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

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Due to the significant impact corporate governance has, not only on the interest of all stakeholders\(^1\) but also on the state’s economy, and with the view to develop its corporate governance regime\(^2\) and bring it into line with the best international practice, the UAE’s government had taken several steady steps and issued several laws to regulate managers’ and directors’ duties and liabilities. Such duties and liabilities could be towards the companies they work for, their shareholders or even third parties.

It is therefore necessary to shed light on the legal basis of the duties and liabilities of general managers (the “Managers”), the chairman (the “Chairman”) and members, including executives and non-executives (the “Directors”) of the Board of Directors (the “Board”) of limited liability and joint stock companies in the UAE. This article considers the basis and the legislation governing such duties and liabilities, the nature or types of these duties and liabilities and the consequences of breaching them.

I. Basis of duties and liabilities:

The duties and liabilities imposed on Managers and Directors can be either statutory pursuant to any legislation, law and regulation issued in the state or contractual, based on a management or employment contract, or on a power of attorney (the “POA”) issued pursuant to these contracts, and may even be joint if there are multiple Managers or Directors.

II. Legislation governing the duties and liabilities:

There are several laws and resolutions governing the duties and liabilities of the Managers and Directors in the state (whether local or federal), including, but not limited to, the following:

1) UAE Civil Transactions Law No. 5 of 1985 as amended (the "Civil Transactions Law"), which mainly regulates the contractual responsibilities of Managers and Directors, whether based on an employment or management contract or a POA;
2) UAE Commercial Transactions Law No. 13 of 1993 (the "Commercial Transactions Law"), which includes provisions regulating Managers’ and Directors' liabilities in certain situations, such as companies’ bankruptcies;
3) UAE Commercial Companies’ Law No. 2 of 2015 (the "Companies’ Law");
4) Federal Penal Code No. 3 of 1987 as amended (the "Penal Code");
5) The Resolutions issued by the Securities and Commodities Authority in the UAE (the "Authority"), including Resolution No. 7 of 2016 on institutional discipline

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\(^1\) "Stakeholders" are defined by the Authority’s resolution no. 7 of 2016 as “each and every person having an interest with the company such as the shareholders, employees, creditors, clients, suppliers and potential investors”.

\(^2\) The Companies’ Law No. 2 of 2015 defined in article 1 "Corporate Governance" as “a set of controls, standards and procedures that achieve corporate Governance upon the management of the company in accordance with the international standards and practices, by determining the duties and responsibilities of the Directors and the executive management of the company, taking into account the protection of the rights of the shareholders and the stakeholders".
standards and corporate governance, which apply to public joint stock companies; and

6) The Resolutions issued by the Ministry of Economy (the "Ministry") on the corporate governance of private joint stock companies, including Ministerial Resolution No. 10 of 2014 and other Resolutions issued by many regulatory authorities (whether local or federal), such as the UAE Central Bank (the "Central Bank") and Insurance Authority.

III. Types of Liabilities:

Managers’ and Directors’ liabilities are generally divided into civil liabilities in general, and criminal liabilities in certain cases where a breach is considered to be a crime, under the Companies’ Law or any other legislation.

1. Civil Liability:

Civil liability is usually established when a Manager or a Director (or any person authorized pursuant to a POA) breaches any of the obligations prescribed in any legislation, law or resolutions (including those mentioned above), 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. Such liabilities are regulated mainly by the Civil Transactions Law and the Companies’ Law. Any breach to these obligations would result in civil liability being established against a Manager or a Director towards the concerned company, its shareholders and partners or even a third party who could initiate legal proceedings against such Manager or Director for any losses sustained by it due to such mismanagement.

In addition, due to its special nature and objectives, the Companies’ Law is the main legislation regulating Managers’ and Directors’ duties and obligations which all Managers and Directors (including executive/non-executive Directors) should be acquainted with in order to avoid violating any of these duties, which might render them legally accountable. Accordingly, the Companies’ Law classifies these duties and liabilities into general (applicable to all commercial companies) and specific (according to the nature or legal form of the company).

1.1 General duties and liabilities:

The general duties and obligations stipulated under the Companies’ Law and imposed on all Managers and Directors of limited liability and joint stock companies, include, but are not limited to, the following:

i) To comply with all legislation issued in the state (whether federal or local) especially those relating to the legal form or the commercial activities of the company, such as the Companies’ Law, the Resolutions relating to corporate governance issued by the Ministry, the Authority or the Central Bank (each
according to its jurisdiction\(^3\) - this applies to joint stock companies), the provisions of the MOA and AOA\(^4\), their employment or management contracts and the resolutions issued by the general assembly from time to time;

ii) To register the companies’ MOA and AOA and all their amendments in the commercial register at the competent authority and to notify the latter of any amendments or changes to the details of the company, such as its name, address, capital or number of partners or even its legal form, failing which they could be jointly liable for any damages sustained by the company, its partners or third parties, as a result to such violation\(^5\);

iii) To preserve the companies’ rights and to act for its benefit with the care of a prudent person\(^6\), in accordance with its objectives and the powers granted to them\(^7\);

iv) To submit a copy of the latest audited statement of accounts and the latest report of the company’s auditor within a period of 10 days if so requested by one of the shareholders in writing\(^8\), and to give the shareholders access to the minutes of the general assembly meetings or the company's books and documents or any documents relating to a transaction the company entered into with a related party\(^9\);

v) To avoid fraudulent acts which may cause the company to incur losses or expenses, for which they could be obliged to compensate the company. Furthermore, they must indemnify the company for any losses or expenses incurred by it due to the misuse of the powers granted to them or as a result of any violation of the provisions of any applicable law, MOA and AOA, or of their employment contracts or for any mistakes in managing the company\(^10\);

vi) Not to manage any business in competition with the company or of the same objectives (for limited liability companies\(^11\)) or participate or be involved in any competitive activities without the consent of the general assembly of the company (for joint stock companies\(^12\)). Any such consent shall be renewed annually;

vii) 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, within three months of the end of each fiscal year for limited liability companies and within four months of the end of each fiscal year for joint stock companies\(^13\);

viii) To call for a general assembly meeting at least once within four months following the end of the fiscal year or if requested to do so by one partner or more holding not less than 25% of the capital share of a limited liability company\(^14\) or one

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3. Article 7 of the Companies’ Law  
4. Articles 84 and 162 of the Companies’ Law  
5. Article 15 of the Companies’ Law  
6. Article 1 of the Companies’ Law defined a “prudent person” as “the person who has adequate experience and the commitment required in his work”.  
7. Article 22 of the Companies’ Law  
8. Article 27 of the Companies’ Law  
9. Article 342 of the Companies’ Law. The Companies’ Law defines “Related Parties” as “the Chairman, Directors, senior executive management and employees of the company, such companies in which any of such persons holds at least 30% of their share capital and subsidiary, associated or sister companies”.  
10. Articles 84 and 162 of the Companies’ Law  
11. Article 86 of the Companies’ Law  
12. Article 152 of the Companies’ Law  
13. Articles 87, 235 and 236 of the Companies’ Law  
14. Article 92 of the Companies’ Law
shareholder or more holding at least 20% of the capital share of a joint stock company;¹⁵

ix) To call for a general assembly meeting if the losses of the company reach half of its share capital, whether it is a limited liability or a joint stock company (the issued share capital in the case of a joint stock company) so that the liquidation of the company can be considered and discussed by the general assembly, or when vacancies on the Board reach 25% of the members of the Board, within 30 days of the vacancy of the last position (for joint stock companies)¹⁶;

x) To register the dissolution of the company in the commercial register with the competent authority. Such dissolution will not be effective against third parties until the date of its registration and the announcement of the dissolution in two daily local newspapers (at least one of them is issued in Arabic)¹⁷;

xi) The Manager or Chairman should notify the Authority or the concerned authority (subject to each one’s jurisdiction) of any resolution of the general assembly to dismiss the auditor and the reasons of such dismissal, within 7 days from the date of the dismissal resolution¹⁸; and

xii) To provide the inspectors of the Central Bank, the Ministry, the Authority or any competent authority (subject to each one’s jurisdiction) with copies of the company’s books, minutes of meetings, records, documents and papers as they may request from time to time and to provide them with all the required information and clarification²⁰.

1.2 Specific duties and liabilities:

The UAE’s legislator, through the Companies’ Law, has imposed specific duties and obligations upon the Managers and the Directors of some companies according to the nature and legal form of that company, such as limited liability companies and joint stock companies which are the most common form of companies.

For instance, and in addition to the above mentioned general duties and liabilities, Managers of limited liability companies are obliged to:

i) link its name with the phrase "Limited Liability Company" or "LLC", otherwise they could be held jointly and severally accountable for the company’s obligations;²¹ and

ii) maintain within the company a special register that includes the partners’ full names, nationality, date of birth and place of residence, the transactions made on the shares with their dates, and submit a copy thereof and any changes to the competent authority at the beginning of each fiscal year."²²

¹⁵ Article 174 of the Companies’ Law
¹⁶ Articles 301 and 302 of the Companies’ Law
¹⁷ Article 145 of the Companies’ Law
¹⁸ Article 305 of the Companies’ Law
¹⁹ Article 251 of the Companies’ Law
²⁰ Articles 333 and 336 of the Companies’ law
²¹ Article 72 of the Companies’ Law
²² Article 74 of the Companies’ law
As for joint stock companies, the Companies’ Law includes many other specific burdens and obligations upon the Chairmen and Directors, in line with the nature of such companies, such as:

i) The Board must meet at least 4 times a year, unless the AOA stipulates more meetings. Furthermore, a Director may not delegate another Director to attend Board meetings unless the company’s AOA explicitly permits it. The delegated Director may not in any event represent more than one other Director, and may not be a Director in more than five joint stock companies, nor a Chairman or Vice Chairman in more than two companies or an executive Director in more than one company in the state. If a Director fails to attend three successive or five non-consecutive Board meetings without an excuse acceptable to the Board, such Director will be deemed to have resigned;

ii) The Board should notify the Authority if the company has purchased assets for an amount in excess of 20% of its share capital prior to obtaining the general assembly’s approval of the accounts of the first fiscal year;

iii) The Board must notify the Authority of its resolutions for electing the Chairman (who is prohibited from combining positions of Chairman, company’s Manager and/or executive Director or any other executive position in the company), the Vice Chairman and any other executive Directors. It is also necessary to obtain the Central Bank’s approval on such resolutions if the company is regulated by the Central Bank;

iv) Each Director must, prior to his appointment, confirm in writing his acceptance of his nomination as a Director and to disclose any activities conducted directly or indirectly by him in competition with the business of the company, and of the names of any other companies and establishments where he works or acts as a Director;

v) If a Director has any common or a conflicting interest in a transaction presented before the Board for approval, he must notify the Board of such interest, and his declaration must be recorded in the minutes of the meeting. Such Director shall not vote on the resolution concerning such transaction, whether as a principal or a proxy. Many Directors fail to consider or comply with this requirement, and in such an 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

vi) The Directors (or companies in which they contribute in not less than 30% of the share capital) are prohibited from utilizing information to which they have access due to their position or occupation, to gain any interest for themselves or for third parties whatsoever. The company may not enter into any transaction with such Directors or companies without the Board’s approval, if the value of the transaction does not exceeding 5% of the share capital of the company, and the general assembly’s approval is required in excess of this percentage.

23 Articles 156, 158 and 160 of the Companies’ Law
24 Article 142 of the Companies’ Law
25 Article 4 of the Authority’s Resolution No. 7 of 2016
26 Article 143 of the Companies’ Law
27 Article 147 of the Companies’ Law
28 Article 150 of the Companies’ Law
29 Article 152 of the Companies Law
B) Criminal Liability:

In order to ensure that Managers and Directors comply with all their duties and obligations under all legislation, the legislator has imposed numerous penalties for violations. These penalties may involve fines or even imprisonment and they include the following as stipulated under the Companies’ Law:

i) A fine of not less than AED 50,000 and not more than AED 100,000 may be imposed on the Chairman of a joint stock company if he fails to invite the annual general assembly of the company to convene within four months following the end of its fiscal year; and a fine of not less than AED 100,000 and not more than AED 300,000 if he fails to convene the general assembly meeting upon receiving a request to this effect from the Ministry or the Authority;

ii) A fine of not less than AED 50,000 and not more than AED 1,000,000 may be imposed on the Chairman of a joint stock company or the Manager of a limited liability company if the losses of the company reach 50% of the company’s share capital and he fails to invite the general assembly to convene;

iii) A fine of not less than AED 10,000 and not more than AED 100,000 may be imposed on a Chairman, Manager, or Director if he fails to provide any documents or information to the auditors of the company or to the Ministry’s or the Authority’s inspectors to enable them to perform their duties, or if he conceals information or explanations or provides misleading information;

iv) Any Manager or Director who distributes to the shareholders or to others any profits or interests in contravention of the provisions of the Companies’ Law or the company’s MOA or the AOA may be subject to imprisonment for a period of not less than six months and not more than three years and/or a fine of not less than AED 50,000 and not more than AED 500,000. Such Manager or Director may also be subject to imprisonment for a similar period and/or a fine of not less than AED 100,000 and not more than AED 500,000 if he deliberately provides false statements in a balance sheet, in a profit and loss account or in a financial report, or omits material incidents in such documents for the purpose of concealing the true financial position of the company;

v) A Manager or a Director may be subject to imprisonment for up to six months and/or a fine of not less than AED 50,000 and not more than AED 500,000 if he utilizes or discloses any of the company’s confidential information or deliberately tries to cause damage to its activities; and

vi) A Chairman or a Director may be subject to imprisonment for up to six months and/or a fine of at least AED 1,000,000 and not more than AED 10,000,000 if he participates, directly or indirectly, with any entity for the purpose of influencing the prices of securities issued by the company.

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30 Article 343 of the Companies’ Law
31 Article 345 of the Companies’ Law
32 Article 344 of the Companies’ Law
33 Article 347 of the Companies’ Law
34 Article 363 of the Companies’ Law
35 Article 364 of the Companies’ Law
36 Article 369 of the Companies’ Law
37 Article 370 of the Companies’ Law
In addition to the above, the legislator has imposed a fine of not less than AED 10,000 and not more than AED 100,000 on any person who violates any provision of the Companies’ Law or the regulations, rules or resolutions issued in execution of the Companies’ Law for which no penalty is specified. It is worth mentioning here that some penalties may be imposed on companies due to the violations or breaches by their Managers or Boards of the provisions of the Companies’ Law or the MOA and/or AOA, and such penalties may be deducted from the Boards’ remuneration or claimed from the Managers. Managers and Directors may also be subject to the criminal penalties stipulated in the Penal Code, such as those relating to bankruptcy with negligence, bankruptcy with fraud, breach of trust, fraud, and forgery.

Any exemptions or waivers granted (in the MOA, AOA or any other contract) to the Managers or Directors from the personal duties, obligations or liabilities imposed on them under any applicable legislation will be void.

Accordingly, if a Manager or a Director breaches his duties or violates any legislation or any provisions of the company’s MOA or AOA, he may be personally liable for such breach and for any acts involving fraud, deception or gross misconduct towards the company, the partners or shareholders and any third parties. In cases such as wrongful acts, the company may be held responsible for the acts and dispositions of its Manager, in accordance with the general principles governing responsibility for harmful acts, but this will only arise if the Manager’s acts are accompanied with a statement of the capacity in which he is operating and within the limits of its authorities. However, if these dispositions are not required by the objects of the company or if they exceed the limits of his authorities and powers, then the company will not be responsible for such dispositions towards third parties.

Conclusion

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

The duties and obligations mentioned above constitute the main ones imposed on Managers and Directors under the Companies’ Law. Furthermore, although establishing a claim for breach of duty against a Manager or Director could be a challenging task in some cases, once the breach has been established, any bad intent, negligence, misconduct or wrongful act by a Manager or a Director could be

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38 Article 360 of the Companies’ Law
39 Article 169 of the Companies’ Law
40 Article 84 of the Companies’ Law
41 Article 418 of the Penal Code
42 Article 417 of the Penal Code
43 Article 404 of the Penal Code
44 Article 399 of the Penal Code
45 Article 216 of the Penal Code
46 Article 51 and 162 of the Companies Law
47 Case No. 33 of 2003 – Dubai Court of Cassation
48 Commercial Case No. 162 of 2006 – Dubai Court of Cassation
easier to prove, and this may increase their exposure to liabilities not only civil but also criminal.

- **Although the above applies mainly to local companies in the state (outside the free zones), some of the above provisions may also apply to some extent to companies incorporated in certain free zones in the state within the range permitted by the regulations in the free zones.**

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