



Corporate Governance For Company Carrying The Business As Per The Stakeholders' Desires

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THE COSTS OF NON-COMPLIANCE Vs. THE BENEFITS OF CHOOSING THE RIGHT PATH

Corporate Governance hit the news in 2001 and 2002 with the collapse of global corporations such as Enron, WorldCom, Global Crossing and the international accountants, Andersen. These were blamed on a lack of business ethics, shady accountancy practices and weak regulators. They were a wake-up call for developed countries on corporate governance. Prior to this, commentators had focused on failings in developing countries - blaming the 1997-98 East Asian crisis on poor corporate governance, crony capitalism, poor management practice and lack of disclosure and transparency.

Corporate governance has come to encapsulate the blend of law, regulation and private-sector practice that enables companies to attract financial and human capital, to perform efficiently, and generate long-term economic value for their shareholders, whilst respecting the interests of stakeholders and society as a whole.

Corporate governance needs to be addressed at two levels, which are the country level and the corporation level:

The Country Level

Various regulatory and enforcement mechanisms are important, such as the need for bankruptcy laws, property rights and an effective judiciary. A corporation cannot operate effectively if it is unable to rely on legislation and its enforcement. Good corporate governance therefore requires good political governance, and vice versa.



The Corporate Level

Corporate governance at the company level refers to the rules and regulations that shape its effective operation. Complementary interaction between these two levels is vital to ensure the effective operation of the private sector, in a manner that is both accountable and transparent.

| <i>Principles of Corporate Governance</i> | <i>Explanation</i> |
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| (1) The rights of the shareholder | A corporate governance framework should protect shareholders' rights. |
| (2) The equitable treatment of shareholders | All shareholders should be treated equally, including minority and foreign shareholders. |
| (3) The role of the stakeholders in corporate governance | Good corporate governance recognizes that it is in the long-term interest of the corporation to respect the rights and interests of the stakeholders. |
| (4) Disclosure and transparency | There is a need to ensure timely and accurate disclosure of all material matters regarding the corporation including financial aspects, performance, ownership and governance. |
| (5) The responsibilities of the board | The board is key to the strategic guidance of the company and the effective monitoring of the management. It should be fully able to undertake its tasks and responsibilities and be fully accountable to shareholders. |

UAE Legal System encompasses-

- ***Civil law system***
- ***Regulation is broadly comprised of Federal laws which generally apply to all Emirates***
- ***Local laws which apply to specific Emirates only***

- **The UAE regulatory framework of corporate governance comprises of three components:**
 1. **The UAE Federal Law No. 8 of 1984;**
 2. **Civil Code No.5 of 1985**
 3. **The Federal Law No.3 of 1987 or UAE Penal Code**
 4. **Corporate Governance Rules (UAE Ministerial Resolution 518 of 2009)**



Corporate Social Responsibility (CSR)

CSR is an important complement to corporate governance. CSR looks at the way companies can add social, environmental and economic value to the society in which they operate and a work life balance and duty of care to their employees.

At Al Sahlawi Advocates and Legal Consultants, we understand the legal and commercial pressures faced by shareholders, companies and institutions of all sizes, from small start-up companies to listed international corporations and public sector organizations and deliver a pragmatic and proactive service to help clients deal with those pressures giving them a full satisfaction for their investments.



FIVE ACTIONS TO ENSURE LEGAL COMPLIANCE-

1. PROTECT YOUR REPUTATION
2. DEVELOP EFFECTIVE CORPORATE GOVERNANCE CULTURE
3. ENSURE COMPLIANCE WITH THE CORPORATE GOVERNANCE CODE
4. BE A PROACTIVE INVESTOR, OR ENCOURAGE YOUR OWNERS TO BE
5. BUILD ON THE LONG TRADITIONS OF SOCIALLY RESPONSIBLE BUSINESS IN THE REGION

UAE COMPANIES LAW-

- Article 13 states that: *“The objectives of the company must be legitimate”*
- Article 197 states that: *“The company may not grant cash loans or guarantee any loans to the chairman of its board of directors or to a member of the board”*
- Article 103 sets out limitations on the powers of directors for certain business activities which directors cannot undertake, including entering into loan agreements for periods in excess of three years, the sale or mortgage of the company’s real estate assets and the cancellation of debts owed to the company.
- Article 110 provides that a company is bound by the actions of its board of directors
- Articles 234 to 239 of the Code contain provisions, which criminalize the bribery or attempted bribery of both public and private sector employees.

| <u>PUBLIC SECTOR</u> | <u>PRIVATE SECTOR</u> |
|--|---|
| <p>The relevant parties subject to prosecution: -</p> <ul style="list-style-type: none"> • Recipient • Offeror • Facilitator of Bribe <p>Penalties</p> <ul style="list-style-type: none"> • Fine equivalent to the benefit accepted by them (provided the | <p>Individuals accepting bribes in exchange for duties.</p> <p>Penalties</p> <ul style="list-style-type: none"> • Fine equivalent to the benefit accepted by them (provided the fine is not less than AED 1,000). • Confiscation of the actual benefit accepted and, depending |



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| <p>fine is not less than AED 1,000),</p> <ul style="list-style-type: none"> • Confiscation of the actual benefit accepted and, depending on the circumstances of each case, • Imprisonment ranging from five to a maximum of ten years. | <p>on the circumstances of each case.</p> <ul style="list-style-type: none"> • Imprisonment not exceeding five years. |
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DIFC Law

- **DIFC companies law No. 2 of 2009**
- **Imposes on all directors' fiduciary duties and duty of care and skill.**
- **Article 53 of DIFC companies law. (Fiduciary duties of directors towards the company)**
- **Article 33 of DIFC companies law.**