

# Managers and directors in the spotlight!

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## Introduction

At the best of times managers are required to make difficult business decisions, In times as testing as these, such decisions become critical and consequently are likely to be the subject of heightened scrutiny by corporate regulators, creditors and shareholders. To ensure their decisions stand up to such scrutiny managers must be aware of their responsibilities and obligations.

In the UAE, the use of the terms ‘manager’, ‘board of managers’, ‘director’ or ‘board of directors’ are often used interchangeably, especially in cases of limited liability companies on the UAE mainland and in circumstances where express authority for a particular ‘position’ is not specified, and in most cases the extent of authority in favour of any one or more individual(s) is often left for the shareholders to decide.

In the UAE, there are various legislative sources that set out the responsibilities and liabilities of managers and directors which are applicable to companies located in the UAE mainland as well those companies incorporated in free zones.

## Duties under applicable laws

The UAE Commercial Companies Law (2015) (‘CCL’), the Civil Code and the Commercial Transaction Law set out the responsibilities of managers and directors via a combination of rules stating what managers and directors should do as well as what they may be personally liable for (and hence what they should not do), rather than simply relying on a general concept of fiduciary duties being owed by a director or a manager of a company. In all cases, managers and directors are generally required to: (1) act honestly and in good faith with a view to achieving the best interests of the company; (2) exercise the level of care, diligence and skill expected from a reasonably prudent person in similar circumstances; and (3) exercise their powers for the purposes for which they are conferred and in accordance with the relevant regulations.

When determining the scope of authority, regard should be had to the Memorandum and Articles of

Association, contract of employment and/or power of attorney all of which should be considered within the parameters of the law. In the absence of any specific restrictions or authorisations in the law or otherwise the managers and directors have full capacity to manage the company and any such action shall be binding on the company. It is, therefore, essential to always be mindful of any limitations on the scope of the powers as to exceed any such limitations may expose a manager/director to a potential claim for breach of duty and hence personal liability.

## **Criminal and civil liabilities**

The CCL sets out various penalties for breach of its provisions which shall be borne by whoever legally represents the company. Liability would extend to cover any losses or expenses incurred due to any improper exercise of power or contravention of the provisions of any law, the articles of the company, fraud or any gross error by a manager or director. Hence, to the extent that limitations to the scope of the powers have been exceeded, or misapplied such that the company suffers damages as a consequence, personal liability of the manager or director in question may arise.

Further, it is always open to an aggrieved party to bring a civil claim against a manager or director who has breached any of the duties as a result of which losses have been sustained by said party.

## **How to reduce personal liability**

Directors and managers should always act in what they reasonably believe to be the best interests of the company and within the confines of the instrument granting such authorisations.

In the event that such a person finds themselves in a position where he or she is uncomfortable with a course of action being proposed by a fellow officer, his or her objections should be recorded in writing either by a letter addressed to the other officer, or evidenced in the minutes of meeting.

It would be prudent to ensure that issues pertaining to related party transactions and conflicts of interest are closely considered and monitored, as participation in a business in competition with another company is generally prohibited, and conflicts of interest in relation to transactions of those companies should be disclosed, in order to mitigate the prospect of any criminal proceedings at a later stage.

## **Conclusion**

Managers and directors are liable to the company, its shareholders and third parties for all acts of fraud, abuse, negligence and mismanagement. Thus, it is essential that they always act within the scope of their prescribed authority, in a transparent and ethical manner and in what they reasonably believe to be in the best interests of the company. If they do so, they should be able to act safely and with the knowledge that their action(s) will not expose them personally to the risk of civil or criminal sanctions.

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