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JUDICIAL DEPARTMENT

Corporate Governance

in the UAE Legislation

Dr.

Ashraf Ahmed Abdel Moniem

Former Legal Advisor

for the Minister of Economy and

the Securities and Commodities Authority

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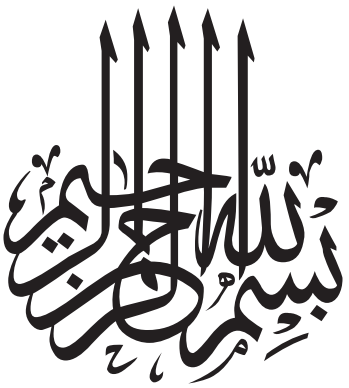
بسم الله الرحمن الرحيم

INTRODUCTION

The collapse of institutions and companies, that the world is witnessing from time to time, including giant and small alike, especially those listed in the capital markets, and the related financial scandals, associated with senior managers of these companies and their workers, and the consequent implications and consequences that shook the capital markets, and thus affected the economy of many countries; was strong indication and sufficient evidence that the traditional legal regulation, which governs these institutions and companies, no longer or rather did not provide a sufficient guarantee that these institutions or companies managed according to proper rules and principles, or that it falls on the mechanisms and means that can inhibit these collapses or limit its effects.

The total collapses and the facts of corruption in these institutions, has reached a significant in terms of size or impact, prompting the concerned institutions at the international level, and the regulatory and supervisory bodies at the national level, to study and to stand on their causes, and to research for ways that can contribute in their treatment and reduction. Some(1) have expressed that what caused the financial crises was the fuel necessary to accelerate the application of legislation on corporate governance. This can be monitored through “SARBANES OXELY ACT OF 2002»(2) issued by the U.S. legislator, as a legislative response to a series of scandals that have affected many companies in the United States of America(3), that was a cause for re-interest in corporate

1. Mariam AlSherif - Adherence to the standards of governance relationship to the financial crisis, Master thesis, Faculty of Economic Sciences and Science facilitation - Algeria - Year 2009 – P. 2.

2. This law aims, in general, to the activation of control over audit firms and market institutions and to prevent conflicts of interest in auditing firms through the adoption of a particular organization obliged not to provide other financial services while offering the services auditing, and to strengthen disclosure and transparency in investment banks, as well as increase the quality of information provided to the financial markets.

3. ROBERT J. RHEE Corporate Ethics, Agency and the Theory of the Firm, JOURNAL OF BUSINESS & TECHNOLOGY LAW, VOL. 3 NO 22008, P. 1101.
This law follows periodic and fast means, in order to obtain the required disclosure and transparency, as well as the formation of committees of independent board members to follow-up review or audit accounts and financial statements, and the establishment of a device for monitoring the performance of accounting and auditing corporate, to ensure efficiency in the performance of their work.

governance, and giving them so much attention at all academic, professional and legislative levels[1].

These crises and collapses have revealed that traditional organization of the corporation - in particular - which included in the Companies Act, becomes insufficient in any way - and perhaps also from the beginning - to prevent manipulation of management in the financial statements or the corporation accounting or operations associated with it[2], or provide a suitable environment to ensure that the members of the Board of Directors and managers working in favor of the corporation and its shareholders not to achieve their personal interests or the interests of their families, and that was on the whole, the most important causes of collapsed corporations and institutions[3].

In the countries that adopt a market system - as in the most countries of the contemporary world – the government performs only the role of government, including tasks of regulation, supervision and oversight, without extending their role or intervention to the access to these rules, or in other words, without having to be one of the players in the market. So the search for a way to ensure the reduction of these collapses and risks, and lead to devote management role that working for the corporation and its shareholders[4],The frame shape that has been working through it to search for this medium.

For that, Corporate Governance was the subject of attention of international institutions and was one of the priority topics on their agenda[5], as it is the

1. AIYESHA DE Y Corporate governance AND Agency Conflicts Journal of Accounting, Research Vol. 46 No. 5 December 2008 p. 1144.
2. For more details about this title, see: Mohamed Naguib Mohamed Sadeq, «The Role of Corporate Governance in the Fight Against Corruption – An Accounting Point of View.» – p. 4, A research presented to the 6th international scientific conference - Business Ethics and Knowledge Society – year 2006 – University Zaytoonah – Jordan.
3. James McConvill – Positive corporate Governance and its implications for Executive, 2005-1778 GERMAN LAW JOURNAL – Vol. 06 No. 12-Compensation – p. 1777.
4. Dr. Sameeha Fawzy – Corporate Governance and the Capital Market, p. 3 – Egyptian center for Economical Studies, April 2003.
5. Guide to the establishment of Corporate Governance in Emerging Markets, prepared by the

means that have been reached to achieve these goals, where some saw a viable solution that would address many of the problems(1), as well as being one of the ways to prevent corruption in the business sector in general(2). Some felt that without the rules of good corporate governance, the predicted recurrence of such collapses and scandals will constantly persists(3).

As corporate governance has received great interest from many of the owners of the financial and economic disciplines and accounting, the concern of the men of law in the Arab world is still limited. The Secretariat of the Gulf Cooperation Council (GCC)(4) has indicated to the importance of the legal framework for governance, because it works to fulfill the rights of all parties related to the corporation shareholders or managers or workers or owners of other interests(5). It noted that the cornerstone of this band is in the efficiency of the regulatory and supervisory climate by focusing on two key factors: the disclosure and transparency on the one hand and the accounting standards on the other.

This study aims to contribute in shedding light on some of he legal aspects of corporate governance.

Center for International Private Enterprise - p 3.

1. Alexander Chkoleniecov, Andro Wilson - From sustainable corporate to sustainable economies, Corporate governance as a tool of development, p. 4 - Center for International Private Enterprise.
2. John D. Solevan – The moral compass of the corporate .. Anti-corruption tools: the values and principles of business ethics and corporate governance, p. 6 - Guide VII, World Forum on Corporate Governance - Publisher: International Finance Corporation (IFC).
3. James McConvill – Positive Corporate Governance and its implications for executive, 2005 – Compensation – p. 1777 GERMAN LAW JOURNAL – Vol. 06 No. 12.
4. Secretariat of the Gulf Cooperation Council (GCC) – Corporate Governance - Research and Studies Department – pp. 25 – 27, Press of the General Secretariat of the Gulf Cooperation Council (GCC), 2009.
5. the United Nations defined «stakeholders» that they are a group of people who are affected by the institution and/or can influence them without necessarily to have shares in it. A work of these entities can affect the Brand name and reputation of the institution and its financial performance, and also in giving it license to work. See, in this concern: Indicators of corporate responsibility in the annual reports, the United Nations Conference on Trade and Development, 2008, p. 3.

In conclusion, we hope that this book help both the legal profession, whether they are judges, litigants, lawyers, academics, researchers, or other law enforcement officer.

Dr. Ashraf Ahmed Abdel Moniem

Abu Dhabi- UAE

FIRST CHAPTER

THEORETICAL FRAMEWORKS FOR CORPORATE GOVERNANCE

FIRST CHAPTER
THEORETICAL FRAMEWORKS FOR CORPORATE GOVERNANCE

Some argue[1] - and we support them in that - that the use of the term corporate governance, and to advocate the adoption of specific content to it, not by the sudden attention to the issue of old regard to the management of the company, but it came as a symptom of globalization of business and economic system in the various countries of the world according to the Western concepts. This globalization aims to change the legal structure in States, in order to achieve interests and objects of the capital invested in existing companies and thus saves the trouble on capital to find the efficiency of legal systems which governs the corporations, where capital are pumped, through a pretreated legal status, adopted by all countries, that is the corporate governance systems.

This goal that exists behind the call for the adoption of corporate governance as a system governing corporations, in particular, does not in itself constitute a defect affects the corporate governance simply because it came west orientation, since the unification of legal rules at the international level has always been one of the reasons for Promotion of International Commerce, and encourage the transition of capital from one country to another. However, this desire for uniformity should not prevent the difficulty and risks of the use of pretreated legal models, and put it in a legal and social environment that may not be fully compatible with these models.

So trying to understand these rules will help to judge their suitability for certain legal systems. It can also play an important role in the dismantling and re-installation of these models, and the use of what is consistent with the legal regulations applicable in each country. So that it achieves in the end to ensure the achievement of their purpose, which corporate governance. This what called

1. Dr. Al-Mo›tasem Bellah Al-Ghoriany, Corporate governance, Dar Al Game›aa Al Gadida, pp. 18, 19, 2008.

the Organization of Economic Cooperation and Development to say[1] that there is no one system of good corporate governance can be applied in all countries and at all the companies or establishments, because governance as a system varies from one corporate to another and from one country to another, depending on the circumstances of each.

And If the separation of ownership from management in corporations has become one of the issues that do not accept the debate in the modern era, and the understanding of corporate governance - in general - requires understanding the nature of the relationship between the shareholders on the one hand and management and the Board of Directors on the other hand. So this study will undertake a number of issues that relate to the theory of the agency as one of the traditional concepts, and the main entrance - in our view - to understand corporate governance within the framework of legal regulation, then the definition of corporate governance, and its importance, the statement of principles and tools, with application on UAE law.

We will divide this chapter into two Sections: The first section will dedicate theory of the relationship between the theory of the company and the agency problems and the governance, while the second section deals with the definition and what is the corporate governance.

Section One
Relationship Between the Theory of the Corporate and the Agency Problems and the Governance

We will divide this Section into two sub-sections: In the first one we will discuss the Theory of the company and the theory of the agency. While we will dedicate the second requirement to discuss the theory of the agency and the corporate governance.

1. Referred to it at Dr. Amir Farg Youssef, Corporate Governance, Dar Al Game›aa Al Gadida, p. 349, No Year.

Sub-Section One
Theory of the Corporation and the Theory of Agency

Some regard[1] to the corporation according to the Firm Theory as it is a group of contracts. The basic principle is that the project owner (the company) administered it[2] because he is the one who bears the gain and loss, and therefore, the ownership of the project associated – a long time ago – with its management. However, the individual projects or individual companies are managed directly by the owners or the owners of the quotas, though if it is possible and close to reality, but this is completely different in the management of the capital companies or corporations. This is due to the presence of a large number of shareholders owners of these companies[3]. This huge number of equity prevents owners– of course – to entrust them all to manage the company.

The reason for the high numbers of shareholders - often – relates to the low value of the stock and thus increase the number of small shareholders. For the law value of their stocks, They do not care to exercise the rights of supervision and control over the administrators of the corporation, so the shareholders became ignorant of almost everything about the corporation, and do not mean nothing but the profits that accrue, and so on .. The increasing numbers of shareholders made it difficult if not impossible to entrust them all to the management of the project or the corporation.

So it was one of the most important characteristics of the corporation[4] it is based on the existence of several bodies operate the corporation, but

1. Dr. Goma›a Mohamed Al-Raqiby - Governance relationship between the contracting parties in the Islamic formulas (Islamic Murabaha and Mudaraba) - Research presented to the Conference of Islamic financial services, second meeting in Tripoli during the period from 27 to 28 April 2010, p 6.
2. Dr. Nadia Moawad, Commercial Companies, Dar-El-Nahda-El-Arabia, 2001, p. 346.
3. Dr. Hossam Eisa - Joint Stock company – 1997, p. 9
4. Dr. Sameeha Al-Qaliouby – Commercial Companies – Part II – 1993, Dar Al-Nahda-Al-Arabia- p. 418.

these bodies do not all manage the corporation, directly. Basically, the General Assembly of the Corporation, as one of these bodies, manages the corporation, because it – as a general rule – includes all shareholders, but due to the large number of members of this Assembly, the Assembly delegated to an appointed Board of Directors the actual management of the Corporation.

It should be noted in this regard that aside of the commercial jurisprudence went to the denial of the contractual nature of the corporation(1), and that the concept of the contract is no longer valid, or at least is no longer enough to capture all aspects of the legal system of joint-stock company. They ends with that the company in general and in particular, joint-stock company is no longer a contract stands on the principle of freedom of contract and Sultan will, but a legal system the legislator put its rules and provisions, and that the role of individuals will is only choosing to join and submit to its provisions, as tracers to join, without having the authority to amend these provisions(2).

In contrast to this view, we support the view of others(3), who say that the role played by the free will in the life of joint-stock company is not enough alone to exclude the concept of the contract in this case; as the decline in the principle of contractual freedom and authority of will is not a phenomenon limited to the field of joint-stock companies, but a general phenomenon includes almost all private law contracts, however, no one calls for taking off the concept of contract and to replace the concept of the legal system instead. This decline does not mean more than that the principle of contractual freedom is not as absolute as it was in the past; as a result, not necessarily the evolution of the concept of the contract itself.

Some argue(4) that in the twenties of the last century the financial

1. Dr. Aly Hassan Younis – Commercial Companies, Dar Al-Fikr Al-Araby, p. 4.
2. Dr. Abdel Fadeel Mohamed – Corporations – Dar-Al-Nahda-Al-Arabia, 2003, p. 8.
3. Dr. Hossam Eisa - joint-stock companies – 1997, p. 20.
4. Fred R. Kaen A Blueprint for Corporate Governance Strategy, Accountability, and the Preservation

capitalism[1] took in decline, and the interest of separation of ownership from management began growing; where companies have resorted to investors for capital - instead of banks. This situation has led to a large number of investors, who had a limited amount of stock, and thus these investors did not have any effect regarding the management affairs of the company, at a time when the door was wide open for the managers and owners of large quotas in the company to carry out the management of the company and influence its decisions to achieve their own interests.

This has led to the so-called minority control[2], where, a limited number of shareholders (the Board), unique to the management of the company, directing its activities, and control over resources. This number may not have only a fraction of the capital, and some of them may not have absolutely anything of the company's capital. This has led, in addition to the complexity of management and accounting methods, the difficulty for other shareholders to follow the performance of the company's management, and failure of the shareholder to evaluate the performance of the Board of Directors. The shareholder is no longer interested in, only the profits earned by the company, and of what is distributed, as well as the movement and fluctuations in the prices of the company›s shares on the Stock Exchange.

The Board of Directors, as one of the governing bodies, manages the company, to achieve the purpose for which it was formed. The board of directors, that manages the company, subjects to some type of censorship, aiming - originally – to verificate of carrying administrative burdens soundly. The censorship authorities are: Auditors and the competent administrative authority[3],as well as the company›s General Assembly.

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of Shareholder Value – American Management Association – 2003 – p. 8.

1.)) Financial capitalism means in this context, companies used to finance through financial intermediaries, such as banks.
2. Dr. Hossam Eisa – Joint-Stock-Companies – 1997 – p. 10.
3. Dr. Abd El-Fadeel Mohamed – The Corporations – Dar El-Nahda El-Arabia, 2003, p. 339.

Some felt that the crises and problems that have emerged by the beginning of the present century, and that has hit many Joint-Stock Companies, has been associated with the behavior of managers and boards of directors in these companies(1), and that this behavior has recalled attention to the role of agency theory in joint stock companies, and that the provisions contained in the corporate laws are no longer enough to solve these problems.

Others(2) express these problems in an economic manner, saying that profit maximization within the company is the most important objectives that can not be denied, and that this is done through a very personal motive. It is not free of charge for the benefit of others, who are shareholders of the company and its stakeholders, and in spite of that the company is in the modern concept requires to be managed to maximize profit for others, but what we can say, at the moment, that profit maximization is for the benefit of the decision-makers inside the company; as bonuses and rewards that are determined to members of the Board of Directors and managers, decided by them for themselves. These costs are not subject to any accounts designed to minimize them to the maximum extent, but there are factors or traditional incentives that promote its reporting.

The fact that we can conclude, in this place, is that the corporate laws are considered as one of the topics which emphasize – day after day – that some branches of law and related studies, now require familiarity with aspects of economic or financial or technical(3), because these aspects are of importance in proper understanding or interpretation of the legal aspects.

1.)) Robert J. Rhee, Corporate Ethics, Agency, and the Theory of the Firm, op. cit., p. 1101.
2. John K. Galbreth. History of economical thought, the past is an image of the present, translated by: Ahmed Fouad Balba›a, The series of Alam Al-Ma›arifa, Issue no 261, The National Council for Culture, Arts and Literature, Kuwait, p. 307.
3. John R. Boatright and Michael J. Schuck, The Contractual Theory of the Firm as a Normative Business Ethic and its Relationship to Roman Catholic Social Teaching on Economic Life. P. 2. http://www.stthomas.edu/cathstudies/cst/conferences/antwerp/papers/BoatrightSchuck. pdf.

Sub-Section Two
Theory of the Agency and Corporate Governance

The definition of the Agency, in general:

Article (924) of the UAE Civil Transactions Law defines Agency as “A contract permits the Agent to replace another person instead of himself in a permissible known conduct.”

Definition of Agency in the light of the Corporate Theory.

The definition of the Agency in the field of the Corporate Theory does not come out of the legislative definition of the above referred to; where Agency is defined as[1] the contract that authorizes the principal person (the owner of the corporate or the shareholder) someone else called the agent (the Board of Directors or equivalents), in some of his powers to do certain work to his advantage.

The History and Content of Agent Theory.

Historically, Concepts underlying this theory, back to the well known economist (Adam Smith), when discussing the problem of the separation between ownership and control, in his book «The Wealth of Nations”. If we looked at the economic literature of corporate governance, we will find that each of (Perle and Means) were of the first who separate Ownership from management in 1932, After them, both of (Meckling) and (Jensen) discussed the problem of Agency[2],where they pointed to the inevitability of a corporate conflict, when there is a separation between ownership and management, which is the so-called «agency problems”. Fama has referred to as a problem that haunt the researchers since (Adam Smith) to (Berle and Jensen).

1. Michael C. Jensen and Willam H. Meckling. Theory of the Firm: Managerial Behavior, Agency costs and ownership structure, Journal of Financial Economics, 3 (1976), p. 308.
2.)) Michael C. Jensen and Willam H. Meckling. Theory of the Firm: Managerial Behavior, Agency costs and ownership structure, Journal of Financial Economics, 3 (1976), p. 305 , 360.

Agency theory has arisen as an attempt to solve the problem of interests› conflict[1], through its view to the corporate as a series of optional contracts between the various parties in the corporate, which will reduce the behavior of administration of favoring their personal interests at the expense of the interests of other parties.

The writings[2] in the fields of law, economics and management indicate to that the governance problems - to a large extent – are the result of agency theory in the corporate, these problems that arise and seem obvious because of separation of ownership from management in public shareholding companies.

It should be noted, what some went to, that, as a result of the existence of a contractual relationship between owners and managers, many problems arose, and most of them focused in the problem of conflicts of interest; where most of managers work to achieve their own interests by maximizing their returns or not to make the effort at the expense of the interests of owners, and in order to reduce these problems, many countries developed basic principles for governance to protect the interests of related parties of the corporate. We see in this instance that the cause of the problem is not the existence of a contractual relationship between owners and managers, but the problem lies in the conflict of interest, and that the agency or contractual theory was one of the ways that have been resorted to work to resolve this problem. Therefore, it must be seen as it relates to the efficiency of the solutions that can be provided by agency theory in eliminating the problem of conflict of interest.

As a result of the conflict of interest between management and owners, and between them and the stakeholders in the corporate (such as creditors and suppliers). And according to the principle of rational choice - under which each

1. Dr. Tarek Abd El-Aal Hammad – Corporate Governance (Conceptd – Principals - Experiences - Applications of corporate governance in banks), |Al Dar Al-Game›ia. 2006, p. 68.
2. Michael Bradley, Cindy A, Schipani, Anant K. Sundaram and James P. Walsh, The Purpose and Accountability of the Corporation in Contemporary Society: Corporate Governance at Across Roads Law and Contemporary Problems, Vol. 62: No. 3, p. 11.

party tries to maximize his own benefits - the process of selecting the policies and objectives of the company comes affected by the objectives and self-interest of management. The governance or good governance aims or trying to work to control the behavior of the Board of Directors and its role, including working to achieve the goals of the corporate; regardless, whether those objectives, or polices were compatible or achieving the objectives of owners (shareholders) and other stakeholders, and even if it is at the expense of providing complete and accurate information about the events and processes that relate to the corporate, and with the recognition of the role played by the company in the economy and society[1].

This theory[2] goes to that, under conditions of incomplete information and uncertainty that characterize all business enterprises, there are two problems: Adverse selection and Risks. As for the problem of adverse selection, it is a situation, where the client is uncertain that the agent has the capabilities he offered for the job, which enables him to complete the work entrusted to him against the agreed wage. The problem of risks, it is when the client is not sure that the agent is doing its best to complete the work or it works for his own interest without the knowledge of the client, and the way available, so far, to regulate the relationship between the agent and the client is the to conclude a contract between the two parties. However, this contract cannot be itself deals with all matters[3]; Since it is not possible to write a contract expects and contains all the details of the future, and may result in rights and obligations for both parties; therefore it is of important that these provisions must include a mechanism of making decisions, that not explicitly included in this contract, and that the contract with a fixed income, which given to the agent, is not the

1. James McConvill, Positive Corporate Governance and its Implications for Executive Compensation, German Law Journal, 2005, Vol. 06, No 12, p. 1783.
2. Dr. Goma›a M. Al-Rakaiby, Governance relationship between the contracting parties in Islamic formulas (Murabaha and Mudaraba) – A research presented to the Islamic Financial Services Conference, Second Meeting in Tripoli during the period from 27 to 28 April 2010, p 3.
3. Wiyesha Dey, Corporate Governance and Agency Conflicts, Journal of Accounting Research, Vol. 46, No 5, December 2008, p. 1144.

best way to regulate the relationship between the Agent and Client, but that participation in responsibility reduces the agent motivation to inflate the cost of the Agency. Therefore, the Agency, within the framework of corporate theory, is a contract authorizing the other shareholders (Board of Directors) to manage the corporate on their behalf. Perhaps the most important condition in agency contract is that the agent manager must undertake his responsibilities, in order to achieve and maximize the interests of shareholders (the client), for a suitable fee for the performance of his obligations.

Section Two
Definition and the Essence of Corporate Governance

Stand on the definition of corporate governance, the statement of what it is, represents a cornerstone in understanding its the rules, and regulation, and provisions that it includes. So we shall divide this section into three requirements: we shall dedicate the first requirement to define the corporate governance, and the second requirement, for the determinants of governance; while, the principles of corporate governance are the topic of a third requirement.

Sub-Section One
Definition of Corporate Governance

Corporate Governance is one of the relatively newly established terms, which was expressed upon it through other terms; such as: good governance and governance [1], but mostly it is the use of the term governance. To determine the meaning of this term, we will present its Linguistic and Idiomatic Meanings, as a term that is not subject to standards in Arabic derivation.

1. Dr. Hakem Mohsem Al-Rabe›I and Dr. Hamad Abd El-Hussain Radi, Governance of Banks and their impact on performance and risk, Scientific Aleaozi House for Publishing and Distribution, 1st Ed. 2011, p. 9

Linguistic Meaning of Governance:

If Researcher turns toward Language Dictionaries to know the meaning of governance, the entry to the Article (Hakama) = (govern), in those dictionaries soon provide him with the following meanings:

(Al-Mana') means Prevention: It is said: I govern someone i.e. I prevent him. Also, it is said: (Hakmat Al Dabba) : something is placed on the animal's mouth to prevent her from gorging on what her rider does not want to eat[1].

(Al-Qadaa')[2]: it means judgment.

(Al-Hekma)[3]: it means to put the right thing in the right place.

(Al-Hakam): the referee is appointed by the judge to rule among the people and try to fix them.

(Al-Hokm)[4]: means is to lead people with what is good for them.

Idiomatic Meaning of the Corporate Governance:

Some[5] point out that there is difficulty in agreeing on a unified definition of the term corporate governance, reflects the intended meaning in particular, and believes that the problem of unifying definition is increasing and vary as the level of development of the markets differs. Respect to that also, that the term corporate governance is associated with many regulatory issues, economic, social, and financial companies[6].

1. Ibn Manzour: Lesan El-Arab – the Article (HAKAMA) ; Al-Fairouz-Abadi: Al-Qamous Al-Moheet – the Article (HAKAMA).
2. ()Al-Gohary: Al-Sahhah: (Article: Hakama) ; Ibn Faris: Makayees Al-Logha: (Article: Hakama); Al Bostani: Moheet Al-Moheet: (Article: Hakama).
3. Al-Qamous Al-Moheet: (Article: Kakama).
4. Ibn Manzour: Lesan El-Arab, (Article: Hakama); Al-Zobaidi: Tag Al-Arous: (Article: Hakama).
5. Maged Shawki, Corporate governance, Private International Projects Center, 2002, p. 1.
6. Dr. Mohamed Mostafa Soliman, Corporate governance and the role of the members of Board of Directors in Arab Republic of Egypt, Al Dar Al-Game›ia, 2008, p. 14.

The difficult to agree on a definition due to the difference in Outlook to term governance itself[1].If it is seen from the legal point of view in the framework of the corporate makes most of his focus on the nature of the contractual relationship - in terms of being complete or incomplete - which defines the rights and obligations of shareholders and stakeholders on the one hand, and the managers on the other hand. And if it is seen from the economic point of view, it can be seen as the mechanism that helps the corporate or organization in obtaining funding, and ensures the maximize of the value of the corporate shares or assets of the organization and its continuation in the long term. There is a third team looks to it from the social and moral point of view focusing on the Social responsibility of the corporate in protecting the rights of minority or the small investors and achieve equitable economic development.

This difficult to agree on a definition, did not commend thinkers or researchers trying to develop a definition of the term. Therefore, the definitions of this term varied; as defined by some as: “the procedures used by the representatives of the stakeholders in the organization to provide supervision on the risks, and control of the risks undertaken by the management.

This definition is characterized as, it focused on management and control of risk, as one of the most important goals of governance: a risk management and control, but that is not the only goal of governance. The governance also includes, in addition to the rules or procedural provisions, another set of rules or substantive provisions that institution must abide by them.

Some have defined [2] it as: «The group of controls that govern the relationship between the shareholders, the board of directors and managers in the corporate, and put a continues technology to its own legislation.”

1. Dr. Sameeha Fazwy, Evaluation of the principles of corporate governance in Arab Republic of Egypt, the Egyptian Center for Economical Studies, 2003, p. 3.
2. Dr. Maha Rehawi, Joint-Stock Companies between governance, laws and regulations (A case study of Omani public Joint-stock companies), Damascus University Journal of Economics and Political Science, Volume I, issue 1, p. 90.

This definition is characterized of being focused on the form of the rules of corporate governance, as a set of controls that are interested to organize the relationship between the shareholders on the one hand, and the Company›s management on the other hand, but what is taken on this definition, it omitted the reference to the role of corporate governance within the relationship between the corporate and other owners of factories, as well as the presence of regulating the relationship between the shareholder and management is not a goal in itself, but, the nature of this organization and its provisions must ensure the interests of all parties fairly.

Others[1] went to define it – generally – as «Laws, rules and standards that define the relationship between the company›s management, on the one hand, and the shareholders and stakeholders or parties related to the company as the bondholders, workers, suppliers, creditors and consumers.)"

This definition differs from its predecessor in that it has referred to the stakeholders and related parties, while not interested in the substantive aspect of the term governance, on the grounds that these laws and rules should be aimed at achieving the interests of all parties fairly.[2]

Some others[3] defined it as «the process through which to obtain a return on the investments of the company›s financiers".

1. Dr. Sameeha Fawzy, Evaluation of the principles of corporate governance in the Arab Republic of Egypt, the Egyptian Center for Economic Studies, 2003, p. 3.

2. When some point to corporate governance, on the grounds, as it is a framework or set of rules or regulations governing the management of the corporate, this reference leads us to rule on this framework in terms of quality; so we can then talk about good governance and bad governance, and we believe that the reference to corporate governance should be meant by good corporate governance, given that this term has arisen and been associated with attempts to fix bugs in the corporate management, and repair operations can only be carried through frameworks and good rules, as the corporate governance linked to the quality of the provisions of the frameworks and rules.

3. Michael Bradley, Cindy A. Schipani, Anant K. Sundaram and James P. Walsh, The purposes and accountability of the corporation in contemporary society, corporate governance at a cross roads law and contemporary problems, Vol. 62, No 3, p. 11.

In fact, this definition, in turn, is inaccurate, because corporate governance is more comprehensive than just a relationship between the corporate and the providers of capital or funding; because corporate governance relates also to a set of explicit and implicit relationships between the corporate, its employees, creditors, suppliers, customers and communities that comprise.

The truth is that the concept of corporate governance is based on the values of transparency, responsibility, accountability, and justice[1]; therefore it is concerned with the powers and responsibilities related to the corporate management, and the way this administration is monitoring its work. And as the Corporate Governance is based on these values, it is concerned with solving the problems that arise from the separation of ownership from management.

Therefore, some defines governance as[2]: ««putting the optimal system through which the exploitation of the corporate resources and the their well-directing and monitoring, in order to achieve the corporate goals and to meet the standards of disclosure and transparency."

We support this definition, with reservation in respect of that the governance is the system itself, and not the process of placing the order. So, governance can be defined as: "the system through which the exploitation of the corporate resources, and their well-directing and monitoring, in order to achieve the corporate goals and to achieve the standards of disclosure and transparency."

This definition is approaching from the definition, which Cadbury, in his report, reached to, saying that: «Governance is the system that the corporate is managed and controlled.» Noting that the definition of Cadboury committee did

1. Mostafa Hassan Bassiouni Al-Sa›adani, Transparency and disclosure in the framework of corporate governance, A research presented to the Symposium of public and private corporate governance, for economic and structural reform, which held in cairo, Egypt, in November 2006, and published by: Arab Organization for Administrative Development, the principles and practices of corporate governance, p 173.

2. Dr. Mohamed Ibrahim Mousa, Governance of listed corporate in the stock market, the Dar Al-Gamea'a Al-Jadeeda, 2010, p 17.

not refer to the quality of the system or to the goals it seeks to achieve.

The Relationship between the Linguistic and the Idiomatic Meaning of Corporate Governance (CG):

Although the word (CG) is of the non-standard words in Arabic derivation formats[1], but despite all this, it reduced, within it, the majority of the linguistic meaning of governance, as utilized in the prevention of acts and irregularities that are harmful to the balanced relationship between the parties to the institutions or corporate or establishments. It also has the meaning of governance and arbitration, where they are invoked in the governance system of laws and legislative and regulatory frameworks that aim to work within the discipline or institution or corporate; so it looks like the rhythm of work in harmony with the legal and administrative rules and systems applicable in the corporate governance topics and their vocabularies..

The governance in the idiomatic sense is not far from wise, i.e. putting something in its place and the right and good opinion, or tighten word and act and tighten them. Perhaps that is what prompted some people to use the term good governance as a synonym for corporate governance, where rationality is to adhere to the path of truth with the stiffness, and the rational person is who estimates the thing perfectly[2].

It should be noted in this regard that the term corporate governance expressed independently and directly about the intended meaning of it, and perhaps this is what prompted some authors to use the word (good) with the term (good corporate) to express its intended meaning.[3] So It means good governance[4].We believe it was better to use the term good governance in the

1. Dr. Abd El-Majeed Al-Salaheen, Governance in Islamic Financial Institutions, A research presented to the 2nd Conference of the Islamic Financial Services, held in Tripoli during the period of 27 to 28 April 2010, p. 7.
2. Ibn Manzour: Lesan El-Arab, Al-Waseet, Arabic Language Academy in Egypt, Article: RASHADA
3. Yalmiz Arguem, Corporate Govrnance for quality of life, Palgrave Macmillan, 2009, p. XV.
4. Dr. Amir Youssef Farag, Corporate governance, Dar Al-Matboa›at Al-Game›ia, (without

legal literature, that dealt with this topic. However, the term corporate governance has been used, downward to the widespread use of this term, and that this term being in the course of the measurement of what has been introduced from other contemporary conventions such as globalization.

Sub-Section Two
Determinants of corporate governance

Although there is a discrepancy between thinkers about the agreement on the definition of the term corporate governance, There is almost an agreement among themselves on the most important determinants[1]; as a good application of corporate governance or not, depends on the availability and quality of the two sets of parameters, namely: the determinants of external and internal determinants.

a- External Determinants.

It refers to the overall climate for investment in the state, which includes, for example: the laws regulating the economic activity; such as: (Money Markets, Corporate, Regulating Competition, Prevent Monopolistic Practices and Bankruptcy Laws), and the efficiency of the financial sector (banks and the money market) in the provision of funding for projects, and the degree of competitive markets for goods and factors of production, and the efficiency of appliances and regulatory bodies (Capital Market Authority and the Stock Exchange) to tighten control over the corporate, as well as some self-regulatory institutions, to ensure that markets work efficiently (including for example: professional associations, which establish a code of ethics for employees in the market, such as: the auditors, accountants, lawyers and companies, operating in the stock market, etc. ..), as well as private institutions of liberal professions, such as: law firms, audit, credit rating, financial and investment consulting. The importance of

publishing date), p. 43.

1. Dr. Sameeha Fawzy, Evaluation of the principles of corporate governance in the Arab Republic of Egypt, the Egyptian Center for Economic Studies, 2003, p 3.

external determinants relates to that their presence ensures the implementation of laws and regulations, that ensure proper management of the corporate, and reduces the discrepancy between the social return and the private return.(1)

b- Internal Determinants.

It refers to the rules and principles that determine the mechanism of decision-making and the distribution of powers within the corporate between the General Assembly, the boards of directors, executives, where its availability leads - on the one hand -and its application - on the other hand -, to reduce the conflict between the interests of these three parties.

Sub-Section Three
Principles of Corporate Governance

There are many bodies and organizations focused on developing the principles of corporate governance(2).But - come on top - those principles

1. Mohamed Hassan Youssef, Determinants of governance and standards - with special reference to the pattern applied in Egypt –, National Investment Bank (NIB), p. 6.

2. ((There are other bodies put standards, consistent with the nature of the corporate involved, Such as: standards of the Basel Committee on the global Banking supervision; where the Basel Committee developed in 1999, special instructions of governance - in the banking and financial institutions - which focuses on the following points: -

1- The company's values and codes of conduct for good behavior and other standards of good behavior and systems, where the application of these standards is achieved by using them.

2- A well designed strategy for the corporate, with which we can measure its overall, success and the contribution of individuals in it.

3- Proper distribution of responsibilities and decision-making centers, including functional sequence of approvals, required from individuals to the Council.

4- Develop a mechanism for effective cooperation between the Board of Directors, auditors and senior management.

5- The availability of a strong internal control system includes the functions of internal and external audits and independent risk management for business lines, taking into account the fit with the responsibilities of authorities (Checks & Balances).

6- Special monitoring to risk centers in locations where conflicts of interest mounts, including working relationships with borrowers associated with the bank, major shareholders and senior management or key decision makers in the organization.

7- Financial and administrative incentives for senior management that meet the work in a proper manner, and also for managers or employees, whether in the form of compensation or upgrades or other elements.

8- Proper flow of information internally or outside the company.

Self Finance Corporation (IFC) standards:

In 2003 International Finance Corporation (IFC) of the World Bank put guidelines, general rules and standards it deems essential to support governance in the institutions - with their diversity - , whether financial or non-financial, on four levels as follows:

formulated by the Organization for Economic Cooperation and Development[1]. The importance of those principles, drafted by the organization, due to its formulation to recognize that there is no single model for the proper methods of corporate governance. The importance of those principles, drafted by the organization, due to its wording on recognizing that there is no single model for the proper methods of corporate governance, but at the same time there are some common elements that define what proper methods for corporate governance.

These principles are not binding, nor does it aim to provide detailed guidance for national legislation; but intended to serve as points of reference that can be used by the competent authorities in the preparation of legal and regulatory frameworks for corporate governance. These principles are not binding, nor does it aim to provide detailed guidance for national legislation; but intended to serve as points of reference that can be used through the competent authorities in the field of preparation of legal and regulatory frameworks for corporate governance, to reflect the economic and social conditions of each country.

Those principles include the five domains, they are: The rights and equal treatment of the shareholders and the role of stakeholders, disclosure, transparency, and the responsibilities of the Board of Directors[2].

- Accepted practices of good governance.
- Additional steps to ensure the new good governance.
- Fundamental contributions to improve good governance locally.
- Leadership.

Details revised in: Mohamed Hassan Youssef, Determinants of governance and its standards, with particular reference to the style applied in Egypt – National International Bank (NIB), 2007 p. 2007, p. 6 and seq.

1. OECD Principles and Annotations on Corporate Governance, Arabic translation – http://www.oecd.org/daf/ca/oecdprinciplesofcorporategovernance.htm

2. These principles has been supported before the Transparency International (TI) and the Bank of Credit Lyonnais, and became including seven major determinants of internationally accepted corporate governance (Center of International Project Enterprise – “CIPE”), namely: Transparency, disclosure of accounting method, the informational content of accounting disclosure, auditing, independence, justice and discipline. It is noted that it is difficult to evaluate the extent of the commitment of these corporate by these determinants, due to the absence of the relative weight of each determinant›s vocabulary, also the inability to prepare record number or form, to the point of acceptable governance. This search has been adopted in the preparation of the proposed framework on the seven parameters mentioned. See, in this regard, in detail:

Branch I: The Rights of Shareholders:

a- The fundamental rights of the shareholders include the following:

1- Securing property registration methods.

2- Transport or transfer of ownership of the stock.

3- Getting corporate information timely and regularly.

4- Participate and vote in the general meetings of shareholders (General Assemblies)

5- Election of Board of Directors.

6- Getting share of the profits of the corporate.

b- The fundamental rights of the shareholders include the following:

Shareholders have the right to participate, and to obtain sufficient information for decisions relating to fundamental changes in the company, including:

1- Amendments in the statute or in the articles of incorporation or other basic documents of the corporate.

2- Placing additional shares (capital increase).

3- Any unusual financial transactions may result in a sale of the company.

c- An effective opportunity to participate and vote at the general meetings of shareholders must be available to shareholders, as it should also be informed of the rules governing shareholders› meetings, including voting rules.

1- Providing shareholders, in a timely manner, with adequate information on the distribution of places and agendas of public meetings. In addition providing with full information - in a timely manner - on issues that are meant to decision-making, during the meetings.

2- It should provide an opportunity for shareholders to ask questions to the Board of Directors, and to add topics to the agenda of the General

Dr. Mohamd Abd El-Fattah Mohamed Ibrahim, Accounting framework proposal for the role of corporate governance in revitalization of the stock market (the entrance to activate the analytical knowledge economy), A research presented to the 5th Annual International Scientific Conference, knowledge-based economy and economic development, Ziatona University, Jordan, pp. 11, 12.

Meeting, to be placed within reasonable limits to it.

3- Shareholders should be able to vote in a personal capacity or on their behalf[1].

d- Must disclose capital structures and arrangements that enable certain numbers of shareholders, to exercise a degree of control, do not fit with the rights of property owned.

e- Markets should be allowed to control corporate (stock markets) to work effectively transparent.

1- Ensure clear wording, disclosure rules and procedures that govern the validity of corporate control in the capital markets, and this is also true for extraordinary amendments, such as mergers and sale of large proportions of the company›s assets; so that investors understand their rights, and identify the tracks (choices) available to them, and that financial transactions should be conducted at declared prices, and carried out under fair conditions, which would protect the rights of all shareholders, according to their various categories.

2- Not to use anti-acquisitions mechanisms, to immunize against the executive management accountability.

f- Shareholders, including institutional investors, should take into account, the costs and benefits associated with the exercise of their voting rights.

Branch II: The Equitable Treatment of Shareholders.

The methods of practice in corporate governance authorities, must ensure equal treatment for all shareholders, including minority of shareholders and foreign shareholders. It should also provide an opportunity to get actual compensation for all shareholders, in case of violation of their rights.

1. It seems to us that the texts that restrict attendance Acting, which requires no attendance on behalf of the other shareholder, except within the limits of a certain percentage, represents a restriction of this principle.

a- Shareholders belonging to the same class should be treated equal treatment.

1- It should be for the shareholders - within each category - the same voting rights, since all shareholders should be able to obtain information relating to the voting rights granted to each of the categories of shareholders, before they bought the stock. As any proposed changes in voting rights should be subject to a vote by shareholders.

2- It must be voted by trustees or commissioners in a manner agreed with shareholders.

3-a- Processes and procedures related to general meetings of shareholders, should ensure equal treatment for all shareholders - as corporate procedures should not result in difficulty or a rise in the cost of the voting process.

3-b- Stock trading must be prevented in a manner inconsistent with the disclosure or transparency.

b- The board members or executives should be asked to disclose the existence of any interests of their own, may relate to operations or matters affecting the corporate.

Branch III: The role of stakeholders in the ways of practice management authorities in corporate.

The framework of methods of practice management authorities in corporate must involve recognizing the rights of stakeholders, as established by law, as established by law, and also works to encourage cooperation between corporate and stakeholders, in the field of wealth creation, employment and sustainability of projects based on proper financial footing.

a- The framework of methods of practice management authorities in corporate should work to emphasize respect for the rights of stakeholders that are protected by law.

b- When the law protects the rights of stakeholders, those should have the opportunity to receive compensation in the case of violation of their rights.

c- The framework of methods of practice management authorities in corporate

should allow the existence of mechanisms for the participation of stakeholders and to ensure that these mechanisms, in turn, improve performance levels.

d- When stakeholders involved in the process of practice management authorities in corporate, they should have the opportunity to obtain information related thereto.

Branch IV: Disclosure and Transparency

The framework of methods of practice management authorities in corporate should ensure the strict disclosure – at the appropriate time - on all matters relating to the establishment of the corporate, including the financial situation, performance, ownership, and method of practice of power.

a- Disclosure should include - but not be limited to - the following information: -

1- Financial and operating results of the corporate.

2- The corporate goals.

3- The right of the majority in terms of contribution, and voting rights.

4- Members of the Board of Directors, key executives, salaries and benefits granted to them.

5- Visible risk factors.

6- Financial matters relating to personnel and to others of stakeholders.

7- Structures and policies to exercise the powers of corporate management.

b- preparing and review the information, as well as the disclosure, in a manner consistent with the quality standards of accounting and finance. This method of disclosure should also meet the non-financial disclosure requirements and also the requirements of the audits.

c- Information distribution channels should ensure that the users access to information in the convenient time and at the appropriate cost.

Branch V: Responsibilities of the Board of Directors

The framework of methods of practice management authorities in corporate must provide strategic guidelines, to guide companies. It also must ensure effective follow-up of the executive management by the Board of Directors, and to ensure the accountability of the Board of Directors by the corporate and the shareholders.

a- Board members must work on the basis of full availability of information, s well as on the basis of goodwill, and the safety of applicable rules. It also must work to achieve the benefit of the corporate and shareholders.

b- When decisions of the Board of Directors entail varying effects on different groups of shareholders, the Council must work to achieve equal treatment for all shareholders.

c- The Board of Directors must ensure compliance with applicable laws, and take into consideration the interests of all stakeholders.

d- The Board of Directors must undertake a set of basic functions, including:

1- Review and guide the corporate strategy, action plans, policy risk, annual budgets, business plans, and to put performance goals, follow up the implementation and performance of the corporate, as it should oversee the capital spending and acquisitions, and the sale of assets.

2- Choosing key executives, adoption of salaries and benefits accorded to them and follow-up them. In addition, when it requires, replacing them and follow-up functional succession plans.

3- Review levels of salaries and benefits for Executives and Board Members, and to ensure formalize and transparency to the process of the nomination of the members of the Board of Directors.

4- Monitoring and management of various forms of conflict of interest, for the executive management and board of directors and shareholders,

and between those images: the misuse of company assets and conduct transactions with related parties.

5- Ensure the safety of accounting and financial reporting for the corporate. This requires the existence of an independent auditor, to find the appropriate control systems, particularly, follow-up systems risk, financial control, and commitment with the provisions of the laws.

6- Follow up the effectiveness of methods of practice management authorities, which councils work under its authority, and make the required changes.

7- Oversee the process of disclosure and communications.

e- Board of Directors must be able to exercise objective evaluation to the corporate affairs, and that is being done - in particular - independently of the executive management.

1- The Board of Directors must consider in the possibility of appointing a sufficient number of non-executive members, who are characterized by the ability to independent evaluation of the work.

2- Board members must devote sufficient time to direct responsibilities.

f- In order to achieve carrying out those responsibilities, It must ensure access to accurate and relevant information, in a timely manner, to the members of the Board of Directors.

CHAPTER TWO

THEORETICAL FRAMEWORKS FOR GOVERNANCE OF CORPORATE BOARDS

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The Corporate Board governance is considered, in general, as a part of corporate governance, but it is - in fact - located in the heart of the system of governance and its primary axis. The attention to the governance of corporate boards was - at the same time - due to the importance of the role of the Board of Directors and the terms of reference assigned to it, in the corporate, and the related skills and experience that must be available in the members of the Board of Directors, and the method of selection and the formation of the Board of Directors.

We shall divide this Chapter into three Sections, as follows:

The first Section: The Role of Board of Directors in Joint-Stock Companies

The Second Section: Rehabilitation of members of Boards of Directors.

The Third Section: The method of selection and the formation of the Board of Directors.

Section One
The Role of Board of Directors in joint-Stock Companies

We shall divide this Section into two Sub-Sections: The first Sub-Section is allocated to the statement of the importance of the Board of Directors, while we devote the second one for the statement of the terms of reference of the Board of Directors in the joint-stock companies.

Sub-Section One
The importance of the Board of Directors In the Company

There is no doubt - that the human element is one of the most important assets of the company, particularly, its managers› team, as the company is assessed, according to the functions and achievements of this team, which is what drives the new shareholders to contribute, as the presence of a distinguished team of managers not only maintain the existing shareholders, but leads - at the same time - to attract other investors from abroad, to contribute to the company.

On the other hand, for those managers bonuses, reflect the efforts that have been made , and achievements, represents a way to keep them, and an incentive for them. The Board of Directors, which is working properly, has to make sure that the assessments of the company›s managers are balanced and fair.

Because the task of the Board of Directors - as the owner of power in making the final decision in the corporate - is to lead the company, in an innovative way, and to bring to the shareholders - in the long term - an added value. One of the ways that could pave the way for the success is the presence of the corporate strategy. And the presence of the corporate strategy is a strategic choice. Therefore, every strategic choice involves risk, because the adoption of a particular choice or decision means rejecting of another strategic decision, and going into a certain way means avoiding another way, and the strategic choices represent options for future, and the future - of course - is unrealized happening.

There is also a duty on the Board of Directors to make better or improve strategic decisions, by subjecting the strategic choices to a set of tests, based on the expertise available to the members of the Board of Directors. This jurisdiction, or rather the duty, shows the importance of having a diversified, specialized and

independent expertise in the Board of Directors, in order to reach strategic or important decisions among a group of choices, before the Board of Directors. As the Board of Directors must oversee the protection of the moral and material assets of the corporate, to achieve the duty credit burden on its shoulder. As Maintaining the corporate reputation among its shareholders and owners of factories, requires that the Board of Directors oversight, and not only oversee the financial and legal aspects, but that control extends to verify the existence of added value.

In the light of this presentation, the issues or topics related to the granting of bonuses to managers, and decision-making processes, and the culture and experience of the Board of Directors, is one of the issues that are important to ensure the continuation of the corporate. These issues are the subject of corporate governance, Here, the importance of the governance adoption, is a preliminary condition to ensure the continued development of management performance in the corporate.

There is no doubt that there is great importance to adopt corporate governance in public companies, which pose its shares to the public. However, family businesses and small enterprises, even non-profit institutions, remain in need of governance; as governance, as we pointed out, does not stop at ensuring profits for the shareholders, or the Board of Directors, in turn, protect the interests of the corporate and its partners, but its purpose extends to ensure the continuation of the enterprise or the institution in achieving its objectives.

As for example, in family businesses, corporate governance may help to avoid conflicts that can occur in the corporate, as a result of differences that may arise between members of the family that owns the corporate. The governance as it aims to ensure the continued survival of the company and maximize their value and attract new partners, are also important in the field of small businesses and non-profit institutions.

This perception of the content of governance, in general, and the corporate governance, in particular, looks a major cause to adopt the governance system by the UAE legislator, by issuing the Federal Law by Decree No (5) for the year 2001, concerning the Boards of directors, trustees and committees in the federal government, then the decision of the Cabinet No. (29) of 2011 regarding the governance system of the boards of directors of profit and non-profit bodies, institutions and corporate that owned to the Federal Government. On the other side[1], and in the field of governance of the public shareholding companies, listed on stock market, the Minister of Economy issued the decision no. 518 of 2009 regarding controls and standards of institutional discipline.

Sub-Section Two
Terms of Reference of the Board Of Directors

The determination of the terms of reference of the Board of Directors, and the availability of certain elements or attributes in this Council, is the key to the success of any corporate or organization. And if the features that must be available in the Board of Directors, which could be described as quite general, If the features that must be available in the Board of Directors, which could be described as quite general, the terms of reference of the Board of Directors which is linked to the tasks undertaken by the corporate or organization, must be accurately identified and clear; since these tasks vary from one company to another, however, there are some rules that are indispensable, which governs the jurisdiction of the Board of Directors, regardless of the difference among companies or organizations in their goals or objectives.

The general rule, in this regard, stands on the basis that the Board of Directors does not aim only to protect the company, but also to achieve the interests of shareholders and stakeholders. Therefore, we can say that the Board

1. This decision was preceded by the decision of the Chairman of the Board of Directors of Securities and commodities authority No (32/ر) of 2007 concerning controls of the governance of the public shareholding companies, and standards of institutional discipline.

of Directors is competent to take a decision in every case of interest, where there is a risk that can catch the corporate, against the return that the corporate can get. The Board of Directors also have to take the decision on ethical considerations which commits the corporate in exchange for market practices, and it should also balance between the owners of competing interests in the company.

Section Two
Rehabilitation of the members of the Board of Directors

It is required to become a member of the Board of Directors that a person has a proven track record of achievements that reveal his integrity and ethical standards and his knowledge of financial aspects, and aware of the concept of duty of loyalty, and the ability to communicate with others, listen to them, and influencing skills, and have had enough time, interesting and care of the tasks entrusted to himself, as a member of the board of directors, and so that he can effectively able to actively participate in the discussions of the Council, including discussions concerning the fulfillment of the objectives of the corporate or organization or financial aspects or the difficulties and dangers it faces.

As the Board of Directors decisions require complex assessments take into account several considerations, and display different views on the table, and given the opportunity to assess all points of view to reach the best decision, Therefore, the independence and impartiality of the members of the Board and their self-confidence is one of the conditions and characteristics that must be taken into consideration when forming the Board of Directors; Especially in cases where the Chairman has a force or influence, or those in which the chief executive is a member of the Board of Directors, because the tendency or inclination to challenge decisions or veto them require a high degree of self-confidence. They are also required and equally when supporting these decisions, as the ability to object when you need is a real test of independence. However,

it must be clear that the role of the members of the Board of Directors is not to paralyze decision-issuing process by provoking fears. But it must verify that all aspects of the decision-making process has been observed, and that the necessary precautions have been taken, and that the decision would be issued in the appropriate time.

In order to proceed the tasks entrusted to the members of the Board of Directors, in an effective manner, it must have available a range of experiences in many different ways, including those related to planning, financial, legal, technical, in addition to having a vision for the future of the corporate and the overall look and wise.

The basic criterion that must be applied when selecting members of the Board is the value that can be added by the member to the Board of Directors. In addition to this experience and knowledge, this value, which arise through the ability to exchange views with other members of the Board of Directors or with the corporate management in ways that are objective and constructive freedom.

There is no doubt that the difference in experience and knowledge between the members of the Board, which leads to add that value to the Board of Directors, as if every member of the Board was thinking - in all cases - in the same way that other member thinks, there would have been no need for the presence of the Board of Directors, as the multiplicity of the members of the Board of Directors will not have a need for. Thus, the presence of one member in such a situation would be sufficient.

In this regard, we can divided the features that must be available in the members of the Board of Directors, into two groups: The First group involves a number of general features which should be available in all members of the members of the Board of Directors, while the second group involves a set of skills or attributes that are sought on an individual basis, as who owns these

skills adds to the Board of Directors different facets and variety of experiences in many fields.

While it can be said that the group of general characteristics, to be met by members of the Board of Directors, stems from the fundamental role and duties of the Board of Directors, the second group that related to skills or competencies which required individually linked to the powers and tasks undertaken by the company.

Sub-Section One
General features required in the members of the Board of Directors

A set of general features, experience and knowledge to be enjoyed by the members of the Board of Directors to carry out the tasks entrusted to them, in the interests of the company and its shareholders, can be summarized as follows :-

First – General Features

- The experience and knowledge necessary to understand and the leadership of the institution.
- Integrity and demonstrate a high level of ethical standards.
- Compatibility with the values of the institution.
- Understand the responsibilities arising from the commitment with loyalty to the institution.
- Familiarity with the financial aspects.
- The ability to assess a particular decision, taking into account the implications.
- Independent thinking and the ability to express ideas in a clear manner.
- Displaying topics in way that leads to public teamwork.
- Accommodate the principles of corporate governance.
- Adoption and implementation of the development of performance standards.
- Be eligible to allocate sufficient time to pay attention to the institution affairs,

and to do the responsibilities arising from the membership of the Board of Directors.

- Willingness to take the initiative, and the ability to cope with management, taking an attitude if necessary.

Secondly - The knowledge and experience of the members of the Board of Directors

When forming the Board of Directors of the Corporate, it must be taken into consideration that it should include an appropriate number of members, with a certain formation, beside the importance of a work system, governs inside this Board.

The importance of this clears in that the way of formation and composition of the Board helps to ensure that the members of the Board can do their fundamental duties of supervision, control, and decision-making.

The selection of the members of the Board of Directors based on the availability of certain attributes and expertise of the members of the Board of the Corporate management on one hand, and compatible with its the needs on the other hand, leads to provide more space for autonomy and a greater chance in judgment and objective evaluation to the members of the Board of Directors when dealing with topics before the Board.

So there is a set of behaviors and knowledge are expected to abide by a member of the Board of Directors when he performs his duties within the Council.

1- Good knowledge of the corporate and the market conditions.

It is important that the member of the Board of Directors should be familiar with the past of the corporate, its current status, and the expected to be in the future. He should also be familiar with the environment in which the corporate

operates, its strengths and weaknesses, threats that may affect it, and the opportunities that it can benefit of them. All these issues have a great importance in enabling the member of the Board to play an effective role in supervision and control on the corporate.

The process of evaluation of the corporate achievements must be done in light of the comparison with the achievements of corporate competing with it. In this context, the comparison process should not stop at mere comparison between financial indicators, but should also include measurement of production processes, and the satisfaction of customers, suppliers and measurements relating to strategic initiatives. Also there is an importance of learning and continuous development and the pursuit of a comparison between the corporate and other firms that excel. As this will provide an opportunity for the Board of Directors to identify the factors of excellence in these corporate, and thus the possibility of drawing up plans and programs to achieve the desired level.

2- Effective and constructive debate.

The main objective of this, is to achieve a good understanding and the full circumstances of the company, and to make sure that all aspects or effects of the resolution before the Board of Directors have been considering them into account, instead of displaying the viewpoint or opinion of one, or putting the corporate management into test.

3- Good absorption of the company›s cash flows

The information related to the cash flows are of beneficial interest in granting board members the possibility of measuring the company’s ability to generate cash or its equivalent; as issuing of some decisions by the Board of Directors, such as the expansion of existing projects or the entry of new projects, requires assess the capacity and degree of certainty regarding generate those flows.

The statement of cash flows assists to obtain information that enables the members of the Board of Directors and other stakeholders, to assess changes in the net assets of the company and its financial structure (including the liquidity and solvency).

Information relating to the historical cash flow is often used as an indicator helps to predict the amounts and timing of future cash flows, and to identify the confirm factors associated with them. It is also considered useful in examining the difference between net profit and cash flows.

4- Focus on the future and the present together

The corporate is established as an institution to operate in the present and future. The corporate performance may be good at the moment, however, the future may carry many risks. Therefore, the future vision of the corporate becomes an important issue.

The Board of Directors has to take into account and to give attention to some of the topics and indicators that involve risks in the future, which must be identified, dealt with, and managed, by introducing a number of scenarios relating thereto.

5- Knowledge of the circumstances of extraordinary growth

As opposed to cases of normal growth aimed at increasing productivity and reducing cost, the incidence of non-organic growth related to an increase of the volume of business through mergers or acquisitions, and affected by changes that can occur to the exchange rate or government directions. The member of the Board of Directors has to be constantly aware of all those things, and of what the corporate can get or face of related chances or risks.

6- Knowledge of the circumstances of extraordinary growth

One of the most important risks, facing the corporate, is the unexpected changes in some key positions. Therefore, the Board of Directors should be concerned, not only with the accomplishments achieved by the management, but also with the follow-up planning for human resources of the corporate, and planning to fill some positions through qualified candidates from within or outside the corporate alike. At the same time, develop a plan to work on developing the potential and rehabilitation of some potential candidates from within the company to fill those positions. The process of the development of possibilities and training of some employees of the corporate is not only beneficial to those workers, but, it is important for the company as well.

7- Knowledge of potential liabilities outside the budget and risks associated with reputation.

The Board of Directors must be familiar with the company's contractual obligations, anticipated contracts, or other guarantees and warranties offered by the corporate. So it must distribute these contracts, as; Agreements relating to salaries and allowances are made with the Executive Director, while there will be a need for the Board of Directors to automatically evaluate the agreements that are made with another party.

It also must be noted that the corporate valuation is not only according to its financial results, but it is also through the corporate commitment to the provisions of the laws and regulations in force, and to do their moral obligations expected of them, as the breach of corporate laws or damaging the environment, may be linked to non-directly to the financial aspects of the corporate, but the direct impact of this is damaging the reputation of the corporate. So, the corporate acquisition of adequate internal control system is a very important issue. Thus, the Corporate must establish a control system that ensures continuous and permanent review, through the management of internal control, linked to the

Board of Directors. This system helps the Board of Directors to identify potential risks or cases of fraud. As there must be a mechanism followed by the Board of Directors to communicate with the management and staff of different levels to evaluate those risks.

8- Understanding consumer desires and expectations of stakeholders

Board of Directors, in some cases, may discuss the matter relating to the product or service performed by the corporate, whether, by cutting production line or developing it or other matters relating to the service or product. The board members, in order to contribute well in judging the topic before them, they must first have to understand the nature of the products or services offered by the corporate, and there must be interaction with consumers and stakeholders, to find out their needs and expectations. As far as this knowledge and interaction with the needs of consumers or beneficiaries and stakeholders of shareholders and others, as far as decision comes expressing the interests of the company.

9- Understanding of the value chain

All products usually pass with a series of activities that begin with research and development, and move to manufacturing, and then finally reach to the consumer, which is the so-called value chain. This term is used in business management and reflects a series of activities that contribute to add value to the product. Therefore, the value chain is a set of activities or processes by which the composition of the product or provide the service and delivery to customers. They form a framework to identify all of these activities or operations, and analyze how they influence on the corporate costs, and on the value provided to consumers.

An understanding of the members of the Board of Directors for each phase or all of these activities, and related alternatives, and time to get the value-added through those stages, is useful in access to appropriate evaluation of the risks

that the corporate may be exposed to. It could be argued that, determine the strength of this series is by selecting the strength of the weakest links in the chain itself.

10 - Familiarity with the provisions of the laws and regulations:

The company is one of the legal people in contemporary (modern) society, and it is talked by the provisions of the laws and regulations, and must abide by those provisions to avoid legal accountability. Therefore, the knowledge of the members of the Board of Directors to the provisions of applicable laws and regulations, and changes that could arise, helps them to make decisions, consistent with the provisions of the laws and regulations. This behavior protects the corporate from the risk of breach of such legislation.

Sub-Section Two
Special skills required in the members of the Board of Directors

There are a set of skills that must be available in the member of the Board of Directors. It is a set of special knowledge, because it is linked to the firm and its nature or the geographic area in which they operate, and those skills are:-

1- The member of the Board of Directors must have a leading experience in the sector in which the corporate operates, on both locally and internationally, and industries that are relevant to the work of the firm.

2- The need for stakeholders experience, an experience that understands the nature of the relationship between the main stakeholders with the firm, which will allow members of the Board of Directors, to lead the firm during each operation of the strategic development and its implementation.

3- Availability of senior management experience, i.e. the availability of deep experience and adequate in certain areas, that provides a larger market to the firm.

4- Availability of extensive and strong relationships with many national and international institutions working in the fields related to the firm.

5- Availability of expertise relating to the geographical region in which the firm operates, through a good understanding of the trends and the environment related to the firm, or possession of experience related to the life cycle of the firm.

Section Three
The method of selecting the members of The board of directors

The method of selection and the formation of the Board of Directors reflect, in many cases the ownership structure of the corporate. The Board of Directors, which includes members with independent, expresses about the quality of the performance of this Council, and the way that conduct its affairs. We shall divide this section into the following two requirements.

First Sub-Section: The method of selecting the members of the Board of Directors

Second Sub-Section: Formation of the Board of Directors and the independence of some of its members.

Sub-Section One
The method of selecting the members of the Board of Directors

The principles of corporate governance, on the foregoing, decide to shareholders all rights related to the stock, including the right to choose the members of the Board of Directors, provided following the cumulative voting system. We will review the concept of cumulative voting system and its application

method, as follows:

First - the concept of cumulative voting

Cumulative voting means that each shareholder has a number of votes equal to the number of shares he owns in the corporate. He may give all these voices, to one candidate or divides them among any number of his choice of candidates, so that the total of votes given is equal to the number of shares owned.

Second - How to apply the cumulative voting system.

The following provisions must be taken into account, when applying the cumulative voting system:

1- The voting process should be done through a voting card that is distributed to the present shareholders or their representatives at the meeting, and this card should be prepared sufficiently in advance before the meeting; or through a corporate special program of computer «system of voting".

2- Taking into account the proportion of the independent members of the Board of Directors of the corporate, if the number of candidates equal to the number required to be elected or less of it, the winners by acclamation will be announced, without need to make the election process.

3- Voting may not be for more than the required number to be elected to the Board of Directors. Otherwise, voting card is canceled totally in this case.

4- If any shareholder votes by greater number of which he owns, the excess votes will be reduced proportionately among the candidates who voted for them.

5- If any shareholder votes by less number of which he owns, he will not be in a position to use the rest of the number, which is owned by adding it to one of the candidates.

6- Candidates Descending ranking according to the number of votes obtained, and the election of candidates who obtained the greatest number of votes will be announced. taking into account the seats of independent members,

who must form one-third of the members of the Board of Directors, at least, according to election rules and conditions and provisions of the corporate system.

7- If the number of independent candidates is equal to or less than the required number to be elected in the Board of Directors of the corporate, these candidates who win by acclamation will be announced without going through the election process with the rest of the candidates.

8- When counting of votes, the winning of the candidate who had the highest number of votes is announced, and then the next. Taking into account the number of seats allocated to independent members, so that if the required members is five, for example, the announcement of the winning first five, who obtained the highest number of votes, is declared, if it includes at least two of the independents. Or to announce the win of the first three, if it includes no independent. And the number of independent is to be completed according to the number of votes obtained by the candidates in this category. If the first three candidates, including one independent candidate, the fourth winner is declared and the independent candidates who come after him in the order … and so on.

Sub-Section Two
Formation of the Board of Directors and the Independence f some of its members

Traditionally, the Board Members is selected by the shareholders. It may happen that the relationships and personal connections with senior shareholders or the Executive President of the Corporate are of importance and influence in the selection of members of the Board of Directors in the corporate. Here, the Board of Directors, based on personal knowledge, may face a problem of the frequency of Council members to oppose or discuss the decisions of the Executive President of the corporate, who helped them come up to the Board of Directors.

At the same time, the lack of means or process that helps to provide a wide range of candidates, may hinder individuals with merit accession to the Council, and therefore reduces the diversity of expertise required in this Council.

This problem in the formation of the Board of Directors, both those related to the formation of the Council on the basis of personal knowledge, or lack of means enables those with merit to join the Council, calls for providing legislative or regulatory solutions. These solutions may seem to rely on cumulative voting, or the possibility to join experienced members to the Board of Directors or the need for independence in some members of the Board of Directors.

It is important that any board of directors seeks to include persons with competence and specialization to its membership, and to provide the diversity necessary for the experience in its formation, and if it is difficult to be carried out by the Board of Directors. Generally, it is the duty of the corporate committee of governance to study the availability of the required diversity of experiences in the corporate Board of Directors and present recommendations and proposals in this regard to the Board of Directors.

The search for potential members must be widely, to reach a broad cross-section of candidates, and then each candidate is evaluated through his experiences, as a member of the Board of Directors, and the extent of his willingness and ability to be a member of the team, and the extent of what he can offer to contribute to overcome the difficulties faced by the corporate or help the corporate to achieve its goals, and promoting diversity in this Board in particular. Something else must be taken into account is related to the availability of time, which allows sufficient attention to the burdens of the membership of the Board of Directors.

First - The definition of an independent member of the Board of Directors.

With the proliferation of codes of corporate governance in the countries of the world, the talk of the independence of some members of the Board of Directors became of interest, and the majority became sees the importance of having independent board members in the formation of the corporate Board of Directors.

This is consistent with the main task of the independent member of the Board of Directors. This is consistent with the main task of the independent member of the Board of Directors, which is to verify that what we called in advance (the agency problem) between the shareholders and the management of the corporate has been dealt with in a fair manner. This would not be possible unless the independent member of the Board of Directors, has done a proper and objective evaluation of the work and actions of the corporate management, in terms of fit return with risk, and return of the act in the near term and long term, as well as the extent of the conflict or conflict of interest.

It also rests on the independent member of the Board of Directors burden to verify that it has not been granted a preferential treatment to any of the stakeholders; so it is not enough to the independent member of the Board of Directors to be qualified or competent for the membership of the Board of Directors, but he must also has sufficient information, which enables him to form an opinion in such cases. And when the member of the Board of Directors leads this role , it must be clear that he does not replace the management of the corporate, but he does ensure that the management of the corporate has its work taking into account the pre-mentioned considerations.

The main aim of all this is not to force the company›s management to do a certain action, but to verify that the corporate is well managed, and that the interests of shareholders and the interests of all stakeholders with others

is observed and protected, as a reflection of the role and responsibility of an independent member of the Board of Directors to provide guidance and oversight needed to ensure the continuity of the increased value of the company. This responsibility is not the responsibility of each individual member of the Board of Directors, but also a shared responsibility for the corporate Board as a team.

Some of the codes of corporate governance concerns with the conditions relating to the financial aspects when defining the independent Board of Directors, where independence defined as: not getting any financial benefit from the corporate, except for what the member of the Board get for his membership in the board of directors.

Moreover, this definition does not solve the problem of conflict of interest between the members of the board and the shareholders of the corporate; it is not consistent with the spirit or the nature of the independence that must be available in the member of the Board of Directors.

In fact, the lack of independence reasons are multiple, some of which does not have such a financial nature, and thus becomes important to stand first on all the reasons that could lead to a lack of independence, and the definition of independence or a member of the Board of Directors in light of that. So the outlook to the independence of the Board Member, just in financial terms, is not enough, in our view.

There are rules guiding help to determine the independence of a member of the Board of Directors. Some of these rules are associated with the financial aspects; while others come out from this description:

1- The member of the Board of Directors be independent if the share he owns is not more than (5%) of the capital of the corporate.
2- The member of the Board of Directors should not occupy any job in the

company, or in any institution or entity associated with the corporate, or in a sister corporate or its subsidiaries, and should not have been served any of these positions during the past two years on the membership of the Board of Directors.

3- An independent member of the Board of Directors or his spouse or any of his relatives from the first class, should not be contributor and has a considerable share in the corporate, or holds a managerial position in the corporate, or a position has an effect on the internal audit process.

4- If a person has become a shareholder in the company as a result of being a member of the Board of Directors; his shares must not be less than the minimum stipulated in the law. That is called in some legislation " Shares membership guarantee ".

5- What he gets from the proceeds of the corporate should be confined to his reward for the membership of the Board of Directors, and dividends, which owned to him as a member of the Board of Directors.

6- The member of the Board of Directors must not be representing any of the major contributors in the company.

It could be argued that the financial perspective is one of the factors that must be taken into account to verify and ensure that the independence of a member of the Board of Directors has not been compromised with, influence, or in other words not or will not be distorted.

After all, it is expected from the independent member of the Board of Directors, to exercise this independence actually, when he exercises the functions of his membership in the Board of Directors, by putting the corporate interest first before any other interests, and to be a neutral when exercising his right to decision-making or voting on it.

In this context, we can say that, whenever the availability of independence in all its forms or its elements, including the intellectual, behavioral, political and

emotional independence, when the independent member of the Board of Directors practicing his functions, the greater the value and effectiveness of the Board of Directors; where opinions of independent member of the Board of Directors then become clearly expressive about interests of the corporate. The following is an attempt to shed light in more detail on factors of this independence.

Second – Factors of the independence of the member of the Board of Directors

The First Factor : Independence in thinking

Another problem could arise on talking about the independence of the member of the Board of Directors, i.e. those relating to intellectual autonomy or independence in thinking, when the independent member of the Board of Directors is not on the same level of expertise and efficiency, that his peers from other members of the Board of Directors enjoys, where, in such cases, it appears that some independent members of the Board of Directors - under the influence of these factors - may refrain from expressing their opinions, which may constitute in fact prejudicing with their independence. So it is important in such cases that the Board of Directors innovates solutions that help elucidate the point of view of these independent members. The Board of Directors has to look for a way to lead to a reduction of these problems so that independent members of the board of directors can express their opinions or present their views without being influenced by the views of members of the most experienced, so that they have an opportunity or priority to express an opinion by other members.

The Second Factor: Political independence

As the Independence should be in thinking, without being influenced by the views of others, it is also politically. The foundation stone of this matter is that the member of the Board of Directors puts the corporate interests first before the interests of any of the stakeholders in the corporate. If political ambition affects the decision or the opinion of a member of the Board of Directors, it would collide with its independence. For example: The member of the Board of Directors has

to have the ability to take advantage of the his role of the Board of Directors to effect some stakeholders with the company. That would represent an obstacle to his independence.

The Third Factor: Independence from the Group.

If the member of the Board of Directors was a member of a group or a sect or other groups, where, the Chief of this group or that sect leader can affect his decision. In this case, the member of the Board of Directors, who is a member in this group, cannot be considered independent.

The Fourth Factor: Emotional Independence

We mean by emotional independence that the membership of the Board of Directors may not be an end in itself for the individual, trying to get them or continue to satisfy a need in himself, regardless of the corporate interest. For example, that the membership of the Board of Directors constitutes one of the foundations of social prestige of the individual. In such cases it may be difficult for a member of the Board of Directors to proceed in his functions within the Board, or to have an independent view, contrary to the prevailing within the Governing Council.

It is important to evaluate the independence of the members of the Board of Directors in light of all the above factors, in order to reach true and full independence to the member of the Board of Directors. The check of the independence availability in, this way, is no less difficult, because as it is clear, some of these factors, such as emotional independence, are hard on the external evaluation, i.e., it is difficult to be done by a specific body whether from inside or outside the corporate. The evaluation process stops - in some respects - on what the individual is doing as a self-assessment of his independence, in some cases, it may appear that the member of the Board of Directors is independent, while the fact that he himself realizes well, asserts otherwise. Even in this case, this self-process, does not oblige member of the Board of Directors, but morally.

In spite of those difficulties that relate to the possibility of achieving the optimal shape for the independence of a member of the Board of Directors, the focus on these factors leads to contribute significantly - albeit incomplete – to the achievement of this independence. Members of the general assembly of the corporate, who exercise the selection process, are granted the right to choose an independent board member, who meets the required constituents.

However, there is a criticism can be directed to the requirement of independence in a board member of the corporate, regarding that experienced people, who can add to the Board of Directors are often successful people in their fields. And thus they have relationships with many stakeholders in the corporate, and therefore, their exclusion from membership of the Board of Directors for this reason, may lead to weakness of the Board of Directors, and the denial of the experiences of these people.

This criticism is true in general, since the requirement of independence in every member of the Board of Directors may preclude benefit of the owners of the experience, as well as it conflicts with justice, when it leads to deprive some senior shareholders, whom their ownership exceeds the percentage allowed for an independent member of the Board of Directors, in the membership of the Board of Directors.

But there are solutions which can overcome this criticism, and perhaps the most important that the code of corporate governance does not require the need for independence in all the members of the Board of Directors, but only to be half or one-third of the members of the Board of Directors of the independents. In this case, the Board of Directors will be able to join deserving candidates from non-independent to its membership, as well as independent members.

On the other hand, the presence of these relationships does not necessarily mean its impact on independence. Ultimately, it is up to how the

member of the Board of Directors behaves if there is a case of conflict of interest, as the purpose of Governance is not to eliminate the conflict of interest situations, but to put rules to govern the conduct of the member of the Board of Directors in case of emergence one of these cases. So, it is important to text on the need for disclosure by the member of the Board of Directors that he has an interest when discussing a particular topic. There is also an importance of the existence of certain criteria, within which we can judge on the independence of a member of the Board of Directors, despite the existence of these relations, so that it refrain, in some cases, to vote on decisions relating to these cases. The process of putting standards or rules referred to is a matter of very accurate and proportional. So it may be appropriate to entrust to follow up this matter to a committee of governance emanating from the coporate board of directors.

CHAPTER THREE

GOVERNANCE OF CORPORATE BOARDS IN THE UAE LEGISLATION

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Judge William T. Allen[1] President of the Court Delaware of Chancery summed and expressed the task of the Board of Directors that the Board of Directors selects the senior management of the corporate, and identifies patterns that administration stimulus and watching the growth of the corporate, as well as his duty to advise the corporate management in time of need.

The talk about Governance of Joint-Stock Companies Boards in the UAE law raises several topics concerning the legal basis, the scope of application, the formation and composition of the Board of Directors, and the role of an independent member of the Board of Directors, members of executive and non-executive directors, as well as civil liability lawsuits for members of the Board of Directors, and the isolation of the Board of Directors, in five topics as follows:-

The First Section: The legal basis and the scope of application of corporate governance in the UAE law.

The Second Section: The formation and composition of the Board of Directors.

The Third Section: The role of the independent Board Member.

The Fourth Section: The role of the executive members and non-executive directors.

The Fifth Section: Board Rewards.

1. G. Lorsh, James Cellar, Boards of directors and corporate performance, Center for International Private Enterprise (CIPE), p 86.

The Sixth Section: The responsibility of the Board of Directors.

Section One
The legal basis and scope of application

This section deals with the legal basis for the commitment of controls or corporate governance rules in the UAE law, which we apply (Code of Corporate Governance). It also deals with the scope of the application of this Code on joint-stock companies, by identifying the called corporate that they must commit – legally - to the contained provisions, as follows: -

First Sub-Section: The legal basis for corporate governance in the UAE Law.

Second Sub-Section: The scope of application of the Code of Corporate Governance in the UAE Law.

Sub-Section One
The Legal Basis for Corporate Governance in the UAE Law

Talk about the rules of corporate governance in the UAE legislation leads us to talk briefly about the history of these rules or regulations, issued under the decision of the President of Board of Directors of the Securities and Commodities Authority No (32/r) for the year 2007, on Public corporate governance controls, followed by the issuance of Ministerial Resolution No (518) for the year 2009, on corporate governance controls and standards of institutional discipline amended by Ministerial Resolution No (84) of 2010, issued on 7/3/2010, and the Ministerial Resolution No (239-1) of 2012G.

Perhaps the first thing that draws attention to that the first code of

corporate governance, was issued pursuant to the decision of the Chairman of the Board of Directors of the Securities and Commodities Authority, while the resolution currently in place, issued by the Minister of Economy and Chairman of the Board of Directors of the Securities and Commodities Authority. It is not seem obvious, if this decision was issued by the Minister of Economy, based on the provisions of the Commercial Companies Law or based on the provisions of Authority and Emirates Stock Market and Commodities Law, However, the revision of this decision shows that it was not presented to the Board of Directors of the Securities and Commodities Authority. This decision also regulates a range of issues that are not included within the systems that can be issued by the Authority, as provided for in Article (4) of the Federal Law No (4) for the year 2000G concerning the Authority and Emirates Stock Market and Commodities, However, by reviewing this decision shows that it was not presented to the Board of Directors of the Securities and Commodities, and that this decision organizes a range of issues that are not listed in the regulations that the body can be issued, as provided for in Article (4) of the Federal Law No. (4) for the year 2000 concerning the Emirates Securities market Commission and Securities, where this article stipulates that:

Firstly: In order to achieve its purposes, Authority may exercise the following powers:-

1- To propose the following special regulations, to be issued by decision of the Council of Ministers (Cabinet):
   a- The statute of its work.
   b- System for licensing the market, and control it.
   c- System of accepting the inclusion and cancellation or suspension of the inclusion of any securities or commodities trading in the market.

2- to put the following regulations, in consultation and coordination with licensed markets in the state.
   a- Statute of the Market.

b- Intermediaries system, organizing their work and stop them.

c- Circulation system, Clearing, Settlement, the Transfer of ownership and Custody of securities.

d- The system of Market Membership.

e- System for disclosure and transparency.

f- System of arbitration in disputes arising from trading securities and commodities.

3- The formation of the specialized technical committees and determine the scope of its work and their fees.

4- Contact with Global Markets with to access, exchange of information and experiences, join to the membership of the relevant Arab and International Organizations and Federations.

5- To do all other acts which help to achieve the purposes of the Commission or the exercise of its powers in accordance with the law.

Secondly: It is permissible for markets licensed in the State to propose amendments, as it deems appropriate, on the regulations stipulated in this article.

Sub-Section Two
The Scope of Application of corporate Governance Control in the UAE Law

Talking about Corporate Governance Rules in the Emirates Legislation leads us to to talk briefly about the history of these rules or regulations, issued under the decision of Chairman of the Board of Directors of the Securities and Commodities Authority No (32/R) of 2007 on the Rules of public shareholding corporate governance, where, the application of its provisions to all public

shareholding companies established in the State and companies, whose securities are included in the market and the members of the boards of directors of those companies, was one of the most important features of this resolution in accordance with the provisions of Article (2).

This decision was binding to the companies, which listed Securities in the stock market, as well as shareholding companies, even if it did not include securities in the market. This decision gave, under the provision of Article (16) thereof, timeout to listed companies in the market to be repositioned in accordance with the provisions of these regulations and standards within a duration not exceeding three years from the date of publication in the Official Gazette.

It is noticeable that, although the resolution referred to, texts in Article (2) thereof, on the validity of its provisions to all public shareholding companies and companies listed on the stock market. However, it grants companies listed in the stock market time limit to adjust their positions, while it did not give the this time limit for other public shareholding companies that their securities sere not listed in the stock market.

It should also be noted that the text of Article (2) of this resolution, did not refer to the exclusion of any Public shareholding company, from submitting to its provisions, and thus all public shareholding companies became committed to apply these rules, although some of these companies were wholly owned by the federal government or to one of the Emirates members of the Union, and therefore considered public joint stock companies; where, Article (7) of the Commercial Companies Law No. (8) for the year 1984 states that “companies that the State or any other Public Person owns a part of their capital, whatever its amount, must take the form of a public shareholding company.” Article (70) of that Law authorized, in its 2nd Paragraph, the Federal Government or Governments members in the UAE, to establish a company alone. It may also involve with

itself, in providing capital, a fewer number than provided in the 1st paragraph of that article (10 people).

As a result of that, companies, wholly owned by the Federal Government or the Government of any of the United Arab Emirates members of the Union, as a public company, became committed to apply the rules of corporate governance, as stated in the resolution referred to, while many of these rules are not commensurate with the nature of the ownership structure in those companies.

Perhaps this - along with other objectives - is what prompted the legislature to the issuance of the Ministerial Resolution No (518) for the year 2009 on governance controls and standards of institutional discipline, which replaced the Board Chairman›s Decision No (32/R) for the year 2007, on Controls of Governance of public shareholding companies, and institutional discipline standards, which can be called a code of corporate governance.

In the field of identifying companies that subject to the rules of corporate governance, Article (2) of the Resolution stipulated that:

«a- The provisions of this Resolution shall apply to all companies and institutions which listed Securities in one of the Stock Markets in the Country, and to the members of their Boards of Directors.

b- The following are excluded from the application of the provisions of this resolution:

1- Companies and institutions wholly owned by the federal government, or one of the local governments.

2- Banks, Finance Companies, Investment Firms, Exchange Companies and Brokerage Firms of Cash, that subject to the supervision of the Central Bank.

3- Foreign companies listed on a stock market.

It is concluded that, Rules and Provisions contained in this Resolution apply to all companies, which listed Securities in the stock market and to the members of their Board of Directors. Thus, it seems that the legislator has changed, in this Resolution, the controls under which the companies are subject to corporate governance rules, than planned in the previous resolution No (32/R) for the year 2007. While, the controls under which the companies are subject to corporate governance rules, in accordance with the Resolution of the year 2007 is that the company is public company. It has become, in accordance with the Resolution, currently in force, issue in 2009, that the company has listed its own Securities in the stock market.

This has resulted in an important outcome, namely; those Corporations that did not list Securities in the stock market, became not talked by the provisions of this Resolution, and is not committed to what it is stated in the resolution of the obligations, unless the source of these obligations, finds its foundation in the Commercial Companies Law.

On the other hand, the Resolution has excluded foreign companies listed in the stock market, from its provisions. It also excluded from its provisions the companies that work in the field of Banks, Finance Companies, Financial Investment Firms, Exchange Companies and the Brokerage Firms of Cash, which subject to the supervision of the Central Bank.

Exception of public shareholding companies wholly owned by the Federal Government or the Government of a Member State and foreign companies listed in the stock market, can be justified according to the nature of the ownership structure of the first companies, Exception public shareholding companies wholly owned by the Federal Government or the Government of a Member State and foreign companies listed in the stock market, can be justified, depending on the nature of the ownership structure of the first companies, given that the owner is one person, a government entity, or because the foreign company listed in the

stock market of the State, is a listed company in the market depending on the inclusion in their national market, and therefore subject to the rules governing the market, as well as the need to subject to the control of a regulatory body similar to the Securities and Commodities Authority.

However, that justify the exception of companies, that work in the field of banks, finance companies, financial investment firms, exchange companies and brokerage firms of Cash subject to the control of Central Bank, from these provisions has no justification, where rightly described as joint-stock companies listed in the stock market, like all other companies talked by the provisions of this resolution, and saying that these companies are subject to the control of the central bank is not enough, on the basis that the Commission›s monitoring relates to the requirements of the inclusion of these companies in the Securities market, and the continuation of this listing, which requires its application to all national companies.

Section Two
The Formation and Composition of the Board of Directors

Some[1] tend to that company›s board of directors consists of a limited number of members, regardless of the size of the company, so as to ensure the effective management of the firm, where it is difficult to deal with a large board size, the number of its members exceeds eleven.

We shall address the conditions of membership in the Board of Directors, generally, according to the law of Commercial Companies. Also we address the numerical and qualitative composition of the Board of Directors within the framework of corporate governance rules, as follows:

1. Ganathan Sharkham, Operations of Boards of Directors - Behavior Patterns - Corporate Governance in the twenty-first century - Chapter VII - Center for International Private Enterprise - p 136.

Sub-Section One
Conditions for Membership in accordance with the Commercial Companies Law

There are a set of conditions that must be met by a member of the Board of Directors of Shareholding Company – in general. All relating to qualifications or basic ingredients that are essential for their availability in the member or the board of directors; so that the person can exercise tasks of this membership as that the legislator wanted.

The First Condition: Good Behavior:

The company's shareholders put their confidence in the member of the Board of Directors. So he must be worthy of that trust. For that the legislator stipulated in Article (97) of the UAE Commercial Companies Law: Not to be convicted in an offense against moral turpitude or dishonesty, unless he has been rehabilitated, or authorities competent pardon him.

The second condition: Not to combine the membership of the Board of Directors and the membership of five joint-stock companies:

This condition is associated with the need to be available to the member of the Board of Directors the time and effort through which he can exercise the functions of membership. Article 98 of the Commercial Companies Law provides that: «No one may - in his personal capacity or as a representative of a legal person to be a member of the board of directors for more than five joint-stock companies based in the state and not to be Chairman of the Board or his deputy in more than two companies, their positions in the state. It also may not be the Managing Director of Management in more than one company based in the state. Nullify the membership who violates this provision, in relation to corporate boards that increase the quorum according to the novelty of his appointment. The violator is committed to refund what he may be paid to the company which

revoked his membership.

The question arises about the extent of the legal person's commitment to this provision. I.e. is the legal person shall not combine the membership of the Board of Directors for more than five companies. This question relates to that the concept of full-time to the natural person is different from the concept of full-time to the legal person, as the legal person exercises his functions through natural persons, so it is difficult to say that the legal person is not a full-time.

In view of some jurisprudence [1], this provision is as apply to the natural person, also applies to the legal person, because the wisdom of this requirement is to prevent between the person, of whatever nature, and the control of a group of companies, causing damage to the national economy.

We believe that this provision does not apply to legal persons; because on the one hand, because on the one hand, the concept of a full-time, which is true for natural person does not apply to it, and on the other hand, the text of Article 98 does not allow any one, for his personal capacity or as a representative of a legal person, to combine between the membership. It is understood that the text talks to natural persons, not to legal persons, because the natural person is the only one who can be a member of the Board of Directors originally himself, and can also be a board member of another company, representative of a legal person. The nature of the penalty for violation of this requirement, obliging member of the Board of Directors to refund what he took, reveals that the legislature considered that the member of the Board of Directors, in this case, does not have a turn or performs his duties, even if the legislator aims to achieve another purpose from this requirement, he will decide a penalty commensurate with the requirement of that purpose, for violation of the condition.

1. Dr. Sameeha Al-Qaliouby – Commercial Companies, Part II, 1993, Dar Al-Nahda Al-Arabia, p. 455.

The third condition: Disclosure of positions that he occupied before his membership of the Board of Directors:

This requirement does not exist in the Commercial Companies Law, This requirement does not exist in the Commercial Companies Law, but stipulated in Article (5/5) of the Code of Corporate Governance, under which, each member of the Board of Directors, upon receipt of his or her functions, must disclose the nature of the company about the nature of occupied positions in companies and public institutions and other important commitments, and specify the time allotted, and any change to it, as soon as it occurs.

In spite of that part of the jurisprudence [1] consider the disclosure of those things a formal requirement for membership of the Board of Directors, we see that the disclosure here is closer to commitment, which must be done by a member of the board of directors, than a condition for membership. We would prefer, in this place that the legislature adopts a different attitude, which is that the disclosure be prior to the membership of the Board of Directors, not later. Since then the company's shareholders can evaluate the candidate for membership, and check the availability of the necessary expertise, or the time enough to direct the functions of membership.

The Fourth Condition: The majority of the members of the Council should be of Citizens:

Article 100 of the Commercial Companies Law provides that: « The majority of the members of the Board of Directors must be of the nationality of the state, and if the proportion of citizens of the state in the Board of Directors, decreases the percentage required pursuant to this article, it should be completed within three months at most, otherwise, the decisions of the Council will be void after the expiration of this duration."

It should be noted that the UAE as a member of the Cooperation Council for

1. Dr. Sameeha Al-Qaliouby – Commercial Companies, Part II, 1993, Dar Al-Nahda Al-Arabia, p. 448.

the Arab States of the Gulf, treat the citizens of the Council, the same treatment of its citizens, in accordance with international agreements signed in this regard.

It should also be noted that the legislator stipulated in Article (99) of the Commercial Companies Law that the Company›s Chairman should be of the citizens of the State, supporting to the economic life, which the company is considered one of its components.

Sub-Section Two
Composition of the Board of Directors

First: The Numerical Composition of the Board of Directors:

Article (1/3) of Resolution No (518/R) for the year 2009 that «the company shall be managed by the Board of Directors, and the statute of the company determines the way of its composition, the number of its members and the duration of the membership in it.

The silence of previous text for determining the minimum and maximum number of members of the Board of Directors does not mean the freedom to determine the number of members of the Board of Directors in the company's statute, but it must interpret this text in light of the text of Article (95) of the UAE Commercial Companies Law, which states that: «The management of the Company is to be directed by a Board of Directors, appointed by the statute of the company, the statute of the company determines the way of its composition, the number of its members, and the duration of membership, provided that the number of its members should not be less than (3) and not more than (15) members, and the term of membership shall not exceed the three years, and the member may be re-elected for more than once."

Some[1] finds that “The legislator made the number, in its minimum and maximum «Odd”, to avoid the equality of votes, when they intends to vote on the decision taken by the Council. This is what most of laws went to, such as the Egyptian, the Syrian and Jordanian Law.

Others[2] consider that the number of Board members, according to the law, must be «an Odd», based on the provisions of Article (95), the above referred to, to facilitate issue decisions within the company›s board of directors, and to avoid equality of votes when voting on the question before the Board.

In our view, the legislator, as he texts on the minimum and maximum number of members of the Board of Directors, he lefts the Statute of the company to determine the number of members of the Board, within these two limits. The statute of the company may stipulate on that the number of the members of Board of Directors is to be “an Even”, as long as it is more than (3) and less than (15).

On the other hand, the determination of the maximum and minimum number of members of the Board of Directors, was not intended, as some went, to avoid an equality of votes, when voting on the question before the Board, because there is a difference between the Board of Directors, and the quorum necessary for the correct of its sessions. The Board of Directors may be composed of (15) members and the quorum for the correct of its sessions is a presence of a majority of its members. In this case, they are (8) members; and thus, the possibility would be existed for the equality of votes, when voting on a question before that meeting; and the composition of the Board of Directors of an Odd number, will not intercede in solving this problem.

1. Dr. Fawzy Mohamed Samy: Businesses in the United Arab Emirates, University Library, Sharjah, Second Edition, 2010, p. 210.

2. Dr. Fayez Naeem Radwan, Businesses, according to the Federal Law No. (8) of 1984, as amended in the United Arab Emirates, published by Dubai Police Academy, Ed. 2006, p. 347.

We see that the determination the minimum and maximum number of members of the Board of Directors, finds its justification in taking the circumstances of each company into account, in terms of its size and the number of shareholders. So that this number should not be a little, where it leads to individually decision-making within the company, and not be overly large, so that opinions, within the Board of Directors, are divided and dispersed. Thus, some companies may find it is convenient to compose the Board of Directors of (15) members, given the size and number of its shareholders, or the need for the Board of Directors to members with multiple experiences. On the contrary, some companies may find that the Council would be composed of fewer number, in view of the previous considerations.

However, in all cases, this number should not be less than three; because the composition of the Board of Directors of the two may result in the impossibility of holding this Council or issuance of its decisions; because the absence of one of these members or disagreement with the other member in the opinion, means lack of quorum necessary for the Board of Directors, and inability to make decisions on questions before the Council in the events of the equality of votes, as well as the difficulty of identifying or choosing the head of the Council of them, since both of them, as a member of the Board of Directors, has an even voice with his counterpart.

This issue draws attention to something else, namely the processing mechanism of issuing resolutions of the Council, in the event of the equality of votes within the Board of Directors; because, while most of the legislation, including the UAE legislation[1], stipulates that when the votes are equal, the side of the Chairman of the Board would be a casting vote. This case looks, in our view, in need to further reflection. Giving the Chairman of the Board of Directors a casting relatively weight, to vote on questions before the Board appears to be under consideration.

1. Article (105) of the UAE Commercial Companies Law No (8) for the year 1984, and Article (3/7) of governance resolution No (518/R) for the year 2009.

The Chairman of the Governing Council is merely one of the members of the Council, and his choice as head of the Board of Directors, comes through internal elections, conducted among members of the Board, and not elected directly by the General Assembly of shareholders; but at a time of his election, as a member of the Board of Directors in the meeting of the General Assembly of Shareholders, his chosen as a Chairman of Board of Directors was not before the General Assembly of Shareholders. Thus, one of the members, who got the lowest percentage vote of General Assembly, may become Chairman of the Board, based on the choices of the members of the Board of Directors, and to say, weighting the side that the Chairman of the Board votes for, in such cases, may not find, despite its simplicity, support of legal reasoning.

Thus, it appears the importance of seeking for different treatment to cases, where the votes are equally members of the Board of Directors, when voting on the question before the Board. In Our view, the legislator can keep the casting vote of the Chairman of the Board, provided that, the choice of Chairman of the Board should be through the company's General Assembly; because in that case, it seems that giving the Chairman a casting relatively weight is justified, as it is the choice of the General Assembly of the Company. In other cases, it seems to postpone the vote on that issue to a later session, to be possible changing the number of members present, to allow the issuance of a majority decision, or refer to the company›s General Assembly in cases that the Board of Directors cannot issue a decision thereon due to equality of votes.

If we look at the tasks that the legislator entrusted to the Chairman of the Board of Directors in the Code of Corporate Governance, we can say that those tasks carried out by the Chairman of the Council are dominated by regulatory or administrative nature of the work of the Board[1]. Where the legislator, in the

1. For more details about the Role of the Chairman of the Board of Directors in organizational aspects, refer to: Saleh Hussein: The Social responsibility of the members of the Company's Board of Directors; No Publisher, pp. 131:134.

Corporate Governance Resolution [1], texts on that the Chairman of the Board, in particular, had the following functions and responsibilities:

1- To ensure the effective functioning of the Board of Directors and its responsibilities, and discussing all major and appropriate problems timely.

2- To put and adopt the agenda for each meeting of the Board of Directors, taking into account any matters proposed by members to be included on the agenda. The Chairman of the Board of Directors may entrust this responsibility to a particular member, or to the reporter of the Board of Directors under his supervision.

3- To encourage all members to participate, fully and effectively, to ensure that the Board of Directors acts in accordance with the best interests of the company.

4- To take appropriate action to ensure effective communication with shareholders and convey their views to the Board of Directors.

5- To facilitate the effective contribution of the members of the Boarder of Directors, especially, non-executive directors, and to find a constructive relations between executive and non-executive members.

Any of these processors, to which we referred, on the issuance of the decision mechanism, in case of equality of the number of members of the Board of Directors, needs that the legislator adopts one of them and working out, because they provide better climate expressing the will of the general assembly of shareholders.

Secondly: The qualitative composition of the Board of Directors

The importance of the Code of Corporate Governance in the UAE clears in the new provisions relating to the qualitative composition of boards of companies subject to the provisions of this Code.

The Code was keen in Article (3) to take into account in the formation

1. Article (4) of Resolution No (518 / R) for the year 2009.

of the Board the appropriate balance among the executive, non-executive and independent members; so that at least one third of members should be of independent members, and that the majority of the members should be of non-executive directors, who must enjoy the experience and technical skills, which in the interest of the company. In all cases, when choosing the non-executive members of the company, taking into account that the member should be able to allocate sufficient time and attention to his membership, and this membership must not represent a conflict with his other interests.

Sub-Section Three
Organizing Meetings of the Board of Directors

Commercial Companies Law texts in Articles (105) to (108) on some provisions relating to the Board of Directors Meetings, and how to issue its decisions, but this law doesn›t subject to determine who has the authority or the power to call a session[1].The law also did not specify the required quorum availability of the members of the Board of Directors, which could call a session, in case of the inaction of the Chairman of the Board of Directors in directing such a call. The texts do not contain the minimum number of times of the Council meetings, but confined to state the extent necessary for the issuance of the decisions of the Council, and the statement of the rule of absences from meetings of the Board, The method of preparation of minutes of meetings of the Board, and registering objections on those records; therefore the Code of Corporate Governance focused on addressing those provisions, and statement of the mechanism applied. Thus, it blocked a lack of legislation, there was a need to address it, which we will expose to it as follows:-

Way of the Meeting:

While the Commercial Companies Law did not show the ways, in which the Board of Directors can meet, it is understood from extrapolation of Article

1. Dr. Fayez Naeem Radwan, Businesses according to the Federal Law No. (8) of 1984, as amended in the United Arab Emirates, Dubai Police Academy, Ed. 2006, p. 355.

(105) that attendance is the way in which the council does the meetings. As the administrative body issued a decree regulates the manner and procedure of the meeting through the methods developed (Video – Audio – Conference). The Code of Corporate Governance also organized the issuance of scrolling decisions, considering that is the alternative to the preceding means. We will address each of them as follows: -

The first way: Actual Attendance:

It is the traditional way, the most common to the meeting of the Board of Directors. We mean by the actual attendance meeting of the members of the Board of Directors together into one place, so as to allow each of them see and hear other members of the Board and to exchange views with them.

The meeting in this way is not without benefits, as members of the Board of Directors Meeting in one place, and discuss the affairs of the company, allows them good communication among themselves and put forward ideas, visions and the exchange of experiences and ideas, and thus to reach a decision based on sufficient information.

The second way: Meeting through Methods Developed:

The great acceleration in information and communications technology on the one hand, and the spread of the members of the Board of Directors per company, in different places of the world, on the other hand, and increasing preoccupation, on the third hand, as well as the high cost of the move and accommodation to attend the meetings of the Board of Directors, on the fourth hand. All these factors led to wonder about the possibility of holding meetings of the Board of Directors using modern technology, in order to save time, effort and money.

Perhaps the answer to that question lies in the extent to allow the existing legal regulation in the businesses law to adopt such means, and the availability

of the necessary guarantees in the meeting in this way, as to ensure achieving the purpose of the meeting of the members of the Board of Directors each other.

In this context, the text of Article (105) of the UAE Commercial Companies Law, which included the text on the quorum necessary for the meeting of the Board of Directors to be held right, did not require to be actually attend those meetings, during a meeting of members of the Board of Directors of the company in the same place, but the council may be held, if the quorum is achieved, through methods developed, and by default Board through those means, as long as there are safeguards to ensure the availability of the conditions required by law to be held right, and the associated procedures.

In order to organize these meetings, the Securities and Commodities Authority in the UAE issued controls of holding meetings of the Board of Directors of public shareholding companies, through modern technological means, as follows:-

“As the keenness of the Securities and Goods Authority to keep up with the modern technological development in the field of holding meetings of the boards of public shareholding companies; and recognizing the importance of the role played by these councils in the management of companies and work on their growth and prosperity; and in the framework of the provisions of the Federal Law No (8) of 1984 regarding commercial companies; and based on requests from a number of public shareholding companies, and after coordination with the Ministry of Economy on the possibility of holding meetings of the boards of directors of public shareholding companies through modern technological means, such as «Circuit TV», it was approved on the permissibility to the public shareholding companies boards of directors meetings through these means with the need to take into account the following procedures and controls:

1- That the company has the necessary electronic equipment and this equipment

is selected prior to the meetings in advance.

2- The reporter of the Board of Directors meetings must coordinate and ensure of the following matters:-

- Communication with all members to make sure of attendance the meeting either in person or via this mechanism.
- The member, who planned to attend the meeting via the mechanism, must inform the company before a sufficient period.
- That all documents are sent before the meeting to all members.

3- Registering the minutes of the meeting of the Board of Directors and save it for the duration of the existence of the company and not be disposed of by obsolescence.

4- That each member of the Board of Directors and the reporter should present himself at the beginning of the meeting (for the purposes of registration).

5- Members that use this mechanism - should underline the following at the beginning of the meeting:-

- Hear the rest of the members who are present personally with complete precision.
- Receipt of all documents and agenda of the meeting.
- Determine the type of device used in the mechanism.

6- A member of the Board of Directors or the Reporter should define his name, in the case of his desire to speak during the meeting, either to make intervention or comment or voting.

7- A member of the Board of Directors has to be in a position that allows him looking directly to the camera during the meeting and speak in a clear voice and audible, and If there is slow connection or interruption during the meeting,

the reporter or (the person in charge) should retelling what has been during the interruptions, and when voting the reporter should repeat words again, to make sure that everyone had heard what was said before the vote.

8- The reporter should fulfill the signatures of all the Attendants (whether Personally or through the mechanism) on the minutes of the meeting, to cut the doubt in any obstacles have occurred."

Issuing Decisions Scroll:

Making decisions by scroll is not a way of attendance, but a means to issue some urgent decisions, which it may result on the delay of its issuance, until holding the board by the traditional way or through modern means of communication, loss of interest or harm to the company.

Because making decisions by scroll is not the original way to issue decisions by the Board of Directors, so the Code of Corporate Governance was keen to organize this process in Article (3/8), and so as not to be expanded or misuse. It stipulates that: «Without prejudice to the provisions in the previous item, the Board of Directors may issue some decisions exceptionally by scrolling, in emergence cases, taking into account the following: -

a- That the cases of making decisions by scroll four times a year.
b- Approval of the majority of members of the Board of Directors that the case, which requires the issuance by scroll is an emergency case.
c- The members of the Board of Directors should deliver the decision in writing, for approval, accompanied by all necessary documents for review.
d- Written consent on any of the resolutions of the Board of Directors issued by scroll, must be written and in majority, and shall be presented at the next meeting of the Boarder of Directors to be included in the minutes of the meeting.

There is a set of observations that must be taken into account when the

decision scroll, intended in this regard, the majority of the members of the Board of Directors, and not the majority of attendants, as the Board of Directors has not been held, at all, to talk about the majority of the attendants, and this condition represents a guarantee to confirm the satisfaction of the majority, and not some members of the Board of Directors on the issuance of the resolution.

It is noted from the foregoing that decisions scroll issue is not a way for holding the Council, and therefore make decisions scroll cases are not counted, in the times that the Council should be held through them. Therefore, if the legislature required that the Council must hold a certain number of sessions per a year, it is not counted within the session times the number of times in which the Council issued a scroll decisions, where the only session counted are the number of the actual sessions, whether the meeting of the Board of Directors was held in, actually, one place, or through modern means of communication with safeguards put by the legislator or the regulatory body.

Call to convene the Board:

According to Article (6/3) of the Code of Corporate Governance, the Board of Directors holds meetings once every two months at least, based on a written invitation from the Chairman of the Board, or upon a written request of two members of the Council, at least, and the call should be at least a week before the deadline, together with the agenda, The Board of Directors held meetings once every two months at least, based on a written invitation from the Chairman of the Board of Directors, or upon the written request of two members of the Council, at least, the call went by at least a week ahead of schedule, together with the agenda, and each member has the right to add any subject, he finds a need to be discussed at the meeting.

Quorum necessary for the session and issue decisions:

Question arises in cases in which the Council discussing the subject regards to the interests of a member in the Board of Directors with the company.

Is it possible for this member to participate in the debate? And to what extent the right to vote? And what is the required quorum to vote in this case?.

Articles (109) of the Commercial Companies Law, and (10/3) of the Code of Corporate Governance addressed this issue, and while the text in the Commercial Companies Law included a general provision, the article contained in the code of corporate governance has organized the rule of vote of the Board of Directors in conflict of interest issues in the core issues that come before the Board of Directors.

a- The General Rule:

Articles (109) of the Commercial Companies Law, and (10/3) of the Code of Corporate Governance addressed this issue, as Article (109) stipulates that: «Each member of the Board of Directors has an interest conflict with the interest of the company in a process presented to the Board of Directors for approval, has to inform the Council and register his acknowledgment in the minutes of the meeting and he may not participate in the vote on the resolution issued regarding this process.»

What noted on this strategy, is that the commitment of the member of the Board of Directors by the disclosure to the Board, about his interest, subject to be the process that he has an interest therein, is presented to the board of directors, and thus the member of the Board of Directors does not comply with the disclosure he has dealt with the company if those transactions were not required by law to be displayed, and were not before the Board of Directors.

The burden of the obligation to disclose is located on the member of the Board of Directors, the stakeholder, when viewing the subject on the Board of Directors. And it applied equally, if the member of the Board of Directors was present in the meeting himself, or on behalf of other member, or absent.

b- Provision on the Core issues:

Article (3/10) of the Code of Corporate Governance stipulates that if any board member has a conflict of interest in the issue should be considered by the Board of Directors, and the Board of Directors decided it is a fundamental issue, it must make its decision by the majority of Members, and the stakeholder member may not contribute in voting on the decision, and these issues, may exceptionally be treated through committees emanating from the Board of Directors, formed for this purpose under a decision it issues, provided that the opinion of the Committee should be presented to the Board of Directors to take a decision in this regard."

It may seem from this text that it has included a special strategy with respect to the core issues, which involve a conflict of interest, which is presented to the Board of Directors, and it is clear that it is permissible for the Board of Directors to instruct one of the sub-committees of the Board, but the final decisions in this regard will be of the Board of Directors.

We believe that there is no special organization to this issue, as has also been organized in the Code of Corporate Governance, as the Board of Directors has, as a general rule, the right to form of what he sees of committees to discuss any subject before it. As long as the decision in the end will be issued by the Board of Directors, there is no difference, in this case, if this issue is fundamental, or non-essential, as long as it involves a conflict of interest.

The meeting minutes of the Board of Directors:

While the Article (107) of the Commercial Companies Law stipulated that meetings minutes of the Board of Directors in special book, and that each member who attended the meeting and the Reporter of the session should sign every minutes in the book, the article (3/9) of Code of Corporate Governance stipulated that the details of the issues that have been seen by the Council and the decisions that have been taken, including any reservations or members dissenting opinions expressed by them, should be recorded in these minutes, and it must be signed by all the members present on drafts of the meetings minutes of the Board of Directors, before the approval. Copies of these minutes should be sent to the members after approval, to be kept. The Board of Directors Reporter keeps all minutes of the Board and its Committees. And in the case of a member's abstention to sign, his objection is recorded in the minute and the reasons for the objection once mentioned.

Number of the Board Meetings Times:

The Commercial Companies Law does not include the minimum times of the Board Meetings. This Organization mentioned only in the second Paragraph of article (28) of the Statute Sample of the Joint-stock Company issued by the Ministerial Decision No. (64) of the year 1999. which stipulated on: «The Board of Directors should meet once every two months at least.

The Code of Corporate Governance confirmed the same provision in Article (3/6) when it stipulated that: «The Board of Directors holds its sessions once every two months at least, upon a handwritten invitation by the Chairman of the Board, or upon written request, submitted by two members of the Board, at least, and the invitation should be directed at least a weak before the deadline, together with the agenda, and each member has the right to add any topic he believes it should be discussed in the meeting.»

Section Three
The role of the independent Board Member.

Talk about the role of independent board member under the governance of the Board of Directors is due to the importance of the role played within the Council or the Standing Committees emanating from it, such as audit committees, or nominations and awards. Accordingly, it is important to define the independent member of the Board of Directors, and cases in which he can lose his independence, and the impact of this on his membership in the Council.

We shall divide this section into three Sub-Sections, as follows:-

Sub-Section One
Definition of the independence of Board Member

With the proliferation of codes of corporate governance in the countries of the world, the talk of the independence of some members of the Board of Directors became of interest, and the majority became see the importance of the presence of members of the Board of Directors in the formation of independent Board of Directors.

This is consistent with the main task of the independent member of the Board of Directors, which is to verify that what we called previously (the agency problem) between the shareholders and the management of the company has been dealt with in a fair manner. This would not be possible unless the independent member of the Board of Directors evaluated the work and actions of the company's management objectively and appropriate evaluation[1], in terms of fit with the risk return, and the returns of the act, in the near term and long term, as well as the extent of the conflict of interest.

1. (1) Dr. Hakem Mohsen Al-Rabeie , Dr. Hamad Abd El Hussein Radi, Governance of banks and their impact on performance and risk, Scientific Bazdawi House for Publication and Distribution, 1st Ed. 2011, p. 113.

It also rests on the shoulder of independent member of the Board of Directors the burden to verify that he did not grant any of the stakeholders preferential treatment. Therefore it is not enough that the independent member of the Board of Directors is eligible or efficient for membership in the Board of Directors. Sufficient Information must also be available to him to be able to form an opinion in such cases. And when the independent member of the Board of Directors does this role, it must be clear that he does not replace the company's management, but he ensures that the management of the company did its work, taking into account the above mentioned considerations.

The main goal of all this is not to force the company›s management to do a particular work, but to verify that the company is properly managed, and that the interests of shareholders and all stakeholders with others is taken into account and protected. This is a reflection of the role and responsibility of an independent member of the Board of Directors to provide guidance and oversight needed to ensure the continuity of the increased value of the company. That responsibility is not the responsibility of each individual member of the board of directors, but also a shared responsibility for the company›s board as a team.

Some codes of corporate governance concern with the conditions relating to the financial aspects when defining an independent member of the Board of Directors, where the independence is defined as the member of the Board of Directors does not get any financial benefit from the company, except for what he gets for membership of the board of directors.

In addition, this definition does not solve the problem of conflict of interest among the members of the Board of Directors and shareholders of the company; it is not consistent with the spirit or the nature of independence that must be available in the member of the Board of Directors.

In fact, the lack of independence has multiple reasons, some of which does

not have this financial nature, and therefore it becomes important, to stand first on all the reasons that could lead to a lack of independence, and the definition of independence or a member of the Board of Directors in light of that. So, to look at the concept of the independence of the board member, just in financial terms is not enough, in our view.

It could be argued that the financial perspective is one of the factors that must be taken into account to verify and ensure that the independence of the board member has not been touched or effected, or in other words not or will not be distorted.

After all, it is expected from the independent member of the Board of Directors to be practicing this independence actually when exercising the functions of his membership in the Board of Directors, by putting the company›s interest first before any other interests, and to be neutral when exercising his right to decision-making or voting on it.

But, is it enough, the independence of a member of the Board of Directors to resolve those problems, related to corporate governance, and that the company may be exposed to?

Some argue(1) that strict rules regarding the independence of the Board of Directors will help prevent financial scandals and ensure better control. In this context, we can say that the greater availability of independence in all its forms or its components, including the intellectual, behavioral, emotional and political independence, when the independent member of the Board of Directors exercises his functions, the greater its value and effectiveness of the Board of Directors, where the views of independent member of the Board of Directors then become vividly reflect the interests of the company.

1. (1) Georges Dionne and Thouraya Trik Risk Management and Corporate TGovernance: The Importance of Independence and Financial Knowledge for the Board and the Audit Committee Working May 2005, p. 303, paper 05.

Sub-Section Two
Cases that affect the independence of the member of the Board of Directors

Article (1) of the Code of Corporate Governance issued by Resolution No (518/R) for the year 2009 defined the independent member as: «The member, who, or his wife or any of his relatives, from the first class, is not of members of the executive management of the company, and neither of them, a relationship which resulted in, financial dealings with the company or the parent company, or any of its subsidiaries or sisterly or its allies, during the last two years, if these transactions exceed in the aggregate 5% of the paid-up capital of the company or the amount of five million Dirhams or the equivalent of foreign currency, whichever is less.

Independence Recipe obviates from the member of the Board of Directors, in particular, in the following cases:-

- To be an employee at one of the parties related to the company during the past two years.
- If he was directly associated with a company doing consulting work or provide advice to the company or any of the parties associated with it.
- Has any personal service contracts with the company, or any of the parties associated with it, or the staff of the executive management.
- If he was directly associated with one of the organizations that are not-for-profit, which receives a great deal of funding from the company or one of the parties associated with it.
- If he was, in the past two years associated with, or employed by, any of the auditors, external, or former, of the company, or with any of the parties associated with it.
- If his ownership of the ownership of his minors sons, or both of them, in the company's capital amounted ratio of (10%) or more.

It is noted on this definition that it does not define the independent member of the Board of Directors, as far as what he has defined the non-independent member. Definition does not mean to specify the independence factors, as far as his handling of the factors or situations, which lose this independence with the member of the Board of Directors.

Based on this, we can keep pace with this legislative approach, and identify cases in which the (possible) member of the Board of Directors loses the description of independence in the following cases:

The First Case: Kinship:

If the member of the Board of Directors or his spouse or any of his first-degree relatives, members of the executive management of the company, during the last two years.

Needless to say, that the word (spouse) means the spouse in this place, whether man or woman, also it is intended by the first-degree relatives: Father, mother, sons, husband, husband's father, husband's mother and husband's sons.

There are two cases in which the board member loses his independence character: The first case is a qualitative condition, respect that he or any of the above-identified relatives may have already occupied an executive functional position in the company; while the second case, represents the time constraint, i.e. he must have served this function during the past two years.

Some conclusions resulted on that; which is that, if the member of the Board of Directors of his spouse or any of his relatives of his first class, served a position that not included in the definition of the Executive management in the company, in this case the member of the Board of Directors will not lose his independency.

The Code of the Corporate Governance defined the Executive Management of the company, when it defined the Management, in general; where it defined Management[1] as «the executive management of the company, including Director-General, Executive Director, Chief Executive Officer or Managing Director authorized by the Board of Directors to manage the company and their deputies.

Thus, according to this, if the board member took one of the other functions in the company, other than executive management functions, he would not lose his independency.

He also does not lose his independency even in the hypothesis where he occupies any of the functions previously identified, if he had engaged it, two years before the scheduled date to be a membership of the Board of Directors.

It follows, too, that the membership of the Board of Directors at an earlier date or his candidacy for the membership of the Board of Directors of the company does not lose him, in itself, his independency, because the membership of the Board of Directors does not enter within the definition of the executive management.

In this regard, it should be noted that the Code of Corporate Governance [2] has provided for another case in which the member of the Board of Directors loses the status of independence. It is where, «the member of the Board of Directors, is an employee of one of the parties related to the company in the past two years.»

This reference finds its importance in that the legislator stipulated that the member has served for the executive management of the company, which he

1. (1) Article (1) of Resolution No ((518/R) for the year 2009.
2. Article (4) of Resolution No ((518/R) for the year 2009.

occupies the membership of its board of directors, during the past two years, to be considered a non-independent member; while merely just to have this member employed by any of the parties associated, in the past two years.

We believe that it was better for the legislator to state in the Code of Corporate Governance that the member of the Board of Directors is considered a non-independent "if he had occupied an executive management position with one of the parties related to the company in the past two years" instead of merely being an employee of any of the parties associated with the company.

The Second Case: Financial transactions taken into account

This means that there is not any relationship, between the member of the Board of Directors or his spouse or any of his relatives of first class with the company or the parent company or any of its subsidiaries or affiliates or its allies, resulted in a financial dealings during the last two years, if these transactions exceeded, as a whole, the proportion of (5%) of the company's paid-up capital paid or the amount of five million Dirhams, or the equivalent in foreign currency, whichever is less.

It is concluded that the legislator cares not specify the nature of the relationship between the member of the board of directors and his relatives. His attention was focused on the results of that relationship of financial transactions, when the total of these transactions, during the past two years, was five million dirhams or equivalent in foreign currency, or (5%) of the company's paid-up capital, whichever is less.

The question may arises about what's intended by the company›s capital? Is it the capital of the company that the person wants to be a membership of its board of directors or the capital of the subsidiary, or sisterly, or allied, or Holding, which has been has been dealt with?

There is no explicit answer in the Code of Corporate Governance for this question. We believe that the intention here is the company's capital, which has been dealt with, whether the company was the same company that the person nominates himself for the membership of its board of directors or was one of the subsidiaries or affiliates or sisterly or the holding company.

The member of the Board of directors is considered non-independent if he had any financial dealings during the last two years of the scheduled date for the membership of the Council with this company, when these transactions amounted to 5% of the share capital of that company paid or the total of those transactions was five million dirhams, even if that total transactions was less than 5% of the paid-up capital of the company.

Also, the member of the Board of Directors is considered non-independent if he had any financial dealings during the last two years of the scheduled date for the membership of the board, with one of the subsidiaries or sisterly or allied or Holding companies; when these transactions amounted to 5% of the paid-up capital of the company (subsidiaries or associates or allies or Holding), or the total of such transactions, during that period, of five million Dirhams, even if the total of these transactions was less than 5% of the paid-up capital of the company.

The question arises about, if all the financial dealings that reached this ratio or value affect on the status of independence of the member of the Board of Directors, in a hypothesis in which the company works in a field of nature requires that transactions with members of the Board of Directors and others, as if the company is engaged in construction and real estate investment, and the board member bought a real estate valued at five million Dirhams.

In this case, we believe that the member of the Board of Directors does not lose his description as an independent member of the Board of Directors if

his financial dealings, he conducted with the company, enter in the purpose of the main activity carried practiced by the company, and that those transactions would be under the conditions set by the company to deal with all clients.

It is noticeable that the basis in determining the capital is the paid-up capital of the company, not the company's issued capital or authorized.

The Third Case: Functional Relationship with One of The Related Parties:

When the member of the Board of Directors be an employee of one of the parties related to the company in the past two years.

In this case, the probably member of the Board of Directors loses the status of independence if he worked, during the last two years, as an employee for one of the parties associated with the company. It is not contained in the Code of Corporate Governance an inclusive definition for the associated parties, though, reading the Code reveals that the meant is the parent company or subsidiary or sisterly or allied.

Thus, the concept of the associated parties, which the legislator concerned here, is different from the concept of stakeholders, whom he defined them as they are every person who has an interest with the company, such as shareholders, employees, creditors, customers, suppliers and potential investors. Thus, the potential member of the Board of Directors does not lose the status of independence if he works during the last two years at any of those.

The concept of the associated parties differs from the concept of associated parties, which are defined by the legislator as the Chairman and members of the Board of Directors and members of the members of the Supreme executive management, and companies in which any of these have a controlling stake.

The Fourth Case: Doing Consulting Work:

If the (the potential) member of the Board of Directors is directly linked to the company doing consulting work or provide advice to the company or any of the parties associated with them.

It is intended in this case that (the potential) member of the Board of Directors is a partner in a company doing consulting work for a company that he wants to nominate himself a member of its Board of Directors or any of the parent company or subsidiary or sisterly or allies.

It is noticeable here that the legislator stipulated that this link be continued during the period of membership of the Council. If this link is previously to the membership of the Board of Directors, such a link does not affect the independence.

The Fifth Case: Correlation by Personal Services Contracts:

If (the potential) member of the Board of Directors has any personal services contract with the company or any of the parties associated or executive management staff.

It is noticeable that the legislator has expanded the scope of the limitation, in this case. In addition to the recognition of the existence of this relationship between the potential member and the company or any of its associated parties, he considered also that, the existence of personal services contracts between the (potential) member of Board of Directors and any of the occupants of the company's executive management functions, a reason to lose the status of independence, which is the expansion that the legislator did not take it when counseling.

We have already pointed out that the intended executive management

in accordance with the definition adopted by the legislator, is the executive management of the company, including General Manager, Executive Director, Chief Executive Officer, or Managing Director authorized by the Board of Directors to manage the company, and their deputies.

It is noticeable here that the legislature also stipulated that this correlation be continued during the period of membership of the Council. If this correlation is previously to the membership of the Board of Directors, such a correlation does not affect the independence of a member of the Board of Directors.

The Sixth Case: Correlation with non-profit organizations:

If he was directly correlated to one of non-profit organizations, which receive a great deal of funding from the company or one of the parties associated with it.

The organization here means any organization does not aim to profit, whatever its name, and whether it takes the form or the name of the organization or association or, institution or party or club.

The direct correlation here means that the (prospective) member is a member of the board of directors or a manager of a member of one of those organizations that do not aim to make a profit.

Code of Corporate Governance did not indicate or specify the large amount of funding intended that this organization receives from the company or from the related parties, in order to determine the availability of the independence condition in the member, when his candidacy for the membership of the company's board of directors. It was better that Code includes specific criteria, through which, the authorities that apply the code of corporate governance can guide with it in this concern. It is proposed in this regard, to b guided by the way followed by the legislator, when determining the intended financial transactions, as described in the second case.

The Seventh Case: Correlation or Employment with the External Auditor.

If he was in the past two years associated with or employed by any of the company's external or former auditors or with any of the parties associated with it.

As a result of this, the status of independence negates from (the potential) member of the board of directors, if he is a partner or an employee for the company's external (past of present) auditor, when this relationship was based during the two years preceding the scheduled date for membership of the Board of Directors.

Also, status of independence negates, if he was a partner or employee for the company's external (former or current) auditor, when this relationship was based during the two years preceding the date scheduled for the membership of the Board of Directors.

The Eighth Case: Having a Certain Percentage of the Company›s Capital:

If his or his minor children ownership or both, in the company's capital ratio reached (10%) or more.

It is concluded that, if the ownership of the (probable) member of the Board of Directors in addition to what owned to his minor children were less than (10%) of the company's capital, he does not lose the status of independence.

He also does not lose this description if he, alone, has less than (10%), while the total of what he and his adult sons reach or exceed this percentage.

His ownership beside the ownership of his minor children of this percentage in the capital of any of the holding companies or subsidiaries or affiliates, does not lose him the independence. This ruling may be in need of a legislative audit.

It is noted here that the husband ownership did not enter the in the legislator consideration when determining the proportion of ownership which loses the member of the board of directors the status of independence. The reason for this is due to the view of the legislator for the financial disclosure between husband and wife, and the absence of what might be called the joint ownership of the couple in the national legislation.

The question arises about, whether having a proportion of bonds issued by the company, could lead to a losing status of independence?. The answer to that depends on the nature of the bonds issued by the company. If the bonds were non-convertible into stocks, the ownership of these bonds, in any proportion, would not lead to loss of independence status.

If those bonds, of which may turn into stocks, in accordance with the provisions of Article (186) of the UAE Commercial Companies Law, It follows that, if those bonds were converted into stocks already, the ownership of the member of the Board of Directors reaches to the ratio that he loses his independence status. However, it must be taken into account that this percentage will be calculated in view of the company's former capital, plus what has been converted from bonds to stocks.

Sub-Section Three
The impact of the Loss of the Member of the Board of Directors His Independence

Question arises about the fate of the membership of the Board of Directors for the independent members of the Board of Directors, if it occurs after acquiring membership what affects on the independence, such as if any of the first-degree relatives had a position in the company's executive management in which they are members of the Board of Directors.

The Code of Corporate Governance answered this question that if the nomination committee found that one of the members of the loosed the requirements of independence, it should submit the matter before the Board of Directors, and the Board of Directors should notify the member with the justifications for absence of independence status, by a registered letter on his address existing in the company, and the member has to respond to the Board of Directors within fifteen days from the date of notification.

The Board of Directors issues a decision as the member is an independent or non-independent, at the first meeting following the member response or the expiration of the period referred to in the preceding paragraph without reply.

If the member loss of this status will not result in prejudice to the minimum number of members within the Board of Directors, this shall be taken into account in the formation of the committees.

Without prejudice to the provisions of Article 102 of the Commercial Companies Law, if the decision of the Board of absence reasons or justifications of independence from the member, would influence the minimum rate should be available of the independent members within the Board, the Board of Directors appointed an independent member to replace this member, provided that his appointment should be presented before the first general assembly of the company to consider the adoption of the resolution of the Board of Directors[1].

Those legislative treatment finds its justification in that the member of the Board of Directors when he nominated himself for the membership of the Board of Directors, he has nominated himself as a member has factors of non-independence, and when the company's general assembly selected the independent member of the Board of Directors, it puts, on choosing him, this description into consideration. Therefore, if he lost this description after he was

1. The text of paragraph (1) of Article (6/1/b) of the Code of corporate governance was amended under the Ministerial Decree No (34) for the year 2010.

elected as an independent member of the Board of Directors, lost one of the membership conditions, which on the basis of them he was chosen.

The legislative treatment required, theoretically, that an independent member replaces the member who lost terms of independence, but the legislator balanced between these theoretical considerations and the practical considerations which require maintaining a degree of stability to the Board of Directors, to conduct the company's business. The legislator did not arrange this provision, except in cases of lost member of the Board of Directors of independence, which affects the proportion of independent members within the Board of Directors. But, if the loss of independence for the member of the Board of Directors, does not entail a breach of the proportion of independent members within the Board, the member of the board should complete his duration in the Board.

The question arises about what is the ruling when more than one member loss their independence in contemporary time, and as a result, and accordingly, an imbalance occurred in the proportion of independent members within the Board? We believe that if the independence with the last of these members, would result in an imbalance in the proportion of independent members within the Council, it is obliged to distinguish among three hypotheses:

The first hypothesis is that there will be an imbalance in the proportion of independent members of the Board of Directors, provided that, the number of members, who have lost the terms of independence, does not reach a quarter of the members of the Council. In this case, the Board of Directors should hire who replace them from the independent members until the meeting of the General Assembly of the Company to consider the adoption of this appointment or the appointment of others.

The second hypothesis, is that there will be an imbalance in the proportion

of independent members of the Board of Directors, and that the number of members who have lost their independence Terms a quarter of the members of the Council, which must then invite the company›s general assembly for a meeting, within three months from the date of the last free place, to elect who fill the vacant places, pursuant to the provisions of Article (102) of the UAE Commercial Companies.

The Third hypothesis is that it would be no breach with the proportion of the independent members of the Board of Directors, but the number of members, who have lost their independence terms, is a quarter of the members of the Council. In this hypothesis, it must also invite the General Assembly of the Company for meeting during (3) months at most, from the date of the last free place, to elect who fill the vacant places, pursuant to the provisions of Article (102) of the UAE Commercial Companies.

Section Four
A Non-Executive and Executive Member of the Board of Directors

The Board of Directors includes, as well as, independent members, who must be, at the same time, non-executive members, another variety or kind of members, who are executive members. We shall review in the following two Sub-Sections each type of them:

Sub-Section One
The Non-Executive Member of the Board of Directors

Some believe[1], and we support him in that, the presence of a sufficient number of non-executive members in the company's management, provides the Board of Directors with a great deal of independence in thinking.

1. Ibram M. Milestaine, Corporate Governance in the Twenty-First Century, the Center for International Private Enterprise, p. 39.

While some others advocates[1] of the need to strengthen the role of non-executive members of the board of directors, by having a council of the second-tier of managers. The Council of the second tier must all consist of non-executive members all the time, chosen by the stakeholders in the enterprise (Investors, Depositors in the case of Banks, employees). The task of the Board, in this case, represents mainly in the formulation of strategy and standards of ethical behavior, and advise the Executive Council.

The Code of Corporate Governance defined the non-executive member of the Board of Directors as he is “The member who does not have a full-time company management, and reward, which he charges, as a member of the Board of Directors, are not considered salary”. Accordingly, it defined the non-executive member of the Board of Directors as “the member who has a full-time management of the company or receive a monthly or annually salary from the company”.

The importance of the presence of non-executive members of the Board of Directors appears in that some codes require that the chairman of the Board of Directors would be of the non-executives, and the need to separate the position of Chairman of the Board from the Chief Executive Officer, and the non-executive members should have considerable formation in the company’s board.

The legislator has adopted on the availability of one of two criteria, to say that a member of the Governing Council is executive or non-executive, they are: a full-time or to get salary. If the member of the Board of Directors was a full-time member of the company’s management, he would be considered an executive member. As well as, if he was not a full-time to manage the company, but receives a salary from it.

The Code indicated in article (3) to that most of the members of the Board

1. ()Dr. Tarek Abd El Aal Hammad, Corporate Governance (Concepts – Principles, Experiences , Applications of Corporate Governance in Banks), Al Dar Al-Game’ia, Ed. 2005, p. 180.

of Directors should be of non-executives, and that those members shall have expertise and technical skills, which returns with interest for the company. We believe that this latter provision did not put control to identify what is meant by the non-executive member of the board of directors, as far as he put an indicative rule or desirable something in the non-executive member of the Board of Directors, so his accession will be an added value to the Board of Directors, and of interest to the company and its shareholders.

A question may arises about how to calculate the number of non-executive members for some companies, which include provisions in their statutes provide that the company shall be managed by a board of directors composed of a certain number, (9) members for example. Some of them are assigned, (3) for example, representatives from the government, including the Chairman of the Board, by a decree or any other tool. The right of the government falls in the ratio in which they are assigned. The Ordinary General Assembly elects the remaining members of the Board of Directors, who represent the private sector, by secret ballot cumulative, and the majority of the six non-executive members, including two independent members.

In reply to this question, and whether such texts are incompatible with the requirements of corporate governance controls, In that it must calculate the majority of non-executive members and one-third of the independent members on the basis of the total members of the Board all, and not on the basis of members representing the private sector only, and thus the majority are 5 members, and the third is three members, not only two.

We believe that the text of Article 2/3 of the Code of Corporate Governance issued by Ministerial Decree No 518 of 2009, or in accordance with the provisions of Article (3) of the Authority's Board of Directors resolution No 32/R for the year 2007 on the controls of corporate governance and standards of institutional discipline, that the company's board of directors is who manages the

company. The Statute of the company determines the way of its composition, the number of its members and the duration of the membership, and the members of the first Board of Directors of the Company are elected by the founders. After that, the members of the Board of Directors are elected by the company's shareholders, for a fixed period. It must be noted, in the formation of the Board of Directors, the appropriate balance between executive members, non-executive and independent members, so that one third of the members, at least, should be of the independent members, and the majority of non-executive members, who should have experience and technical skills, which will be of interest to the company.

Pursuant to the rules of interpretation, the origin in legislative texts is not to carry on its non-purposes, and not to interpret its phrases to what leads them out of their meaning, or be interpreted to sprains out of its context, or regarded as a distortion for it, either by separating it out of its theme or exceeded its intended purpose, because the meanings indicated by these texts, which should be adhered to, are those considered revealing the truth about their content, declaring what the legislator meant by them, showing his real direction and purpose, highlighting what he meant. This is due to that the legislative texts do not formulated in a vacuum, and may not be taken away from its reality, which should take into account their intended interest, and always assumed that the legislator intended to attain, taking from the drafting of legislative texts way to it. And then, this interest would be the ultimate goal for each legislative text.

If it is, and the interest that targeted by the legislator, in the decisions that regulate corporate governance – when forming the Board of Directors - is to establish a balance within the Board of Directors among all members, either executive and non-executive or independent, and his way to that was the need for a minimum number of independent members of the Board of Directors (one-third of the number of members), and non-executive are majority of the members. Thus, this interest can only be achieved by selecting the minimum number of

independent members and non-executive members, given the proportion of these members to the number of members of the Board of Directors all, and thereby the number of non-executive members that must be available – at a minimum – as in the previous example, in proportion to the total number of the Board of Directors, becomes (5) members. The number of the independent members should not, also, less than (3) members.

If the answer to the previous question looks simple in the light of the rules of the stable interpretation, but what seems in need to think about is whether the government or any other legal person, in such cases, it must take into account in the ratio that it assign, the ratio of independent or non-executive members.

The texts of the Code of corporate governance did not answer to this question. We see that this issue needs to explicit legislative addressing, takes into account the percentage stipulated in the Code of Corporate Governance - at a minimum - when the company's statute includes text gives a shareholder the right to appoint a proportion or number of the members of the Board of Directors, away from the elections conducted by the General Assembly to choose the other members.

Until this study reviews the committees that should emanate from the Board of Directors, we limit ourselves, in this regard, with reference to the role of non-executive members in the formation of such committees, as it is in accordance with Article 2/7 of the Code of Corporate Governance, these committees compose of members of non-executive board, not less than three, and that at least two of them are independent members, and that the committee is chaired by one of them. The Chairman of the Board may not be a member of any of these committees. The Board of Directors must choose the non-executive members of the Board of Directors in the committees concerned with the tasks that may result in a conflict of interest cases, such as: to ensure the safety of financial and non-financial reports, and check transactions with parties of stakeholders, and

selection of executive members of the Board directors, and determine bonuses.

Sub-Section Two
The Executive Member of the Board of Directors

The presence of executive members within the Board of Directors is not a requirement for the safety of the formation of this Council, but if any, it must be taken into account the qualitative composition of this Board. There is no doubt that the existence of some members who can be called executives with the company, is not free of interest, represented in the diversity of experiences available to the members of the Council.

Another opinion(1) based on a case study carried out on Turkey, where the members of the Board of Directors have to be of the shareholders, and that the Council includes in its membership, a representative of the government, and that this type of structures calls into question the efficiency of management control, according to the principles of corporate governance, because the concept of independent directors is not common.

Some(2) argue that the law does not separate between the capabilities of members of non-executive directors and other executives; because all board members bear responsibility for the company›s business, because the target role for non-executive members of the Board of Directors is quite clear, as the task of doing the independent evaluation of the performance of independents is delegated to these members, at the time, they bear the responsibility resulting from the powers granted to them, with executives, and that the effectiveness of that role must take into account not to interfere unnecessarily in the powers of directors. In spite of granting non-executive members big powers, to hold

1. Majed Shawki, Corporate Governance Is Easy For Developed Countries, Difficult to Access for Emerging Markets, Center for International Private Enterprise, 2002, p 5.

2. Mark Hesel, Corporate Boards, Control through representation, Center for International Private Enterprise, p. 42.

managers accountable, for their performance, it must be borne in mind that the balance of power within the Board is achieved through operational management. This is due, in general, to the lack of a clear definition of the role of non-executive members of the company.

In this context, article (3/3) of the Code of Corporate Governance issued by the Ministerial Decree No 518 for the year 2009 has banned combine the post of Chairman of the Board and Director of The Company or the Managing Director[1].

It is noted here that the legislator prohibited the combining between the posts of Chairman of the Board & Managing Director and Chairman of the Board & Director of the Company. But that, of course, does not preclude the Managing Director of the company or the Director, to be a member of the Board of Directors of the Company.

Section Five
Committees Emanating from the Board of Directors

According to the Resolution (Code) of Corporate Governance in the UAE legislation[2], the formation of sub-committees of the Board of Directors are in accordance with procedures established by the Council, and the resolution of composition must include identification of the task of the Commissions and the duration of their work and the powers granted to them and how to control the Board of Directors. The committee shall submit a report in writing to the Board of Directors of the procedures, conclusions, and recommendations reached, in absolute transparency. The Board of Directors must ensure the follow-up work of the committees to verify its commitment to the work entrusted to it.

1. This text is a repetition of the text that was mentioned in the previous Code of Corporate Governance issued pursuant to Resolution No 32/R for the year 2007. It was read: «It is prohibited to combine the post of Chairman of the Board and Director of the Company and / or the Managing Director."

2. Article (3/6) of the Resolution No (518) for the year 2009.

There is a minimum number of committees that should emanate from the Board of Directors to meet the requirements of corporate governance in the UAE legislation; they are: "the Audit Committee", which is also called in some literature of corporate governance the 'Committee of Review' and the "Nominations Committee" or the so-called 'the Remuneration Committee'. If those committees entrusted with a permanent task, there is also a system for devolution of powers within the Board, which will be introduced in the three Demands allocated to this Section.

Sub-Section One
The Audit Committee

There are many reasons led to the emergence of corporate committees to help boards of directors to abide by and fulfill its supervisory responsibility. Some of these reasons are: the size of the Board of Directors and the heterogeneity among its members, and some members of the Council are not specialists in matters of financial and accounting matters, as well as the differences that may arise between the interests of management and the interests of the quality of financial reporting. These committees consist of independent members of the Board of Directors, who have financial and accounting skills, so as to support the independence of the external auditor of the company, and determine his remuneration, and audit the financial statements and reports to make sure the quality of the information contained therein[1].

Definition of the Audit Committee:

Due to the multiplicity of definitions in the literature of review, it may be appropriate to refer briefly to what is meant by Audit Committee[2]. We shall exhibit only the definition of one of the professional organizations, in addition to

1. Holi G. Gregory and Jesson R. Leline, Audit Committee's role in corporate governance, Chapter III, Corporate Governance in the Twenty-First Century, 2003, pp. 205 – 212,

2. Awad Bin Salama Al Raheely, Audit committees as one of the pillars of corporate governance: the case of Saudi Arabia, p. 193.

another definition of one of the writers interested in this subject. For example, The Canadian Institute of Chartered Accountants defined the Audit Committee as: “A committee composed of the company›s directors who their responsibilities are concentrated in the audit of the annual financial statements prior to delivery to the Board of Directors. The Audit Committee works as a link between the auditors and the Board of Directors, its activities are summarized in reviewing the nomination of the external auditor, the scope and results of the audit, well as the company’s internal control, and all the information for publication.”

As it defined by some others as: “A committee composed of three to five directors is not entrusted with executive responsibilities for financial management. Auditing of the financial statements is one of its most important work, as well as to ensure the effectiveness of the system of internal control and accounting of the company, and the results of the audit done by the internal and external auditor and give recommendations on the nomination and determine the fees of the external auditor.”

The Composition of the Audit Committee and Its Objectives:

Audit Committee[1] is often consists of independent members of the Board of Directors, and exercises its supervisory role by working for enhancing the effectiveness and efficiency of internal and external auditors; working to ensure their independence from management; reporting on this; and follow up the implementation of these reports to make sure that the company’s management works to implement the recommendations contained in this report.

Those committees[2] also aim to verify that the members of the Board of Directors do the duty of care, with respect to the adequacy of the company›s

1. Dr. Maha Mahmoud Ramzy Rehawy, Corporations between governance, laws and Regulations Corporations between governance and laws and regulations (Case Study for Omanian Public Shareholding Companies), Damascus Journal of Economic and Legal Sciences, Vol. 24, Issue I, 2008. p. 98.

2. Fenwick & West-Audit Committee Duties and Best Practices, 2002, p. 1.

operations and financial reporting. It helps the Board of Directors in overseeing the conduct and management performance, with regard to the preparation of the financial statements of the Company and the financial menus or clarifications[1].

In the United States of America[2], and since the issuance of the Sarbanes-Oxley Act (SOX Act) of 2002, the audit committee transformed from a simple committee, has limited duties, to become a key element of corporate governance, according to the Securities and Exchange Commission (SEC) in its commentary on the standards for audit committees of listed companies in the market.

Some[3] point to that the corporate governance rules laid down by the New York Stock Exchange (NYSE) require from the Audit Committee to discuss and review risk assessment that the company may be exposed to, and strategies or hedge plans.

The Duties of the Audit Committee:

Two main duties[4] are located upon the members of the Audit Committee, as members of the Board of Directors of the company, they are: the duty of loyalty and the duty of care. As the duty of loyalty requires from the management to act in good faith, and not to achieve or promote personal interests at the expense of the company, the duty of care requires that the company's management is making reasonable care in the management of its affairs, and to be prudent in managing the affairs of the company, as audit committees are - in general - supervise the process of preparing the company›s financial statements by evaluating the information that has been obtained from the management, independent auditors,

1. G. Lorsh, James Seller, Corporate Governance in the twenty-first century, Chapter VI, Center for International Alkha_khash Enterprise, p 110.
2. Thomas O. Goman Sarbanes-Oxley Act: Audit Committee Lexis Nexis Release, No 2, June, 2009, p. 1.
3. Georges Dionne and Thouraya Trik Risk Management and Corporate Governance, The Importance of Independence and Financial Knowledge for the Board and the Audit Committee Working May 2005, p. 103, paper 05.
4. Fenwick & West – Audit Committee Duties and Best Practices, 2002, p. 1.

and other sources.

But, is this role of the audit committees require to replace the financial executive management of the company? We believe that it is not intended of the existence of the Audit Committee to verify the accuracy and quality of the financial statements of the company in terms of integrity of financial reporting and accounting or audit and operations that were carried out in this regard by the staff of the company or auditors, but those committees aims at activating the role of bodies concerned with the preparation of financial reports; such as management, auditor or internal controller or compliance officer and the external auditor, and when the State does this role it must encourage actions that promote mutual accountability between these bodies, by verifying that the performance of management is developing correctly, and that it is committed to the application of a proper accounting system, and the internal auditor has to evaluate the accounting and administrative practices in the company, objectively. Also it must verify that the external Auditors had evaluated, trough their own vision, the management and the practices of the internal control practices.

Thus, when the Audit committees perform their functions, this does not mean the exclusion of the company's executive management for the daily operations related to the financial aspects, and thus it does not prevent the executive management of the company to perform its tasks in the preparation of the financial statements and financial reporting in general, where the company's financial affairs staff leads this daily processes. in addition to reviewing the company's accounts by the External Auditors, as well as the internal control management role in this field.

We can therefore summarize the functions of the Audit Committee as[1] «to study and review of the financial statements before being approved by the Board of Directors, and review the company's policy and the extent of its

1. The audit committee, the institute of internal auditor, p. 2, www.cipe-arabia.rg/pdfhelp.asp.

commitment to the laws, and the application of the rules of corporate governance in the company, and cases of conflict of interest, and risk management, through a variety of mechanisms. The main role of the Audit Committee is to check that the internal audit and the external auditor lead their roles[1], and its ability to reach information, and the effectiveness of the internal control system in general, and to make recommendations related to the Board of Directors, which leads to activate the system and its development, and to achieve the company›s goals and protects the interests of shareholders and other stakeholders, efficiently and at reasonable cost.

The Audit Committee in the Emirati Legislation:

Articles (6) and (9) of Resolution No 518 for the year 2009, organized the provisions for Audit Committee. Article (6/1) stipulates on: "the formation of a Council to manage the Standing Committees and to follow them up directly as follows:

a- The Audit Committee, and its functions would be in accordance with what is contained in Article (9) ..."

In accordance with the provisions of Article (6) the Code has necessitated that the Company should have a permanent audit committee, follow the company's board of directors, and composed the non-executive members of the Board of Directors, and not less than (3) members, and that at least two of them are of independent members, and that the committee is chaired by one of them, and the Chairman of the Board may not be a member of any of these committees.

And despite the fact that the formation of committees generally dealt with the text of Article (6) referred to in advance, but the Code, on speaking

1. Saleh Ben Ibrahim Al Sha'alan, The possibility of the application of corporate governance in listed companies in the Saudi stock market, A thesis presented for a Master's Degree, College of Business Administration, King Saud University, 2008, p. 54.

about the audit committees in Article (9), repeatedly mentioned these provisions, and necessitated to form the committee of the non-executive members of the Board of Directors, and that the majority within the committed would be to the independent members.

The Validity Conditions of the Audit Committee Formation:

If the duty, according to this text, is to form the Audit Committee of the non-executive members, and that the majority would be of the independents, so the Chairman of the Company's Board may not be a member of any of those committees. The wisdom behind this seems obvious in that the Agendas of these committees will be submitted to the Board of Directors of the company. Hence, the participation of the Chairman of the Board of Directors in the work of the committees may affect the opinion of the Board in the Committee's works.

Nor shall any former partner in the external audit office, in charge of audit the accounts of the company, to be a member of the Audit Committee, for a period of one year from the date of expiry described as a partner, or have any financial interest in the Audit Office, whichever comes later.

If the Code has expressly stated, the inadmissibility to be a member of the Audit Committee, any former partner in the external audit office, in charge of audit the accounts of the company. The rule, a fortiori, also applies to the current partner in the office of the external audit, although we believe that the rule explicitly provided.

It should be noted here that this ban on the partner in the office of the external audit is temporary lapse of one year from the date, in which his partnership with this office ends. The legislator has estimated, in this case, that the participation of the member of the Board of Directors in the Audit Committee can affect the work of the committee. Particularly that, a part of the tasks assigned to it, is to evaluate the work of the External Auditor.

On the other hand, it is not enough for the validity of the formation to form the Committee of non-executive members and that most of them are independent, but that committee should be headed by one of the independent members.

Due to the nature of the tasks entrusted to the Audit Committee, it must be among the members of that committee, an expert in finance and accounting, since the nature of his task requires a degree of expertise in this field.

The question arises for cases where the number of members of non-executive is not enough for the formation of this committee, or that is not among the members of the Board of Directors an expert in finance and accounting. In reply to this question, the Code stipulated in Article (9) on that it may be appointed one or more members from outside the company, in case of unavailability of a sufficient number of non-executive members. And if this provision addresses only the case of insufficient of the non-executive members to form a committee, we see it fits well in the absence of an expert in finance and accounting from among the members of the Board of Directors.

It should be noted that the Code does not require in the member of the Audit Committee, the expert in finance and accounting, to be among the executive members, or to be of those who possess the status of independence. If this is the rule of the text, we see that it is crucial, that this member would be of the non-executive members.

The Chairman of the Committee:

The Code of Corporate Governance stipulated that the committed would be chaired by one of the independent members, but it did not show in an explicit provision the method of selection of the Chairman of the Committee, So we see that it is permissible for the Board of Directors when issuing his decision to form a committee to determine its chairman from among the independent

members. It is also permissible for the Board of Directors to leave this matter to the Committee to choose from among its independent members, who chairs its meetings, and the first meeting of the Committee has to be chaired by of its independent members.

The Meetings of the Committee:

Article (2/9) of the Code addressed the provisions relating to the meetings of the Committee, stipulating that "The Committee shall hold meetings once every three months at least, or whenever the need arises, and the records of the meetings of the Committee should be kept by the reporter, and drafts of the minutes of meetings of the Committee must be signed by all present members before being approved. In the case of a member's abstention to sign, his objection should be recorded in the minute, with the reasons of the objection, once mentioned, and a final copy of the record has to be sent to members, after approval, to be kept by them."

The Functions and Duties of the Commission:

Article (5/9) of the Code addressed the provisions relating to the functions and duties of the Committee, stipulating that "The Audit Committee has to do the following tasks and duties:

a- Putting and application of the policy of contracting with the external audit, and submit a report to the Board of Directors, determining the matters that it believes the importance of taking action in it, with recommendations of the steps that need to be taken.

b- Follow up and monitor the external auditor's independence, and the extent of his objectivity, and to discuss him about the nature and scope of the audit process, and its effectiveness, according to the approved auditing standards.

c- Surveillance the safety of the company's financial statements and reports

(annual, semi-annual and quarterly) and reviewing them as part of the normal work during the year, and it should give a special focus to the following:

(1) Any changes in policies and accounting practices.

(2) Highlighting the aspects that subject to the estimation of the administration.

(3) Substantial amendments resulting from the audit.

(4) Assuming the continuity of the company's business.

(5) Compliance with accounting standards decided by the Commission.

(6) Compliance with listing rules, disclosure and other legal requirements relating to the preparation of financial reports.

d- Coordination with the Company's Board of Directors, Executive Management and Chief Financial Officer or Director who does the same tasks in the company, in order to perform its functions. The Committee shall meet with the external auditor of the company at least once a year.

e- Consider any important items and unusual mentioned or should be mentioned in these reports and accounts. It should give due attention to any matter presented by the Chief Financial Officer or Director who does the same tasks of Compliance Officer or External Auditor.

f- To review the financial control, internal control and risk management systems in the company.

g- Discuss the internal control system with management, and to ensure the performance of its duty to establish an effective system of internal control.

h- Consider the results of major investigations in matters of internal control that guaranteed by the Board of Directors or at the initiative of the Committee and the approval of the Board of Directors.

i- Make sure that there is coordination between the internal auditor and the

external auditor, and ensure the availability of the necessary resources to internal audit, and to review and surveillance the effectiveness of that system.

j- Review policies and financial and accounting procedures in the company.

k- Review the external auditor's letter and his work plan and any substantial inquiries raised by the auditor to management about the accounting records or the financial accounts or systems of control and its reply and approval.

l- Make sure that the Board of Directors replied, in the time required, to clarifications and fundamental matters put forward in the external auditor's letter.

m- Establishing controls that enable company employees to report any possible breaches in financial reporting, internal control or other matters, in secret, and the steps to conduct independent investigations and fair for those offenses.

o- Surveillance the company's compliance with the rules of professional conduct.

p- Ensure the application of rules concerning the functions and powers entrusted to it by the Board of Directors.

q- Submit a report to the Board of Directors on the matters contained in this item.

r- Consider any other matters determined by the Board of Directors.

The extrapolation of the previous text reveals the importance enjoyed by the Audit Committee in the Code of Corporate Governance, on one hand. It also reveals that the UAE's legislator agreed with modern legislation, where he gave a necessary attention to this committee through stating its formation, its

(terms of reference) اختصاصاتها to review financial controls, internal control and risk management in the company, as well as, statement of the organization of its meetings, and the nature of the tasks entrusted to it, in a precise manner.

The Role of the Audit Committee for the Board of Directors:

We pointed out above, that the Audit Committee is one of the committees of the Board of Directors, and therefore, the reports of this committee are submitted to the Board of Directors, to decide the appropriate actions. He can take the recommendations of that committee or reject or request modification, and the responsibility of the Board of Directors on what is decided in these reports is a collective responsibility

The Role of the Audit Committee for the External Auditor:

There is another case, the legislator singled it with an important provision regard to the recommendation of the Audit Committee to choose Article (9/6) which provides that: “In case the Board of Directors did not approve the recommendation of the Audit Committee concerning the selection or appointment or resignation or dismissal of the external auditor, the Board of Directors shall include the Governance Report, a statement explaining recommendations of the Audit Committee, and the reasons that led the Council for not taking them.

In this case, the Code did not move away its philosophy to consider what the audit committee ends to is merely recommendations are subject to the Directors’ report, but it committed the Board of Directors to include in his report on corporate governance the reasons that made him refuse the recommendations of the Audit Committee. There is no doubt that the statement of these reasons in the Corporate Governance Report enables shareholders and other company stakeholders to control the decision of the Board of Directors and to evaluate it. At the same time, it is considered a pressure factor on the Board of Directors in cases where it estimated rejection of the recommendations of the Committee, so as not to be rejected but for serious and objective reasons.

If the Article (9/6) had pointed to the recommendations of the Audit Committee on a dismissal or appointment of the auditor, and that case of which enters in the powers of the Board of Directors, that does not mean the authority of the Board of Directors in the appointment or dismissal of the auditor, because the company›s general assembly is competent alone - as a general rule - to take the decision to appoint the auditor, and it may not delegate the Board of directors in this regard, pursuant to Article (144) of the Federal Commercial Companies Law No (8) for the year 1984.

It remains the text of Article (9/6) relating to situations that not addressed in the text of Article (144) of the Commercial Companies Law, It is those cases where the company has not, at any time and for any reason, an auditor, where we see that in such cases, the Board of Directors, on the recommendation of the Audit Committee, can appoint the auditor, and that this procedure be presented at the first meeting of the General Assembly of the company.

It should be noted that, in order to organize the appointing process of the auditor, the guiding controls in the Kingdom of Saudi Arabia has given its interest to the details of this process[1], as those controls indicated to that the Committee should determine the names of five of Chartered Accountants, who have the ability to audit the accounts of the company, efficiently and effectively, then the Company's management has to prepare a table compared with the presentations of the five offices and to submit it to the audit committee, after that the audit committee should prepare a memorandum to be submitted it to the Board of Directors, declaring the conclusion of its analysis to presentations, and nominate a chartered accountant or more to review the company's accounts, showing the basis on which the nomination was built. And then, the Board of Directors introduces the recommendation that submitted to it by the Audit Committee, to the General Assembly of the Company, indicating to the names of Chartered Accountants who submitted offers, and nominating them by the

1. Awad Ben Salama Al Raeely, Audit committees as one of the foundations of corporate governance - the case of Saudi Arabia -, Journal of King Abdulaziz University, Vol. 22, Issue 1, 2008, p. 193.

Committee to review the company's accounts, and statement the audit fees, also the basis on which the nomination was built. The General Assembly shall appoint a chartered accountant or more to review the company's accounts and determines their remuneration and the duration of their work.

If these controls had been characterized by an indicative nature, but that included provisions related to the nomination of more than one auditor, the General Assembly chooses among them who it deems to be the company's auditor, us a commendable (laudable) trend, as it gives the company›s general assembly freedom of choose among candidates.

Reports of Audit Committee:

Despite the importance of the role played by the Audit Committee within the company, the Code did not require publication of the report of the Committee on the public shareholders.

If there is a reference, in Article (3/14) of the Code, refers to the need to include in the Annual Report Board of Directors, the irregularities committed during the fiscal year, and the statement of its causes, and how to address them, and to avoid repetition in the future, this reference is not enough to evaluate the performance of the Audit Committee.

In this regard, we refer to what the Public Oversight Board[1] in the United States has recommended, that the report of the Audit Committee is published, including a statement of whether the Commission had the following tasks during the year:

1- Review the annual financial reports.

2- Consultation with the company›s management and the internal auditor, regarding the process of preparing the financial statements.

3- To be received from the internal auditor assurances that he committed by

1. Dr. Mohamed Mostafa Soliman, Corporate Governance and the role of the Board of Directors Members and Executive Managers, Al-Dar Al-Game'ia, 2008, p. 110.

all generally accepted auditing standards during the performance review process.

4- To emphasize that the financial statements published by the company include all of the financial information available to them and that the company does not hide any information.

5- To emphasize that the financial statements have been prepared in accordance with accounting policies appropriate to the nature of the company›s activity.

Sub-Section Two
The Nomination and Remuneration Committee

Its Definition:

Corporate governance literature indicates to different labels for the Nominations Committee, as expressed by the Commission on wages or Remuneration Committee or Nomination and Remuneration Committee or the Selection Committee and rewards. Regardless of that this difference in terminology does not constitute in itself a sign of a fundamental difference in the task exercised by that Committee, The existence of that Committee aims to support the strategic goals of the company, retaining senior executives in the company and their selection, and evaluation related to their reward and their own performance, in compliance with the requirements of regulatory bodies and law enforcement agencies, on the one hand, as well as to meet the expectations of shareholders and other stakeholders in the company, from other hand.

It should be noted that most companies in the United States constitute a committee for bonuses and wages or other compensation and other Committee for the nominations(1).

Its Importance:

We have already pointed out that the theory of the Agency in the company

1. Adnan Ben Haidar Ben Darwish, Corporate Governance and the role of the Board of Directors, Union of Arab Banks, 2007, p. 116.

aims to solve two problems[1] can be occurred as a result of the relationship between the principal (shareholders) and the agent (managers and staff).

: The first of these problems is the problem that arises when the desires or goals of the principal (shareholders) are in conflict with the goals of the agent (Managers and employees). The first of these two problems is the problem that arises when desires or goals of the principal (shareholders) are in conflict with the goals of the agent, as well as when it is difficult or costly to the principal, to know how does the agent act when he manages the company? The problem here lies in that the agent does not know specifically whether the actions of the agent in the company's management are appropriate or inappropriate, while the second of these two problems, in relation to the risks, where each of the principal and the agent has a different look towards those risks[2].

Thus, with regard to the risks, both principal and agent has different attitude toward risk, while the principal is neutral for risk, while the agent is characterized by staying away or avoid risk. Therefore, both of them keep a probabilistic assessment asymmetric toward actions authorized by the first party (the principal) to the second part (the agent) to carry out them. This means that the principal makes the agent bears all the risk or part of it, so as not to cause harm to the interests of the principal, and thus conflicts of interest[3].

Corporate Governance aims to regulate the relations among stakeholders in the company, where there is usually a group of dominant stakeholders within the company. These groups may offer their interests on the interests of other

1. Kathleen M. Elsenharot, Agency theory, An assessment and Review Academy of Management Review, 1989, Vol. 14, No. 1, p. 58.

2. Peter L. Bernstein believes that: "the word (risks) comes from the old Italian risicare, which means "to dare. " Which implies a choice, not a fate, and acts that dare to bring and which depend on the extent of our freedom to make choices is the core and essence of risk.», Referred to at Dr. Tarek Abdel Aal Hammad, Corporate Governance (concepts - principles - experiments), Applications of corporate governance in Banks, 2502.

3. It should be noted that the theory of conflict of interest may find a reference in the Qur'an in the verse "Many intermixers wrong one another; except those who believe, and do good works, and they are few indeed", Surat Şād, verse 24.

groups. The corporate governance works then to regulate the relations among the various stakeholders within the company.

The groups of stakeholders can be divided into Internal stakeholders and external stakeholders[1],and on the basis of the relative proximity if any of these, to the value-adding processes within the organization, and in accordance with this standard, the concept of internal stakeholders includes, for example, Executive Directors and employees, while the concept of external stakeholders includes shareholders and creditors. In companies that are dominated by internal stakeholders, there is little of the restrictions that limit the ability of managers and employees to work together to achieve common goals, such as maintaining jobs and insuring income, which may conflict with the interests of external stakeholders.

In this context, many of the legislation focused on those committees aimed at processing the conflicts of interest. Here is the Unified legislation issued in the United Kingdom in 1998, which include guidelines to reform the Boards of Directors. This includes the set of committees of Board of Directors, and the separation between the function of Chairman of the Board and Chief Executive Officer, and the disclosure of details of salaries, and to reduce the rules of listing on the New York Stock Exchange. The companies are committed to providing reports that show their commitment to this legislation.

Viénot Committee[2], which is a group of private sector, purposes to evaluating methods of practicing power in French Companies, concluded the need for the Board of Directors to form review and salaries committees, In addition to the need to hire a minimum number of independent outside directors. The Union of Financial Management Group, that represents Fund Managers,

1. Suzane J. Konzeimann, CORPORATE GOVERNANCE, STAKE-HOLDING AND THE NATURE OF EMPLOYMENT RELATIONS WITHIN THE FIRM CENTRE FOR BUSINESS RESEARCH, University Cambridge Working Paper No. 313, p;. 3.

2. Stephen M. Davis, The Race for Global Corporate Governance, Center for International Private Enterprise, p. 3.

submitted a proposal to take steps more powerful. Examples include the application of more stringent standards on the independence of senior managers and greater disclosure, and to put an end to defend against acquisitions, which resemble the poison pill.

Some argue that there is a growing depicting that, corporate managers, executives and concerned actors in the company acting for personal motives, and they are taking advantage of their positions in the company to achieve their own interests at the expense of the company and its shareholders, and disbursement of excessive compensation, and provide great rewards for executives in the company, even if the company failed or has not performed up to the expected level, or performed below the expected level, which was expressed by some as “payment without achievement”[1]. Growing distrust and suspicion of executives and managers of the company all over the developed world, led to the development of written rules – regularity or legal –, such as the Law of Sarbanes Oxley in the United States of America, or the rules set by the New York Stock Exchange. Or those set by the rating agencies on Corporate Governance, and the basic assumption is that such initiatives required by external regulatory mechanisms from top to bottom, designed to encourage those in positions of power to put the interests of the company listed in the top ranking of their interests, on representation of the company, and without this regulation, the evading and non-compliance by these managers become inevitable.

What is meant by «executive remuneration».

It should be noted that the term «executive remuneration” is often misunderstood by commentators and executives, alike, and perhaps the use of alternatives to multiple expression about the corresponding received by those, such as compensation, remuneration or reward, is one of the possible reasons for this, although there is an increasing trend towards the use of the term «total

1. In 2004, Lucian and Jesse Fried issued a book about this problem, entitled: “Pay without Performance: The Unfulfilled Promise of Executive Compensation).

rewards" in the expression for that return, to refer to all allocations of financial and non-financial paid to staff for their services. We prefer to use the term «executive remuneration" in reference to the total paid to directors of those companies.

So it was the search for certain means in the context of corporate governance, to solve some of these problems and deal with them, by the establishment of committees for bonuses or compensation and nominations.

First: Formation of the Nominations Committee

Emirati legislator does not allocate a text to form a Nomination Committee in the Code of Corporate Governance, as he did on the occasion of the formation of the Audit Committee, but he circulated this matter while he was forming the sub-committees of the Board of Directors in general.

Thus, in accordance with article (2/6) of the Code of Corporate Governance, the Committee shall consist of non-executive Board Members, but at least three in number, and to have, at least, two of them are independent members, and that the committee is chaired by one of them, and the Chairman of the Board may not be a member of any of these committees.

As provided in paragraph (3) of Article (8) that a committee is formed in accordance with procedures established by the Board of Directors, including identification of the task of the commission and the duration of their work and the powers granted to them and how to control the Board of Directors. The Committee must submit a report in writing to the Board of Directors by the procedures, conclusions and recommendations reached in the absolute transparency. The Board of Directors has to ensure the follow-up work of the committees, to verify its commitment to the work entrusted to it.

The Code did not require what it has required, when the formation of the Audit Committee, of the need for specific expertise in the members of that

committee or some of them, where we declared that one of the members of the Audit Committee must have financial or accounting experience, and therefore, it is sufficient for the safety of the formation, legally, to form a nominations committee of non-executive directors, and that the most of it should be of the independent members, and that Committee is chaired by one of them. We see that there is a need to take into account, when forming the Committee, the need for specific expertise in some of its members, to help accomplish its tasks required, and if this is not possible for the Board of Directors, the Committee may be assisted by experts who it deems to help it in its tasks.

The Code did not subject to the rule of non-availability of the sufficient number of non-executive members to form a Nominations Committee, and paused for text on the possibility of use of external board members in this committee, as it did for the Audit Committee, and we see that there is a need to text on that provision, in response to the reality or unforeseen circumstances could face companies, hat are disclosed in the corporate governance report for this action and justifications, and to disclose, in the Corporate Governance Report, of this action and its rationale.

Second: Functions of the Nominations Committee:

Notwithstanding the provisions of Article (6/3) of the formation of the Committee in accordance with procedures established by the Board of Directors, including determining its task, which is understood that the Board of Directors contributes an important role in determining the Committee task, Article (6/b)[1] of the Code of Corporate Governance stipulated that the task of the Nominations Committee, as one of the committees of the Board of Directors, would be, mainly, as follows:-

1. The text of paragraph (1) of Article (6/1/b) was amended under the Ministerial Decree No (84) for the year 2010.

1- Verification of the Independence of the Members of Board of Directors:

We have already defined an independent administrative Board, and cases in which this description negates for a member of the Board of Directors, but the (probably) member of the Board of Directors may be independent when he joined the Board of Directors, then that such adjective be no longer with him after that. His existence in the Board of Directors, with this description, may affect the integrity of the composition of the Board, as required by the legislator, where the proportion of independent members can decrease than the percentage that he requested. This may also affect the formation of sub-committees of the Board. So it was not to be a means by which verification of the user to continue to enjoy that capacity on the basis of which he was elected. So it had to be a way to verify that the member is still enjoying in that capacity on the basis he was elected. The competence was held to the nominations committees.

Therefore, the Committee has to make sure of the independence of the independent members, continuously. If the Committee finds that one of the members lost one of the requirements of independence, it shall submit the matter to the Board of Directors, and the Board of Directors has to notify the member by the justifications for the absence of his independence, by a registered letter on his address that existed in the company. And the member has to reply to the Board within (15) days from the date of notification.

The Board of Directors shall issue a decision, at the first meeting following the member's reply, considering the member as an independent or non-independent, or the expiration of period referred to in the preceding paragraph without reply.

If the Loss of the character will not result in prejudice to the minimum number of independent members within the Board of Directors, this would be taken into consideration in forming the committees.

As if such Council Resolution, the absence of reasons or justifications for independence from the Member, has an effect on the minimum rate should be available of the independent members within the Council, the company's board of directors will appoint an independent member to replace this member, then the decision of his appointment will be presented on the first General Assembly of the company to consider the adoption of a resolution of the Board of Directors.

If this is the matter of jurisdiction of the Committee, in terms of verification of the continued independence of the member of the Board of Directors elected, on the basis of such status, verification of continued non-executive status in the members of the Board of Directors who were elected, in their turn, on the basis of such status. The Code also did not address the impact of the decline of non-executive members of the limit drawn by the law, or the impact on the formation of sub-committees of the Board.

2- Prepare Policy of Giving Rewards and Incentives:

Nomination Committee shall prepare a policy for granting bonuses, benefits, incentives and salaries for members of the Board of Directors of the company and its staff, and review it annually. The Committee must verify that the rewards and benefits granted to senior executive management of the company are reasonable and commensurate with the company›s performance.

Which is noted in this context that the Nominations Committee shall prepare a policy for rewards and incentives, salaries and other benefits for members of the Board of Directors of the company and employees at all levels, including, of course, executives. If the Codes of corporate governance focused on the wages of executives, it is noted that the preparation of salary policies in the Code of Corporate Governance in the UAE are not only limited to wages of Executives, but also includes all employees in the company.

The commitment of the Nominations Committee to prepare the company's

remuneration policy does not stop at just the preparation of such a policy, but there is a sustained commitment to an obligation that is reviewing that policy annually, to verify that they meet the requirements and conditions of the company.

3- Preparation of Human Resources and training Policy in the Company and control its application and revision annually and identifying the needs company of the company's competencies at the level of the senior executive management and employees and the foundations of their choice.

4- Organization and follow-up procedures for nominations to the Board of Directors, in accordance with the laws and regulations in effect and the provisions of this resolution.

The process of organizing and following up the nomination for membership of the Board of Directors was not among the tasks assigned to the Committee on Nominations[1] under the Code of Corporate Governance for the year 2007, while the Resolution No (518) of 2009 created this competence of the Nomination Committee, so it was the current text to report the jurisdiction for the importance of identifying a specific body within the company, specializes in the procedures for nominations to the membership of the Board of Directors, and follow-up commitment by the company›s management, and to ensure the check of the integrity of the nomination process.

Sub-Section Three
Administrative Authorization

The provisions of the UAE Commercial Companies Law and the Code of Corporate Governance shared the provisions of the mandate (authorization) within the joint-stock companies, as while the provisions of the Commercial

1. In accordance with Resolution No 32/R for the year 2007, the legislator called on the Nominations Committee the name of the follow-up committee and rewards.

Companies Law dealt with provisions relating to the mandate of the powers of the Chairman of the Board of Directors to some of its members or the Executive management.

It seems important to point out that in the field of devolution of powers, that if the law mandated a competence to a person or to a specific body, it may not permissible for that person or that body to waive that competence or mandate it, however, if the law had authorized that[1], and the mandate or waiver should be in the border drawn by the law.

The article (11) of the Code of Corporate Governance[2] addressed the provisions of authorization of the Board of Directors some of its powers to one of its members or to the executive management of the company, stipulating that «the Board of Directors can delegate one of its members of the Executive Management in some administrative matters, in which it has the power of making decision. In this case, it must give clear guidance regarding the powers of the management, particularly with regard to cases in which the management must obtain the prior approval of the Board of Directors before making any decisions or enter into any commitments on behalf of the company, provided that it should edit a written list of tasks and functions performed by the Board of Directors and those delegated to the management, and review those tasks and functions periodically.»

Each mandate must be specified in its subject, duration of its effect, and it has to include a date of presenting its findings to members of the Board.

1. Judgment of the Egyptian Court of Cassation, Appeal No (808) for the year 68, 4th July, 1999 G.

2. Article (11) of the Code of Corporate Governance, which was in force under Resolution No (33/r) for the year 2007, stated that «the Board of Directors can delegate the management in some administrative matters, in which it has the power of making decision. In this case, it must give clear guidance regarding the powers of the management, particularly with regard to cases in which the management must obtain the prior approval of the Board of Directors before making any decisions or enter into any commitments on behalf of the company, provided that it should edit a written list of tasks and functions performed by the Board of Directors and those delegated to the management, and review those tasks and functions periodically.»

Terms of Authorization:

Terms of authorization vary according to the body which has the power of issuing it. In the following we shall show the conditions once issued by the Board of Directors, or the Chairman of the Board of Directors, on details as follows:-

A- Delegating Some Powers of the Board of Directors:

According to Article (11) referred to in the Code of Corporate Governance, the Board of Directors has the authority to delegate one of its members or any of the members of the Executive Management in the company in some administrative matters, which the Board may has the power to take a decision in it. It follows that authority outside that range is not permissible: the mandate of the non-members of the Board of Directors or the administrative management is one of these, as well as the case if the mandate was focused on the overall competence of the Board of Directors.

The Code did not determine what is meant by the Administrative matters, which the Board of Directors may mandate them. It should be noted that the law in Germany separates between the administrative functions and supervisory positions, and prevents the supervisory councils to exercise any administrative activities, and limits its responsibility in supervising the company's administrative system[1], and off course, although it could be expanded in defining the concept of supervision in German law, where that expansion should always be within the spirit of the law, however, most of the supervisory boards are still committed and sticking to a narrow interpretation of the concept of supervision or supervisory function, so that councils do not replace management.

The Board of Directors should put a list specifying the tasks that it will perform itself, and those that it can be delegated to management. This way contributes in understanding, identification and classification of the Board of

1. James Cellar and J. Lorsh, Boards of directors and the company›s strategy, Corporate Governance in the twenty-first century, Chapter VI, Center for International Private Enterprise (CIPE), p. 107.

Directors to the topics that enter within its competence, and weighing of each of them alone, and accordingly determines what it may or can delegate others to do, according to specific basis and an overview of its competence, and not according to each case alone.

In this context, the Board of Directors, when exercising such authority, it must give clear guidance regarding the powers of the management, particularly with regard to cases in which the management must obtain the prior approval of the Board of Directors, before making any decisions or the conclusion of any commitments on behalf of the company.

It seems that the legislature did not result legal effect on the safety or validity of the mandate, from legal view, if the Board of Directors does not take into account what is provided for with respect to its commitment to give specific guidance on the powers of management in the use of this authorization, and restrictions when conducting those posers.

B- Authorizing Some of the Powers of the Chairman of the Board of Directors:

Article (104) of the UAE Commercial Law No (8) of 1984 stipulated that "The Chairman of the Board of Directors may authorize other members of the Board some of his powers." The text is explicit in that the Chairman of the Board of Directors may delegate some of his powers to any of the members of the Board.

In this regard[1], it is ruled that the «Chairman of the Board is the head of a joint stock company, and representing it before the court in accordance with the provisions of Article (104) of the Companies Law, and whether he may authorize other members of the Board in some of his powers, it is incumbent upon who exercises those powers to offer the document of mandate of the Chairman of the

1. Case No 458 for the year 23 UAE, Session 10 April 2002.

Board of Directors referred to.

The Results of the Distinction between Delegation of Powers according to the Body that it owns.

Based on the above, two important results, appear some differences between the authorization system stipulated for in the Code of Corporate Governance, and those stipulated in the Commercial Companies Law: the First of them is that the Code of Corporate Governance has authorized the Board of Directors to delegate some of its administrative powers to a member of the executive management, while the Commercial Companies Law did not permit delegating some powers of the Chairman of the Board of Directors to one of the members of that administration, thus the mandate was limited to members of the Board of Directors. The Second of them is that the Law of Commercial Companies gave to the Chairman of the Board the validity to mandate in any matter in which he has the power to make decision, while the Code of Corporate Governance made this authorization limited to administrative matters or topics only.

Authorizing Some of the Powers of the Board of Directors to a Committee:

Previously noted that in accordance with the Code of Corporate Governance Board, the Board of Directors must constitute at least two committees: the Audit Committee and the Nomination Committee, but these committees are the minimum of committees should be formed by the Board of Directors, and then there is no what prevents the Board of Directors to form other pop-up committees entrusted with some of his powers within the limits provided for in Article (11) of the Code.

The Reasons for the Establishment of the Other Committees:

Some[1] attributed the reasons for the establishment of committees other than those required by law[2], to that the company may resort to the establishment of such committees on a permanent basis or for a particular purpose, and that there are three reasons explain the reason of establishment most of these committees, namely (a) that the Board of Directors is facing a serious problem, real or potential, (b) that the Council will be needed to control commercial activity on an ongoing basis. (c) that there are conditions or external effects recommends the use of a committee. Most of the activity of these committees may expand to include a task being addressed by the Board of Directors, on a regular basis, but some of them performs a function was addressed only once, irregularly in the Board of Directors, and some of them will be in response to a need not addressed by the Council before, whatever the job of these committees can be carried out, we recommend that each committee shall prepare a list clarifying the issues of competence and approved by the Board of Directors, and include how and the period of preparing its own report.

Section Six
Directors Remuneration

Remuneration of the Board of Directors occupies a great importance. Perhaps what we said when talking about the nominations committees and their role regarding the remuneration of the Board of Directors reveals the importance of this issue. The Code of Corporate Governance has dealt with regulating issues related to those bonuses, as it was preceded by the UAE Commercial Companies Law.

1. Janathan Sharkham, Operations of Boards of Directors, Behavior Patterns - Corporate Governance in the twenty-first century - Chapter VII - Center for International Private Enterprise – p. 136.

2. As amended by Ministerial Decree No 7 of 1991.

The extrapolation of the provisions concerning the distribution of remuneration of board of directors shows that these provisions dispersed among the texts of the Commercial Companies Law, and the Statute of the joint-stock company issued by Ministerial Decree No (64) for the year 1989[1] and the Code of Corporate Governance.

Because of the correlation between the exchange and calculating the remuneration of the Board of Directors' members, and the distribution of dividends to shareholders, we will begin to discuss how to distribute profits within the company, and the entitlement conditions for the award to the Board of Directors.

Sub-Section One
How to calculate the company's profit contribution

Article (58) of the Joint-Stock Company's Statute Model issued by Ministerial Decree No (64) for the year 1999, as amended by Ministerial Decree No (7) of 1991 showed how to calculate the remuneration of the Board of Directors, stipulating that «distribution of annual net profits of the company after deducting all general expenses and other costs as follows:-

1- 10% shall be cut off and allocated to the legal reserve account, and if the total reserve amount equals at least 50% of the company's paid-up capital, this deduction will be stopped, and is to return to the truncation at the lack of reserve.

2- Another 10% is deducted and allocated to the statutory reserve account. This deduction stops by a decision of the Ordinary General Assembly on the proposal of the Board of Directors or if reached (…%) of the paid-up capital of the company.

3- An amount equal to (5%) of the paid-up value of the shares is deducted to be distributed to the shareholders, as a first share in profits, and if the net profits

1. As amended by Ministerial Decree No 7 of 1991.

are not sufficient, for distribution, in any year, it may not claim them from the profits of the following years.

4- After the above, a maximum of (10%) of the rest is allocated to reward the Board of Directors.

5- The rest of the net profit is distributed to shareholders later as additional share of profits or be transferred, on the proposal of the Board of Directors, to the coming year, or be allocated for the establishment of unusual reserve money, according to the decision of the Board of Directors.

Sub-Section Two
Allowances, Expenses and Salaries

Board members may receive allowances or expenses or salaries that are not called rewards. We shall shed light on all of them in the following:

a- Attendance Allowanced:

Article (34) of the Joint-Stock Company's Statute Model issued by Ministerial Decree No (64) for the year 1989 on the Model of the set up contract and the Joint-Stock Company's Statute Model, and the Board of Directors' remuneration shall consists of a certain percentage of the net profit, in accordance with the provisions of Article (58) of this system, as well as the attendance allowance which the General Assembly determines its value each year.

Although, the Commercial Companies Law did not address, by an explicit provision, allowances or expenses that may be performed to the member of the Board of Directors, in return for the time and the effort to attend the meetings of the Board and discuss its affairs. Article (34) of the the Joint-Stock Company's Statute Model pointed out that, when it stated that the Board of Directors' remuneration consists of a percentage of the profit, and of the attendance allowance which the General Assembly determines its value each year.

There are reservations to consider the attendance allowance a part of the directors› remuneration, as stated in article (34) of the Joint-Stock Company's Statute Model referred to, where this allowance is added to the specified percentage of reward by law, which may entail that those bonus exceed this ratio, which represents, then, contravention of the provisions of Article (118) of the Commercial Companies Law, which stipulated that the members of the board of directors' remuneration might no more than (10%) after deducting the reserve and profit distribution to shareholders of at least (5%).

So, the Members of the Board of Directors' remuneration must be in the ratio limits stipulated in the statute of the company, so that it does not exceed the ratio which identified by the legislature in Article (118) of the Commercial Companies' Law, and does not exceed (10%) of the net profit after deducting the reserve and profit distribution to shareholders of at least (5%). while attendance allowance must not enter in the calculation of that ratio.

As the Board of Directors' remuneration linked to company performance, while the attendance allowance is not linked to such performance or to the Company achievement for any profit, but associated with the presence of the member of the Board of Directors of the Board meetings or its committees meetings. It is therefore necessary to exclude attendance allowance calculated from the prescribed percentage to reward the members of the Board of Directors, due to the difference in nature of each of them.

There is an important guarantee provided for in Article (34) of the Statute regarding the allowance report for attending meetings of the Board of Directors, which are those relating to the need that the General Assembly determines those allowances annually, in order that the determination of these allowances not to be dominated by the Board of Directors, determines it according to his will, and in order not to become, consequently, back door for the disbursement of bonuses to the Board of Directors, rather than be a real counterpart to attend

the meetings.

b- Expenses, Salaries and Fees:

If a 'remuneration report' to the Board of Directors has been processed under the provision of Article (118) of the Commercial Companies Law, and the 'attendance allowance' for members of the Board of Directors has been decided in the Model Statute, article (7) of the Code of Corporate Governance decided to cash additional expenses or fees or salaries to any of the members of the Board of Directors, which stipulates that «Subject to the provisions of Article (118) of the Commercial Companies Law No (8) for the year 1984, the Directors' remuneration consists of a percentage of the net profit. The company may have to pay additional expenses or fees or monthly salary to the extent determined by the Board of Directors to any of its members, if the member works for any committee or makes a special efforts, or does additional work to serve the company, in addition to his regular duties as a member in the Board of Directors, and in all cases, the directors' remuneration should not exceed to 10% of net profit after deduction of consumption, reserves and profit distribution to shareholders of at least (5%).

It is concluded that, the Board of Directors may decide to cash fees or administrative expenses or a monthly salary to any member of the Board of Directors provided that the availability of one of the three cases identified by the text, namely: the participation of the member in a committee formed by the Board or mandating him to do work requires special efforts, or that the member doing additional work to serve the company, in addition to his regular duties as a member in the Board of Directors of the Company. In all cases, the Board of Directors is the one who has the authority to estimate the availability of one of the cases of due as well as expenses or fees or salaries.

It seems that the legislator in the Code of Corporate Governance tried to ensure that the Board of Directors does not offend its powers by granting

bonuses without right to its members, or to the Director-General or the Executive Director or Chief Executive Officer of the company who is appointed by the Board of Directors, where it has obliged in the article (14) of Corporate Governance, the Board of Directors to submit annual report to the Authority of Securities and commodities on bonuses granted to them, and the Board of Directors should make this report available to all shareholders(1) of the company in sufficient time before the General Assembly meeting, so as to be able to study and judge the contents of the report and to discuss in the General Assembly, if appropriate.

However, it seems to us, in this regard, that such a guarantee is not sufficient, for being confined to disclose, in the annual report of the Board of Directors, on bonuses without other of salaries, allowances and expenses which are decided to the members of the Board, which means to us unduly discrimination.

It should be noted that some of the comparative legislation(2) gives to the General Assembly the power to determine the cut salaries and other advantages that decided to the Board members, while the determination of bonuses, salaries and allowances of the Managing Director are excluded from that provision, as they are decided by the Board of Directors.

Sub-Section Three
Maturity Controls for Bonuses to the Board of Directors

The general rule is that the company's system determines the method for determining directors› remuneration (Bonuses), and if not contained in the Company's Statute such a determination, the remuneration must not exceed, in accordance with Article (118) of the Federal Law No (8) of 1984, (10%) of the net profit after deduction of consumptions, reserves and the distribution of profit not

1. Mohamed Mostafa Soliman, Corporate Governance and the role of the Board Members and Executives, Al Dar Al Game'ia, ed. 2008, p. 208 et seq.

2. Article (88/1) of the Egyptian Companies Law No 159 of 1981.

less than 5% of the capital to shareholders[1].

It seems that there are three controls for entitlement to that bonus (remuneration) for the company›s board.

The First Control: Deduction of Consumptions and Reserves:

The Company, before deciding to cash rewards (bonuses) to the Board Members to cut a percentage, determined by the Board of Directors, from the annual gross profit, for the consumption of the Company's assets or compensation for depreciation of its value, and the disposition of these funds is based on a decision of the Board of Directors, and it may not be distributed to shareholders.

It also must deduct 10% to be allocated to the legal reserve account, where this deduction may be stopped when reserves totaled the equivalent amount (50%) at least of the company's paid-up capital. if reserves decreased of this percentage, the deduction had to return. It also must be cut another 10% to be allocated to the statutory reserve account. This cut stopped by decision of the ordinary General Assembly on the proposal of the Board of Directors a certain percentage of the paid-up capital, and as determined by the company's system.

The Second Control: Distribution if percentage of the profit to shareholders:

Distribution of a certain percentage of profits to the members of the Board of Directors as a reward for them depends on a distribution of profits to shareholders, as the Board of Directors to distributes the total percentage to its members[2]. Without this distribution to shareholders, the Board of Directors will not be able to distribute the reward.

1. Fayez Naeim Radwan, Commercial Companies according to Federal Law of the United Arab Emirates (UAE) No (8) of 1984 and its amendments.
2. Dr. Ahmed Al-Wargali – Distribution of Commercial Companies' profits, Al Maktab Al Game'i Al Jadeed, 2006, p. 212.

This restriction or condition on the distribution of remuneration to the members of the Board of Directors, and linking it with the distribution of percentage of the profit to shareholders is in need to re-consider, particularly in cases the company does not achieve profits so as to external circumstances or for general reasons, as in time of crisis, where the matter is not related to the performance of the members of the Board of Directors, but in some cases, the Board of Directors has achieved remarkable success in time the company gets a limited loss compared to a large loss of similar companies.

Depriving the members of the Board of Directors of the bonus in such cases is unreasonable, and it seems fitting that there will be treatment for such imposition. It seems that the legislative treatment is an important issue in this context, The legislature, in such cases, can entrust to the General Assembly the authority to decide rewarding the members of the Governing Council, on a proposal from the Nominations Committee (rewards) indicating the proposed bonus and the foundations of its estimation, and when voting, it must exclude those votes that represent the members of the Board of Directors in the meeting. Through this treatment, the Assembly estimates the extent of the achievements of the Board of Directors, and Through this treatment, the Assembly an estimate of the extent of the achievements of the Board of Directors, and the effort made in order to manage the affairs of the company.

The Third Control: Distribution of a profit not less than (5%) of the Capital to the shareholders

Legislator conditioned that in order that the Board of Directors deserves a reward, the profit shall be distributed to shareholders, which it is called the primary profit, so that at least (5%) of the share capital of the company.

While article (118) of the law did not state what is intended by the company's capital, we find the article (58) of the sample statute of the Company stated the meaning of the capital, as the company's paid-up capital.

The law or the system model of the Establishment contract does not specify a particular way to distribute the profits. So these profits may be in the form of cash dividends or in the form of free shares or bonus shares.

Section Seven
The obligations of the Members of The Board of Directors

In this section we shall address some legal obligations of the member of the Board of Directors, which look of great importance in the field of Corporate Governance. They are: the obligation 'not to share in a competitive work', and 'the obligation to disclose', as follows[1]:-

The first Sub-section: The obligation 'not to share in a competitive work'

The Second Sub-section: The obligation 'to disclose'.

Sub-Section One
The obligation 'not to share in a competitive work'

a- Content of the Obligation:

The member of the Board of Directors may not trade for his own account or on behalf of another in a branch of the activity practiced by the company without a special authorization from the General Assembly[2].

Article (108) of The UAE Commercial Companies law referred to this obligation, when it stipulated that "The Chairman of the Board or the member of the Board are not permitted, without prior authorization from the General

1. There are other obligations the member of the Board of Directors must abide by. We preferred not to mention it here, where it has been treated in some detail, in the publications of Joint-Stock Companies.

2. Dr. Sameeha Al-Qalioubi, Commercial Companies, Part II, Dar Al-Nahda Al-Arabia, ed. 1993, p. 459.

Assembly, renewed annually, to participate in any action that compete with the company, or trade for his own account, or on behalf of another one of the branches of activity practiced by the company. Otherwise, it was to ask him for compensation or to consider the processes that he exercised for his account as it was practiced for the company."

It is clear that, the burden of this obligation is on the Board Member; applies equally if his involvement in one of the branches of the company's activity has been to his personal account or for the account of others.

What seems obvious that the law does not prohibit the Board Member to participate in one of the branches of activity exercised by the company, but it is prohibited to do this work without obtaining the approval of the General Assembly of the company.

b- The effect of violation of the obligation:

This obligation does not relate to the validity of the membership of the Board of Directors, as the violation does not affect, in itself, the membership of the Board of Directors, as the membership of the Board Member, who violates this obligation remains valid. The company's General Assembly may isolate him, if it estimated that, under the powers assigned to it in general.

It is permissible for a person to be a member of the Board of Directors in a company engaged in the same activity, though he was not licensed before, by the Company's General Assembly, and it seems that this provision concerns with the shareholder's right to run for membership of the Board of Directors, and therefore, he may not be deprived of it, and if the Board Member violated this obligation, the company has to ask him for compensation or to consider the operations he practiced for his own account as if it was practiced for its own account.

It should be noted here that the company could have to ask Board Member, who violated this obligation and began working for his own account, compensation or to consider the operations he practiced for his own account as if it was practiced for its own account; while the company cannot claim to consider the operations he practiced for others account as it was performed for its own account, but only it has the right to claim compensation.

Sub-Section Two
The obligation 'to disclose'

a- The obligation 'to disclose' when there is a conflict of interest

We have previously mentioned that, if each Board Member in the company who has an interest conflicts with the company's interest in an operation presented to the Board of Directors for approval, he has to inform the Board so, and to register his acknowledgement in the minute of the meeting. And he may not participate in voting on the resolution issued regarding this process[1].

However, it seems that the legislator wanted in the Code of Corporate Governance to expand on the commitment of the parties related to the disclosure. Among them, of course, the members of the Board of Directors, where he does not regulate the disclosure of them, according to article 3/10 of the Code of Corporate Governance, but he expanded the scope of disclosure and persons covered with his provisions. And for the importance of this new provision, we shall discuss it in some detail:-

b- Disclosure of Relevant:

We shall define the relevant parties and the statement of legal treatment to those parties' dealings with the company and the limits of the disclosure, and whom it should be disclosed and the impact of non-disclosure.

1. Article (109) of the UAE Commercial Companies Law, See, p. …. and subsequent of this book.

The Definition of Relevant

The Code of Corporate Governance defined the relevant as “Chairman and members of the Board of Directors and members of the senior executive management, and companies in which any of them have a controlling stake, parent companies or subsidiaries or sisterly or allies[1].

It seems clear from this definition that the legislature in the Code of Corporate Governance wanted to distinguish between the relevant and the stakeholders, where the code defined the Stakeholders as: they are every person who has an interest with the company, such as: shareholders, employees, creditors, customers, suppliers, and potential investors.

It can be also seen that the definition of stakeholders came broadly, to include every person who has an interest with the company, and that the census which came in the article was, for example, but not exclusively. Thus, the member of the Board of Directors, who has an interest with the company, is one of the stakeholders.

So it seems that the definition of stakeholders could include the definition of relevant parties, so it seems that the definition of stakeholders could include the definition of relevant parties, and there was no need to find a special definition to ‘relevant parties’. And while shareholders are of the stakeholders, according to the definition of stakeholders, they are not considered to be relevant parties in the definition of relevant. On the other hand, while the members of the Board of Directors are considered of the relevant parties according to the definition of relevant parties, they are considered, at the same time, of stakeholders.

As we shall see, when talking about the provisions relating to the relevant parties in terms of disclosure, the legislature linked between the relevant party and the existence of interest in his relationship with the company, thus the interest

1. The definition (Relevant) was added under the Ministerial Decree No (239/1) for the year 2012G.

became the basis of the disclosure. Therefore there was no importance to define the relevant party, and the definition of the stakeholders became enough.

Also, it is (maligned) يعاب on this definition; it came vague, as it did not define the 'controlling stake', when it referred to the companies in which the Chairman, the members of the Board of Directors and the members of the Senior Executive Management who have a controlling stake in the definition itself or in the Code of Corporate Governance, which opens the door to diligence about the meaning of 'controlling stake' where it should be specific, so as to determine the extent of compliance with the provision of this article.

Disclosure provisions of the relevant party:

Article (12 bis) of the Code of Corporate Governance[1] addressed the provisions relating to the relevant parties, as it stipulates that:

"1- If the relevant party has an interest or benefit – either directly or indirectly – in any deal has been or is scheduled to be with the company or the parent company or any of its subsidiaries or associates, and that interest or benefit conflicts or may conflict with the company's interests, that relevant party has to send a letter to the Board of Directors in which he disclose the nature and the extent of his interest or benefit, within a period not exceeding three working days starting from the day the relevant party knew the conflict of the interests which requires disclosure. The details of this discrepancy in the financial report offered by the company's auditor on the ordinary General Assembly at the annual meeting. If the relevant party is a shareholder in the company, he does not have to vote on the resolution of the General Assembly to be issued on the deal belongs to him.

2- If the relevant party did not disclose his interest or his benefit as described in item (1) of this article, it is permissible to the Board of Directors of any

1. The definition of article (12 bis) has been added by the Ministerial Resolution No 239/1 for the year 2012G.

shareholder to request the competent court to stop offending deal, and to oblige the relevant party to reimburse the company any profit or benefit made to him, and the court issues what it consider appropriate, in this regard, taking into account not harm the interests of bona fide third parties or expose the company's interests to risk.

Terms of the Relevant Party Disclosure:

It is required to comply with the disclosure in this case the availability of the following conditions:-

1- The party stakeholder has to be the chairman or a member of the Board of Directors of a member of the senior executive management, or companies in which any of those owns a controlling stake, or the parent company or subsidiaries or associates or allies of the company that is dealing with it.

2- The relevant party should have an interest or benefit conflicts or may conflict with the company's interests in deal has been or may be between them.

The wording of this condition seems to be of a great mystery, whether what relates to the definition of the interest that is inconsistent or may conflict with the interests of the company when dealing with it, as all transactions requires opposite interests between their parties. It seems that talking about interests may conflict with the interests of the company is in need to be determined.

3- The disclosure is to be by a letter addressed to the Board of Directors telling about the nature and extent of party's interest or his benefit within a period not exceeding three days from the day of his knowledge of the conflict of interests requiring disclosure.

Talking about the need to disclose the nature and extent of the interest or benefit that can be obtained by the relevant party, in its turn, needs to be

clarified; since the disclosure in itself about the nature of the transaction is the disclosure of the nature, but the disclosure of the extent of interest or benefit may involve professional secrets, it may not force the relevant party to disclose it, especially if it was relating to another company he owns a controlling stake in it.

The Impact of the Obligation to Disclose:

Disclosure to the Board of Directors of the company consequent to include details of this discrepancy in the financial report offered by the auditor of the company to the ordinary General Assembly. And if the relevant party was a shareholder in the company, he cannot vote on a resolution issued by the General Assembly on the transaction the belonging to him.

The question here, is if this topic will be displayed on the General Assembly of shareholders, in accordance with the auditor's report, does this mean to stop dealing until the annual meeting of the General Assembly of shareholders.

This talk seems practically unacceptable, especially since the article did not stipulate on the powers of the General Assembly with regard to this process, either with approval of rejection; while this article addressed only on the authority of the General Assembly in case of violation of the obligation to disclose.

The Impact of Non-Compliance with Disclosure:

Code of Corporate Governance arranged an impact on non-compliance with disclosure, as it authorized the Board of Directors of the Company of to any of its shareholders to apply to the competent court to stop offending transaction and to oblige the relevant party to reimburse to the company any profit or benefit has been achieved, and the court issues what it consider appropriate in this regard, taking into account not to harm the interests of bona fide of the third party, or exposing the company's interests to risk.

It is maligned on this text that it left to the court the authority to take

appropriate decisions to halt deal as soon as violation of the obligation to disclose, without being required damage could be caused to the company as a result to this deal.

This text also left to the court the authority to take the appropriate decision to stop the transaction or oblige the relevant party to pay the company any profit or benefit achieved, despite the fact that achieving the relevant party or any other party for benefit or interest due to his dealing with the company or any other party is the target of any civil or commercial transaction. And therefore, it seems that the

It seems that the standard should be followed here is to oblige the relevant party to compensate the company in the limits of its loss.

Section Eight
The Responsibility of the Members of The Board of Directors

The company is committed originally by the actions carried out by the Board of Directors, and to compensate the damage resulted. The article (110) of the Commercial Companies Law stipulated that: “The company is committed to the acts conducted by the Board of Directors within the limits of its competence, also it compensates the damages arises as a result of unlawful acts of the members of the Board of Directors during the company’s management.»

On the other hand, and in contrast, the Article (111) of the law, has developed the general rule of responsibility of the Chairman and members of the Company’s Board of Directors, when it states that «the Chairman and members of the Board of Directors are responsible towards the company, shareholders and the third party for all acts of fraud and abuse of power, and for each violation of law or the company›s system, and the error in the administration, and invalidate

all the requirement otherwise."

The responsibility of the members of the Board of Directors may arise on the occasion of performing tasks of this membership[1]. This liability may be civil liability and it may be criminal liability. In this context, we shall limit our study to the civil liability provisions that the members of the Board of Directors could be subjected to it, in the face of the company, shareholders or others, when their damage could be attributed to the members of the Board of Directors fault.

Sub-Section One
The Company Lawsuit

Article (113) of the Commercial Companies Law addressed the provisions of the Company's lawsuit, where the company, as a legal person, can sue against the Chairman and members of the Company's Board of Directors for the faults that were located in that capacity[2]. In this context, we shall refer to the terms of compensation or the pillars of responsibility, on the occasion of its definition and talk about conditions, as follows: -

Definition of the Company's Lawsuit

The Company's Lawsuit can be defined as a lawsuit is filed based on a decision of the General Assembly, in which it specifies who will proceed the suit against the Board of Directors if it committed mistakes resulted in damages to the sum of shareholders, and if the company is in liquidation, the liquidator shall raise the case based on the decision of the General Assembly.

Conditions of the Company's Lawsuit

There are four conditions to accept the company's lawsuit, and to report

1. Dr. Abd El-Fadeel Mohamed, Companies, Dar Al-Nahda Al-Arabia, Ed. 2003, p. 358.
2. Dr. Fayez Naeim Radwan, Commercial Companies according to the Federal Law No. (8) of 1984 and its amendments in the United Arab Emirates, Publisher: Dubai Police Academy, 2006 edition, p. 362.

the responsibility of the members of the Board of Directors and compensation governance, described as follows:-

The first condition: that there is an error done by the Board of Directors causes damage to the company:

This condition is one of the General rules of liability, where the liability, in traditional theory, stands on the error corner that leads to damage[1], and therefore it must prove the error on the side of the Board of Directors or one of its members, and must prove the damage and the causal relationship between them.

In this regard, the damage must have infected the company, not one of its shareholders, which was expressed by the legislator that the damage has to infect the total shareholders, and if the damage had hit one of the shareholders, the way to compensate for this is to raise the individual shareholder suit, as it will be declared later.

The second condition: that the General Assembly must issue a decision:

A decision of the General Assembly of the company should be issued to file a claim against the Board of Directors, if the General Assembly considered that the Company's Board of Directors has committed, while he was managing the affairs of the company, errors caused damage to total shareholders.

The question may arise about the eligibility of members of the Board of Directors to vote on bringing a case of responsibility in this case. Actually, there is no explicit text prevents the Chairman and the members of the Board of Directors to participate in voting in that case, because the right to vote is one of the rights associated with the company's contribution, and as long as the members of the Board of Directors have that capacity, they may not be deprived

1. Dr. Mohamed Hussein Mansour – The General Theory of Obligation "Sources of obligations", Dar Al-Game'a Al-Jadida, ed. 2006, p. 516.

to vote but with an explicit text.

This is what was confirmed by Article (12) of the Code of Corporate Governance that “Shareholders should have all rights related to the arrow, in particular the right to receive a share of the profits that decided to be distributed, and the right to receive a share of the company’s assets upon liquidation, and the right to attend the General Assemblies, and to participate in the deliberations and voting on its decisions.

It does not preclude the foregoing, to text in the article (132) of the UAE Commercial Companies Law on that: “It is not permissible to the Board Members to participate in the vote on the resolutions of the General Assembly on their acquittal of civil liability for their administration or related to a special benefit to them or to a dispute exists between then and the company because the rule of this text must be limited to the omission of some members of the board of Directors from voting in that three cases mentioned in the text. It is the cases of discharge from civil liability, or when the General Assembly discuss a matter related to the members of the Board of Directors or to a dispute exists between them and the company.

The third condition: that the General Assembly must determine who proceeds the lawsuit on its behalf:

The basic principle is that the company’s chairman is representing the company before the judiciary according to the text of Article (104) of the UAE Commercial companies Law, but the legislator went out on this asset, on the occasion of the proceedings that are held on behalf of the company›s Board of Directors. It is not imagined or accepted that the Chairman of the Board attend the proceedings in his capacity as a deputy of the plaintiff and the defendant in the same time. So the Article (113) entrusted to the General Assembly naming who it deems valid to direct action on behalf of the company.

It should be noted that the provisions of the law did not require in those who determined by the General Assembly to assume the case of behalf of the company to be one of its shareholders, and thus the company may determine for this, a person of the third parties, as will as he will act on behalf of the company's general assembly.

The authority of the General Assembly to determine who initiate proceedings on its behalf is not exempted from all constraint, but this power finds its borders in the case where the company is in liquidation. In this case, if the Assembly decided to proceed the liability suit on the Board of Directors, it must appoint liquidator of the company to represent it in that case.

Side of Jurisprudence[1] went, in the field of interpretation the text of article (114) of the UAE Commercial Companies law, to that the shareholders can proceed this case if the company did not proceed it, and each shareholder can individually proceed the company's suit in case of it did not proceed the case, and if the error would harm him as a shareholder, provided that he must notify the company that he intends filing the lawsuit and each clause in the company' statute be considered null and void.

We believe that what is meant by the article (114) of the UAE Commercial Companies Law, not that the shareholder individually files the company's lawsuit, but what is meant here is filling the individual shareholder's suit. The reason of this is that the legislator has stipulated to establish the last suit that the shareholder has been harmed as a contributor, while the terms of the company's lawsuit, as previously mentioned, that damage has to infect the total shareholders resulted of an error arose from a decision or action of the Board of Directors or one of its members as well.

1. Dr. Fayez Naeim Radwan, Commercial Companies according to the Federal Law No. (8) of 1984 and its amendments in the United Arab Emirates, Publisher: Dubai Police Academy, 2006 edition, p. 362.

Comparison legislations[1], which allows for a group of shareholders or shareholder individually sue the company, including the Egyptian Commercial Law in article (102) which corresponds to article (245) of French Companies Law, did not require that such shareholder of a group gets a private damage, but required that errors occurred from the members of the Board of Directors has caused damage to the company itself.

The fourth condition: that the case should be directed to the Board of Directors or some of its members

One of the liability suit pillars, whatever its form was, is the occurrence of the error by the members of the Board of Directors, but it is not necessary to raise company's lawsuit against all the members of the Board of Directors, where the suit may be filed on the responsibility of all members of the Board of Directors if the error resulted from a resolution adopted by consensus, and in this case, the responsibility be shared between all members of the Board[2].

If the resolution, the issue of accountability, has been issued by majority vote, opponents do not ask him, when they have demonstrated their objection in the minutes of the meeting, there is no responsibility for the opponents, when they have proved their objection in the minutes of the meeting. If one member was absent from the meeting, at which the decision was issued, his responsibility will not obviate, where he may be entered in the adversarial and applying to eliminate his responsibility, unless he proves that he has no knowledge of this decision or that he was aware of it but he was not able to object it.

1. Dr. Sameha Al-Kalioubi, Commercial Companies, Vol. II, ed. 2003, Dar Al-Nahda Al-Arabia, p. 471.
2. Dr. Fayez Naeim Radwan, Commercial Companies according to the Federal Law No. (8) of 1984 and its amendments in the United Arab Emirates, Publisher: Dubai Police Academy, 2006 edition, p. 362.

Sub-Section Two
Lawsuit of Individual Contribution

Each shareholder can proceed in a liability suit against the company or against members of the Board of Directors, if such error, which occurred from all of them or some of them, has caused damage to him, a shareholder, as if he has not been given his share in the profit or prevented from attending the meeting of the General Assembly, or to read a document he has the right to read, or had bought the company's shares on the basis of inaccurate disclosure of the company's Board of Directors, depicts the financial position of the company in exaggerated manner[1], provided that he must notify the company of its intention to raise the case.

The shareholder's right to raise that case concerns with the public order. He shall not be deprived of it, though it was stated in the company's statute.

The personal shareholder's suit does not stop or expire[2] or the right in it falls, as soon as the decision of the General Assembly which authorizes the actions of the members of the Board of directors that subject to accountability or discharge the Board of Directors or approval of his actions, and that can be done by leaving the shareholder his lawsuit or abdication it.

Sub-Section Three
The Lawsuit of the Third-Party

Non-shareholders, including, for example, the creditors of the company or group of bondholders can pursue the Chairman and members of the Board of Directors before the courts by a civil liability suit[3], if it is proven that the actions

1. Dr. Abd El-Fadeel Mohamed, Companies, Dar Al-Nahda Al-Arabia, ed. 2003, p. 359.
2. Dr. Sameeha Al-Kalioubi, Commercial Companies, Part II, ed. 1993, |Dar Al-Nahda-Al-Arabia, p. 477.
3. Dr. Fayez Naeim Radwan, Commercial Companies according to the Federal Law No. (8) of 1984 and its amendments in the United Arab Emirates, Publisher: Dubai Police Academy, 2006

or decisions of any of them, as that capacity, has caused him harm, according to the rules of civil liability prescribed in Article (282) of the UAE Civil Transactions and what follows.

This lawsuit is not intended to compensate for the administrative errors committed by the Board of Directors, as the proceedings in that case will be directed to the company, not to its Board of Directors, but the third-party lawsuit aims at compensation for personal damages involving fraud or deceit or abuse of power, and it basis on the rules of tort liability(1).

Sub-Section Four
The impact of Discharge of the members of the Board of Directors on the claims responsibility

The legislator did not arrange, under article (115) of the UAE Commercial Companies Law on any decision taken by the General Assembly in order to discharge the Board of Directors that the civil lawsuit against the members of the Board of Directors falls, because of the errors that happens in the implementation of their tasks, and thus the General Assembly may decide to proceed the company suit against all or some of the members of the Board of Directors, even if it has issued a decision of discharging them.

However, if the act which requires liability was presented before the General Assembly and it has ratified it, the civil liability suit falls upon the expiry of one year from the date of the convening of this Assembly.

It is noted that the provisions of limitations that result in fall of civil liability suit are provisions of showing the act that entails responsibility to the General Assembly of the Company(2), whether it was by a report from the Board of

edition, p. 365.

1. Dr. Abd El-Fadeel Mohamed, Companies, Dar Al-Nahda Al-Arabia, ed. 2003, p. 359.
2. Dr. Sameeha Al-Kalioubi, Commercial Companies, Part II, ed. 1993, |Dar Al-Nahda-Al-Arabia, p. 480.

Directors or the auditor, and in this case right to sue for the responsibility falls in accordance with the general rules.

Sub-Section Five
Isolate the members of the Board of Directors

The report of the Cadbury Committee issued in 1992 referred to the role of shareholders in the accountability of the Board of Directors, each of them has his own role in the activation of the issue; As The Board of Directors, in its turn, provides good data for the shareholders, and the shareholders do their part to express their desire in practicing their responsibility, as owners of the company, through the powers authorized in them.

The report of Credit Lyonnais Bank also referred, in its fourth section, which is titled accounting for responsibility, that the role of the Board of Directors is supervisory rather than executive, and to the ability of the members of the Board of Directors to play an effective audit. Also it referred in Section V, which titled the responsibility, to the need to develop the mechanisms that allow signing punishment for executives and Board of Directors if necessary.

The report of the Organization for Economic Cooperation and Development (OECD) which issued in 1999 also pointed out in the principle of responsibilities of the Board of Directors to the need for effective follow-up of the executive management by the Board of Directors, as well as the accountability of the Board of Directors by the shareholders.

The general role in accordance with the provisions of Article (116) of the UAE Commercial Companies Law is that the General Assembly of the Company has the right to isolate all or some of the members of the Board of Directors, even if there is text, otherwise, in the Statute of the company, and when the General Assembly decides to isolate all or some of the members of the Board of

Directors, it has to elect new members to the Board of Directors instead of who have been dismissed.

The text of Article (4/3) of the Code of Corporate Governance confirmed this sense, when it stipulates that «every member of the Board of Directors occupies his position until the end of his membership or approval of his resignation by a decision of the Board of Directors, or his death, or dismissed by a decision of the General Assembly of the company.

Practice raises a problem relates to the representatives of legal persons within the Board of Directors or legal persons itself, who are represented in the Board of Directors by shares they hold, in accordance with a text contained in the Statute of the company. And the question here regards to the extent of the possibility to isolate any of these by the General Assembly.

The texts of the UAE Commercial Companies Law did not expose to this provision, also the provisions contained in the Code of Corporate Governance did not address it. We see that if the text of the law authorizing the General Assembly of the Company to isolate all or some of the Board of Directors. it is vested that the General Assembly is the authority which had since the beginning the right to elect these members or their choice, and if the membership of any of the members of the Governing Council planned under a text in the statute of the company, not by the General Assembly, the Assembly cannot isolate them, because the dismissal and the election of others by the General Assembly will be contrary to the statute of the company, which means amending the statute without legal instrument, and without a decision by the (Extraordinary) General Assembly and in contrast to the text of the provisions of Article (137) of the Commercial Companies Law of the UAE.

CONCLUSIONS

AND RECOMMENDATIONS

CONCLUSIONS AND RECOMMENDATIONS

We tried in this book to address the governance of the joint-stock companies and Borders of Directors, legally. This topic is rarely addressed from this point of view. So we have made - as much as we can – an effort, hoping to be a building block in the Legal Construction of Corporate Governance in the United Arab Emirates (UAE), which is characterized by the Code of Corporate Governance, which has compulsory application by all the companies listed on the stock market, thus becoming a leading country in this field.

The Governance controls, like any other human work, are always in need to reconsider, to supplement the lack of them, or interpretation of the mysterious and clarifying it, or removal of the inconsistent between some of its texts or with other legislation. Accordingly, this book was an attempt to state its provisions and interpretation what ambiguous on the legal professionals, in particular, or who interested in the management of companies and investors, in general, through highlighting the legal aspects of the corporate governance and Board of Directors, with the application on the Code of Corporate Governance in the United Arab Emirates.

In the context of the foregoing and to complete the utility, we can summarize some recommendations that have been concluded in this book, as follows:-

First: In light of the limited scope of the controls and rules on corporate governance issued by the Ministerial Decree No (518) of 2008, and its amendments, on the Companies listed in the stock market, it is appropriate to issue these rules by a decision of the Cabinet for being associated with the listing requirements in the stock market, where the law of the authority and UAE market for securities and enjoined that the listing system has to be issued by a decision of the Cabinet.

Second: we recommend that the text is to be taken into account, when formation of a Nomination and Remuneration Committee, the availability of certain experiences in some of its members, help to accomplish its tasks required. If this is not possible to the Board of Directors, the Committee can use who those who it deems from the experts to help it to accomplish its tasks.

Third: The importance of that the code of corporate governance addresses the rule of the lack of a sufficient number of non-executive members to form a Nominations Committee, in light of the silence of current text and not reporting that the Board of Directors can use external members in that committee, as it did for the Audit Committee and justifications.

Fourth: There is a need for the legislature to reconsider granting the Chairman of the Board of Directors a casting vote. The legislator can keep the casting vote of the Chairman of the Board at Board meetings when members are equal, provided that the chosen of the Chairman of the Board of Directors through the General Assembly of the Company. In that case, it seems that granting the Chairman of the Board of Directors a casting relatively weight has to be justified, as it is considered a choice to the General Assembly of the Company. In other cases, it seems to postpone the vote on that matter to a later meeting where the number of the present members can change, and the required majority for the decision can be achieved or refer to the General Assembly of the company in cases, in which the Governing Council can not issue a decision because of an equality of votes.

Fifth: It is worth mentioning that the legislator, in the Code of Corporate Governance, considers the member of the Board of Directors independent, if he had held an executive management position for one of the parties related to the company during the past two years, Instead of the require that the member of the Board of Directors employed for any of the parties associated with the company, and that in order to achieve a legislative harmony with what the requirements

of the Code for the member of the Board of Directors who held an executive position in the company itself during the past two years.

Sixth: Code of Corporate Governance texts did not include the rule concerning the government or any legal person which takes into account the percentage that it assigns to the Board of Directors, that the proportion of independent members or non-executive directors. Thus, we recommend explicit legislative treatment, which addresses the need to take into account the ratio stipulated in the Code of Corporate Governance – as a minimum - when the statute includes the company's text gives allows a shareholder to determine the percentage or a certain number of members of the Board of Directors, away from the elections conducted by the General Assembly to choose the other members.

Seventh: In the light of the Code of Corporate Governance, it does not required in the member of the Audit Committee financial expert to be one of the non-executive members or be independent.

Eighth: There is a need to reconsider the text of Article (12 bis) of the Code of Corporate Governance on related parties transactions of the Code of Corporate Governance, to evacuate the ambiguity, and removes the apparent conflict between it and the provisions included in the UAE Commercial Companies Law. As the contents of this study.

God Almighty,
of the intent behind

Dr. Ashraf Ahmed Abdel Moniem

MINISTERIAL RESOLUTION NO. (518) OF 2009 CONCERNING GOVERNANCE RULES AND CORPORATE DISCIPLINE STANDARDS

The Minister of Economy and Chairman of the Board of Directors of the Authority;

Having considered:

Federal Law No. (8) of 1984 concerning Commercial Companies, as amended;

Law of Civil Transactions, promulgated by Federal Law No. (5) of 1985;

Federal Law No. (22) of 1995 Organizing the Auditing Profession, as amended;

Federal Law No. (4) of 2000 concerning the Emirates Securities and Commodities Authority and Market, as amended;

Federal Decree No. (18) of 2009 Forming the Cabinet of the United Arab Emirates;

Cabinet Resolution No. (12) of 2000 on the Regulations of Listing of Securities and Commodities, as amended;

Cabinet Resolution No. (13) of 2000 on the Regulations of the Operations of the Emirates Securities and Commodities Authority, as amended;

Cabinet Resolution No. (194/15) of 2006 Forming the Board of Directors of the Emirates Securities and Commodities Authority;

Ministerial Council for Services Resolution No. (3/3) of 2007 Authorizing the

Emirates Securities and Commodities Authority to receive applications for incorporation of public joint stock companies, to complete and supervise all relevant procedures;

The Authority Board Resolution No. (3) of 2000 on the Regulations of Disclosure and Transparency, as amended;

The Authority Board Resolution No. (7) of 2002 on the Regulations of Listing of Foreign Companies;

The Authority Board Resolution No. (43/r) of 2008 concerning Dual Listing; and

Following consultations and coordination with the concerned bodies in the United Arab Emirates:

Has Have resolved to approve the Governance Rules and Corporate Discipline Standards.

Article (1)
Definitions

For the application of this Resolution, the following terms and phrases shall have the meaning given to them below, unless the context otherwise requires:

Law	:	Federal Law No. (4) of 2000 concerning the Emirates Securities and Commodities Authority and Market, as amended.
Authority	:	The Emirates Securities and Commodities Authority.
Board	:	Board of Directors of the Authority.
Market	:	A securities and commodities market that is licensed and authorized by the Authority to operate in the country.

Corporate Governance	:	A set of rules, standards and procedures that aim to achieve corporate discipline in the Management of the Company in accordance with international standards and approaches through determination of responsibilities and duties of Board Members and the Management of the Company, taking into consideration protection of shareholders' and Stakeholders' equity.
Company	:	A public joint stock company whose securities are listed on the Market.
Board of Directors	:	The board of directors of a Company.
Management	:	The executive management of a Company, including the general manager/executive director and chief executive officer or the managing director that is authorized by the members of the Board of Directors to manage the Company and their deputies.
The Company Manager	:	The general manager, executive director or chief executive officer of a Company, appointed by the Board of Directors.
Board Member	:	A natural or corporate person who is selected to be a member of the Board of Directors.
Executive Board Member:	:	A member Board Member who is dedicated on a full-time basis to the management of a Company or who receives a monthly or annual salary from a Company.
Non-Executive Board Member:	:	A Board Member who is not dedicated on a full time basis to the management of a Company or does not receive a monthly or annual salary from a Company. The remuneration received as a Board Member shall not be deemed salary.
Independent Board Member	:	A Board Member who neither himself/herself, nor his/her spouse nor any First-Degree Relative is or has been a member of the Management of a Company during the last two years or has a relationship that resulted in financial transactions with a Parent Company, Sister Company or Allied Company during the last two years if the total amount of these transactions exceeds 5% of the paid-up capital of the Company, an amount of five million Dirhams (AED 5,000,000.00) or an equivalent amount in a foreign currency, whichever is less; In particular, a Board Member does not meet the independence condition in the following cases:

he/she is an employee of any party related to the Company during the last two years;

he/she is directly related to a company that performs consultation business or provides consultations to the Company or any parties related thereto;

he/she enters into personal service contracts with the Company, any party related to the Company or the employees of the executive management of the Company;

he/she is directly related to a non-profit organization that receives considerable financing from the Company or a party related thereto;

he/she is or has been during the last two years related to or an employee of any external or former auditor of the Company or any party related to the Company;

if his/her or his/her minor children's share or the share of both in the capital of the Company amounts to ten percent (10%) or more.

First-Degree Relative : Father, mother, children, spouse, spouse's father, spouse's mother and stepchildren.

Compliance Officer : A person that is appointed by a Company to verify compliance by the Company and its employees with the Law, the regulations and resolutions issued in implementation thereof as well as internal policies and procedures.

Listing Rules : Rules and requirements of listing under the Law, the regulations and resolutions issued in implementation thereof as well as the internal bylaws of the Market.

Disclosure Rules : Rules and requirements of disclosure under the Law, and the regulations and resolutions issued in implementation thereof.

Material Information : Any event, fact, resolution or information that may directly or indirectly affect the price or trading volumes of securities or may have an effect on a person's decision to purchase, retain, sell or dispose of securities.

Stakeholders : Each person that has an interest in a Company, such as shareholders, employees, creditors, clients, suppliers and prospective investors.

Parent Company : A Company holding more than 50% of the capital of any other Company.

Subsidiary Company	:	A company in which at least 50% of the capital is held by another company.
Sister Company	:	A company that is an affiliate to the same group to which another company is an affiliate.
Allied Company	:	A company that is engaged by virtue of a cooperation and coordination agreement with another company.
Cumulative Voting	:	Each shareholder shall have a number of votes that is equal to the number of shares he/she holds, to be applied towards voting for only one nominee to the membership of the Board of Directors or distributed to selected nominees; provided, however, that the number of votes given to selected nominees should not exceed the number of votes held.
Concerned Parties[1]*	:	The chairman and Board Members; members of Management; companies in which any of the aforesaid have a controlling share; and any Parent Company, Subsidiary Company, Sister Company or Allied Company.

Article (2)[2]*

Scope of Application of the Resolution

The Securities and The Authority shall be charged with the supervision, control and verification of compliance by Companies with the rules and provisions hereunder.

a. This Resolution applies to all companies and institutions whose securities are listed on the Market in the country and to their Board Members.

b. This Resolution does not apply to:
   (1) Companies and institutions that are wholly owned by the Federal Government or a local government.
   (2) Banks, finance companies, financial investment companies, money exchange companies, monetary brokerage companies that are under the

1. * Definition of Concerned Parties has been added according to Ministerial Resolution No. (239-1) of 2012.

2. * Article (2) has been amended according to Ministerial Resolution No. (84) of 2010 which was issued on 7/3/2010.

supervision of the Central Bank.

(3) The foreign companies that are listed in any financial market.

Article (3)
Board of Directors of the Company

1. A Company shall be managed by a Board of Directors. The Company's articles of association shall determine the method of formation of the Board of Directors, number of Board Members and the term of their membership.

2. Board of Directors of a Company shall be elected by the founders, while the members of subsequent Boards of Directors shall be elected for a fixed term by the Company's shareholders and the formation of the Board of Directors shall take into consideration an appropriate balance between Executive Board Members, Non-Executive Board Members and Independent Board Members; provided that at least one-third of Board Members shall be Independent Board Members and a majority of Board Members shall be Non-Executive Board Members who shall have the technical skills and experience required to serve the interests of the Company. In all cases, when selecting Non-Executive Board Members of the Company, it shall be taken into consideration that a Board Member shall be able to dedicate adequate time and effort to his/her role and that such role is not in conflict with his/her other interests.

3. No person may simultaneously assume the offices of the chairman of the Board of Directors, the Company Manager and/or the managing director.

4. Each Board Member shall assume office until the term of his/her membership expires or his/her resignation is approved by a resolution of the Board of Directors, upon his/her death or removal by a resolution by the general assembly of the Company.

5. In case a Board Member's office becomes vacant, the Board of Directors may appoint a member to fill such vacancy and the matter shall be referred to the first meeting of the general assembly to ratify this appointment or the appointment of a replacement Board Member, unless the articles of association of the Company otherwise provide. In the event 25% of membership of the Board of Directors becomes vacant, the general assembly shall be convened for a meeting within a period not exceeding three months from the date of last vacancy to elect persons to fill such vacancies.

6. The Board of Directors shall meet at least once every two months at the written invitation of the chairman of the Board of Directors or at a request in writing made by at least two Board Members. Such invitation shall, together with the agenda for the meeting, be served at least one week prior to the date fixed for the meeting. Each Board Member shall have the right to include on the agenda any issue it deems necessary to be discussed at the meeting.

7. Board of Directors shall only be valid with the attendance of a majority of Board Members. The resolutions of the Board of Directors shall be issued by a majority of votes of attending and representing Board Members. In the event of an equality of votes, the chairman shall have the deciding vote.

8. Without prejudice to clause (7) above, the Board of Directors is permitted in exceptional cases to issue resolutions by circulation in cases of emergency, subject to the following conditions:
   a. Passage of passing such resolutions may not exceed four times per annum;
   b. Majority approval of the Board Members with regards to the urgency of the case which required the issuance of such resolution;
   c. The Board Members shall receive the resolution in writing for approval, together with all necessary documents for review; and
   d. Resolutions passed by the Board of Directors shall be approved in writing

by a majority and shall be presented to the next meeting of the Board of Directors to be included in the minutes of that meeting.

9. The minutes of meetings of the Board of Directors or its committees shall reflect details of issues considered and resolutions adopted, including any reservations or dissenting opinions raised by Board Members. All attending Board Members shall sign the draft minutes of the meetings of the Board of Directors prior to its approval and copies of these minutes shall, following approval, be sent to Board Members for their records. Minutes of meetings of the Board of Directors and board committees shall be kept by the board secretary. If a Board Member refuses to sign, his/her objection shall, together with the causes of the objection (if revealed), be recorded in the minutes of the meeting.

10. In the event a Board Member is subject to a conflict of interest in an issue to be considered by the Board of Directors and the Board of Directors resolves that it is a material issue, the board resolution shall be issued on attendance of a majority of Board Members and such interested Board Member may not vote in respect of the resolution. In exceptional cases, these issues may be handled through board subcommittees formed for this purpose by a board resolution and the committee's opinion shall be referred to the Board of Directors to make a decision in this regard.

11. Board of Directors may by a resolution adopted by a majority of attending Board Members, request an opinion from an external consultant in respect of any issues related to the Company and at the Company's expense, subject to avoiding conflict of interests.

12. The Board of Directors shall develop procedural rules for Corporate Governance, and shall supervise and control the application of the same in a manner that does not contravene the provisions of this Resolution, and shall

be liable for the application of such rules in accordance with this Resolution.

13. The Board of Directors shall seek to lay down suitable development programs for all Board Members to improve their knowledge and skills, and to ensure effective participation in the Board of Directors.

14. The Board of Directors shall lay down written rules in respect of the dealings of the Board Members and employees of the Company in securities issued by the Company, any Parent Company, Subsidiary Companies or Sister Companies.

Article (4)
Chairman of the Board of Directors

In particular, the chairman of the Board of Directors shall assume the following duties and responsibilities:

1. He shall ensure that the Board of Directors acts efficiently, fulfils its responsibilities and discusses all its main and appropriate issues on a timely basis.
2. He shall develop and approve the agenda of each board meeting, taking into consideration any issues that Board Members propose to be included in the agenda for the meeting. The chairman of the Board of Directors may assign this responsibility to a certain Board Member or board secretary under his own supervision.
3. He shall encourage all Board Members to fully and efficiently participate in the Board of Directors in order to ensure that the Board of Directors acts in the best interest of the Company.
4. He shall adopt suitable procedures to ensure efficient communication with the Company's shareholders and the efficient communication of their views to the Board of Directors.
5. He shall facilitate effective participation of Board Members, specifically

Non-Executive Board Members and develop constructive relations between Executive Board Members and Non-Executive Board Members.

Article (4)/ bis[1]*

1. Determining the Tasks and Duties of those in charge of a Company's Management

The tasks and duties of the chairman of the Board of Directors or those in charge of the Management of a Company may be determined in the articles of association, provided that such tasks and duties shall include adequate powers to run the business of the Company and to take whatever actions are necessary to preserve its financial position and perform the work honestly and devotedly in a manner not detrimental to the interests of the Company and its shareholders. Such tasks and duties, whether administrative, financial or other, may be determined by a resolution of the Company's general assembly.

Article (5)
Members of the Board of Directors

1. The Management shall make a newly-appointed Board Member aware of all departments and divisions of the Company and provide him/her with all necessary information to ensure that he/she properly understands the activities and operations of the Company and properly comprehends his/her responsibilities as well as all duties he/she can duly assume under applicable laws and legislation, other regulatory requirements and the Company's policies in its field of operations.

2. The Management shall provide the Board of Directors and its sub-committees with sufficient complete documented information on a timely basis to empower the Board of Directors to adopt decisions on solid grounds and

1. * Article (4)/ bis has been added according to Ministerial Resolution No. (239-1) of 2012.

duly perform its duties and responsibilities and the Board of Directors shall adopt all measures to obtain information that enables it to make decisions on reasonable and solid grounds.

3. The Board Member shall, when exercising his/her powers and duties, act honestly and devotedly, taking into consideration the interests of the Company and its shareholders, make the utmost effort and adhere to applicable laws, regulations and resolutions, as well as the articles of association and internal bylaws, of the Company.

4. The duties of Non-Executive Board Members shall, in particular, include:
   a. Participation in meetings of the Board of Directors to give an independent opinion in respect of strategic issues, policy, performance, accounting, resources, key appointments and standards of operation.
   b. Giving priority to the interests of the Company and its shareholders in the event of a conflict of interest.
   c. Participation in the audit committees of the Company.
   d. Follow Follow-up in respect of the Company's performance in order to achieve agreed objectives and purposes and oversee performance reports.
   e. Empowering Enabling the Board of Directors and different committees to benefit from their skills, experience and diversified specializations and qualifications through regular attendance, effective participation, attendance of general assembly meetings and developing a balanced understanding of shareholders' views.

5. Each Board Member shall, when assuming his/her office duties, disclose to the Company the nature of positions he/she assumes in companies and public institutions as well as other important obligations, their set period and any change thereto as soon as it occurs.

Article (6)
Board of Directors' Committees

1. The Board of Directors shall form standing committees directly affiliated to the Board of Directors as follows:
   a. The audit committee to assume the duties stipulated under Article (9) hereof.
   b. The nomination and remuneration committee to be mainly charged with:
      (1) Independent Board Members. If the committee discovers that any such Board Members do not meet the independence criteria, it shall present this matter to the Company's Board of Directors, and the Board of Directors shall notify such Board Member by a letter to be sent by registered mail to that member's registered address kept in the Company's files and shall address the reasons for the lack of independence; such Board Member shall provide clarification to the Board of Directors within 15 days from the date of the letter.

      Board of Directors in its first meeting following the relevant Board Member's response to such letter or after the expiry of the period referred to above, shall issue a decision confirming whether the Board Member is considered independent or not.

      Even when such board member is no longer meeting Should the Board Member's loss of the independence criteria not affect the minimum requirement of Independent Board Members, then that loss of the criteria should be taken into account at the formation of committees.

      Notwithstanding Subject to the provisions of Article (102) of the Commercial Companies Law, if as a result of the Board of Directors' decision resolving that an Independent Board Member is no longer independent the minimum requirement for Independent Board Members is no longer satisfied, the Board of Directors shall appoint a new Board Member replacing such Board Member and such appointment shall be approved at the earliest general assembly of the Company in order to

give effect to such appointment.(1)*

(2) Formulation and annual review of the policy on granting remunerations, benefits, incentives and salaries to Board Members and employees of the Company and verification that remunerations and benefits granted to the Management of the Company are reasonable and in accordance with the Company's performance.

(3) Determination of the Company's need for qualified staff at Management level and other employees, and the basis of their selection;

(4) Formulation of, supervision of compliance with and annual review of, the Company's human resources and training policy.

(5) Organization Regulation and follow-up in respect of procedures of nomination to the membership of the Board of Directors in line with applicable laws and regulations as well as this Resolution.

2. Committees shall consist of at least three (3) Non-Executive Board Members, of whom at least two (2) shall be Independent Board Members, and shall be chaired by one Independent Board Member. The chairman of the Board of Directors may not be a member of any such committees. The Board of Directors shall select Non-Executive Board Members for the committees charged with the duties that may result in conflicts of interest, such as verification of the integrity of financial and non-financial reports, review of deals concluded with Concerned Parties, selection of Non-Executive Board Members and setting remuneration.

3. Board of Directors which shall determine the duties, term and powers of the committee as well as the approach of the Board of Directors' control over those committees. The committee shall in a transparent fashion make a report in writing to the Board of Directors setting forth the procedures, results and recommendations that the committee reaches. The Board of Directors shall follow up on the performance of the tasks of these committees to verify

1. * Clause (1/b/1) of Article (6) has been amended in accordance with Ministerial Resolution No. (84) of 2010.

their adherence to the tasks commissioned to such committees.

Article (7)
Remunerations of Board Members

Pursuant Subject to Article (118) of Federal No. (8) of 1984 Concerning Law of Commercial Companies, the remuneration of Board Members shall be calculated as a percentage of net profit. Additionally, the Company may pay additional expenses or fees or a monthly salary in the amount fixed by the Board of Directors to any member if such Board Member works in any committee, undertakes special efforts or undertakes additional duties for the Company beyond his/her normal duties as a Board Member of the Company. In all cases, the remuneration of Board Members may not exceed ten percent (10%) of net profits, having deducted depreciation, reserves and distribution of dividends of at least five percent (5%) of capital to shareholders.

Article (8)
Internal Control

1. A Company shall apply a precise internal control system that aims at developing an assessment of the Company's means and methods of risk management, sound application of Corporate Governance rules, verification of compliance by the Company and its employees with applicable laws, regulations and resolutions that govern its operations, as well as internal procedures and policies and review of financial information that is presented to the Company's Management and used for drafting financial statements.
2. The Board of Directors shall issue the internal control regulation following consultation with Management and shall be implemented by a competent department for internal control.
3. The Board of Directors shall determine the objectives, duties and powers of the department for internal control that shall enjoy adequate independence to

perform its duties and shall directly report to the Board of Directors.

4. Board of Directors shall conduct an annual review to ensure efficiency of the internal control system in the Company and any Subsidiary Company and disclose results to shareholders through the Corporate Governance annual report.

The annual review shall specifically cover the following elements:

a. Basic control elements, including control over financial affairs, operations and risk management.
b. Changes that have taken place since the last annual review has been conducted in the nature and extent of major risks and the Company's ability to respond to operational changes and the external environment.
c. Scope and nature of on-going control by the Board of Directors over risks, internal control systems and internal auditors' operations.
d. Frequency of reporting to the Board of Directors or the committees of the Board of Directors on the results of control to enable the Board of Directors to assess the position of the internal control system in the Company and the efficiency of risk management.
e. Detected weaknesses and shortcomings of the control system or unexpected emergencies that have materially affected or may materially affect the performance or financial position of the Company.

Efficiency of the Company's operations in respect of financial reporting and adherence to listing and disclosure rules.

1. The Board of Directors shall disclose in the Corporate Governance report the scope of the Company's compliance with the internal control system during the time period covered in the report. Such disclosure shall cover:
   a. The mechanism of operations of the Company's internal control department.
   b. The procedure that the Company has adopted to determine, assess and

manage material risks.

c. Any additional information to assist in the understanding of the operation of the Company's risk management and internal control system.
d. An acknowledgment by the Board of Directors confirming responsibility of the Board of Directors for the application, review and efficiency of the Company's internal control system.
e. The procedure that the Company has adopted to review the efficiency of the internal control system.
f. The procedure that the Company has adopted to manage material internal control aspects of any serious problems that have been disclosed in the annual accounts and reports.

2. The Board of Directors shall make sure that the Company's disclosures provide sufficient, accurate and true information for investors and reflect complete compliance with disclosure rules.

3. The Company shall appoint a Compliance Officer who shall be charged with the task to verify the scope of compliance by the Company and its employees with applicable laws, regulations, resolutions and bylaws. A person may occupy the positions of Compliance Officer and director of the Company's internal control department at the same time.

Article (9)
The Audit Committee

1. The Board of Directors shall form an audit committee consisting of Non-Executive Board Members, whilst the majority of the audit committee's members shall be Independent Board Members. The audit committee shall consist of at least three (3) members, of whom one (1) member shall be an expert in financial and accounting affairs. One or more members from outside the Company may be appointed if the number of Non-Executive

Board Members is not sufficient.

2. A former partner of the external audit office charged with the audit of the Company's accounts may not be a member of the audit committee for a term of one (1) year from the expiry date of his/her capacity as a partner or of having any financial interest in the audit office, whichever is later.

3. The audit committee shall meet at least once every quarter or whenever necessary. The minutes of the audit committee's meetings shall be kept by the secretary and draft minutes of the meeting shall be signed by attending members prior to approval. If a member refuses to sign, his/her objection shall, together with the reasons for objection (if revealed), be reflected in the minutes of the meeting. Members shall be given final versions of the minutes following approval for their records.

4. A Company shall provide the audit committee with adequate resources to perform their duties, including the authority to seek the help of experts, whenever necessary.

5. The audit committee shall assume the following duties and responsibilities:
   a. It shall Develop and apply the policy for instructing external auditors and make a report to the Board of Directors to set out the issues in respect of which an action shall be adopted together with recommendations on necessary to-be-adopted steps.
   b. It shall Follow up and oversee the independence and objectivity of the external auditor and hold discussions with the external auditor on the nature, scope and efficiency of auditing pursuant to approved audit standards.
   c. It shall Oversee the integrity of and review the Company's financial statements and reports (annual, semi-annual and quarterly reports) in the course of its operations during the year and shall, in particular, focus on:

(1) Any changes to accounting policies and practices;

(2) Highlighting matters that are subject to Management's judgment;

(3) Material amendments emerging out of auditing;

(4) Assumption the assumption of the Company's continuity as a going concern;

(5) Adherence to the accounting criteria set by the Authority; and

(6) Adherence to listing and disclosure rules as well as other legal requirements in relation to financial reporting.

d. It shall coordinate with the Board of Directors, the Management and the financial manager or the manager assuming the same duties in the Company in order to duly fulfil its duties. The audit committee shall hold a meeting with the Company's external auditor at least once per year.

e. It shall consider any outstanding irregular issues that are or have to be reflected in these reports and accounts and pay necessary attention to any issues raised by the financial manager of the Company, the manager assuming the same duties, the Compliance Officer or the external auditor.

f. It shall review the Company's financial control, internal control and risk management systems.

g. It shall discuss the internal control system with Management and make sure that it fulfils its duty to develop an effective internal control system.

h. Consider findings of main investigations into internal control issues assigned to it by the Board of Directors or at the initiative of the audit committee upon the approval of the Board of Directors.

i. It shall ensure coordination between internal and external auditors, ensure availability of necessary resources for the internal audit body, and review and control the efficiency of this body.

j. It shall review the Company's financial and accounting policies and procedures.

k. It shall review the external auditor's letter and action plan and any material inquiries raised by the auditor to the Management in respect of accounting records, financial accounts or control systems, respond thereto and

approve the same.

l. It shall Ensure that the Board of Directors responds on a timely basis to inquiries and material issues raised in the external auditor's letter.

m. It shall develop rules that enable the employees of the Company to confidentially report any potential violations in financial reports, internal controls or other issues and take adequate steps to conduct independent and fair investigations into these violations.

n. It shall oversee the scope of the Company's compliance with its code of conduct.

o. It shall ensure application of rules of operation in connection with their duties and powers assigned thereto by the Board of Directors.

p. It shall make a report to the Board of Directors on the issues set out in this article.

q. It shall consider any other issues as the Board of Directors may determine.

6. In the event the Board of Directors disapproves the recommendations of the audit committee on the selection, appointment, resignation or dismissal of the external auditor, the Board of Directors shall include in the Corporate Governance report a statement that explains the recommendations of the audit committee and reasons for the Board of Director's disagreement with such recommendations.

Article (10)
The External Auditor

1. The Board of Directors shall nominate an external auditor on the recommendation of the audit committee. The external auditor shall be appointed, and its remuneration fixed, by a resolution of the general assembly of the Company.

2. The external auditor shall be selected on criteria of efficiency, reputation and

experience.

3. The external auditor shall be independent from the Company and its Board of Directors, and may not be a partner, agent or a relative up to the fourth degree, of any founder or Board Member of the Company.

4. A Company shall adopt reasonable steps to ensure the independence of the external auditor and that all operations performed by the external auditor are free from any conflict of interests.

5. [1]*

6. The external auditor may not, while performing an audit of the Company's accounts, perform any technical, administrative or consultation services or works in connection with its assumed duties that may affect its decisions and independence or any services or works that the Authority decides that an external auditor shall not perform, in particular:
   1) Any other accounting services or works in connection with accounting records and financial statements, excluding routine accounting services that may be rendered by the external auditor to a Subsidiary Company of the Company of which it audits its accounts, where the following conditions are met:
      a) the service rendered by the auditor does not require issue of judgements;
      b) the Subsidiary Company is not a material part of the Company whose accounts are audited by the auditor;
      c) these services are clearly immaterial for the auditor and the Subsidiary Company; and
      d) the external auditor's provision of this service does not materially affect the financial information of the Parent Company.

1. * Clause No (5) of Article (10) has been repealed in accordance with Ministerial Resolution No. (84) of 2010.

2) Design or use of any information systems if they can have a material effect on financial information or relevant control systems. Satisfaction of these conditions shall be verified by the audit committee.
3) Provision of any internal audit services or works pursuant to a subcontract.
4) Provision of any actuary services or works.
5) Provision of any assessment or valuation services or works of the Company during performing, or taking part in, the audit.
6) Provision of any administrative services or works or employment services for the Company's financial management, human resources or administrative positions, starting from heads of divisions as well as higher and lower administrative or supervisory positions.
7) Provision of any stock brokerage services or works.
8) Provision of any consultations, excluding the following investment consultations:
   - Assisting customers to prepare feasibility studies and strategic plans.
   - Capital restructuring consultations.
   - Auditing services to the companies that the customer intends to purchase.

In these exceptional cases, the audit committee shall verify that:

a) policies and procedures are in place to prevent the auditor's employees from making a decision in connection with the Company Management;
b) the auditor's employees who provide these services may not take part in the audit process;
c) the auditor's fees for these services may not be material; and
d) the subject of service may not be of value or effect on the financial information of the Company it is assuming the audit thereof.

9) Provision of any legal services or expertise, excluding assistance in connection with a lawsuit before a court.

7. The external auditor shall attend general assembly meetings and recite its report to shareholders, setting forth any obstruction or intervention on the part of the Board of Directors while fulfilling its duties, its remarks on the accounts and financial position of the Company as well as any violations therein, and its report shall be independent and impartial.

8. The external auditor shall report to regulatory bodies any material violations or obstruction and their details in case the Board of Directors does not make suitable decisions thereon.

Article (11)
Delegation of Management

The Board of Directors may delegate a Board Member or the Management in some administrative issues in which it has the authority to make a decision. In this case, it shall make clear directives with regard to the Management's powers, in particular such cases in which the Management must obtain the prior approval of the Board of Directors before making any decisions or assuming any obligations on behalf of the Company and a written list shall be formulated to reflect the duties and competencies that the Board of Directors assumes as well as duties and competencies delegated to the Management and these duties and competencies shall be periodically reviewed.

Each delegation shall be specified in terms of subject and duration and shall set a date for providing the results of delegation to the Board Members.

Article (12)
Shareholders' Rights

1. Shareholders shall have all rights related to their shareholding, in particular the right to receive their share of dividends allocated for distribution and of assets on liquidation, attend general assembly meetings, take part in deliberations, vote on general assembly resolutions, dispose of shares, have access to the Company's financial statements and reports. Additionally, they may request to see the Company's records and documents with the permission of the Board of Directors or the general assembly pursuant to the Company's articles of association.

2. A Company's articles of association and internal bylaws shall include necessary procedures and rules to ensure the exercise by all shareholders of all their regulatory rights including:
   a. Provision of all information that enables shareholders to exercise their rights duly and indiscriminately, including their awareness of the rules that govern general assembly meetings and voting procedures. Such information shall be complete and accurate and shall be provided and updated regularly on a timely basis, including any information with regard to the Company's proposals before voting in meetings, or any other information.
   b. Providing an opportunity to all shareholders to take an effective part in the deliberations of the general assembly meetings and voting of resolutions. Shareholders shall have the right to discuss and raise questions over agenda issues to the Board Members and the external auditor, and the Board of Directors and external auditor shall answer such questions to the extent that the interests of the Company are not compromised.
   c. Provision of a biography of nominees to the membership of the Board of Directors before voting, giving the shareholders a clear indication of the practical experience and academic qualifications of such nominees. The selection of members shall be made by Cumulative Voting.

3. The Board of Directors shall disclose material events, significant resolutions and shall clarify information with regard to the operations and activities of the Company and the Board of Directors shall develop a clear policy on dividend distribution in the best interests of both shareholders and the Company. Shareholders shall be made aware of this policy at the general assembly meeting and the same shall be reflected in the report of the Board of Directors.

4. Board Members may not be granted proxies from shareholders to attend on their behalf at general assembly meetings.

5. A Company shall open nomination to membership of the Board of Directors by announcement in two daily newspapers, of which at least one newspaper is issued in Arabic. Such announcement shall clarify that the Company will publish names of the candidates along with their relevant details at the sign board in the Company, on its website or by any other means acceptable to the Authority at least two weeks in advance of the general assembly meeting and the Company provide the Authority with a list of names of the candidates.

The nomination to the membership of the Board of Directors shall be kept open for at least one month from the date of the announcement and any shareholder that meets nomination criteria pursuant to the Law and the Company's articles of association may stand for election to the membership of the Board of Directors by virtue of an application filed together with his/her biography and information on the capacity in which he/she is willing to stand for election. (1)*

1. * Clause No (5) of Article (12) has been amended according to Ministerial Resolution No (84) of 2010.

Article (12)/bis[1]*
Disclosure of the Concerned Parties

1. If one of the Concerned Parties has an interest or benefit, either directly or indirectly, in any transaction made or purported to be made with the Company, the Parent Company or any Subsidiary Company or Sister Company, and such interest or benefit involves or may involve a conflict with the interests of the Company, such Concerned Party must disclose by means of a written letter addressed to the Board of Directors stating the nature and extent of his interest or benefit within a period of no more than three business days commencing from the day when the Concerned Party becomes aware of the conflict of interest that requires disclosure. The details of such conflict of interest shall be included in the financial report presented by the auditor of the Company to the general assembly in the annual meeting. If the Concerned Party is a shareholder in the Company, he may not vote on the general assembly's resolution to be passed regarding his transaction.

2. If the Concerned Party fails to disclose his interests or benefits as described in item (1) above, the Board of Directors of the Company or any shareholder therein may file a petition with the competent court to suspend the relevant transaction and compel the Concerned Party to pay to the Company any profits or benefits realized. The court may use its discretion in this regard, provided that it does not prejudice the interests of bona fide third parties or expose the Company's interests to risk.

1. * Article (12)/ bis has been added according to Ministerial Resolution No. (239-1) of 2012.

Article (13)
Code of Professional Conduct

A Company shall approve the code of professional conduct along with other internal policies and principles in conformity with the objectives and purpose of the Company and it shall adhere to applicable laws and regulations. These rules shall apply to Board Members, directors, employees and the internal auditor in the course of fulfilment of their duties.

Companies shall apply an environmental and social policy towards the local society.

Article (14)
Corporate Governance Report

The Corporate Governance report is a report signed by the chairman of the Board of Directors of a Company and is submitted to the Authority on an annual basis or at its request during the accounting period covered in the report or for a subsequent period up to the publication date of the annual report, which shall cover all information and details in the form prepared by the Authority, in particular:

1. requirements and principles of completion of a Corporate Governance system and approach of their application;
2. violations committed during the financial year, reflecting their causes as well as the method of remedy and avoidance of future occurrence; and
3. method of formation of the Board of Directors in terms of member classes, term of membership, means of setting remuneration as well as the remuneration of the General Manager, executive manager or chief executive manager of the Company as appointed by the Board of Directors.

The Board of Directors shall make this report available to all the Company's

shareholders a sufficient time prior to the meeting of the general assembly.

Article (15)
Administrative Penalties

Upon breach of the provisions hereof, the Authority may impose any of the following penalties:

1. addressing a warning notice to the Company to remove causes of any violations;
2. suspension of the Company's listing;
3. cancellation of the Company's listing; or
4. a financial penalty that may not exceed the maximum limit hereunder.

Article (16)
Enforcement of the Resolution

1. Companies and institutions whose securities are listed on the Market shall make all necessary changes to adopt the provisions of this Resolution no later than 30/04/2010.

This Resolution shall be published in the Official Gazette and shall take effect on the next day following its date of publication. Companies and institutions listing securities on the Market shall comply with the provisions of this Resolution following the effective date thereof.

Signed
Sultan Bin Saeed Al Mansouri
Minister of Economy

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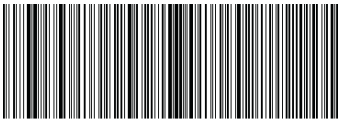

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