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Uae CORPORATE GOVERNANCE

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This country-specific Q&A provides an overview of corporate governance laws and regulations applicable in UAE.

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UAE CORPORATE GOVERNANCE



1. What are the most common types of corporate business entity and what are the main structural differences between them?

In the UAE, the principal forms are: Public Joint Stock Companies, Joint Stock Companies, Limited Liability Companies, Professional licences, and free zone Entities.

2. What are the current key topical legal issues, developments, trends and challenges in corporate governance in this jurisdiction?

The key legal issues challenges and trends in Corporate Governance in the UAE would be summarised as follows:

Directors Liability and fiduciary obligations towards the Company/ How to manage these 2 concepts in an efficient manner

Insolvency regime and its impact on Directors' Liability. We have seen recently a judicial decision by a court in Dubai where all board members were personally considered liable in a bankruptcy proceeding. As a result, the Bankruptcy law was amended to differentiate where and how the Director's liability is triggered.

Board has to rethink strategy and priorities by including issues like:such as:

- working from home versus working in the office;
- digital transformation and other accelerating trends;
- ensuring more sophisticated and reliable supply chains; and
- engaging further with the Customer base whose needs and demands are changing.;
- Review the alignment of corporate purpose, culture, values, and strategy;
- Identify specific practices to drive quality boardroom discussions about strategy and the future.

Board Dialogue with management these days is now becoming a pressing issue, rather than the traditional top-down approach from Boards, given the important role such dialogue will have on the overall strategy of a Company.

It is important to highlight/ask how can the board help management think through the implications of pressing and potentially existential strategic questions and decisions? Further, is management up to the challenges in correctly guiding the Board correctly and enabling the Board to take appropriate measures and decisions ?

To that effect, the following trends are observed and are becoming increasingly important in today's governance dynamics.

- Encouraging management to revisit the strategic planning process.:
- Is the process adequate, considering the speed and impact of megatrends - and does it capture the risks and potential disruptions on the horizon?
- Does the process challenge the validity of key assumptions that the company's strategy and business model are based on?

3. Who are the key persons involved in the management of each type of entity?

The following bodies apply to most forms of entities in the UAE(assuming that the most common type of companies in the UAE are either a Joint Stock Company [listed or private] or a Limited Liability Company [whether in free zones or mainland UAE]):

The General Assembly (whether of partners or Shareholders depending if the entity is a Limited Liability Company and/or a Joint Stock Company) , the board and its committees, the company secretary and the chairman of the board have ultimate responsibility for the governance and management of a company.

4. How are responsibility and management power divided between the entity's management and its economic owners? How are decisions or approvals of the owners made or given (e.g. at a meeting or in writing)

The General Assembly is responsible for setting the corporate governance framework and electing the board.

The board is responsible for drafting and approving the corporate governance policies and for the formation of the board's sub-committees (ie, audit, nomination and remuneration, and risk).

The General Assembly in a company in the UAE is the "legislative body" the ultimate body of the corporate that can take decisions and change the charter of the company.

The Board is the executive body and organ of the company where the overall guidance and decisions of the General Assembly are formulated into business plans and execution plans. The Board is responsible before the General Assembly.

The Board appoints the Senior management that is responsible to execute the directives and guidance and business plans of the Board whilst liaising with the different board sub-committees/

5. What are the principal sources of corporate governance requirements and practices? Are entities required to comply with a specific code of corporate governance?

Corporate governance requirements in the UAE primarily emanate from the following regulations:

- the Central Bank of UAE's Corporate Governance Regulations and Standards, issued on 18 July 2019, which aimed to standardise corporate governance practices for banks in the UAE;
- the Securities & Commodities Authority's Decision No 3 (Chairman) of 2020 concerning the Joint Stock Companies Governance Guide;
- the UAE Cabinet's Decision No 2 (9w) of 2020 on the Governance System for Federal Government Boards;
- the Dubai International Financial Centre's Rulebook (Chapter 2);
- Abu Dhabi Global Market's Rule Book (Chapter

2).

6. How is the board or other governing body constituted?

A board of directors shall be composed of a minimum of three members and a maximum of 11 members, provided the number of members is always an odd number.

The board may be composed of executive, non-executive, independent and non-independent members, provided that the majority of board members shall be non-executive independent board members. A recent amendment to the Corporate Governance Framework in the UAE made it mandatory by 2022 for all listed companies to have 20% female representation on the board.

Roles of Board Members

The roles of boards of directors are as follows.

Taking the necessary procedures to ensure compliance with applicable laws, regulations and resolutions, as well as the requirements of the supervisory authorities.

Adopting the strategic approaches and main objectives of the company, and supervising implementation thereof. This includes:

- setting the company's comprehensive strategy and main work plans and reviewing thereof constantly;
- setting risk management strategy and reviewing thereof constantly;
- specifying the best capital structure, strategies and financial objectives of the company, and approving the annual budgets;
- supervising the company's main capital expenses and ownership and disposal of assets;
- setting performance objectives and monitoring implementation and the overall performance of the company;
- conducting periodic reviews of the company's organisational and occupational structures and adopting these structures.

Taking the necessary procedures to ensure efficient internal auditing of the work flow in the company, including:

- setting a clear policy approved by the board to ensure efficient internal auditing of the work flow in the company;

- setting written and detailed regulations and procedures for internal auditing, which determines the duties and responsibilities in compliance with the policy approved by the board and the general requirements and objectives stipulated in the applicable legislations.

Establishing an internal auditing department to follow up compliance with the applicable laws, regulations, resolutions and requirements of the supervisory bodies, the internal policy, regulations and procedures set by the board.

Setting written procedures to manage and address conflict of interests and dealing with potential cases of such conflict for board members, the senior executive management and shareholders, and setting the procedures to be taken in cases of misuse of the company assets and facilities or misconduct resulting from transactions with related parties.

Ensuring the soundness of administrative, financial and accounting systems, including the systems related to preparation of financial reports.

Ensuring the use of appropriate regulatory systems for risk management by outlining potential risk and discussing it with transparency.

Setting clear and precise standards and procedures for board membership and putting them in force subsequent to approval by the general assembly.

Setting a clear delegation policy in the company to determine delegated persons and the powers assigned thereto.

Setting a policy regulating the relationship with stakeholders in a manner ensuring the company's fulfilment of its obligations towards them, preserving their rights, providing them with required information, and establishing sound relations with them. Such policy shall cover the following aspects:

- mechanisms for indemnifying stakeholders in the event of violation of their rights approved by laws and protected by contracts;
- mechanisms for settling complaints or disputes that may arise between the company and stakeholders;
- maintaining confidentiality of the information related to them;
- the company policy towards the local community and environment.

Setting a code of conduct for the board members, the

staff, auditor and persons to whom some of the company works are assigned.

Setting procedures to apply governance rules in the company, review of such procedures and assessment of compliance thereto on annual basis.

Establishing appropriate development programmes for all board members to develop and update their knowledge and skills, ensure effective involvement in the board and ensure implementing any training or qualification programmes as determined by the Authority or the market.

Familiarising a newly appointed board member with all the company departments and sections and providing them with all the information required to ensure correct understanding of the company activities and works and full realisation of their responsibilities, all that enables them to perform their duties duly in accordance with the applicable legislations, all other regulatory requirements and the company policies in its field of business.

Setting procedures to prevent insiders in the company from using the confidential internal information to make tangible or intangible gains.

Setting a mechanism for receiving shareholders' complaints and proposals, including their proposals to add particular issues in the general assembly agenda in a manner that ensures studying such proposals and making the right decisions about them.

Adopting criteria for granting incentives, bonuses and privileges to board members and senior executive management in a manner that serves the company interest and realises its objectives.

Setting the company disclosure and transparency policy and following up its implementation in accordance with the requirements of the supervisory authorities and applicable legislations. Such policy shall include the following:

- a commitment to disclose periodic reports, material information, insiders and their relatives' ownership of securities issued by the company, related parties transactions performed with the company, and the benefits of the board members and senior executive management;
- providing information to shareholders and investors precisely, clearly and punctually so as to enable them to make their decisions;
- using the company website to enhance disclosure and transparency;
- setting a clear policy for distribution of the

company profits in a manner that serves the interests of both the shareholders and the company; such policy shall be displayed to shareholders in the general assembly meeting and mentioned in the board report.

Ensuring the availability of resources required to achieve the company's objectives.

Ensuring the protection of shareholders' interests and the company's assets.

Ensuring the establishment of a compliance function to follow the compliance with applicable laws, regulations and decisions, as well as regulatory requirements, internal policy, regulations and procedures established by the board.

Determining the extent of the company-wide risk appetite, including specific targets, maximum limits or indicators of risk appetite.

Supervising the company's human resources policies.

Ensuring the accuracy and validity of the disclosed data, statements and information according to the applicable policies and regulations in relation to disclosure and transparency.

Determining and recommending potential new board members for election by shareholders.

Recommending the remuneration policy of the board for approval by shareholders.

Evaluating the overall performance and effectiveness of the board, its committees and members and taking corrective actions as appropriate.

Ensuring that the board communicates with stakeholders through the investor relationships function.

Forming specialised committees from the board according to the resolutions that determine the duration of these committees and their powers, functions and responsibilities, as well as the method used by the board for monitoring these committees. Such resolutions shall determine names, duties, rights and obligations of the members.

Evaluating the performance and works of the board and its members.

7. How are the members of the board appointed and removed? What influence do the entity's owners have over this?

The appointment and removal of Board members is the privilege of the General Assembly. The listed companies have more prescriptive Board appointment and election procedures that can be summarized as follows:

- The General Assembly should have on its agenda at the end of each term (or upon the constitution of the company) an item pertaining to the election of the board of directors, as per the articles of association of the company. Thereafter the General Assembly members (shareholders) will vote on the election of the board. The vote is secret and cumulative. If a government entity is a holder of 5% or more of the shares of a company, it may appoint its board representatives (pro rata).
- The majority of the board members and the chairman must be UAE nationals.

8. Who typically serves on the board? Are there requirements that govern board composition or impose qualifications for board members regarding independence, diversity, tenure or succession?

(REFER TO CONSOLIDATED ANSWER ABOVE)

9. What is the role of the board with respect to setting and changing strategy?

(REFER TO CONSOLIDATED ANSWER ABOVE)

10. How are members of the board compensated? Is their remuneration regulated in any way?

(REFER TO CONSOLIDATED ANSWER ABOVE)

11. Do members of the board owe any fiduciary or special duties and, if so, to whom? What are the potential consequences of breaching any such duties?

Board members owe fiduciary duties to the Company and its shareholders and has to operate in the best interest of the Company and Shareholder. Any Breach of

such fiduciary duty, namely in case of conflict of interest, the liability of the Board Member may be evoked by the Shareholders and/or the Company itself.

12. Are indemnities and/or insurance permitted to cover board members' potential personal liability? If permitted, are such protections typical or rare?

Board and Officers Insurance is acceptable and is a market practice in the UAE however, still such insurance and indemnitees are to be tested.

13. How (and by whom) are board members typically overseen and evaluated?

Board members are overseen and evaluated by the Board Remuneration and Nomination committee. Shareholders have the ultimate powers in evaluating Board Members

14. Is the board required to engage actively with the entity's economic owners? If so, how does it do this and report on its actions?

It is all routed through the General Assembly Meeting where Board submits reports to the Shareholders

15. Are dual-class and multi-class capital structures permitted? If so, how common are they?

Yes permitted namely in specialised free zones such as the DIFC and ADGM and such classes of shares are very common namely for companies that require more than one round of financing and/or in fund related structures.

16. What financial and non-financial information must an entity disclose to the public? How does it do this?

A listed company shall submit a governance report signed by the chairman in accordance with the form prepared by the Authority and available on the Authority's website.

The annual report shall include a corporate governance report which features the following, at least:

- the names of board members, chairman, vice-chairman and other persons occupying main jobs in the company, a brief biography of each member including their qualifications and experience, and the identification of the independent member(s) as well as other positions in the board or senior management they hold in other companies or institutions;
- committee and board members, the authorities and assignments entrusted thereto and activities carried out during the year;
- the number of meetings held by board and board committees as well as names of the attendees;
- the names of the major shareholders who directly or indirectly own more than 5% of the company shares, in addition to a brief summary of the changes in the company capital structure;
- a report on the risk management framework and internal controls, including the following:
 - the applicable corporate governance rules;
 - the self-evaluation approach of the board performance;
- internal audit procedures and the scope of their full application by the board, and details and reasons for any compensation and allowances received by each board member and board committees for the financial year;
- a statement of the company directors and the first and second grades as stated in the organisational structure of the company and their functions, dates of appointment, details of salaries, bonuses received by each of them separately and any other compensation received from the company, clarifying the consideration for these compensations;
- compensation of the board members and all members of the company administrative body, including remuneration and any incentive programmes related to securities issued or guaranteed by the company.

The board shall make this report available to all company shareholders before submitting an application to the Authority to approve holding of the Annual General Meeting.

Listed companies are under the obligation to announce their quarterly, semi-annual and annual financial performance, in addition to disclosing any information that is or might be price-sensitive information

17. Can an entity's economic owners propose matters for a vote or call a special meeting? If so, what is the procedure?

Yes via a General Assembly Meeting. Any shareholder holding 10% and above or group of shareholders holding 10% or above may request the General Assembly meeting prior to the meeting to add any item on the agenda and request a vote accordingly.

18. What rights do investors have to take enforcement action against an entity and/or the members of its board?

Shareholders can enforce any breaches of the directors' duties; internal audit can also investigate any breach by any board member and has the duty to report the same to the board and/or the chairman of the board.

The Emirates Securities and Commodity Authority (SCA) has also the authority to investigate any breach of the corporate governance rules by any director and to impose adequate sanctions accordingly (for listed companies).

Other Bases for Claims/Enforcement against Directors/Officers

Members of the board of directors shall be liable towards the company, shareholders and third parties for fraudulent acts and misuse of power, as well as for any violation of the law or the company's articles of association, mismanagement, and any provision made to the contrary hereof shall be null and void.

Liability stated above shall apply to all board members, if such error arises from a decision taken by unanimous agreement.

However, if the decision in question was issued by majority vote, members who objected to the same shall not be held liable, so long that their objections have been established in minutes of the meeting. A member's absence from the session in which the decision in question was issued shall not relieve them from liability, unless proven unaware of such decision or unable to object to the same.

19. Is shareholder activism common? If so, what are the recent trends? How can shareholders exert influence on a corporate entity's management?

Yes it is common we have witnessed this recently in the

actions taken by certain shareholders of a listed company requesting a forensic investigation in the Management and the Board members activities that led to a given listed company suffering financial losses. That action eventually led to a report convicting certain board members and certain members if the management which in turn led to a legal proceeding being initiated.

20. Are shareholder meetings required to be held annually, or at any other specified time? What information needs to be presented at a shareholder meeting?

Yes and normally they should be held prior to the end of May of each year should the financial year ends in December 31 / and Board should submit financial report and administrative report. The statutory auditor of the Company should also submit its report and sign off/or not on the financials of the company, in addition to any information pertaining to any item listed on the agenda that requires the vote of the shareholders allowing shareholders to take appropriate decisions

21. Are there any organisations that provide voting recommendations, or otherwise advise or influence investors on whether and how to vote (whether generally in the market or with respect to a particular entity)?

Not to our knowledge that exists in a direct and blunt manner.

22. What role do other stakeholders, including debt-holders, employees and other workers, suppliers, customers, regulators, the government and communities typically play in the corporate governance of a corporate entity?

Regulators have an increased role in terms of regulating and observing compliance with regulations via continuous inspections and corrective actions taken. However debt holders , employees , suppliers and customers have no role within the corporate governance of a corporate entity, other than, in cases where such stakeholders have claims over the company, they would have recourse to the competent courts/authorities/regulators.

23. How are the interests of non-shareholder stakeholders factored into the decisions of the governing body of a corporate entity?

Not applicable

24. What consideration is typically given to ESG issues by corporate entities? What are the key legal obligations with respect to ESG matters?

Environmental and social corporate responsibility are governed by the SCA's Chairman Decision No 3 related to corporate governance, as well as the UAE Cabinet Resolution No 2/2018. The key issues and requirements for companies are as follows.

The General Assembly of listed companies shall, in the light of a board recommendation, set a policy to ensure a balance between the objectives of the company and those of the community in order to promote the socio-economic conditions of the community.

The board shall develop the programmes and determine the means necessary for proposing socio-economic initiatives by the company, including:

- developing indicators that link the company performance with its socio-economic initiatives, and comparing them with other companies involved in similar activities;
- disclosing social responsibility objectives of the company to its employees and raising their awareness and knowledge of social responsibility;

- disclosing the plan of achieving social responsibility in periodic reports on the activities of the company;
- developing awareness programmes for the community to introduce the company's social responsibility initiatives.

It is worth noting that the above is to be also included within the audit programmes of each listed company, and it is the internal audit's responsibility to ensure that these requirements are being adhered to.

25. What stewardship, disclosure and other responsibilities do investors have with regard to the corporate governance of an entity in which they are invested or their level of investment or interest in the entity?

Other than ensuring that corporate governance is observed and been applied by the corporate entities they have invested in there is no regulatory or legal requirements for such investors for any such responsibility or disclosure.

26. What are the current perspectives in this jurisdiction regarding short-term investment objectives in contrast with the promotion of sustainable longer-term value creation?

Whether it's a short term investment or a long term investment the regulatory regime within the UAE is the same.

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