



CORPORATE GOVERNANCE

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"Governance
Professional"

DUBAI



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CHAIRMAN'S MESSAGE

Dear Readers,

I hope this message finds you well. I am writing to you with a mix of excitement and a sense of responsibility as we release this edition of Corporate Governance magazine. First and foremost, I would like to extend my sincerest apologies for the delay in publication. We understand the importance of timely information in the ever-evolving field of corporate governance, and we are taking measures to ensure that such delays do not occur in the future.

In this edition, we delve into critical topics that are shaping the landscape of corporate governance today. Compliance remains at the forefront of our discussions, as organizations worldwide strive to navigate the complexities of regulatory requirements. Effective governance practices are not only about adhering to regulations but also about fostering a culture of integrity and accountability.

Another focal point of this edition is the use of technology in risk management. As technological advancements continue to accelerate, the integration of innovative solutions in identifying, assessing, and mitigating risks has become indispensable. We explore how technological tools are revolutionizing the way organizations approach risk management, enhancing their ability to foresee potential challenges and respond proactively.

I would also like to take this opportunity to encourage our esteemed members and readers to contribute to Corporate Governance magazine. Your insights, experiences, and research are invaluable in enriching the discourse on corporate governance. Whether it is a case study, an opinion piece, or an in-depth analysis, your contributions will help us create a more comprehensive and diverse resource for our community.

Thank you for your continued support and understanding. Together, let us continue to advance the principles of good governance and strive for excellence in our respective fields.

Wishing you insightful reading,

Best regards,

R Lakshmanan

Chairman



MESSAGE

FROM THE EDITOR'S DESK

Dear Readers,

Welcome to the latest edition of Corporate Governance magazine. In this issue, we delve into some of the most pertinent topics that are shaping the landscape of corporate governance today.

Board Composition stands at the forefront of our discussions. The evolving dynamics of boardrooms are critical as we navigate through complexities of modern business. We explore the importance of diversity, the balance of skills, and the strategic role of independent directors in driving organizational success.

The preparation of minutes might seem like a routine task, but it holds significant importance in maintaining transparency and accountability. Our articles provide insights into best practices and the legal implications of accurate record-keeping, ensuring that your meetings are documented with precision and clarity.

In the realm of compliance, Anti-Money Laundering (AML) remains a critical concern. We provide a deep dive into the latest AML regulations, offering practical guidance on how organizations can strengthen their defenses against financial crimes.

Automation is transforming risk management and compliance processes. Our feature on automation in risk management and compliances explores how technological advancements are streamlining operations, reducing human error, and enhancing efficiency. Discover how leveraging these tools can position your organization for greater resilience and proactive risk mitigation.

We hope this edition equips you with valuable knowledge and insights to navigate the ever-evolving governance landscape. Thank you for your continued support and engagement with Corporate Governance magazine.

Happy reading!

Sincerely,

CS Raghendra Verma

Company Secretary

REGULATORY UPDATES



UAE: NEW RESOLUTION TO REGULATE TELEMARKETING FROM MID-AUGUST 2024

UAE INTRODUCES NEW TELEMARKETING REGULATIONS EFFECTIVE MID-AUGUST 2024

The UAE Ministry of Economy and the Telecommunications and Digital Government Regulatory Authority (TDRA) have announced new regulations to govern telemarketing practices, effective from mid-August 2024. These regulations apply to all licensed companies, including those in free zones, engaging in marketing products and services through phone calls, text messages, and social media.

KEY PROVISIONS:

1. Licensing and Approval:

- Companies must obtain prior approval from the relevant authority to engage in telemarketing.
- Telemarketing is restricted to landline or mobile numbers registered to the licensed company.

2. Consumer Protection:

- Individuals are prohibited from making telemarketing calls.
- Telemarketing calls are allowed only between 9:00 AM and 6:00 PM.
- Companies must not call consumers more than once a day or twice a week if calls go unanswered.
- Consumers can file complaints about unwanted marketing calls.

3. Ethical Conduct:

- Companies must exercise care to avoid disturbing consumers and adhere to standards of transparency, credibility, and integrity.
- Telemarketers must avoid pressuring or misleading consumers.



4. Training and Documentation:

- Companies must train telemarketers on professional ethics.
- Detailed records of all marketing calls must be maintained and periodically reported to the relevant authority.

5. Penalties:

- Violations can result in fines ranging from AED10,000 to AED150,000.
- Severe or repeated violations may lead to suspension or cancellation of the company's license.
- Natural persons making illegal marketing calls face fines starting at AED5,000 and potential disconnection of phone services.

These regulations aim to protect consumer privacy, reduce unwanted marketing calls, and ensure ethical marketing practices. The Ministry of Economy, in coordination with TDRA and other relevant authorities, will oversee the enforcement of these new rules.

Source: <https://www.zawya.com/en/legal/regulations/uae-new-resolution-to-regulate-telemarketing-from-mid-august-2024-dvk4s6us>

DUBAI INTRODUCES "ONE FREE ZONE PASSPORT" TO REVOLUTIONIZE BUSINESS OPERATIONS



Dubai is set to transform its business landscape with the introduction of the "one free zone passport" scheme, allowing companies to operate across multiple free zones with a single license. This initiative, led by the Dubai Free Zones (DFZ) Council, aims to streamline the licensing process and significantly reduce costs for businesses.

KEY HIGHLIGHTS

1. Unified Licensing:

- Businesses can now operate in multiple free zones through a single license, simplifying operations and reducing fees.
- This initiative enhances business flexibility and supports economic sustainability.

2. Extended License Duration:

- Proposal to extend free zone licenses from 25 to 50 years, providing greater stability and fostering long-term investments.

3. Comprehensive Geo-Economic Map:

- Dubai is developing a geo-economic map to position itself as a premier investment destination, reinforcing its commitment to economic diversification.

4. Onshore and Offshore Operations:

- Free zone-based entities can now operate both onshore and offshore in Dubai, eliminating the need for multiple licenses and enhancing operational flexibility.

5. Free Zone 10X Platform:

- A proposed financial market exclusively for free zone enterprises to facilitate funding through Initial Public Offerings (IPOs).
- The feasibility of this marketplace is under study, focusing on legislative and logistical requirements.

6. Collaborative Efforts:

- The DFZ Council is working with key entities, including the Ministry of Economy, Dubai Chamber of Commerce, and Dubai Municipality, to update and enhance the free zone concept.
- This collective approach aims to add value to the local economy and aligns with the vision of His Highness Sheikh Mohammed Bin Rashid Al Maktoum.

LEADERSHIP VISION

Sheikh Ahmed Bin Saeed Al Maktoum, Chairman of DFZ Council, emphasized that these initiatives open avenues for sustainable development, attract SMEs and international companies, and empower entrepreneurs.

Dubai's commitment to innovation and economic development positions it as a dynamic global business hub, fostering groundbreaking projects and concepts that transcend geographical borders.

Source:
<https://www.bsabh.com/knowledge-hub/regulatory-and-legal-updates/dubai-launches-unified-licensing-for-free-zones-unveils-initiatives-to-boost-economic-growth>

NAVIGATING THE NEW LANDSCAPE FOR LIFE SCIENCES COMPANIES IN THE UAE

Release Date: May 2024



The UAE's rapidly evolving market presents significant opportunities and challenges for life sciences companies engaged in the import, distribution, and manufacturing of pharmaceutical products. This article highlights recent regulatory changes and practical advice for successfully operating in the UAE.

REGULATORY FRAMEWORK

Federal Law No. (8) of 2019 (the "Pharmaceutical Law") governs the import, export, distribution, warehousing, manufacturing, pricing, advertising, promotion, safety reporting, and product recalls of medical products in the UAE, including in free zones.

Law No. (11) of 2023 (the "New Pharmacy Law") introduces new requirements for companies importing medical products. Key provisions include:

- Marketing Authorization Holders (MAH) must appoint at least two pharmaceutical establishments to import and distribute products.
- The supporting regulations are pending publication by the Ministry of Health and Prevention (MOHAP), creating some uncertainty in practical application.

Federal Decree-Law No. (28) of 2023 establishes the UAE Drug Authority, aiming to position the UAE as a global hub for pharmaceutical and medical industries. The Authority, based in Abu Dhabi, regulates medical products, approves research entities, and develops policies for the sector.

MARKET ENTRY AND COMPLIANCE

To import, register, and distribute medical products in the UAE:

- A UAE-based company must be established and registered with MOHAP.
- A marketing office license is required for distributing products.
- A pharmaceutical distribution license, taking about six months to obtain, is necessary.
- A medical warehouse license is also required, with stringent technical and safety regulations.

Recent changes allow 100% foreign ownership of pharmaceutical distribution companies, aligning with broader UAE company law reforms. This applies to both mainland and free zones, making it advantageous to explore opportunities in zones like Dubai Science Park and Dubai Healthcare City.

IMPACT OF THE NEW PHARMACY LAW

The New Pharmacy Law's multiple distributor requirement could necessitate restructuring business plans. Companies may need two entities for importing and marketing, and one for distribution, posing challenges for those seeking to alter their distribution network.

PRICING REGULATIONS

MOHAP regulates the pricing of medical products, setting maximum prices based on efficacy, safety, and quality. Companies must adhere to these prices, and unauthorized adjustments can result in significant fines and reputational damage. The introduction of generic drugs affects the pricing of innovated and biosimilar drugs, emphasizing compliance with MOHAP's pricing guidelines.



Future Outlook

With the UAE Drug Authority set to refine product registration and pricing procedures, companies should stay informed about potential updates. These changes may impact pricing strategies, especially for those distributing products across the GCC region, where UAE prices influence regional pricing.

CONCLUSION

The UAE offers a lucrative market for life sciences companies but requires strict adherence to regulatory frameworks. Recent legislative changes necessitate professional guidance to navigate compliance and capitalize on emerging opportunities.

By understanding and adapting to these regulatory shifts, life sciences companies can effectively leverage the UAE's dynamic market landscape.

Sources: <https://gccbdi.org/legal-updates/opportunities-market-access-life-sciences-companies-new-landscape-import-distribution>

SAUDI ARABIA CONSIDERS ALLOWING FOREIGN LAW FIRMS TO ESTABLISH IN THE KINGDOM

Saudi Arabia is contemplating a significant change to its legal landscape by allowing foreign law firms to set up wholly-owned companies within the Kingdom. The National Competitiveness Center (NCC) recently announced this proposal on its X platform, seeking public opinion on amending Article 50 of the Kingdom's Code of Law Practice.

The proposed amendment, initiated by the Ministry of Justice, aims to permit licensed foreign law firms to establish professional companies owned entirely by non-Saudis. These companies would provide legal advice on Saudi regulations and represent clients in Saudi courts through Saudi lawyers registered as practicing lawyers.

This initiative seeks to enhance the legal profession by improving its quality and efficiency, localizing global expertise, and boosting the Kingdom's competitiveness. The project also aligns with Saudi Arabia's broader goals of attracting foreign investment, encouraging international companies to establish regional headquarters in the Kingdom, and creating high-quality job opportunities for Saudi citizens.

Sources: <https://www.zawya.com/en/legal/regulations/saudi-arabias-move-to-allow-non-saudis-to-set-up-law-firms-emun0kpk>



MANAGING BOARD COMPOSITION



By _____

CS Ramchander Tumuluru

Business Advisor, Dubai, Member of Research & Publications Committee of ICSI ME, ex Group CFO of a European MNC in Brussels

INTRODUCTION

Company Secretary is often a significant influencer and advisor to Shareholders or the Promoter Group in suggesting who to include in a Company Board. Gone are the days when the Board often was the family itself or the Promoters professional or golf or club friends or retired generals. Since Board Composition is very important in ensuring corporate governance, Director (essentially De Jure Directors and also Alternate Directors) appointments need to be well thought over. Further, legislation or exchange requirements or loan covenants often require Board appointments. With corporate scandal and financial frauds, shareholder activism, emerging technologies globalisation and the need for an independent Board that takes accountability and gives strategic direction as a think tank than a group of loyal Yes men has become paramount.

Independence, Strategic Thinking, Accountability and an ability to balance shareholders, oversee the CEO and also provide direction and wise counsel to the business are important. Ethics and Governance also ensure checks and balances which are important although the Board is not actively involved in day to day business – they need through subcommittees and reviews ensure these are in place.

A good effective Board drives better corporate performance by better insights, contacts, independent thinking and strategic input.

BOARD COMPOSITION – FACTORS

In deciding the Board Composition, age , gender, business needs, tenor, race , diversity, internationalization, legislation, tenor, business protection, availability, network, industry or functional expertise, independence , having multi Board or diversified industry experience ,strategic thinking are among several factors that need to be taken into account

A Board Composition Matrix showing the skill required / expertise/strength of each Director on X axis and Directors name on Y axis would help assess this position. While most public companies would have legal compliance requirement of between 2 or 3 Directors as a minimum to normally 12 – 15 Directors at the most to be effective and well represented ,private companies do not have such requirements but nevertheless must see the merit in having an advisor who can balance the risks and perspective rather than it being a dormant or dummy Board with a dominant CEO or Chairman.

It is also about accountability and legal responsibility of Directors. While some independent directors seek indemnity letters or do not hold qualification shares, the responsibilities of a Board makes many shy away, especially in legal situation like bankruptcies. Board liability often extends to several years after leaving the Board in some jurisdictions. Post Covid, the importance of Board Composition appears to have increased with increased international and digital experience

It is useful to note that a Board Member in the French speaking world are called Administrateur / Gerant and the term Directuer is actually a Manager/ Function Head and not to be confused with Director.

BOARD COMPOSITION – TYPES OF DIRECTORS

Key competencies, commitment and ethics are a given and some types of Directors that would be included while planning a Board would include:

Operational/ Wholetime / Inside/Executive Directors /Managing Directori

While some companies have a totally independent Board, it is common practice for atleast the CEO / Managing Director to be on the Board and at times the CFO and Company Secretary too (as Director and Secretary). Operational Directors (KMP) are in the know, are accountable even more with Board liability and wearing dual hats emphasizes this.



Independent/ Non Executive/Outside Directors

Most regulation strongly prefers an important percentage of the Board to be independent Directors who have no material gain or conflict of interest and are not related to the Promoter or connected to the Management. While this is important and helpful from a governance perspective, it is important that these Directors are involved, take responsibility and make an effort to understand business in depth and not just 'sitting' Directors. Independent Directors give confidence to shareholders and third parties/lenders and it depends on the personality traits and value system of how these Directors contribute and yet challenge the business

In the USA , independent Directors make up 66% of the Board and 72% of the S&P 500 Boards per Wall Street (Wikipedia)

Women Directors

In recent years legislation has been pushing and so also activism for women empowerment and removal of gender bias. Women Directors play a key role in corporates with excellent work ethic and focus and also help promoting the women empowerment culture. France requires 40% of Board members to be women. A 2022 amendment to the UAE Corporate Governance Framework mandates a 20% women representation on public company Boards. An EY report highlighted tripling of women on India Boards to 18% in 2022 from 6% in 2013. Yet there is a long way to go with majorpart of Nifty 500 having 'just one Director and less than 5% with a Chairperson. There is significant scope for growth. Often the same person holds several directorships -called the 'golden skirt phenomenon' (Ref:Shivani Shah Breaking the Glass Ceiling.. 22 Feb 24 LinkedIn)

Nominee Directors

Lenders and other interested parties may be covenant be entitled to appoint their directors to protect their interest. Very common in large companies with institutional borrowings, these directors are professional in an institution or industry experts or sometimes ex bankers. My personal experience is that Nominee Directors can be helpful in presenting the business case to the parent institution and support the business if involved rather than a watchdog alone

Worker Directors

I have seen in some jurisdictions, legal requirement of, depending on size, blue collar representation on the Board eg Norway. It is interesting that the workforce is participative and supportive of the business and drives the productivity policy while also challenging as Board members

Local L Resident Directors

Locally based Directors are important or sometime mandated in entities for substance reasons, better governance and also a deep local operating knowledge. Luxembourg for example needs 50% Luxembourg based Directors of the business. Many other countries also limit foreign based Directors on the Board

International Experience and Specialist Directors

Globalisation of Business has given great importance to Directors with a global perspective across industries, across Boards and also specialized in areas that are of growing importance Risk, AI, Cyber Security, Climate Change to name a few in addition to traditional areas such as Legal, HR, IT, Finance, Marketing,

Racial Diversity/ Ethnicity

Large companies are looking for a global representation on its Board on Latinos or Indian or specific representation. This is not only cosmetic with Black Lives Matter etc but is consciously seen to improving the performance of business across regions. A study by McKinsey&Co found that companies in the top quartile for ethnic and racial diversity were 35% more likely to have financial returns above their respective national industry medians.

Staggered Board Director

Directors here have different tenor, typically a third retire every year. This has the benefits of continued knowledge and is also an anti-takeover strategy making Board majority difficult.

Past CEO

Especially in entities that have recently been taken over it is common to have the previous CEO on the Board for continuity and also to guide the new team This can be helpful in guidance and providing minimum links but can also be a constraint to new thinking and may have bias. Some entities also do this as a practice so that the knowledge is preserved in the business while the retired Director also has a berth as an Advisor.

MultiBoard Directors

Directors who are on the Boards of several entities. This can bring a breadth of knowledge and industry practices but at the same time may involving sharing which can be sensitive. It is believed that in Norway women directors hold 23-24 Directorships on an average. Many countries have a maximum limit of number of Directorships possible.

First Time Directors

With the view to introducing youngsters or experts now required or to elevate seasoned leadership/employees, many companies appoint new Directors for the first time. Sometimes the stage of development of the economy and the spikes in growth also reflect this. A Heidrick and Struggles report notes that in UAE 61% of public company Directors were first time Board members in 2021 compared to 38% before. UAE places as significant importance on corporate governance.

There are of course many other types of Shadow Director who is not a Director but in accordance with whom others are instructed to act and a Defacto Director who acts like a Director but is not appointed as one.

BOARD COMPOSITION – SOME TRENDS

A Russels Reynolds study (2023) on Indian Board for India's top 200 companies had the following interesting highlights

- **Average age 61**
- **Average Board size 10.2**
- **Average Board Memberships 1.24** (only 5% serve on 3 or more Boards)
- **19% of Board are women**
- **54% are independent Directors**

BOARD COMPOSITION ASSESSMENT

Board Composition itself does not assure everything. It needs training, 360 deg evaluation and assessment to ensure that the Board performs effectively. And of course, Board succession planning – where age, relevance, contribution and succession to pave the way for younger forward looking members

SUMMARY AND ROLE AND OPPORTUNITIES FOR CS

Boards play a key role in corporate governance and in strategic thinking to bring insights for the management and growth of the business. Company Secretaries, given their proximity to shareholders, CEO and the Board have considerable influence on helping to facilitate this governance, appointment and planning process apart from opportunities to be on the Board themselves given that compliance and governance are key competencies.

RECOMMENDED READING

01. *Spencer Stuart PWC : Board Composition the road to strategic refreshment and succession Apr 23*
02. *Randall Peterson and Pedro Falcao 6 Kinds of Board Members – and how to influence them, Harvard Business Review Dec 2023*



NAVIGATING AML COMPLIANCE: OVERCOMING CHALLENGES AND IMPLEMENTING EFFECTIVE SOLUTIONS



By _____

Deepa Joseph

Head- Corporate Services, AML and Compliance,
Adilzone CSP, Anjarwalla Collins & Haidermota,
Legal Consultants

In today's interconnected global financial environment, it's important for businesses worldwide to prioritize compliance with Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) regulations. As these regulations continue to develop and financial crimes become more sophisticated, organizations are encountering progressively intricate challenges in meeting AML/CFT requirements. This article explores the diverse aspects of AML compliance, addressing common challenges, examining strategies to reduce risks related to money laundering and terrorist financing, and providing insights into effective compliance practices, both within the UAE and globally.

AML/CFT COMPLIANCE CHALLENGES:

Banks, financial institutions, designated non-financial businesses and professions (DNFBPs), registered Hawala service providers, virtual assets service providers, cryptocurrency service providers, trusts, casinos, and online gaming service providers are susceptible to exploitation by criminals and terrorist financiers. They also face reputational risks, including hefty fines, for not

having adequate systems, controls, and procedures to mitigate money laundering (ML), terrorist financing (TF), and sanction risks. Navigating the AML/CFT compliance terrain poses numerous challenges for these businesses, including keeping up with evolving regulatory requirements and managing the complexities of customer due diligence and transaction monitoring.

DIFFICULTIES IN ML-TF RISK MANAGEMENT:

Identifying, assessing, and mitigating risks related to Money Laundering (ML) and Terrorist Financing (TF) pose significant challenges for organizations. To effectively identify these risks, organizations should consider key factors such as: the nature of potential risks, the reasons behind them, their frequency of occurrence, their impact or consequences, the existing control measures, and their association with money laundering, terrorist financing, proliferation financing, and other related risks. Common challenges include identifying beneficial ownership, monitoring complex transactions, and detecting emerging patterns of ML-TF.



Risk appetite refers to the level and type of risk an organization is willing to accept to achieve its strategic objectives, while risk tolerance is the organization's readiness to bear risk after mitigation efforts. Risk treatment, also known as risk response, involves developing strategies to reduce the likelihood and impact of identified risks

RESOLVING CHALLENGES WITH PRACTICAL APPROACH TO AML COMPLIANCE:

Overcoming AML/CFT compliance challenges requires a proactive and comprehensive approach. Organizations must prioritize robust risk assessment processes, implement effective know your customer (KYC) procedures, and deploy advanced sanction screening, politically exposed person (PEP) screening, adverse media screening, and transaction monitoring systems. It is important to strictly adhere to compliance pillars, including compliance officer or money laundering reporting officer, effective ML-TF risk management, AML-CFT policies and procedures, AML-CFT trainings, independent AML-CFT audit, remedial action plan, enterprise-wide risk assessment, ongoing monitoring, internal reporting procedures, external reporting mechanisms, collaboration with regulatory authorities, and leveraging technological innovations such as artificial intelligence to enhance detection capabilities and streamline compliance operations.

EFFECTIVE AML COMPLIANCE IN UAE AND GLOBALLY:

Globally, Money Laundering/Terrorist Financing remains a top concern for financial services. As a significant financial hub worldwide, the United Arab Emirates plays an important role in combating financial crimes and has effectively implemented FATF recommendations. The country has adopted stringent AML/CFT regulations aligned with international standards, emphasizing compliance across sectors. Financial crime, including ML&TF, poses a risk of undermining a country's economy. To bypass AML/CFT measures, criminals often use corporate vehicles as an attractive and effective means to disguise their proceeds before reintroducing them into the financial system. The UAE's competent authorities have established an effective control and communication system for Banks, Licensed Financial Institutions (LFIs), Designated Non-Financial Businesses and Professions (DNFBPs) and Registered Hawala Service Providers (RHPs) to identify and report Suspicious Activity/Transaction Reports (SAR/STR). This action serves as an enabler for Financial Intelligence and Law Enforcement Units to act against Money Laundering and Terrorism Financing perpetrators. SARs help safeguard the interests of reporting entities, assisting them in avoiding regulatory fines, penalties, and other legal consequences. However, achieving effective AML compliance extends beyond geographical boundaries. Organizations operating internationally must navigate diverse regulatory frameworks and cultural nuances while adhering to AML/CFT best practices.



ESR



By _____

Shwetha Nadiga

Founder Director, Raksh Management Consultancies

In the cabinet of Ministers, Resolution No. 57 of 2020 concerning Economic Substance Requirements are passed.

The ESR Regulations are issued pursuant to the global standard set by the Organisation for Economic Cooperation and Development (“OECD”) Forum on Harmful Tax Practices, which requires entities undertaking geographically mobile business activities to have substantial activities in a jurisdiction.

In addition to the work of the OECD, the European Union Code of Conduct Group (“EU COCG”) also adopted a resolution on a code of conduct for business taxation which aims to curb harmful tax practices.

The Cabinet of Ministers enacted the ESR Regulations taking into account the relevant standards developed by the OECD and the EU COCG.

APPLICABILITY TO THE FOLLOWING CATEGORY:

1. Licensee – “an entity that is

- i. a juridical person (incorporated inside or outside the State); or
- ii. an Unincorporated Partnership; registered in the State, including a Free Zone and a Financial Free Zone and carries on a Relevant Activity.”



An Unincorporated Partnership is defined under the ESR Regulations to include those forms of partnerships that may operate in the UAE without having separate legal personality and are thereby identified separately under the ESR Regulations.

Branches registered in the UAE are regarded to be an extension of their “parent” or “head office” and therefore are not considered to have separate legal personality. Thus, a branch of a foreign entity registered in the UAE that carries out a Relevant Activity, is required to comply with the ESR Regulations, unless the Relevant Income of such branch is subject to tax in a jurisdiction outside the UAE

2. Exempted Licensees

The ESR Regulations exclude certain forms of entities from the requirement to meet the Economic Substance Test. For the purpose of the ESR Regulations, an Exempted Licensee includes any of the following entities registered in the UAE and which carry out a Relevant Activity:

- (a) an Investment Fund;
- (b) an entity that is tax resident in a jurisdiction other than the UAE;
- (c) an entity wholly owned by UAE residents and meets the following conditions:
 - (i) the entity is not part of a MNE Group;
 - (ii) all of the entity's activities are only carried out in the UAE;
- (d) a Licensee that is a branch of a foreign entity the Relevant Income of which is subject to tax in a jurisdiction other than the State.

Any entity which claims to be an Exempted Licensee must submit to the relevant Regulatory Authority, along with a Notification, sufficient evidence substantiating its status as an Exempted Licensee for each Financial Year in which it claims to be an Exempted Licensee.

Where an entity fails to provide sufficient evidence to substantiate its status as an Exempted Licensee, the entity will be regarded as a Licensee for the purposes of the ESR Regulations and shall be subject to the requirements of the ESR Regulations as applicable to a Licensee, including the requirement to meet the Economic Substance Test.

3. Relevant Activity

Article 3 of the ESR Regulations identifies any of the following activities to be a Relevant Activity:

- (i) Banking Business
- (ii) Insurance Business
- (iii) Investment Fund Management Business
- (iv) Shipping Business
- (v) Lease-Finance Business
- (vi) Distribution & Service Centre Business
- (vii) Headquarters Business
- (viii) Intellectual Property Business
- (ix) Holding Company Business



- Entities are expected to use a ‘substance over form’ approach to determine whether or not they undertake a Relevant Activity

- A Licensee can undertake more than one Relevant Activity during the same financial period.
- Any form of passive income from a Relevant Activity would bring the entity within scope of the ESR Regulations.

Relevant Income



A Licensee must satisfy the Economic Substance Test having regard to the level of Relevant Income derived from any Relevant Activity.



For the purposes of the ESR Regulations, "Relevant Income" means all of that entity's gross income from a Relevant Activity as recorded in its books and records under applicable accounting standards, whether earned in the UAE or outside the UAE and irrespective of whether the entity has derived a profit or loss from its activities.

Key Requirements of Economic Substance Test

1. The Licensee conducts Core Income-Generating Activities ("CIGA") in the UAE.
2. The Relevant Activity is directed and managed in the UAE;

The 'directed and managed' test aims to ensure that a Relevant Activity is directed and managed in the UAE and requires that, inter alia, there are an adequate number of board meetings held and attended in the UAE.

The 'directed and managed' test further requires that:

- (i) meetings are recorded in written minutes and that such minutes are kept in the UAE;
- (ii) quorum for such meetings is met and those attendees are physically present in the UAE; and
- (iii) directors have the necessary knowledge and expertise to discharge their duties and are not merely giving effect to decisions being taken outside the UAE.

The board members (or equivalent) need not be a resident in UAE rather are required to be physically present in the UAE when taking strategic decisions.

having regard to the level of Relevant Income earned from a Relevant Activity, (i) has an adequate number of qualified full-time (or equivalent) employees in relation to the activity who are physically present in the UAE (whether or not employed by the Licensee or by another entity and whether on temporary or long-term contracts), (ii) incurs adequate operating expenditure by it in the UAE, and (iii) has adequate physical assets (e.g. premises) in the UAE.

Where an outsourcing arrangement is used, the following conditions must be met:

1. The Outsourcing Provider to whom all or part of the Licensee's CIGAs is outsourced must have, at all times in the UAE, levels of:
 - i. employees;
 - ii. Expenditures; and
 - iii. Physical assets (e.g. premises), which are, individually and in the aggregate, adequate in relation to the CIGAs being undertaken.

Notification Filings

Every Licensee and Exempted Licensee is required to submit a Notification to their respective Regulatory Authorities setting out the following for each relevant Financial Year. The Notification must be filled within six months from the Licensee's financial year end:

- i. the nature of the Relevant Activity being carried out;
- ii. whether it generates Relevant Income;
- iii. the date of the end of its Financial Year;
- iv. any other information as may be requested by the Regulatory Authority

Economic Substance Report



Every Licensee shall be required to meet the applicable Economic Substance Test requirements and submit an Economic Substance Report containing the requisite information and documentation prescribed under the ESR Regulations within twelve (12) months from the end of the relevant Financial Year.

Retention of Information and Records

The ESR Regulations prescribe for a minimum information retention period whereby each Licensee and Exempted Licensee must retain for a period of six (6) years from the end of its Financial Year all relevant documents, records and information required by the Licensee to meet their obligations under the ESR Regulations.

REGULATORY AUTHORITIES AND NATIONAL ASSESSING AUTHORITY

Pursuant to the ESR Regulations, certain authorities are appointed in the capacity of “Regulatory Authorities” and the Federal Tax Authority has been appointed as the “National Assessing Authority”.

Penalty

- Failure to file notification – AED 20,000/-
- Failure to file report – AED 50,000/- and it is deemed failure to demonstrate Economic Substance in UAE
- Failure to provide accurate information – AED 50,000/- and it is deemed failure to demonstrate Economic Substance in UAE

Failure to demonstrate sufficient Economic Substance in the UAE for the relevant period

- First year of failure – AED 50,000/- – Information exchange with foreign competent authority of parent company, ultimate parent company, and ultimate beneficial owner.
- Second consecutive year of failure – AED 400,000/- – Information exchange with foreign competent authority of parent company, ultimate parent company, and ultimate beneficial owner.

UNLOCKING THE POWER OF AUTOMATION IN RISK MANAGEMENT AND COMPLIANCE



By

Deepa Joseph

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Legal Consultants

A hand is shown interacting with a digital interface. The interface features a glowing padlock icon and a person silhouette icon, surrounded by circuitry and data points. The background is dark with blue and white light effects.

In today's fast-paced and highly regulated business environment, effective management of risks and compliance has become a top priority for organizations across industries. Risk management encompasses the identification, assessment, and mitigation of potential risks that could threaten the achievement of organizational objectives. Compliance, on the other hand, involves adhering to laws, regulations, standards, and internal policies relevant to the organization's operations. Both risk management and compliance are essential components of corporate governance, ensuring that businesses operate ethically, responsibly, and in accordance with legal and regulatory requirements.

UNDERSTANDING RISK MANAGEMENT

Risk management is a proactive process that involves identifying, assessing, prioritizing, and mitigating risks that could impact an organization's ability to achieve its objectives. Risks can arise from various sources, including financial, operational, strategic, compliance, and reputational factors. Effective risk management entails developing strategies and implementing controls to minimize the likelihood and impact of adverse events while maximizing opportunities for success.

THE ROLE OF COMPLIANCE OFFICERS AND MANAGEMENT

Compliance officers and management play a crucial role in ensuring that organizations comply with relevant laws, regulations, and internal policies. They are responsible for establishing compliance frameworks, monitoring regulatory developments, assessing compliance risks, and implementing controls to mitigate those risks. Compliance officers also oversee training and awareness programs to educate employees about their legal and ethical obligations and ensure that the organization operates with integrity and transparency.

THE POWER OF AUTOMATION IN RISK MANAGEMENT AND COMPLIANCE

Automation offers a transformative solution to the challenges inherent in traditional risk management and compliance processes. By leveraging advanced technologies such as artificial intelligence (AI), machine learning (ML), robotic process automation (RPA), and data analytics, organizations can enhance their risk management and compliance capabilities in the following ways:

1. Streamlining Processes:

Automation enables the streamlining of routine tasks such as data collection, analysis, reporting, and monitoring. Compliance officers and management can automate repetitive activities, such as compliance checks, risk assessments, and due diligence processes, freeing up time to focus on strategic initiatives and high-value activities.

2. Improving Accuracy and Consistency:

Manual processes are prone to human error, which can lead to compliance breaches and operational inefficiencies. Automation ensures a higher level of accuracy and consistency by reducing the risk of errors in data entry, calculation, and analysis. Consistent application of rules and policies across the organization helps establish a robust compliance framework and mitigates the risk of regulatory non-compliance.

3. Enhancing Real-time Monitoring:

Automation enables real-time monitoring of key risk indicators and compliance metrics, providing organizations with timely insights into emerging risks and compliance breaches. By integrating automation with data analytics and visualization tools, compliance officers and management can identify trends, patterns, and anomalies more effectively and take proactive measures to mitigate risks and ensure compliance.

4. Enabling Agility and Scalability:

The dynamic nature of regulatory requirements and business environments demands agility and scalability in risk management and compliance processes. Automation empowers organizations to adapt quickly to changes in regulations, market conditions, and internal operations. By configuring automated workflows and rule engines, compliance officers and management can customize risk and compliance processes to meet specific needs and scale them up or down as necessary.

5. Reducing Costs:

Automation delivers significant cost savings by improving operational efficiency, minimizing the need for manual intervention, and reducing the financial impact of non-compliance. By automating repetitive tasks and optimizing resource allocation, organizations can lower labor costs, mitigate the risk of fines and penalties associated with regulatory breaches, and achieve a compelling return on investment in risk management and compliance.

CONCLUSION

Automation holds immense potential to revolutionize risk management and compliance by enhancing efficiency, accuracy, agility, and cost-effectiveness. By leveraging automation technologies, organizations can streamline processes, improve decision-making, and strengthen their ability to manage risks and ensure compliance with regulatory requirements. Compliance officers and management have a pivotal role to play in harnessing the power of automation to navigate the complexities of the modern business landscape and safeguard their organizations' reputation, integrity, and financial well-being.



A BRIEF LOOK AT MINUTES



By _____

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INTRODUCTION

Writing good minutes is like flossing; Nobody likes to do it but it is essential for good hygiene⁽¹⁾

“So Let it be Written, So Let it be Done” (Ten Commandments)

As Company Secretaries, we at some stage or the other have put together Board Minutes or even Minutes of the Meeting (MoM). Sometimes a seemingly thankless job and a simple activity – writing Minutes is certainly not easy – to capture succinctly all decisions, record the agreed views of the discussion, consider the audience (including government and investigators or due diligence experts) of their Minutes and the legal implications of careful wording (Less is More) which could protect the business and the Board while still giving an accurate description of approved action points for execution and follow through.

Post Covid with audio and video recorded meetings, Minutes has become more important to document meetings where physical meetings did not take place.

HISTORY

I have often wondered why these records are called Minutes when hours are spent. I learn Minutes originates from the Latin Minuta Scriptura short or rough notes. While Greeks had Aghoras or Meeting places centuries ago, the word meeting is believed to have been invented only in the 14th Century. Minutes however seem to have been more formally started in late 1800's. These used to be handwritten in bound / book type volumes.

Henry Martyn Roberts(1837–1923) an American soldier, engineer and author is known to have formalized this process a meeting(in context of parliamentary matters) needs a convenor, have a discussion , resolutions and voting (Robert’s Rules of Order).

MINUTES – PREPARATION AND TIMELINESS

Minutes are usually prepared by the Company Secretary, where there is one, or be a Director assigned to do so or a general counsel/ professional inhouse (sometimes the CFO) or external (a trusted legal advisor) who attended the meeting.

It maybe difficult sometimes for the presenter himself to write Minutes while participating in the meeting itself but most importantly the gist and key decisions must be captured accurately. These are best prepared immediately post the meeting or with a template filled in at or after the meeting with facts.



Timely preparation and Timely Circulation is key so as

- (a) to not miss out any point
- (b) it is fresh in the minds of all present to correct or clarify
- (c) it is available to those concerned for immediate actions based on enabling resolutions
- (d) it is circulated to all present for approval and signature after review

A 2021 Fellows report stated that 51% people still record minutes individually and not collaborative. It is better to have a single document on which the Secretary prepares is circulated for approval and editing if aligned by all. Once final all earlier drafts should be destroyed.

Recent technologies also permit transcription software options eg Sonix , which in any case need to be reviewed meticulously.

MINUTES – CONTENT

Typically Minutes would be prepared in accordance with required corporate legislations and the Statues of the Company (Articles of Association) and would include

- ((●)) Date, Time and Place
- ((●)) Present, Absent and how certain Directors attending portions of meeting (relevant in a testimony when certain decisions were taken) and other attendees invited and present including Alternate Directors and Leave of Absence
- ((●)) Election of the Chairman if relevant

- ((●)) Conflict of Interest/ Interest Parties
- ((●)) A conformation of earlier Minutes and an Action Taken Report of item
- ((●)) Board approvals
- ((●)) Delegations of authority
- ((●)) Appointments Made
- ((●)) Review of Compliance Certificates of the entity and its related entities
- ((●)) Review of Internal and External audit reports where relevant
- ((●)) Rationale for action and inaction – agenda itemwise and other items taken up in the Agenda
- ((●)) Dissenting views or votes
- ((●)) Conflict if interest
- ((●)) How directors attended meeting portions (as testimony)
- ((●)) Attach relevant documents where necessary of reports eg a legal report

Minutes should be

- ((●)) Detailed enough to be compliant
- ((●)) Be reliant, based on Business judgement rule(in good faith in best corporate interests)
- ((●)) Bear in mind that they are Vital evidence in insolvency or litigation and scrutiny of public authorities
- ((●)) inform accurately and transparently of decisions without giving rise to undue liability
- ((●)) important that fiduciary duties are met by a detailed discussion on matters before decision making. An important example could be when the Directors believe they need to file for insolvency or bankruptcy and their assessment of the solvency. Failure to do so timely can have an impact on liabilities.



MINUTES – TYPES



Minutes could be written in Active or Passive mode or in verbatim. Ideally, Minutes should state what is decided to be done than a detailed name wise reproduction. Discussion points maybe summarized where pertinent. As far as possibly it is best in third person and not quoting names of concerned participants unless very relevant

MINUTES – DISPUTES



Minutes albeit being privileged documents for circulation can be reviewed in matters of legal disputes. So well drafted Minutes would be useful as a defence in disputes or in providing clarity on underlying actions and rationale. Well written minutes have obviated the need to provide further extensive details of the business⁽²⁾

SUMMARY OF DISCUSSION AND ROLE AND OPPORTUNITIES OF COMPANY SECRETARIES

Minutes are important legal records documenting Board Meetings and it is Company Secretary's role to see these are crisp, and well written and provide clarity on decision making as well as protect the business and in a way document the corporate governance process. For CS this is an important regular role in the business and also provides opportunities for small and medium businesses in compliance and proper record keeping especially in this region

References

01. *quoting Vice Chancellor Travis Laster Dane E Allen, Jennifer E Bennett and Shelley Dropkin More Minutes: Special Situation CG Seminar Jan 2019*
02. *Recommended Reading:Are Current Minutes more important than Past Minutes ?– Kenneth J Najer, National Law Review 25 Jan 2024*



CS Shwetha Nadig
Founder Director



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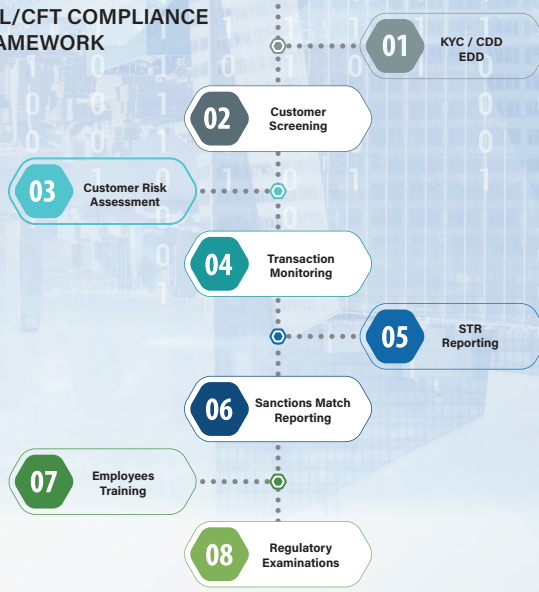


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