

Are you aware of your duties as a Manager or Director?

Due to the significant impact corporate governance has, not only on the interest of all stakeholders but also on the state's economy, and with the view to develop its corporate governance regime and bring it into line with the best international practice, the UAE's government had taken several steady steps and issued several laws and regulations to regulate managers' and directors' duties and liabilities.

The liabilities imposed on Managers and Directors in the UAE can be either contractual (based on a management or employment contract or on a power of attorney - the "**POA**") or statutory (as may arise under any legislation, laws or regulations issued in the state) and they are divided into civil liabilities in general, and criminal liabilities in certain cases where a breach is considered to be a crime, under the UAE's Commercial Companies' Law No. 32 of 2021 (the "**Law**") or any other legislation or law.

Civil liability is usually established when a Manager or a Director breaches any of the duties or obligations prescribed in any legislation, law or regulation, in the Articles of Association (the "**AOA**") or Memorandum of Association (the "**MOA**") of a company or in its general assembly's resolutions, or if they act outside the authorities granted to them therein, in their employment or management contracts or their POA.

Given its special nature and objectives, the Law is the main legislation regulating Managers' and Directors' duties and obligations which all Managers and Directors should be acquainted with in order to avoid violating them, which might render them legally accountable. Accordingly, the Law classifies these duties and obligations into general (applicable to all commercial companies) and specific (according to the nature or legal form of the company).

The general duties and obligations imposed on all Managers and Directors of limited liability and joint stock companies under the Law include the following:

- i) To comply with all legislation and laws issued in the state, the provisions of the MOA and AOA, their employment or management contracts and the resolutions issued by the general assembly;
- ii) To register the companies' MOA and AOA and all their amendments in the commercial register;
- iii) To preserve the company's rights and to act for its benefit with the care of a prudent person, in accordance with its objectives and the powers granted to them and to avoid fraudulent acts;
- iv) Not to manage, participate or be involved in any business in competition with the company;
- v) To prepare the annual budget, calculate profits and losses, prepare an annual report about the company's activities and its financial position and have them audited by the company's auditor before approving and presenting them to the general assembly along with their recommendations on the distribution of profits and to submit a copy of the same and the company's books and documents if so requested by one of the shareholders;
- vi) To call for a general assembly meeting at least once within a fiscal year and in accordance with the Law; and
- vii) To register the dissolution of the company in the commercial register with the competent authority and to announce the same in two daily local newspapers.

In addition to the above duties, the Law lists specific obligations imposed upon the Managers and the Directors of some companies according to the nature and legal form of that company. For instance, the Managers of limited liability companies are obliged to link its name with the phrase

"LLC" (otherwise they could be held jointly and severally accountable for the company's obligations) and the Chairmen and the Directors of joint stock companies are obliged to:

- i) Convene Board meetings at least 4 times a year;
- ii) Notify the competent authority of all the resolutions relating to the election of the Chairman, the Vice Chairman and any other executive Directors;
- iii) Prior to their appointment, confirm in writing their acceptance of their nomination as Directors and to disclose any activities conducted directly or indirectly by them in competition with the business of the company;
- iv) If any of them has any common or a conflicting interest in a transaction presented before the Board for approval, he/she must notify the Board of such interest, and such declaration must be recorded in the minutes of the meeting. Such Director shall not vote on the resolution concerning such transaction. Many Directors fail to consider or comply with this requirement, and in such event, the company or any of its shareholders may apply to the competent court to annul the contract or to require the violating Director to pay any profit or benefit gained by him from such contract to the company; and
- v) Not utilize the information to which they have access due to their position or occupation, to gain any interest for themselves or for third parties whatsoever.

In order to ensure that Managers and Directors comply with all their duties and obligations under all the legislation, laws and regulations, the legislator has imposed on them numerous penalties involving fines or even imprisonment for violations. Furthermore, some penalties may be imposed on companies due to violations or breaches by their Managers or Boards of the provisions of the Law or the MOA and/or AOA, and such penalties may be deducted from the Boards' remuneration or claimed from the Managers and any exemptions or waivers granted to them in that respect will be void.

There are many duties and obligations imposed on Managers and Directors in the UAE of which they must be fully aware in order to avoid violations, as any violation or breach may expose them to substantial liabilities, whether civil or criminal.

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