

The duties and obligations of directors in the United Arab Emirates (UAE) are drawn from various legislative sources, there is no consolidated legislative framework dealing with the duties and obligations of directors under UAE Law. Note that under UAE law the terms “manager” and “**director**” are used interchangeably. As such, any reference in this memorandum to the foregoing terms should be construed as one and the same, where possible we have used the generic term “director” to avoid potential confusion.

## Applicable Law

As noted above, the rules regarding directors’ duties are drawn from a wide range of sources in the UAE including:

- UAE Federal Law No. 2 of 2015 concerning Commercial Companies (“**Company Law**”).
- Federal Law No. 5 of 1985 on Civil Transactions (“**Civil Code**”).
- Federal Law No. 3 of 1987 Promulgating the Penal Code (“**Penal Code**”).
- UAE Federal Law No. 18 of 1993 on Commercial Transactions (“**Commercial Transactions Law**”).

The following summary is limited to the laws of the UAE pertaining to limited liability companies. It does not encompass the laws of the over 40 free zones of the UAE, many of which have their own laws and regulations which impact the role of directors. In particular this summary does not discuss the role of a director under the laws applicable in the Dubai International Finance Centre (DIFC) or the Abu Dhabi Global Market (ADGM) which are, in the case of the DIFC principally and in the case of the ADGM entirely, derived from English law.

## General Duties of Directors Under the Company Law

A director must at all times act in the exercise the care of a prudent person in performing his duties. Actions undertaken by a director must be undertaken in accordance with the company’s objectives and the powers granted to him by the shareholders.<sup>1</sup> It is possible that a director’s ability to represent the company will be subject to internal regulation and oversight, including through the application of specific authorities granted under the company memorandum of association or by way of internal resolution or power of attorney. Therefore it is important that a director understands and operates only within the remit of the powers conferred by the company. In light of the foregoing, it is important that directors ensure that they have obtained the necessary internal approvals before entering into any arrangement to bind the company.

<sup>1</sup> Article 22 of the Company Law.

Note that the company cannot absolve a director from personal liability which attaches to him as a result of his position as a director and any agreement to the contrary is considered null and void.<sup>2</sup> The Companies Law further stipulates that any agreement which seeks to absolve a director from personal liability arising from mismanagement of the company or improper use of the powers conferred on the director by the company shall be void.<sup>3</sup> The foregoing provisions, when read together may be interpreted as meaning that a director may not be absolved from personal liability which attaches to a director arising from any misuse of the powers conferred by the company, or actions which are taken by the director in breach of applicable law. There is no prohibition against the company obtaining directors liability insurance for a director or from indemnifying a director for actions validly taken by a director in the normal course.

## Other Duties of Directors

### Preparation of Annual Accounts

A company is required to prepare for each financial year a balance sheet and a profit and loss account for the company in accordance with International Accounting Standards.<sup>4</sup> Responsibility for the preparation of the annual accounts and for their veracity is a responsibility of the directors.<sup>5</sup>

### Conflict of Interest

A director shall not undertake any activities competing with the company’s line of business unless they obtain approval from the company’s shareholders.<sup>6</sup> Further, a director may not vote on any resolution in which he/she has direct or indirect interest and is required to report in writing to the other directors with full details of such matter.<sup>7</sup>

### Confidentiality

A director is prohibited from utilizing or disclosing company secrets or attempting to damage the company business. If the director violates this prohibition, he/she may be imprisoned for a period of up to six months and/or penalized with a fine of no less than AED 50,000.<sup>8</sup>

<sup>2</sup> Article 24 of the Company Law.

<sup>3</sup> Article 84 of the Company Law.

<sup>4</sup> Article 27 of the Company Law.

<sup>5</sup> Article 87 of the Company Law.

<sup>6</sup> Article 86 of the Company Law.

<sup>7</sup> Article 150 of the Company Law.

<sup>8</sup> Article 369 of the Company Law.

## Resignation Timing

The Civil Code also imposes on directors the responsibility to resign their directorship only at times which would not cause damage to the company.<sup>9</sup>

## Solvency of the Company

Where the losses of the company exceed 50% of its share capital, the directors are required to notify the shareholders who may consider liquidation of the company. Where losses exceed 75% of the company's share capital, shareholders holding greater than 25% of the company can require its dissolution.<sup>10</sup>

## Director's Liability Towards Others

Where the director is found to have committed fraudulent actions, a liability claim may be filed against him/her by the company and/or the shareholders; the director shall also be liable vis-à-vis third parties.

## Directors Liability in the Event of Insolvency

In addition to the general duties owed by a director to the company, a director may be subject to both civil and criminal liability in the event that the company is subject to an event of insolvency and is unable to meet its financial obligations.

In the event that the company becomes unable to pay its debts, the Commercial Transactions Law stipulates that the directors must, within 30 days of the date of suspension of payments of debts, file for bankruptcy. A failure to take such action may result in the directors being considered personally liable in any bankruptcy which may be forthcoming.

The Commercial Transactions Law and the Penal Code contain several provisions as to how courts should treat insolvent companies and their directors. Of particular importance in this respect is article 882 of the Commercial Transactions Law which provides that directors may find themselves subject to a custodial sentence in the event that:

- They have failed to provide adequate details in the financial books and records of the company to reflect the true financial position of the company.
- They do not supply information requested by the court or trustee in bankruptcy or if they deliberately supply false information.
- If they have sold assets of the company at less than their value in an effort to delay the suspension of payment of debts or declaration of the company's bankruptcy or if the directors have taken any action to obtain credit or funds illegally in order to achieve the foregoing.

- If following the point at which the company is no longer in a position to pay its debts, the directors deal with any property of the company with a view to keeping such property beyond the reach of creditors.
- If following the point at which the company is no longer able to pay its debts, the directors honor/settle the debt of any creditor to the detriment of other creditors or provides security or special benefits to any of the creditors in preference to others.

The foregoing is intended as simply an outline of the principal duties and liabilities of a director in the UAE. Careful consideration is needed when considering taking on a director's role and potential directors need to familiarize themselves with the risks in so acting.

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<sup>9</sup> Article 667 of the Civil Code.

<sup>10</sup> Article 301 of the Company Law.