

Corporate Governance updates by SCA for listed joint stock companies

February 2024

Foreword

In recent times, there has been increasing focus on strengthening governance across companies in the United Arab Emirates (UAE), particularly listed public joint stock companies.

Since its inception, the Securities and Commodities Authority (SCA) has been keen on strengthening the legislative structure through their initiatives, issuance of regulations and instructions that further enhance the governance of companies operating in the securities market.

With the ultimate focus of maintaining transparency and enhancing stakeholders confidence, SCA continuously monitors the key developments worldwide in the field of strengthening governance and adopting principles that contribute to achieving its vision.

In its initiative to further develop and enhance corporate governance standards, the Joint Stock Companies Governance Guide ("Guide") issued by the SCA has been amended pursuant to the decision of the Chairman of the Board of the SCA [No.(02/RM) of 2024] as issued on 10 January 2024 and enforced on 16 January 2024.

The amendments are focused on further enhancing the governance in order to protect the interest of shareholders. These span across areas of Internal control, Risk Management, Compliance and other corporate governance related matters.

In this publication, we have analyzed the key amendments and provided our perspective, which we hope you will find to be informative. We look forward to continuing to engage with you.

Thank you.

Yours faithfully

For Uniquis Consultech Inc.

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Overview

The Corporate Governance framework as laid out in the Guide complies with the international standards in terms of defining the-



Responsibilities / duties of the Board of Directors and the executive management team



Rights of shareholders / stakeholders and their supervision, agency towards achieving the company sustainability.

The updated Guide deals with 100+ amendments. These amendments are spread across various sections / articles and look towards further clarifying / empowering the roles and responsibilities of Board, Audit Committee, other Board Sub Committee's, management, and the second / third lines. The changes can broadly be attributed to the below areas.

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Below is a brief summary of the amendments / changes,

Amendments	100+
New Provisions / requirements	18
Amended requirements	82+

Key Takeaways

1. Guide does not apply to free zone companies (Article 3)

In its current form, the Guide does not apply to free zone companies (including financial free zone companies).

Previously only foreign companies listed on the market were exempted from complying with these guidelines. Based on the recent amendments, the scope exclusions will further be extended to free zone and financial free zone companies. Management will need to identify whether the scope exclusions are applicable to any of the Group entities. Entities listed in free zones may continue to adhere to the provisions of the Guide in light of good corporate governance. Further, free zone companies, operating in Mainland with appropriate permits may approach the SCA to obtain exemption related clarifications.

2. Definition of 'related party' extended (Article 1)

The definition has been widened significantly to include the following as 'related parties':

- Relatives of Board members and executive management
- Parent of the Company
- Owners of 5% or more of the company's shares or voting rights (majority shareholders)
- Chairman and members of the Boards of parent, subsidiary, sister, or affiliated companies of the company
- Companies where any member of the Board or executive management of the company serves as a Board Member or senior executive

This amendment widens the definition of 'related parties' and will lead to more parties being identified as 'such'. Accordingly, companies are required to update their register / record of related parties, ensure adequate disclosure in respect of related party transactions. Additionally, companies also need to ensure accurate and adequate compliance with conflict-of-interest related requirements (including necessary disclosures and declarations).

It is also important to note that related party disclosures need to be included in the Annual Governance report, Financial Statements, and the company's website.

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1. Guide does not apply to free zone companies (Article 3)
2. Definition of 'related party' extended (Article 1)
3. Establishment of Policy & Procedures (Article 14)
4. Ensuring existence of a succession plan [Article 59]
5. Enhanced focus on Corporate Governance [Article 14 & Article 63 (Bis)]
6. Prohibiting combining key functions / roles (Article 67 and Article 69)
7. Enterprise Risk Management (ERM) (Article 14, Article 61 and Article 67)
8. Internal Controls (Article 14, Article 61 and Article 73)



3. Establishment of Policy & Procedures (Article 14)

As part of the amended requirements, the Board commits to (i) establishment of internal policies and guidelines to cover all aspects of the company's operations and (ii) adoption of internal procedures, policies, and guidelines for managing corporate affairs, specifying the authorities of executive management.

The Board is responsible for ensuring that the management develops detailed policies and procedures as well as Financial and Operational Delegation of Authorities for the company covering all its operations (For e.g. financial reporting, procure to pay, order to cash, human resources, etc.).

4. Ensuring existence of a succession plan [Article 59]

The amendments require the Nomination and Reward Committee to ensure the existence of an appropriate and updated plan for the continuation and succession of the work of the company's senior executives and chairs of the Board of Directors' committees.

The Nomination and Reward Committee is required to ensure existence of a succession plan for the company's senior executives and chairs of the Board of Directors' committee.

In light of the duties outlined for each of the above roles, the succession plan should be evaluated and approved as per the Delegation of Authority.

5. Enhanced focus on Corporate Governance [Article 14 & Article 63 (Bis)]

As per the amendments, the Board's obligations are enhanced to include monitoring of application of corporate governance rules and ensuring continuous updation.

Further, the Board may establish a Governance Committee to implement a governance system and execute the following responsibilities:

- Providing Annual Reports and recommendations to the Board
- Ensuring the company's compliance with the governance guide issued by the Authority
- Reviewing and updating governance rules according to regulatory requirements and best practices
- Staying informed about the developments and best practices in corporate governance

The amendments requires the Board to monitor the application of corporate governance rules and ensure continuous updation. The Board may consider whether the permanent Governance Committee is required to be established for effective implementation of Corporate Governance, given the fast-changing landscape of regulatory requirements.

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3. **Establishment of Policy & Procedures (Article 14)**
4. **Ensuring existence of a succession plan [Article 59]**
5. **Enhanced focus on Corporate Governance [Article 14 & Article 63 (Bis)]**
6. Prohibiting combining key functions / roles (Article 67 and Article 69)
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6. Prohibiting combining key functions / roles (Article 67 and Article 69)

The amendments specifically outline that the Compliance officer's role as well as the Internal Audit department cannot be combined with any other function / department. This would result in ensuring that these roles / departments remain independent and have a functional reporting to the Audit Committee.

In light of the amendment, which prohibits combining the Compliance Officer role with the Internal Audit department, management should evaluate these roles and teams to ensure independence.

7. Enterprise Risk Management (ERM) (Article 14, Article 61 and Article 67)

The enhanced board responsibilities, mandate all Entities to adopt and implement a Risk Management Framework and recommends that Entities may choose to adopt the COSO Risk Management. Additionally, it also lays emphasis on the Audit Committee's responsibilities with respect to risk management. The Audit Committee is required to include the following sections in their Annual Report:

- Actions that the Committee has taken or will take to address any deficiencies or weaknesses in the event of any failures in Risk Management
- Comprehensive information about the corrective treatment plan in the event of fundamental deficiencies in Risk Management systems

This will also enable the auditors to express an opinion on the effectiveness of the respective Entity's Risk Management system.

Furthermore, based on the existing guidelines, Internal Audit is required to independently assess the effectiveness of Risk Management systems.

It is the responsibility of the Board to mandate the implementation of Risk Management across all entities. A robust Risk Management system including framework, policies, and related documentation is required to be developed by the organization (Management), with channels for periodic reporting to Audit Committee and the Board. The Audit Committee has to make disclosures in their Annual Report with respect to action plan to address Risk Management related deficiencies / weaknesses and a subsequent treatment plan in case of fundamental deficiencies / weaknesses. The amendment also introduces the concept of the Auditor reporting on the effectiveness of the Risk Management system.

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8. Internal Controls (Article 14, Article 61 and Article 73)

The enhanced Board responsibilities, mandate all Entities to adopt and implement an Internal Control framework and recommends that they may choose to adopt the COSO internal Control framework. The Audit Committee is required to include the following sections in their Annual Report:

- Actions that the Committee has taken or will take to address any deficiencies or weaknesses in the event of any failures in internal control
- Evidence that the Committee reviews all medium- and high-risk reports issued by internal audit to determine whether they arise from major failures or weaknesses in internal control
- Comprehensive information about the corrective treatment plan in the event of fundamental deficiencies in internal control systems

Furthermore, the updates also state that the auditors may express an opinion on the effectiveness of the respective entity's internal controls systems.

The amended regulation affixes responsibility on the Board to adopt and implement an Internal Control Framework including detailed policies, an approach for scoping of processes, and testing of controls for design and effectiveness. The Audit Committee has to make clear disclosures in their Annual Report with respect to (i) action plan to address internal control related deficiencies / weaknesses (ii) corrective treatment plan in case of fundamental deficiencies (iii) evidence of review of medium / high risk reports issued by internal audit to evaluate instances of major failures / weaknesses.

The introduction of the requirement to develop detailed policies and procedures will also be a critical element of setting up an effective Internal Control Framework.

The amendment also suggests the Auditor reporting on the effectiveness of the internal control systems.

Get in touch with Uniqus to understand the detailed updates to the Governance Guide.



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