

Company & Commercial - United Arab Emirates

Additional duties imposed on directors of UAE publicly listed companies

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Introduction

Corporate governance and the role of directors of publicly listed companies have gained increasing focus in recent times in the United Arab Emirates. A previous update considered the duties of directors of limited liability companies established in the United Arab Emirates (for further details please see "[Directors' duties under UAE law](#)"). As a follow-up, this update covers the duties of directors of publicly listed companies.

Source of additional duties

In addition to the general duties which flow from being a director of a company (whether public or private), directors of a public company whose securities are traded on the Dubai Financial Market and/or the Abu Dhabi Securities Exchange are subject to additional duties.

The Emirates Securities and Commodities Authority is an authority established pursuant to Federal Law 4/2000 to exercise regulatory functions of control and supervision of the two main stock exchanges in the United Arab Emirates. Accordingly, directors of a financial market and/or stock exchange listed company are subject to the authority's rules.⁽¹⁾

Additional director duties

The Corporate Governance Code imposes a higher duty of care on directors than the duty to "exercise reasonable care" required by the Civil Code. Specifically, directors are required to use their best endeavours to act:

- with honesty and loyalty;
- with due regard to the interests of the company and its shareholders; and
- in compliance with all applicable laws, regulations and the articles of association of the company.

Duties of non-executive directors

In addition to the above duties, non-executive directors must:

- participate regularly and actively in board meetings to provide independent opinion on issues such as strategy, policy, performance, accountability, resources, principal appointments and work standards;
- ensure that the interests of the company and its shareholders take precedence if a conflict of interest arises;
- participate in the audit committees of the company;
- review the company's performance to ensure that it is achieving its objectives and monitor performance reports; and
- devise corporate governance guidelines and supervise their implementation.

Additional duties under the Corporate Governance Code

These duties, applicable to all directors, include:

- a duty to follow the prescribed procedures for the disclosure and approval of related party transactions; and
- a duty to oversee the application of the corporate governance standards and regulations contained in the code.

Duty to ensure compliance

Directors must ensure that the continuing obligations of the company by virtue of its listing are properly satisfied. The main continuing obligations include:

- keeping the market properly informed of developments which could affect the price of the shares or the company's financial position; and
- observing the prohibition on insider dealings in the company's shares.

Consequences of breach

In terms of a breach under the Governance Rules, the authority may, at its discretion, impose any one of the following penalties:

- a warning notice to the company requiring it to address the causes of violations;
- suspension of the company's security listing;
- delisting; or
- a financial penalty.

If the authority considers that a contravention of its rules governing continuing obligations by the company has occurred, it may:

- conduct investigations into the contravention;
- order private or public disclosure of information relating to the contravention; and/or
- suspend trading in the securities of the company.

In addition, a contravention of authority rules on disclosure and insider dealing will render the offending transaction null and void, and can carry a penalty for the defaulting directors of up to three years' imprisonment and/or a fine of up to Dh1 million.

Comment

The duties of directors of UAE publicly listed companies extend beyond the duties imposed on directors of limited liability (or private) companies, and attract some very serious penalties both for the director and for the company in the event of a breach. Directors therefore need to be aware of their responsibilities and duties and ensure they keep up to date with any changes in the rules and regulations of the authority, as well as playing an active role in the company.

Furthermore, the authority actively enforces its rules and investigates directors and companies thought to be in breach. In recent times the authority has issued substantial fines to directors for breaching their duties, and in particular in respect of insider dealings. This further highlights the need for directors to understand fully their responsibilities and duties.

For further information on this topic please contact [Sarah Standish](#) at Taylor Wessing (Middle East) LLP by telephone (+97 14 332 3324), fax (+97 14 332 3325) or email (s.standish@taylorwessing.com).

Endnotes

- (1) Found in Federal Law 4/2000; Decision 32/R/2007 Concerning a Corporate Governance Code for Joint Stock Companies; Ministerial Resolution 518/2009 Concerning Governance Rules and Corporate Discipline Standards as amended by Ministerial Resolution 84/2010; and authority regulations relating to transparency, disclosure and share dealings.

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