
Resolution of Disputes in the Muscat Securities and Capital Market

Dr. Saif Al-Rawhi

Assistant Professor,
College of Law, SQU.

Dr. Malik M. Hafeez

Legal Expert, SQU.

Abstract:

Muscat Securities Market being a regulatory authority of the Sultanate of Oman was established through a Royal Decree. thereafter, the regulatory role was separated from executive authority and Muscat securities. The capital market was restructured to establish three main entities, Capital Market Authority as a legislative, regulatory and supervisory entity, Muscat Securities Market for listing and trading of securities and Muscat Clearing and Depository Company as the central entity for transferring ownership of securities. However, the judicial, quasi-judicial authorities and arbitration mechanism play key role for resolution of commercial and corporate disputes in the Sultanate. The commercial and administrative courts in judicial hierarchy of the Sultanate having codified civil and commercial procedure to conclude the dispute from initiation to decision, the security and capital market authorities being a body corporate provide quasi-judicial mechanism having disciplinary and appellate authorities for resolution of disputes subject to regulatory laws while the arbitration law provides an alternative mode of dispute resolution between persons under public or private law, irrespective of the nature of legal relationship on which the dispute is based. The law of commercial arbitration subject to the agreement between the parties shall be invoked to settle the dispute relating to an economic activity including securities, investment, financial institution, commercial and corporate entities.

Key words: Capital Market Authority; Muscat Securities Market; Arbitration; Conciliation, Dispute Settlement Procedures, Commercial Court.

1. Introduction

Oman is situated along the Arabian Sea and having bordering countries such as UAE, Saudi Arabia and Yemen along with southern approaches to the Strait of Hormuz, across from Iran⁽¹⁾. Historically, Omanis have remained independent since expelling the Portuguese in 1650 whereas the Al Said monarchy began in 1744, extending Omani influence into Zanzibar and other parts of East Africa until 1861 as well as Gawader and Bander Abbas. His Majesty the Sultan Qaboos bin Said Al Said, born in November 1940, is the eighth in the line of the monarchy and became sultan in July 1970. His Majesty innovative and magnetic leadership played a significant role in organizational, institutional and human developments through education to bring peace and economic stability in the region. The governmental policies guarded the process of institutionalizations and economic wellbeing of the nation. Whereas Muscat Securities Market (MSM) being a regulatory authority of the Sultanate of Oman was established through a Royal Decree 53 /88.

The Muscat Security Market being a first and only regulatory authority faced supervisory problems to regulate, govern and monitor security and capital market along with clearing and depository matters, therefore, the regulatory role was separated from executive authority by Royal Decrees No. (80/ 98) and No. (82/ 98) to restructure and reorganize the securities and capital market into three main entities: CMA as a legislative, regulatory and supervisory entity; MSM for listing and trading of securities; and Muscat Clearing and Depository Company as the central entity for transferring ownership of securities and saving related documents. Initially this paper describes and analyzes the role of

(1) Kenneth Katzman, Oman: Reform, Security, and U.S. Policy, Congressional Research Service Report (2016) 1

CMA and MSM in financial market of the sultanate, however, a comprehensive disputes resolution mechanism in the sultanate has also been examined. Lastly, the concluding remarks have also been submitted for readers of the papers and researchers.

2. Capital Market Authority (CMA)

The CMA aims to deliver and diversified economic growth for Oman by improving investment, performance and productivity of issuers having efficient returns for savers, investors and users of financial market products⁽¹⁾. The transparency and maintenance of financial stability through legal mechanism encourage the investors' confidence and ensure stability in financial market for all stakeholders wherein the regulatory role of CMA has become an engine for sustainable economic growth and circulation of wealth to add economic value in domestic growth for which an effective and efficient corporate and financial market is necessary to ensure fair and full market competition among domestic and foreign investors, qualitative risk management and disclosure mechanism.

The CMA being a regulatory body of the Sultanate regulates the capital market through regulations or regulatory mechanism to develop and rationalize the capital market and insurance sectors. The CMA has supervisory and monitoring role to upgrade the efficiency and the level of capital market and insurance industry in general, and to protect investors and policyholders in particular. CMA is also responsible to enhance the capacity building and awareness by organizing conferences, training courses, workshops and publication of literature regarding investment and investors' rights, role of directors and management, saving concept and investment as well as an importance and role of capital markets and insurance industry for public at large and business community in particular. Corporate best practices require code on

(1) Legislations Regulating the Capital Market and Insurance Sector, 4th edition (2013) 26-27 available at <https://www.cma.gov.om/OnlineFlashBooks/En/Encyclopedia/index.html>

corporate governance that provides a mechanism of good corporate governance.¹ The CMA already established the department of corporate governance to meet out the requirement of domestic and international challenges of corporate and financial stability.

The CMA has been envisaged the duties and responsibilities such as regulating, licensing and monitoring the issuance of securities to those companies operating in the field of securities, investment funds, credit rating agencies, insurance companies, insurance brokers, and their agents. Secondly, the CMA also monitors and supervises the Muscat Securities Market, Muscat Clearing and Depository Company, Public shareholding companies, and accredited Audit firms and those companies regulated by CMA. The CMA not only has legislative role for capital market and insurance industry but also plays a role to review the existing legislation to upgrade the regulatory mechanism in accordance with the best international practices and work requirements. The upgradation of Rules for Election of Directors of Public Joint Stock Companies and the Provisions Pertaining to their Responsibilities through proposed amendments in memorandum as well as code of corporate governance witnesses the effective legislative and regulatory role of CMA.

3. Muscat Securities Market (MSM)

In 1988, the Muscat Securities Market (MSM) was established through the Royal Decree (53/88) to regulate, organize and control the securities market of the Sultanate. After a decade, the MSM was restructured or reorganized again into two separate entities, CMA and an exchange as MSM that were created through two Royal Decrees (80/98) and (82/98) to enhance investors' confidence by developing and improving all securities trading system and regulatory mechanism of the stock market such as providing performance based information and financial data of

(1) Malik M Hafeez, Corporate Governance and Institutional Investment, Universal Publication, USA (2015) 10-25

listed companies to investors through a modern electronic trading system to ensure transparency and competitive market for investors and rest of stakeholders. The clearance and settlement of securities mechanism was developed to ensure market stability and rational investment environment for foreign investment in the sultanate. The tripartite clearance and settlement mechanism through MSM, Muscat Clearing and Depository Company and the broker was maintained through a Settlement Bank with a Settlement Guarantee Fund (SGF). The SGF has been established by all intermediary companies operating in the Market to guarantee the continuous settlement processes among intermediaries. Whereas any deficit may be transferred to the settlement bank on behalf of the intermediary and then the same amount of deficit may be collected from the concerned intermediary company for smooth settlement.

The MSM as a public institution aims to encourage investment and saving, disseminating investment awareness and investors' confidence by providing conducive environment to all stakeholders including investors in consideration of mutual interest of investors and the national economy. The securities such as shares of public joint stock companies, government bonds, corporate bonds, investment funds as well as financial instruments approved by the MSM may be traded in the Muscat Securities Market. The MSM is continuously working to develop mechanism to ensure sound transactions, protection of market participants and awareness program through interaction with market participants, educational and economic institutions for the benefit of the economic development process. These developments in capital markets with intent to insure higher standard of performance also require to encourage new listing and diversification of investment instruments.

4. Disputes Resolution Mechanism in the Sultanate

The Basic Law of the State provides the system of governance, envisaged powers of the state to His Majesty the Sultan to rule and govern the affairs of the state with the assistance of an appointed Council of Ministers⁽¹⁾. Certain fundamental rights of nationals and expatriates, including the protection of personal liberty and property interests are also protected by the Basic Law of the Sultanate⁽²⁾. His Majesty the Sultan being the sovereign authority of the Sultanate has absolute power to promulgate the primary legislation by means of royal decrees. However, all subordinate legislation must be issued in accordance with the procedures in the relevant royal decree. The bylaws are usually promulgated through ministerial decisions. The regulations may also be issued by the relevant body. The subordinate legislation such as ministerial decisions and regulations are made and promulgated in pursuance of royal decrees and the same shall be published and notified through Official Gazette whereas commencement date of said laws may be the publication date unless specified otherwise⁽³⁾.

History describes that prior to 1971 the Shariah (Islamic) Courts played an important role to adjudicate civil and criminal matters but His Majesty the Sultan Qaboos Bin Said Al Said restructured and reformed the judicial system in the Sultanate through codification of a Constitution⁽⁴⁾. The sources of legal system in Oman comprises of the civil law, the Anglo-Saxon law and the Islamic law⁽⁵⁾. The religion of the State is Islam therefore; the

(1) Royal Decree No. (101/96) Promulgating the Basic Statute of the State

(2) A guide to legislation in Oman, Oman Chamber of Commerce and Industry, (2005) 681

(3) A guide to legislation in Oman, Oman Chamber of Commerce and Industry, (2005) 68-69

(4) The Royal Decree (101/96) issued and promulgated on 6 November 1996

(5) Khalil Mechantaf, The Legal System and Research in the Sultanate of Oman, Hauser Global Law School Program, New York University School of Law (2010) available at ><http://www.nyulawglobal.org/globalex/Oman.html><

fundamental source of legislation is the Islamic Shariah⁽¹⁾. The Authority for the Settlement of Commercial Disputes (ASCD) had jurisdiction to adjudicate the commercial disputes but the adjudication authority of commercial disputes envisaged to the commercial courts through primary legislation⁽²⁾. In Oman the Ministry of judicial affairs deals with judicature and its issues however, the Constitutional guarantee have provided to uphold the rule of Law, the impartiality of the Judge, the independence of the judiciary and the prohibition of any interference in a Law suit or in the matters of justice⁽³⁾.

4.1. Adjudication of Corporate and Commercial Disputes through Judiciary

The judicature being a custodian of rule of law and constitution is considered as a fundamental organ of every government for administration of justice. In Oman, the judiciary is composed of a Higher Council to run and regulate the affairs of judicature and its auxiliary bodies. The powers and duties of the Council regarding judicature and prosecution are already been elaborated in the constitution⁽⁴⁾. The cases or claims are instituted or filed before the Courts of First Instance and their decisions can be appealed before Courts of Appeal comprising of three Judges whereas the Supreme Court is the final appellate and august court of sultanate for judicial decisions and uniting the legal principles⁽⁵⁾.

(1) Article 2 of the Constitution/The Basic Law of the Sultanate

(2) The Royal Decree No. 13/97 brought changes in the title, structure and powers of the ASCD that can now be defined by the Commercial Courts.

(3) Articles 59, 60 and 61 of the Constitution

(4) Article 66 of the Constitution. One judge of the court of first instance may adjudicate the cases involving value to the extent of less than RO.70,000 while cases of more than this value may be adjudicated by bench of three judges. The court of summary justice established through Royal decree 13/97 may settle claims up to OR 15, 000/- and order up to the value of RO. 5, 000/- may be appealed before court of first instance while claim of less than RO. 5000 will not be appealable.

(5) Khalil Mechantaf, The Legal System and Research in the Sultanate of Oman, Hauser Global Law School Program, New York University School of Law (2010) available at <http://www.nyulawglobal.org/globalex/Oman.html>

Whereas the Administrative courts have jurisdiction to adjudicate administrative disputes while Shariah Courts may also invoke jurisdiction on cases related to the personal status and family law. In appeal the appellate courts have jurisdiction for de novo (afresh) adjudication of appeal cases considering the evidence produced before court of first instance or any additional evidence produced before or called by the appellate courts as well as matter of facts and law while Supreme court being august court of the Sultanate only adjudicates the cases involving questions of law and procedure. All claims or cases subject to the relevant law of limitation (time-period) are filed before courts⁽¹⁾. However, the execution of all Judgments and decisions passed by the judicial entities are made and processed in the name of His Majesty the Sultan whereas any failure or delay in executing these judgments is considered a crime punishable by law and the winning party is entitled to initiate a criminal action through the court against such delay or failure resulted in execution of said decisions⁽²⁾.

Although judges are competent to adjudicate the issues and cases brought before them in accordance with applicable laws of the Sultanate but commercial and corporate disputes require that the court should have to consider the settled principles of commercial and corporate law such as nature of company, indoor management, principles of corporate governance, terms of instruments, legislative provisions, memorandum and articles of associations, rules of customary practices and relevant provisions of Shariah law⁽³⁾. The court may appoint court-registered or recognized experts of relevant fields to reach the conclusion of the cases subject to adjudication of objections on the report of

(1) Royal Decree No. 55/1990 provides limitation for commercial cases.

(2) Khalil Mechantaf, *The Legal System and Research in the Sultanate of Oman*, Hauser Global Law School Program, New York University School of Law (2010) available at <http://www.nyulawglobal.org/globalex/Oman.html>

(3) Mansoor Malik and others, *A Primer in Local Litigation*, in *Dispute Resolution Guide 2015*, International Financial Review (2015) 35

experts submitted before courts⁽¹⁾. However, the court may be inquisitor for understanding of cases but most of the times parties take burdens on their shoulders to present and establish their cases on the basis of their documentary evidence.

4.1.1. Commercial Court

The commercial courts have jurisdiction to take cognizance on all commercial matters and disputes but the question arises that how can commercial courts invoke their jurisdiction on company and corporate matters. The capital market law reveals that the rights and liabilities between seller and purchaser of the securities, which traded in the market, shall be settled according to the contract of sale as documented at the market⁽²⁾. Secondly, the commercial companies laws (Royal Decree No.4/74) is very clear to explain the nature of commercial companies in following terms:

“A commercial company is a contract by which two or more persons undertake to participate in an enterprise for profit, each contributing a share of the capital in the form of tangible or intangible property or services, with a view to sharing any profit or loss resulting from the enterprise”⁽³⁾.

The Omani commercial companies law described the contractual nature of commercial companies and that commercial companies consisting of partnership (either general or limited), joint-stock company, limited liability company and holding company are considered juristic person except companies established in result of joint ventures⁽⁴⁾. The constitution of a company including shareholder-agreements or constitutive contracts, memorandum and Articles of Association of commercial companies, other than

(1)The expert has a mandate to prepare a report whereas the parties are given an opportunity to challenge the expert’s findings and recommendations by filing objections.

(2) Article 22 of the Capital Market Law (Royal Decree No. 80/98)

(3) Article 1 of the Commercial Companies Law (Royal Decree No. 4/74)

(4) Article 2 & 3 of the Commercial Companies Law (Royal Decree No. 4/74)

those related to joint ventures, shall be registered and published in commercial register according to the provisions of commercial companies laws and every member of a commercial company shall be bound by the provisions or terms of the company's constitution, constitutive contract and Articles of Association⁽¹⁾. The commercial companies law envisaged the jurisdiction to commercial courts of the sultanate to decide the corporate and commercial dispute of the company. As the law described that the Commercial Court, upon a complaint by a member or a creditor of the company, finds that a member's contribution in kind has been overvalued, can decide that the member shall pay to the company in cash the difference between the estimated value of the property contributed by him and its market value determined as at the time of contribution⁽²⁾.

4.1.2. Court of First Instance

The commercial court has jurisdiction to resolve commercial and corporate dispute of the companies and financial market, however, the court of first instance may invoke its jurisdiction to decide and settle disputes between parties relating to securities⁽³⁾, the ancillary and connected matters whereas more than 20 employee of state owned corporations and businessmen who directly or indirectly involved in corporate malpractices and corruption, have already been gone on trial by Omani courts since last 4/5 years. An important example of corporate crime has been reported by the Reuters in these words: "The judge at the Court of First Instance in Muscat also convicted Adel al-Raisi, a former aide to the minister of the now-dissolved economy ministry, of organizing a bribe made by a senior official at a South Korea-based firm to Oman Oil Company CEO, Ahmad al-Wahaibi. The court found the vice CEO of the Korean-based LGI,

(1) Article 5 & 6 of the Commercial Companies Law (Royal Decree No. 4/74)

(2) Article 11 of the Commercial Companies Law (Royal Decree No. 4/74)

(3) Article 62 of the Capital Market Law (Royal Decree No. 80/98)

named in court as Myung Jao Yoo, guilty of paying \$8 million to a Caribbean-registered company owned by Wahaibi after winning a billion riyal petrochemical project in Sohar Port in Oman. Oman Oil Company said in a statement it was committed to enforcing a stringent code of ethics and corporate governance practices across all levels of the organization. Its Deputy CEO, Mulham Al Jarf, said he was given the “rights, responsibilities and authorities of the CEO in August 2013 to ensure that the business operations of the company remain uninterrupted,” the statement added. At the hearings, Wahaibi admitted that after the cash was deposited into the accounts of his company, he had given the two other defendants their shares of the cash. The court sentenced Wahaibi to 10 years in jail and fined him 4 million Rials (\$10.39 million) for accepting bribes, 10 years for money laundering and one million Rials and three years in prison for abuse of office. The court also confiscated all the bribe money in his frozen Swiss bank account.”⁽¹⁾.

4.2. Adjudication through Administrative Authorities

The Capital Market Authority being a regulatory body of the sultanate has power to regulate the capital and security market of Oman. The Capital Market Law reveals that the Director General of the market has power to cancel or suspend any transaction or offer and demand of any transaction relating to securities which contradict the provision of law or which are made through unjustifiable price⁽²⁾. The CMA has jurisdiction to conduct investigations, whenever it deems necessary, to probe the violation of any provisions of the Law or the internal regulations or the instructions issued by the Authority. The Authority may ask any person to submit a written statement about the circumstances of the commitment of such violation. Secondly, the Executive President may

(1) Reuters US edition dated 27th February 2014, Omani CEO jailed for 23 years in graft case: court, ><http://www.reuters.com/article/us-oman-corruption-sentences-idUSBREA1Q1OW20140227><

(2) Article 18 of the Capital Market Law (Royal Decree No. 80/98)

form a committee of senior officials of the Market or the Authority to conduct the necessary investigations on the violations referred to the committee and it may summon any person to record his statement on the matter. The committee may ask to concerned person to furnish books, documents, correspondence, notes and other records that may be necessary for committee's review. The order of investigation committee may be executed by assistance of competent authorities of the Sultanate⁽¹⁾.

The Board of Directors of the Authority may form, among its members, a Disciplinary Committee comprising of a chairman and two members to decide on any violation of the law and the regulations, decision, and guidelines thereof, which are imputed to companies dealing in securities, their agents, subsidiaries as well as companies whose securities are listed on the Market. The Disciplinary Committee shall confront the defendant with the violation attributed to him, enable him to defend himself on his own or through an attorney and hear witnesses it deems necessary on its own or at the request of the defendant or his attorney⁽²⁾. The decisions of the Committee shall not be enforced unless they have become final after the lapse of the deadline for an appeal. The Executive President may, upon a recommendation by the Disciplinary Committee, suspend intermediaries and agents from trading on the Market for a period not exceeding two weeks. He may also issue a reminder or issue cautioning in respect of minor violations. The decisions of the Disciplinary Committee may be assailed before the Complaints Committee within 30 days from the date of notification to the person concerned⁽³⁾. The concerned parties may appeal against the decisions made by the Minister, or the Executive President or the Authority pursuant to the provisions of the above-mentioned Capital Market Law and the decisions issued in implementation before the Ap-

(1) Article 60 of the Capital Market Law (Royal Decree No. 80/98)

(2) Article 105 of Ministerial Decision no. 4/2001, issued on 29.4.2001 Issuing the Implementing Regulations of the Capital Market Law

(3) Article 63 of the Capital Market Law (Royal Decree No. 80/98)

peals Committee⁽¹⁾. An appeal committee comprising two senior judges at the Court of First Instance to be nominated by the Minister of Justice and third member nominated by the Oman Chamber of Commerce and Industry shall be constituted on the resolution and recommendation of the Board of directors of the Authority however, the most senior one of them shall chair the committee⁽²⁾.

4.3. Arbitration as a Dispute Resolution Mechanism

Arbitration is regarded as an alternative dispute resolution mechanism. Arbitration is a form informal, quick and flexible mechanism to settle or resolve the commercial and corporate disputes. Arbitration is considered a consensually agreed settlement method wherein parties have liberty to choose the arbitrators, procedural and substantive law to conduct the arbitration and venue of arbitration as per their convenience. The decision of arbitrators is called 'award'. Although arbitral tribunals, unlike courts, face lack of power to enforce the award but once parties submit their consent through agreement, the arbitral award becomes binding having capability to be enforced legally through court of law even many international conventions also facilitate enforcement of foreign arbitral award. The Sultanate of Oman is signatory of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Award (1958) through ratification by Omani law (RD No. 36/98) wherein any award rendered in any country that is a party to the New York Convention should be legally enforceable in the Sultanate. If losing parties do not comply with the award, the other party may invoke the jurisdiction of court for execution of award. Oman is also a member of the Gulf Cooperation Council (GCC). The Omani law recognized the procedure of the GCC Commercial Arbitration Centre (GCAC) situ-

(1) Article 100 of Ministerial Decision no. 4/2001, issued on 29.4.2001 Issuing the Implementing Regulations of the Capital Market Law

(2) Article 61 of the Capital Market Law (Royal Decree No. 80/98)

ated at Bahrain and awards rendered by it since 2000. Usually, domestic arbitration awards may be enforced through the courts subject to adoption of formal procedure, however, in some countries, arbitral awards are regarded as court decisions, therefore, they are executed alike court orders⁽¹⁾. An arbitral award rendered in Oman should automatically be enforced in any member state of the New York Convention wherein the members countries are not only required to give effect to private agreement to arbitrate disputes but also recognize and enforce arbitration awards rendered in another member's country. Whereas any arbitral award rendered in fellow member's state of the convention, the claimant may seek to enforce the award through Omani court.

Arbitration being a dispute resolution mechanism is not a new concept in Oman. Arbitration (Tahkim) was a well-known and widely used method of settling disputes in pre-Islamic time having free choice of the parties to opt procedure to resolve the disputes. This customary dispute resolution mechanism recognized by the Islamic scholars and it has continuity with the arrival of Islam. Oman in Arabic Peninsula had an ancient history with arbitration mechanism having force of Islamic Jurisprudence with binding effect of arbitration award⁽²⁾. The modernization of Omani law, particularly business law, started in 1970, therefore, the Committee for the Settlement of Commercial Disputes (CSCD) was established in 1972 with implementation of commercial law, hearing commercial claims, and interpreting commercial contracts. The Committee was regulated by Royal Decree (4/1974) on the Commercial Companies Law. The Committee seems to be a statutory arbitral body for commercial disputes. The members of the panel were barred to have direct interest in the dispute. They were bound to disclose any conflict of interest, and must

(1) Mohammed Khalfan Ali, A Legal Analysis of the Development of Arbitration in Oman with Special Reference to the Enforcement of International Arbitral Awards, PhD Thesis, University of Hull (2008) 22-39

(2) Abdullah Mohammed Al-Saidi, Evolution of Arbitration in the Sultanate of Oman, Research and Studies, issue no. 181, (2010) 24

not take part in the arbitration process; otherwise any deliberation or decision taken by the panel having conflict interest was regarded as void. The Committee was competent to consider all commercial disputes including companies, banking sector, manufacturing, exploitation of natural resources and management; however, committee's decisions were not subject to appeal.

The certain judicial features of CSCD and binding effect of arbitral award in the Ibadi fiqh, made its decisions enforceable alike court decisions. The Committee had the power to decide commercial disputes and any other matter referred by the Ministry of Commerce and Industry. The Omani Chamber of Commerce and Industry, which was established in 1973, was envisaged some conciliation and arbitration powers⁽¹⁾. Therefore, the Chamber adopted the Conciliation and Arbitration Regulations to conduct dispute settlement functions. In 1984, the BSCD replaced the CSCD through Royal Decree (79/1981) and the Board had jurisdiction over business disputes. The BSCD judgments and arbitration decisions are published selectively by BSCD since 1984.

The BSCD was replaced by the Commercial Court through Royal Decree (13/1997) to have specialized judicial institution to adjudicate commercial disputes. Although the Royal Decree (32/84) recognized arbitration agreements and parties were allowed to invoke arbitration clause to resolve the disputes arising from their contractual relations having binding effect of arbitral awards, but there was no provision preventing the court from considering such disputes, or compelling the parties to recourse to arbitration. All said efforts seems to be a step forward in recognition of arbitration in Oman. The deficiency of vital provisions of law of arbitration was removed in 1997 when new arbitration law was promulgated through Royal Decree (47/1997) for Arbitration in Civil and Commercial Disputes, and previous arbitration laws were repealed. Although after a decade, new amendments

(1)Article 8, Law of the Oman Chamber of Commerce and Industry of 1979

in the law of Arbitration in Civil and Commercial Disputes were introduced through Royal decree (3/2007) to align with UNCITRAL Model Law on International Commercial Arbitration, with some modifications. Although new legislation (i.e. Royal Decree 29/2002) dealing with Procedures in Civil and Commercial Disputes that, among others, regulates the procedure for enforcing domestic as well as foreign court decisions and arbitral awards but recently arbitration as an alternative dispute resolution mechanism has also been accepted in various areas of economic and corporate relationships in Oman. For instance, arbitration has been introduced as a dispute settlement mechanism in MSM and Chamber of Commerce⁽¹⁾. The Oman Chamber of Commerce and Industry has an arbitration committee to which parties to a dispute may refer their case⁽²⁾.

Now the arbitration law empowered the courts to examine arbitration clauses or agreements whereas first instance courts and courts of appeal, as the case may be, have jurisdiction to consider arbitration cases and the Muscat Court of Appeal allocates the jurisdiction for international arbitration as the Royal Decree No. 3 of 2009 amended some provisions of the administrative jurisdiction and added a new article stating the enforceability and application of arbitration law over civil and commercial disputes in consideration of administrative contracts and such disputes would be referred to the first instance or appeal circuits, or court president, as the case may be. Hence, the Omani arbitration is not limited to the extent of civil and commercial law suits but extends to disputes related to administrative contracts⁽³⁾. The Sultanate of Oman being signatory of the New York Convention

(1) Mohammed Khalfan Ali, A Legal Analysis of the Development of Arbitration in Oman with Special Reference to the Enforcement of International Arbitral Awards, PhD Thesis, University of Hull (2008) 104-115

(2) Oman Investment Climate Statement 2015, US Department of State, Available at > <http://www.state.gov/documents/organization/241903.pdf> >

(3) Abdullah Mohammed Al-Saidi, Evolution of Arbitration in the Sultanate of Oman, Research and Studies, issue no. 181, (2010) 26

on Recognition and Execution of Foreign Arbitral Award 1958, Washington Convention 1965 and International Centre for the Settlement of Investment Disputes (ICSID) is encouraging the arbitration as an alternative mode of dispute resolution.

The prevailing law of arbitration in the Sultanate requires a written separate arbitration agreement or arbitration clause in any agreement executed between the parties for resolution of any existing or unforeseen dispute⁽¹⁾. The parties to the arbitration enjoy liberty and autonomy to stipulate the substantive and procedural law including the rules of evidence which the arbitrators are required to apply to the subject-matter of the dispute⁽²⁾. However, in absence of an express clause regarding the application of law, the tribunal has power to determine the applicability of law subject relevancy of dispute or subject-matter to conduct the arbitration proceedings⁽³⁾. The arbitration proceedings as an alternative dispute resolution method are generally kept confidential unless parties allowed otherwise⁽⁴⁾. The arbitration award (decision) rendered by the arbitral tribunal should endure names and addresses of arbitrators including their nationalities and capacities, the text of the agreement to arbitrate, a summary of the relief sought by the parties and their submissions and documents, the operative words of the award, the date and place the award was rendered, and the reasons for the award⁽⁵⁾. The parties have no right of appeal against the award except filing of petition to seek declaration to null and void the award which has

(1) Article 10 of the Arbitration law, (Royal Decree 47/1997)

(2) Article 6 and 25 of the Arbitration law, (Royal Decree 47/1997). The Law of Evidence in Civil & Commercial Transactions, as promulgated by Royal Decree No. 68/2008, could be applied if considered appropriate or, as is common in international arbitrations, the IBA Guidelines on the Taking of Evidence in International Commercial Arbitration.

(3) Article 39 of the Arbitration law, (Royal Decree 47/1997)

(4) Article 42 of the Arbitration law, (Royal Decree 47/1997). An award may not be published, in whole or in part, except without the approval of the parties.

(5) Article 43 of the Arbitration law, (Royal Decree 47/1997)

not been rendered as per law⁽¹⁾. However, an award rendered in accordance with the Arbitration Law shall have binding effect on the parties for execution with the force of res-judicata⁽²⁾.

4.4. Resolution of Disputes through Conciliation

The conciliation being an alternative mode of disputes resolution has been recognized by the Sultanate through promulgating a Royal Decree (98/2005) for conciliation and settlement of disputes. The conciliation and settlement law shall apply, without prejudice to the jurisdiction of courts or other authorities, over disputes in pursuance of other provisions and laws⁽³⁾. The Minister of Justice has power to issue an order, in the required manner, for the constitution of Committees for Conciliation and Settlement. However, parties has choice to suggest members' name for constitution of conciliation and settlement committee. The ministerial order shall determine the place, terms of reference and sessions of each of the Committees without the need to abide by the official working hours⁽⁴⁾. The Committees are authorized to settle disputes, before a reference is made to the courts, by fostering conciliation between parties to civil, commercial or private disputes⁽⁵⁾. The committee shall be comprised of a judge as the chairman and either two judges or two experienced persons, who are known to be knowledgeable and astute, as members⁽⁶⁾.

(1) Article 52 and 53 of the Arbitration law, (Royal Decree 47/1997)

(2) Article 55 of the Arbitration law, (Royal Decree 47/1997) The recent example of Recognition and Enforcement of Arbitrator's Awards in the Sultanate is that in April 2010, overruling an earlier Primary Court judgment, the Muscat Court of Appeal recognized that an arbitration award rendered in Denmark against an Omani company was enforceable in Oman under the New York Convention.

(3) Article 1 of the Conciliation and Settlement Law (Royal decree No. 98/2005)

(4) Article 3 of the Conciliation and Settlement Law (Royal decree No. 98/2005)

(5) Article 4 of the Conciliation and Settlement Law (Royal decree No. 98/2005)

(6) Article 5 of the Conciliation and Settlement Law (Royal decree No. 98/2005)

The Minister shall order to concerned Ministry personnel, who are governed by the provisions of the Civil Service Law, to undertake the responsibility of administration of conciliation and settlement proceedings⁽¹⁾. The Committee may seek the assistance of experts or any concerned persons for effective and solid reconciliation between the disputing parties. A dispute shall be submitted to the Committee by an application, which is free of charge, to be made by interested parties without going to the formalities enumerated by the Law of Civil and Commercial Procedures or the Law of Judicial Authority. An application shall include the name of applicant, place of residence of parties and the subject matter of the dispute required to be resolved⁽²⁾. The personnel of the Secretariat of the Primary Court, within whose jurisdiction a Committee is established, shall offer to plaintiffs or their representatives, before the registration of their complaints, a forum for amicable settlement of disputes, in accordance with this Law. With the consent of the plaintiffs or their representatives the disputes shall be referred to the Committee⁽³⁾. The Committee shall settle a dispute within sixty days from the date of application to the Committee. This may be extended for a further period of not more than thirty days upon the agreement of parties before the Committee⁽⁴⁾.

On completion of conciliation and settlement, the Committee shall prepare a report of the session which shall be signed by all parties and which shall include the date and details of the settlement. The report, signed by the chairman and the members of the Committee, shall become an executable order to be enforced in the same manner as the final judgment of a court. The secretary of the Committee shall deliver a copy thereof to each party and shall keep the original in the case file⁽⁵⁾. In the event that

(1) Article 6 of the Conciliation and Settlement Law (Royal decree No. 98/2005)

(2) Article 10 of the Conciliation and Settlement Law (Royal decree No. 98/2005)

(3) Article 12 of the Conciliation and Settlement Law (Royal decree No. 98/2005)

(4) Article 13 of the Conciliation and Settlement Law (Royal decree No. 98/2005)

(5) Article 15 of the Conciliation and Settlement Law (Royal decree No. 98/2005)

the order of session is not implemented, it shall be enforced in accordance with the Law of Civil and Commercial Procedures after obtaining a copy of the report sealed by the Committee and signed by the secretary⁽¹⁾.

5. An Analysis of Existing Dispute Resolution Mechanism of Securities and Capital Market

The CMA being a regulatory body of MSM supervise and oversee the issues of securities and capital market. The question arises that what are the modes of resolution of dispute arises in capital and security market. The legal structure of the Sultanate reveals that the securities and capital market disputes may be resolved through formal judicial mechanism, quasi-judicial mechanism and alternative dispute resolution. The judicial mechanism of the Sultanate requires that the claim/suit may be instituted in court of first either instance and administrative court or commercial court. The nature of dispute determines the jurisdiction and cognizance of the court. The corporate and securities disputes involving criminal and civil liabilities of the parties may be filed and adjudicated through court of first instance. If any dispute arise because of any action taken by administration of MSM and CMA may be adjudicated through administrative court subject the nature of impugned order passed by the authorities must be an administrative action. Lastly, the commercial court of the sultanate has exclusive jurisdiction on all kind of corporate and securities disputes. Any aggrieved party of security and capital market of the Sultanate may file the case against private party or the government entities before commercial court for adjudication.

The question arises that why parties or business community avoid to adopt formal litigation process to resolve their dispute. It is submitted that the enforcing contracts and resolving disputes is part of the daily business transaction of the capital market but

(1) Article 15 of the Conciliation and Settlement Law (Royal decree No. 98/2005)

parties having business and corporate disputes try to avoid formal recourse of judicial adjudication because of the mechanics of the justice system, pre-existing legislation, prevalence or absence of the rule of law, types of disputes and settlement culture that seems to be crucial factors to consider out of court dispute resolution mechanism. However, it may be argued that whenever the parties involve in novel or unprecedented disputes then they prefer litigation and judicial course of resolution to seek further judicial elaboration. Even the disputes of lower value are not economical to resolve via mainstream litigation because of their disproportionate costs and time span started from institution to final order by the highest court of the Sultanate and its execution process. The role judiciary may be perceived as impeding, rather than facilitating, the resolution of disputes. The lack professional and judicial expertise relating to corporate and capital market transactions, judicial biases during trial or pretrial proceedings to reach early assessment and analysis of the case, influence of trading blocks, requirement of confidentiality of disputes resolution within stipulated time frame may be the causes of preference to alternative dispute resolution mechanism⁽¹⁾.

The Disciplinary Committee for the resolution of securities disputes and the Appeal Committee for the resolution of securities conflicts are considered as a quasi-judicial forum to adjudicate the securities market disputes of the Sultanate. The CMA has power to constitute and establish these quasi-judicial committees that have jurisdiction to decide the securities disputes. The article 18 and 16 of the capital market law (CML) authorize the CMA and its authorized committees to probe and resolve the securities disputes. The article 321 to 324 of Executive Regulations of Capital Market Law (1/2009) provides remedy to aggrieved person to assail the decision or order of Minister, President of CMA and its authorities before the appeal committee while articles 325 to

(1) Alternative Dispute Resolution Guide Line (2011) 27-43, Investment Advisory Service of the World Bank Group, Washington DC, USA.

330 of said regulation elaborate the jurisdiction and adjudication mechanism of the disciplinary committee to resolve the securities disputes. These committee may take cognizance over the disputes falling under the provisions of the CML, the implementation of the regulation, along with the rule and instructions issued by the CMA and the MSM with respect to both public and individual actions. The claims against decisions of committees and actions which will be issued by the CMA or the MSM may be redressed through Appeal Committee. Although capital markets all over the world are regulated by a set of laws, rules and regulations, which are laid down and promulgated in consideration of international best practices and the principles of market regulation by authorized legislative authorities of the state. The regulator including CMA, corporate entities, individuals and the instruments transacted upon are equally governed by these clearly articulated regimes of legislations (i.e. Capital Market Laws). The purpose of these set of laws is to ensure transparency, equity, fairness and orderliness in securities transactions for the overall objective of sustaining investor confidence in the market.

The question arises that the quasi-judicial authorities of CMA are considered an effective mode for resolution of capital and securities market disputes. Although quasi-judicial committees that are formed through the CMA have expertise in securities and corporate issues but their autonomy and financial independence may be questionable. Therefore, it may be argued that the decision against CMA through these committees may reflect the biasness. The institutionalization of these quasi-judicial forum having complete autonomy and financial independence from CMA may be an effective and reliable mode of dispute resolution for investors and rest of the stakeholders of the MSM. The family owned companies dominate the MSM whereas the companies having family dominated ownership face the issues of conflict of interests that discouraged confidence of investors particularly institutional investors. To minimize this conflict of interest among

company shareholders and management the code of corporate governance has been introduced in 2002 and all MSM listed companies are required to comply with the code subsequently in 2005, the code was laid down for all insurance companies working in the Sultanate⁽¹⁾. Although through code of corporate governance the rights of minority shareholders, issues regarding inside trading and financial transparency such as disclosure of risk assessment and off-balance sheet transaction may be addressed. The CMA working hard to capitalize on its relatively strong corporate governance environment through compliance with international best practices. therefore, the cross listing of securities and privatization of the stock market may lead business diversification of capital market and harmonization with rest of regional stock markets. It is further suggested that the fair securities trading and corporate governance require to reduce state share-ownership, and introduction of insider trading mechanism with strong surveillance and enforcement system. The independent, specialized financial and corporate courts may also be required to resolve corporate, securities and finance related issues affectively. Further suggested that 'in addition to strengthen the corporate governance structure, the legal reforms may be pursued to build the investors' confidence with a mechanism by which they can redress grievances in a timely and cost-effective manner'⁽²⁾.

The investment and corporate disputes including stock and securities conflicts are reckoned as commercial disputes. Although the CSCD and BSCD were established through Royal Decrees (4/1974 & 79/1981) for resolution of commercial disputes in the Sultanate but new arbitration law (R.D. 47/97) for resolution of disputes through arbitration including commercial disputes was enacted in accordance with UNCITRAL Model Law on Interna-

(1) Corporate Governance in Oman – An investor Perspective, Task force report (2007) 1-3, The Institute of International Finance, Inc. and Hawkamah

(2) Corporate Governance in Oman – An investor Perspective, Task force report (2007) 3, The Institute of International Finance, Inc. and Hawkamah

tional Commercial Arbitration. Similarly, Conciliation is also considered as an alternative mode of dispute resolution to resolve financial, commercial and corporate disputes in the Sultanate. Now question arises that arbitration and conciliation being alternative modes of dispute resolution are effective under corporate and capital mechanism of the Sultanate. Article 25 of the CML reveals that companies operating in the field of securities are those companies dealing with securities investment, depositing, clearance and settlement of securities transaction, securities portfolio and investment fund, brokerage in securities and management of trusts accounts. Companies conducting the business of securities in MSM shall be commercial companies that shall also form an association or guild to ensure the adherence to justice, integrity and efficiency to protect the interest of investors who deals with securities and stocks. Article 2 of the Law of Arbitration explains that 'the arbitration shall be considered as commercial, in the context of this Law, provided the dispute is based on the legal relationship arising out of an economic activity, irrespective of whether it is in the form of a contractual agreement or not'. The commercial arbitration includes the arbitration of investment and securities disputes. The article 317 of Executive Regulations of Capital Market Law (1/2009) protect the conciliation mechanism as an ADR mode for securities and stock disputes. CMA not only recognizes and encourages the conciliation process but also implements the conciliation decisions effectively.

The Oman Chamber of Commerce and Industry Compromise and Arbitration Regulations shall be applied on all commercial disputes submitted to the committee or referred to it by official entities. Therefore, it may be argued that the legal system of the Sultanate regulates commercial arbitration as an alternative mode for all kind of disputes resolution including investment and securities disputes. Although the Sultanate lacks institutionalization of arbitration mechanism but CMA has understanding with Dubai International Arbitration Centre (DIAC) to promote corpo-

rate arbitration practice in capital market of the Sultanate for regional cooperation. Now the Oman Chamber of Commerce and Industry intends to establish its own centre for commercial arbitration in the Sultanate in 2016. The efforts of OCCI witnesses the deficiency of arbitration centre and its importance for business community within the region. The centre may offer investor security without the need to commence cases in dispute resolution centres in other countries. Although the GCC Commercial Arbitration Centre in Bahrain has benefitted from this lack of a facility in Oman and has attracted the majority of Omani cases but other traditional arbitration centres such as London, Paris and the United States had also attracted some of the larger cases. For instance, recently the Oman's State General Reserve Fund (SGRF) has taken the state of Bulgaria to arbitration at the Washington-based International Centre for Settlement of Investment Disputes following the collapse of Bulgaria's fourth largest Bank in October 2015, and that Oman had successfully defeated an arbitration claim brought in the International Centre for Settlement of Investment Disputes (ICSID) from an investor in a limestone quarry operation.

6. Concluding Remarks

The regulatory structure of the Capital Market Authority, Muscat Security Market, and exiting legal framework of the Sultanate for resolution of disputes seem to be encouraging factors for the smooth functioning of corporate and security market. The independence of judiciary and autonomy of regulatory authority particularly CMA to adjudicate the disputed issues of investors and business community are playing significant role for investment and corporate stability. In addition to aforesaid judicial, quasi-judicial and alternative disputes resolution mechanisms of the Sultanate, some other measures may also be taken to maintain economic and corporate stability. Firstly, the investors and corporate community may be aware about alternative dispute resolution framework that provides affective arbitration and concilia-

tion mechanism to settle the disputes of corporate and business community where the award rendered by the arbitral tribunal, decision of conciliation and settlement committee have binding force for execution alike court decisions. Therefore, an Alternative Dispute Resolution Center (ADRC) may be established in Muscat to institutionalize the alternative mode of dispute resolution where panel of neutral experts may be registered to facilitate independent settlement of disputes between the parties.

Secondly, the commercial courts have been established to adjudicate the commercial disputes but financial and securities issue, company and corporate governance matters including bankruptcy proceeding require special company courts where judges should be well equipped with financial, corporate and securities laws, in addition to commercial laws, to decide the disputes. Although the regulatory authorities having quasi-judicial authority are empowered to take cognizance on corporate and security issues¹ but their decisions as administrative actions may also be questioned and assailed before the administrative courts. These procedural complexities confuse the investors and corporate stakeholders. Therefore, the company courts may be established to adjudicate all these corporate and securities disputes in addition to winding up cases, bankruptcy proceedings, securities issues, decisions of directors and liquidators. Lastly, the smooth and stable economic growth requires that the business community, corporate professionals and government officials having involvement in corruption or commit white-collar crimes shall be prosecuted without any softness. The technical wing of prosecution department is dealing with these kinds of cases but accountability courts and anticorruption authority may be established to prosecute these kinds of criminals and illicit assets of the criminals may be recovered effectively in pursuance of municipal law and international conventions.

(1) The jurisdiction and powers of administrative authorities has already been discussed in section 4.2

References

1. A guide to legislation in Oman, Oman Chamber of Commerce and Industry, (2005)
2. Abdullah Mohammed Al-Saidi, Evolution of Arbitration in the Sultanate of Oman, Research and Studies, issue no. 181, (2010)
3. Alternative Dispute Resolution Guide Line (2011) 27-43, Investment Advisory Service of the World Bank Group, Washington DC, USA
4. Corporate Governance in Oman – An investor Perspective, Task force report (2007) 1-3, The Institute of International Finance, Inc. and Hawkamah
5. Kenneth Katzman, Oman: Reform, Security, and U.S. Policy, Congressional Research Service Report (2016)
6. Khalil Mechantaf, The Legal System and Research in the Sultanate of Oman, Hauser Global Law School Program, New York University School of Law (2010) available at <http://www.nyulawglobal.org/globalex/Oman.html>
7. Legislations Regulating the Capital Market and Insurance Sector, 4th edition (2013) 26-27 available at <https://www.cma.gov.om/OnlineFlashBooks/En/Encyclopedia/index.html>
8. Malik M Hafeez, Corporate Governance and Institutional Investment, Universal Publication, USA (2015)
9. Mansoor Malik and others, A Primer in Local Litigation, in Dispute Resolution Guide 2015, International Financial Review (2015)
10. Mohammed Khalfan Ali, A Legal Analysis of the Development of Arbitration in Oman with Special Reference to the Enforcement of International Arbitral Awards, PhD Thesis, University of Hull (2008)

11. Reuters US edition dated 27th February 2014, Omani CEO jailed for 23 years in graft case: court, ><http://www.reuters.com/article/us-oman-corruption-sentences-idUSBREA1Q1OW20140227><
12. The Royal Decree No. 101/96
13. The Royal Decree No. 13/97
14. The Royal Decree No. 55/1990
15. The Royal Decree No. 80/98
16. The Royal Decree No. 4/74
17. The Royal Decree No. 47/1997
18. The Royal decree No. 98/2005
19. The Ministerial Decision No. 4/2001

Table of Contents

Subject	Page
Abstract	231
1. Introduction	232
2. Capital Market Authority (CMA)	233
3. Muscat Securities Market (MSM)	234
4. Disputes Resolution Mechanism in the Sultanate	236
4.1. Adjudication of Corporate and Commercial Disputes through Judiciary	237
4.1.1. Commercial Court	239
4.1.2. Court of First instance	240
4.2. Adjudication through Administrative Authorities	241
4.3. Arbitration as a Dispute Resolution Mechanism	243
4.4. Resolution of Disputes through Conciliation	248
5. An Analysis of Existing Dispute Resolution Mechanisms of Securities and Capital Market	250
6. Concluding Remarks	255
References	257