II.
[120] Ibid.

purpose of the right to free access to information is to allow shareholders to assess management's performance regularly and independently, and make informed decisions based on this information.[121]

Chapter Three of the OECD Principles provides that a company's corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. Additionally, all shareholders should have the opportunity to obtain effective redress for violation of their rights. [122]

Articles 25-27 of the QFMA Code similarly provide for the equitable treatment of all shareholders, including minority shareholders. In particular, the QFMA Code prohibits insider trading and abusive self-dealing. It also places restrictions and requires additional disclosures on related party transactions.[123]

3.3. Stakeholders

The OECD Principles prescribe that the corporate governance framework should recognise and protect the rights of stakeholders established by law or through mutual agreements and should encourage active cooperation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises.[124] Further, Principles B and D of Chapter Four provide that, where stakeholder interests are protected by law, stakeholders should have access to relevant, sufficient and reliable information on a timely and regular basis[125] and should retain the opportunity to seek effective redress for violation of their rights.[126]

Principle C allows for the development of performance-enhancing mechanisms for employee participation.[127] In addition, Principle E provides that stakeholders, including employees and their representative bodies, should be able to freely, and without compromising their rights or power, communicate their concerns about illegal or unethical practices to the board.

Section 8 of the QFMA Code similarly addresses the rights of stakeholders by requiring that listed companies shall:

- Respect the legal rights of stakeholders;[128]
- Provide access to relevant, sufficient and reliable information on a timely and regular basis;[129]

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121 For more information see *OECD Principles* II Annotation, Principle A3.
122 *OECD Principles* III.
123 *QFMA Code of Corporate Governance* 2009, Articles 25-27
124 *OECD Principles* IV. A.
125 Ibid VI. D.
126 Ibid VI. B.
127 Ibid VI. C.
128 *QFMA Code of Corporate Governance* 2009, Article 29/1.

- Develop a remuneration policy and packages that provide incentives for employees and management of the company; and
- Provide a mechanism to enable employees to complain of suspicious or oppressive board behaviour, particularly where such behaviour is unethical, illegal or detrimental to the company. The Board shall ensure that the employee rights are protected from any harm or negative reaction for whistleblowing.

Notwithstanding the above, the QFMA Code needs to acknowledge the interests of stakeholders and their contribution to the long-term success of the corporation more thoroughly, and introduce appropriate protective measures.

3.4. Disclosure and transparency

An effective disclosure regime is crucial to the dissemination of corporate governance, particularly with respect to market-based monitoring of companies and the protection of shareholders' rights. In recognition of this, the annotation to Chapter Five of the OECD Principles says the purpose of a strong disclosure regime is to increase investors' confidence in a company and thus reduce the company's costs of raising capital, which correspondingly increases investor confidence in capital markets.[130]

In Chapter Five the OECD Principles state that the corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.[131]

Section 6 of the QFMA Code similarly addresses disclosure. According to Article 20/1 a company must comply with all disclosure requirements including financial reporting as well as disclosing shareholdings of board members, senior executives and major shareholders.[132] The board must ensure that all disclosures made by the company are accurate and a true reflection of the company's position.[133] In addition, the company's financial reports must comply with IFRS/IAS and ISA standards.[134]

Finally, both the QFMA Code and the OECD Principles recognise the importance of both internal and external audit procedures. With respect to appointing an external auditor, both frameworks require that the auditor be independent, competent, appropriately qualified, and provide an objective assurance to the board and shareholders that the financial statements are a true and fair representation of the company's financial position in all material

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[129] Ibid.
[130] *OECD Principles* V.
[131] Ibid.
[132] *QFMA Code of Corporate Governance* 2009, Article 20/1.
[133] Ibid Article 29/2.
[134] Ibid Article 20/3.

respects.[135] In addition, both address the significance of having the external auditor being held accountable to the shareholders, and of the auditor owing a duty to the company to exercise due professional care in the conduct of the audit.[136]

4. Differences

The OECD Principles acknowledge that there is no single model of effective corporate governance. [137] While the OECD Principles are not binding, its purpose is to assist countries in reforming and moderating their own corporate governance practices. Accordingly, there are differences between the QFMA Code and the OECD Principles. The application and scope of the two frameworks differ due to the nature of the proscribing body and its functions; but the most substantial differences are found in shareholders' and stakeholders' rights and control regulations.

4.1. Application

The OECD Principles are non-prescriptive and non-binding. The purpose, rather, is to serve as a reference point for policy makers and market participants as they develop their own practice. The QFMA Code states clearly in the Preamble and at Section 2 that the 'QFMA Code' has been developed for Joint Stock Companies, listed on the Qatar Exchange, which are subject to the regulation of QFMA.[138]

While the QFMA Code currently operates on a voluntary basis, Article 31 provides that QFMA may issue decisions, interpretations, circulars and other guiding principles to enforce the provisions of the QFMA Code as and when it deems fit. The fact that the QFMA has discretionary authority to enforce articles of the QFMA Code infers that in the future the QFMA Code is more likely to be subject to administrative regulation rather than self-regulation.

4.2. Scope

Of the six chapters of the OECD Principles outlined above, the QFMA Code has exhaustive coverage with the minor exception that the provision for equitable treatment of shareholders is not contained in a separate section of the Code.

Not surprisingly, the QFMA Code adopts a different numbering structure than the OECD Principles; namely, the Code is comprised of 31 Articles contained in 10 sections. The different arrangement is due to the QFMA's desire to address corporate governance deficiencies specific to Qatar and to

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[135] *OECD Principles* V. C; QFMA Code, Articles 19/1.
[136] *OECD Principles* V. E; QFMA Code, Articles 19/4.
[137] *OECD Principles* Preamble.
[138] *QFMA Code of Corporate Governance* 2009, Section 2.

place emphasis on provisions that deal with the board of directors and committees and their associated duties and responsibilities.

4.3. The rights of shareholders

Unlike the OECD Principles, the QFMA Code does not address the right of shareholders to participate in the nomination, election and removal of board members. Nor does the QFMA Code address the rights of institutional investors. As a result, it is difficult for shareholders to remove directors from the board. According to Article 117 of the Qatari Companies Law, removing directors from the board requires a signed request of shareholders holding at least 25 percent of the company's share capital. The Chairman must then call an ordinary meeting of the general assembly within 10 days of the request.[139] This process is unnecessarily complicated and time consuming and for this reason, a lower percentage and simpler procedure should be introduced in the QFMA Code.

Furthermore, Provision 2 of Chapter Two of the OECD Principles states that minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress. The QFMA Code lacks statements to this effect and in fact, affords very little protection to minority shareholders. In light of this, the QFMA Code should be amended to provide better protection for minority shareholders, particularly in the event of oppression by majority shareholders.

4.4. Stakeholders

Unlike the OECD Principles, the QFMA Code neglects to offer an effective and efficient insolvency framework that allows stakeholders, particularly creditors, to enforce their rights against companies.

4.5. Control regulations

Provisions E1 and E2 of Chapter Two of the OECD Principles emphasizes that markets for corporate control should be allowed to function in an efficient and transparent manner. However, the QFMA Code does not address the concept of market for corporate control in corporate governance, nor does it provide for treatment of acquisitions, mergers and takeovers. Furthermore, the QFMA Code fails to prevent the use of hostile anti-takeover tactics that management may employ to shield against a takeover and sever the board from accountability.

The QFMA Code has successfully included a separate section to regulate internal control in the company and require the appointment of an external

[139] *Companies Law 2002 (QAR)*, Article 117.

auditor. Article 141 of the Qatari Companies Law specifically requires a joint stock company to have at least one auditor appointed by the general assembly for the financial year.[140] Further, the QFMA Code addressed the importance of independence of the external auditor and emphasized clearly that the external auditor should comply with the highest professional standards and not be contracted by the company to provide any advice or services other than carrying out the audit of the company. The author supports this position taken by the QFMA regulators.

There is, however, a discrepancy between the QFMA Code and the Qatari Companies Law in that Article 19/5 of the QFMA Code requires the external auditor to be replaced every three years at a maximum, while Article 141 of the Qatari Companies Law allows an auditor to be reappointed annually for a period of up to five consecutive years. This discrepancy should be amended such that the QFMA Code follows the rule in the Qatari Companies Law.

There are some provisions contained in the QFMA Code that are not suggested in the OECD Principles. For example, the QFMA Code provides for the production of a corporate governance report, aiming to clarify corporate governance issues faced by the organization, and lists the general requirements that must be followed by listed companies when they prepare their corporate governance report.[141] Furthermore, the QFMA Code contains a separate section that entitles QFMA regulators to take appropriate measures for enforcing the provisions of the QFMA Code as appropriate and as required in the future.[142]

5. Conclusions and recommendations

The QFMA Code for listed joint stock companies has addressed the core corporate governance principles of the OECD which have the effect of strengthening and enhancing the operating framework for corporate governance in Qatar in accordance with best international practices and guidelines.

While the QFMA Code was developed in line with international corporate governance best practices of international organisations such as the Bank for International Settlement, the International Corporate Governance Network and the International Institute of Finance, the QFMA has tailored and adapted the Code to suit Qatar's particular needs and deficiencies, business environment, securities market and existing companies laws.

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[140] Ibid Article 141.

[141] *QFMA Code of Corporate Governance* 2009, Article 30.

[142] Ibid, Section 31.

In light of the above comparison between the Code and the OECD Principles, the following recommendations can be made to strengthen the corporate governance practices in Qatar:

1. The Qatari Companies Law and the stock market regulation should be amended to accommodate the new developments in the QFMA Code, particularly in relation to the board of directors' fiduciary duties of care, loyalty and good faith, in addition to other corporate governance duties. This should extend rights of shareholders to be actively involved in the nomination and election of board members.
2. The QFMA should encourage institutional investors acting in a fiduciary capacity to disclose their corporate governance policies (including how they manage conflicts of interest) and their voting records on important or controversial issues where the value of the investment has been affected or where the board's recommendation has been voted against by the fund. Furthermore, institutional investors should be encouraged to consult with each other on issues of corporate governance.
3. The QFMA Code lacks clearly detailed provisions in the area of regulating markets for corporate control; in particular, those necessary to regulate takeover bids and to prevent the use of hostile anti-takeover tactics by management to shield themselves from accountability. QFMA should seek to expand the QFMA Code and its corporate governance framework accordingly.
4. The QFMA Code does not sufficiently address the rights of minority shareholders. Hence, appropriate provisions should be drafted and enforced in the QFMA Code to protect minority shareholders from the abusive actions of controlling shareholders.
5. The QFMA Code should additionally introduce mechanisms to provide effective means of redress for minority shareholders and employees who suffer damage as a result of violation of their rights or oppression.
6. The QFMA Code needs to appropriately recognise the interests of stakeholders other than shareholders, and their contribution to the long-term success of the corporation.
7. The QFMA Code should provide a definition of a 'non-executive' director, including clarifying the maximum number of shares in the company that such a director may hold.
8. The QFMA Code should address key executive succession planning issues.

9. The QFMA Code and the Qatari Companies Law should streamline their terminology in relation to the chief executive officer, acquisitions and mergers as well as their rules regarding the maximum term that a particular external auditor may serve.
10. The QFMA should educate the media about the importance of a corporate governance legislative framework to better enable them to whistle blow by publishing the names of violating companies.
11. Finally, the QFMA should develop an internet-based electronic filing and data retrieval system for the purpose of significantly improving the dissemination of company information in Qatar.