The UAE legislation, and particularly the Commercial Companies Law, has set out general and specific duties and obligations that managers and directors should be aware of to avoid any violation. Stemming from three different legal bases, these duties and liabilities may be of civil nature or criminal nature. Furthermore, the UAE legislation has introduced various penalties in case managers and directors’ violation of applicable laws or breach of contract.

Mojahed Al Sebae from the Corporate and Commercial Team at Galadari Advocates & Legal Consultants, illustrates the duties and obligations of managers and directors, as well as the possible penalties, as per the current UAE laws and regulations.

**Thomson Reuters:** Managers and directors’ duties and liabilities have been the topic of constant legal discussions and studies in UAE. Let us start by identifying the nature of these duties and liabilities.

**Al Sebae:** Managers’ and Directors’ liabilities may be divided into two types of nature:

The first one is the “Civil Nature” of these duties and liabilities; and this nature is applicable to the majority of these duties and liabilities. 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.

However, in certain specific cases – where a breach is considered to be a crime under the UAE Commercial Companies Law – these duties and liabilities will have a second type of nature that is the “Criminal Nature”.

**Thomson Reuters:** Now that we have a clear view of the nature, where are Managers and directors’ duties “derived” from? In other words, what is the basis of these duties and liabilities?

**Al Sebae:** The legal basis for the duties and liabilities imposed on Managers and Directors may be one of three options:

**Option 1,** is laws and regulations issued by the state. Here, we can mention several laws and resolutions governing the duties and liabilities of the Managers and Directors in the state (whether local or federal), these include, but are not limited to, the following:

i) 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;

ii) UAE Law No. 9 of 2016 relating to bankruptcy (“the Bankruptcy Law”), which includes provisions regulating Managers’ and Directors’ liabilities in certain situations, such as when a bankruptcy proceeding has commenced against the company or it has been declared bankrupt;

iii) UAE Commercial Companies’ Law No. 2 of 2015 (the “Companies’ Law”);

iv) The Resolutions issued by the Securities and Commodities Authority in the UAE (the “Authority”), including Resolution No. 7 of 2016 on institutional discipline standards and corporate governance, which apply to public joint stock companies; and

v) 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.

**Option 2,** is a contractual basis. These duties and liabilities would be based, for example, on management or employment contract; and

**Option 3,** is based on a Power of Attorney (the “POA”) issued pursuant to these contracts. The POA may even be joint if there are multiple Managers or Directors.
**Thomson Reuters**: We’ve identified the nature and legal basis of the duties and liabilities of managers and directors. Are there main duties?

**Al Sebae**: The UAE Commercial Companies law, due to its special nature and objectives, is the main legislation regulating the duties and liabilities of Managers and Directors. All managers and directors, whether executive and/or non-executive directors, should be fully aware and acquainted with this legislation in order to avoid violating any of the duties set within, which might render them legally accountable.

Having said that, the UAE Commercial Companies Law classifies these duties and liabilities into two main categories:

1. **General duties and liabilities.** These are applicable to all managers and directors and to all commercial companies.
2. **Specific duties and liabilities.** There are applicable to certain managers and directors 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 Companies’ 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 companies’ 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 presenting them to the general assembly; and a fine of between AED 50,000 and AED 100,000 may be imposed on the chairman, manager or director if he fails to invite the general assembly meeting for the purpose of approving the annual report or any part thereof; 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 Companies’ Law; and to announce the same in two daily local newspapers.

Moreover, a set of specific obligations and duties is imposed upon the managers and directors of certain companies based on the nature and legal form of that company. For instance, the managers of limited liability companies are obligated to link its name with the phrase “LLC”; otherwise, they could be held jointly and severally accountable for the company’s obligations.

In addition to the above, another set of specific obligations and duties is imposed upon the chairmen and directors of joint stock companies:

- **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 to 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.

**Thomson Reuters**: You’ve illustrated the “obligations” part. But, what happens in case of a violation? What are the “liabilities” imposed as a consequence?

**Al Sebae**: Precisely. All laws and regulations in UAE impose numerous and various penalties to ensure that managers and directors do not violate their duties and obligations. These penalties may involve fines or even imprisonment of violators.

As per the UAE Commercial Companies Law, the penalties include the following:

- **i)** A fine of between AED 50,000 and 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 between AED 50,000 and 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 between AED 10,000 and 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 between AED 50,000 and AED 500,000. Such manager or director may also be subject to imprisonment for a similar period and/or a fine of between AED 100,000 and 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.

In addition, it’s worth noting that managers and directors may also be subject to the penalties stipulated in the Bankruptcy Law. Some penalties may also be imposed on companies due to the violations or breaches by their managers or directors of the provisions of the Commercial Companies Law or the MOA and/or AOA.

Thomson Reuters: Which brings us to the next question: When is a company held responsible for the actions of managers and directors?

Al Sebae: The general legal principles governing the responsibility for harmful acts stipulate that Companies are held responsible on behalf of a manager and/or director, if the latter has acted within the limits of his authorities and legal capacity granted to him within the company’s MOA or AOA, or within a special written document or statement such as a Power of Attorney (POA).

Nevertheless, if a manager or director exceeds his capacity limits and harms others with his act, the Company will not be responsible for such dispositions towards third parties.

Thomson Reuters: Will the manager or director be liable towards the company for these wrongdoings?

Al Sebae: Definitely. The manager or director is bound by laws and regulations, as well as the provisions of the company’s MOA or AOA. In case of a breach or violation of his duties and or any act involving fraud, deception or gross misconduct, he will be personally liable towards the company, partners or shareholders and third parties.

Thomson Reuters: One final question, can managers revoke their responsibility on the basis of a waiver?

Al Sebae: Absolutely not. Any exemption or waiver granted – whether in the MOA, AOA or any other contract – to relieve managers and directors from the personal duties, obligations or liabilities, imposed or stipulated in the applicable national legislation, shall be null and void.

Mojahed Al Sebae
Galadari Advocates & Legal Consultants – partner
Corporate & Commercial
Mojahed holds an LLB from the University of Sharjah and an LLM from the University of Hertfordshire. He has extensive experience in Commercial, Corporate, Real Estate, Employment and Litigation. Prior to joining Galadari, he has worked as a Senior Associate for leading local and international law firms, Ajman Chamber of Commerce and Industry and Dubai Public Prosecution. During the course of his career, Mojahed has been requested to review and comment on several new local legislations, authored several articles and participated in several conferences in the UAE.

Nadim Al Jisr
Head of Legal Content
Thomson Reuters

Nadim Al Jisr is Head of Legal Content for Thomson Reuters, Middle East and North Africa. He oversees the product content for Thomson Reuters Westlaw Middle East and manages its growth. Nadim previously practiced as a litigator and legal consultant, in Lebanon and Saudi Arabia, and is proficient in Arabic, English and French. He holds a Bachelor’s Degree in Law from the Lebanese University.


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