

Directors' Liabilities - Listed Saudi Companies

Izabella Szadkowska - Partner - Corporate Structuring / Corporate Services / Corporate / Mergers and Acquisitions / Capital Markets / Family Business

i.szadkowska@tamimi.com - Dubai International Financial Centre

Although prior to the listing and the offering the business might have been managed by directors or managers, the scope and nature of duties and responsibilities as well as potential liability of the board of directors ("Board") and its members post listing/offering will be much broader than before.

For example, Board members may be required to carefully monitor and report their interest in the issuer, become responsible for numerous filings with the exchange and the regulatory authority and cannot be remunerated otherwise than in compliance with a prescribed process. This article examines the context of Saudi companies that have their shares listed and admitted to trading on the Saudi Stock Exchange (Tadawul) ("SSE").

It further sets out some main considerations for Board members of Saudi companies whose shares are listed and admitted to trading on the SSE.

LEGAL FRAMEWORK:

Duties, responsibilities as well as certain restrictions concerning operations of the Board are prescribed under a number of sources:

- KSA Regulations for Companies issued under a Royal Decree No M/6 of 22/3/1386H with further amendments ("Companies Regulations");
- Capital Market Authority ("CMA") of the Kingdom of Saudi Arabia ("KSA") Listing Rules ("Listing Rules");
- CMA Corporate Governance Regulations in the KSA ("Corporate Governance Regulations"); and
- The Capital Markets Law in the KSA issued under a Royal Decree No M30/2003 with further amendments ("Capital Markets Law").

1. COMPANIES REGULATIONS

Under the Companies Regulations, with due regard to the prerogatives vested in the general meeting, the Board has full power in the administration of the issuer.

Despite its broad powers, under the Companies Regulations, the Board is subject to restrictions that include the following:

- Interest: A Director may not have any interest, whether directly or indirectly, in the transactions or contracts entered into by the issuer, other than in exceptional cases. A Director must declare to the Board any personal interest he/she may have in transactions/contracts entered into by the issuer.
- Competition: A Director may not, other than in exceptional cases, participate in any business in competition with that of the issuer.
- Director Loan: A Director shall not accept any cash loan or a guarantee of any loan by the issuer towards it.
- Remuneration: The Directors' remuneration must not exceed 10% of the net profits of the issuer after deduction of expenses, depreciations, and such reserves as are determined by the general meeting or by the issuer's bylaws, and after distribution of a dividend of not less than 5% of the issuer's capital to the shareholders.
- Issuer Loan: The Board may not enter into loans for and on behalf of the issuer for terms exceeding three

(3) years, or sell or mortgage the real property or the place of business of the issuer, or release the debtors of the issuer from their liabilities, unless so authorised in the bylaws of the issuer and subject to the terms set forth therein.

Directors who are found to be in breach of the provisions prescribed under the Companies Regulations may be subject to civil or criminal liability.

The issuer may institute a personal action in liability against any Director for wrongful acts that cause prejudice to the shareholders.

Directors are jointly responsible for damages to the issuer, or the shareholders, or third parties, arising from their maladministration of the affairs of the issuer or their violation of the provisions of the Companies Regulations or of the issuer's bylaws.

In certain cases, e.g. if a Director has dishonestly overestimated the value of contribution in kind or the special privileges granted to founders or received or distributed fictitious (unearned) profits, the Director may be subject to imprisonment for a period of between three months and a year and/or to a fine.

2. LISTING RULES

Apart from those established under the Companies Regulations, the Directors and the Board have certain responsibilities under the Listing Rules including, without limitation:

- **Listing Liability:** Under Director's declaration that each Board member is required to execute in course of the listing application process, each of the Board members declares to have, amongst other things:
 - (a) included all the information required to be included in the prospectus pursuant to the Capital Market Law and the Listing Rules;
 - (b) that there are no other facts bearing on the issuer's application for registration and admission to listing which in their opinion, should have been disclosed to the CMA; and
 - (c) understood the nature of our responsibilities and obligations as Directors of a company whose securities are listed.
- **Continuing Obligations:** The Directors are responsible for ensuring that all disclosures made by the issuer to the public and to the CMA are clear, fair and not misleading.
- **Serving Issuer's Interest:** The Directors must exercise their powers and carry out their duties in such a way as to serve the interest of the issuer.
Any failure by the Board to comply with the Listing Rules may result in the CMA suspending or cancelling the listing of the issuer's securities and/or imposing a trading halt on the issuer's securities.

3. CORPORATE GOVERNANCE REGULATIONS

The Directors and the Board have numerous responsibilities and obligations under the Corporate Governance Regulations that include, in particular:

- **Policymaking:** laying down a clear policy regarding dividends, ensuring that its annual report is prepared in compliance with the requirements set out under the Listing Rules and the Corporate Governance Regulations,
- **Compliance:** approving strategic plans and main objectives of the issuer, supervising their implementation and drafting a Corporate Governance Code for the issuer.

4. CAPITAL MARKETS LAW

Finally, Directors need to act in compliance with the Capital Markets Law, such as:

- **Disclosure:** The Board is required to notify the CMA of any material change to the statements of the prospectus immediately on becoming aware of such material changes where such change may affect the

price or value of the issuer's security.

- **Market Manipulation:** Directors must not intentionally do any act or engage in any action which creates a false or misleading impression as to the market, the prices or the value of any securities for the purpose of creating that impression or thereby inducing third parties to buy, sell or subscribe for such security or to refrain from doing so or to induce them to exercise or refrain from exercising any rights conferred by such security.
- **Insider Trading:** A Director who obtains through family, business or contractual information insider information is prohibited from directly or indirectly trading in the security related to such information or to disclose such information to another person with the expectation that such person will trade in the security.
- **Continuing Obligations:** The Board is responsible for ensuring the issuer's quarterly and annual reports are filed with the CMA.
- **Prospectus:** Directors bear the primary responsibility for the completeness and accuracy of a prospectus.

Should a prospectus contain incorrect statements of material matters or omit material facts, the Board may be held liable.

CONCLUSION:

As the above indicates, apart from the commonly known responsibilities of protecting the shareholders' assets and ensuring they receive a decent return on their investment, actions of Board members are under scrutiny at all times.

Not only is the Board prohibited from taking certain actions, e.g. participating in a competing business to the one of the issuer or taking a loan from the issuer but also required to take certain measure, such as declaring their interest in the issuer, making timely and not misleading market disclosures and introducing internal policies.

Before taking up a role as a Board member of a SEE-listed company, a candidate should become familiar with the rules and regulations that govern operation of the Board and conduct by its members.

Failure to be aware of and meet these legal requirements could result in a legal action taken by the shareholders or third parties against the Board and/or its member.

With valuable contributions from the Riyadh team of Al Tamimi & Company, particularly Hesham Al Homoud, Partner.