

CORPORATE GOVERNANCE IN KSA

HOW DOES IT COMPARE WITH
THE REST OF THE WORLD?

RESPONSIBILITIES AND
COMPETENCIES OF THE BOARD





FOREWORD

Listed companies anywhere in the world play a pivotal role in the economic growth of the country they operate within and the shared prosperity of their people. Public trust is the foremost denominator for keeping the capital markets afloat. It is therefore necessary to frame up the principles which the listed companies need to adopt for better governance and decision making

All over the world “Code of Corporate Governance” is issued by the Regulator of Capital Markets to protect the interest of shareholders. The same has been issued by the “Capital Market Authority” in the Kingdom of Saudi Arabia recently.

This document serves to provide a comparison between the requirements of KSA Code vs some other jurisdictions namely South Africa, UAE, USA, UK and Pakistan. As the economies, culture and companies are not stagnant and always go through an evolution phase; so does the requirements to govern the organizations. Therefore, this comparative analysis is for the regulators, investors, directors, company’s management and public at large to see where KSA stands in this domain with respect to rest of the world and keep on evaluating any changes that may be required from time to time.

The comparison will be issued through a series of documents and this particular publication covers the area of “Responsibilities and Competencies of the Board”.

It is worth mentioning here that all the points which are not explicitly mentioned in any “Code” are considered as a difference for comparison purposes though these many have been captured in a broader term.

I am positive that this effort will play a positive role in raising the general awareness and continuous evolution of governance practices in KSA.



ARTICLE 22: MAIN FUNCTIONS OF THE BOARD

KSA



Main Points

- **Strategy**
- Policy making
- Performance measurement
- Determining Capital Structure and approving Budgets
- Capital management (acquisition and disposals)
- Human Resource Structures and Ensuring Availability
- Ensuring Availability of Resources
- **Internal Control Policy and Oversight**
- Conflict of Interest Policy (Misuse of Company Assets/ Mismanagement)
- Ensuring Integrity of Financial Rules and Reports
- Creating environment for risk awareness
- Implementing Internal Controls and Reviewing Effectiveness
- **Forecasting Risks**
- Disclosing risks to stakeholders
- Policy for Membership in the Board and Implementation
- **Policy for relationship with Stakeholders**
- Policy for compliance with Laws and Regulations
- Disclosure of material information to Shareholders/ Stakeholders
- Cash Flow Management
- Credit Relationships with Third Parties
- Recommendations to the Extraordinary General Assembly
- Recommendations to the Ordinary General Assembly
- Preparing and Approving Financial Statements
- Preparing and Approving Board Report
- Ensuring accuracy and integrity of data/information for Disclosure
- Development of Effective Communication Channels for Shareholders
- Forming, Monitoring and Evaluating Committees according to Resolutions
- Specifying types of Remunerations
- Setting Values

* Shaded points denote the areas that contain differences with other jurisdictions

POINTS MENTIONED IN OTHER JURISDICTIONS BUT NOT IN KSA

King IV Code of Corporate Governance:

1. Strategic Risk Management

"The governing body should oversee that the organisation continually assesses, and responsibly responds to, the negative consequences of its activities and outputs on the triple context in which it operates, and the capitals which it uses and affects".

2. Ensure an effective assurance model through external assurance providers

"The governing body should oversee that the combined assurance model is designed and implemented to cover effectively the organisation's significant risks and material matters through a combination of the following assurance service providers and functions as is appropriate for the organisation:

- Independent external assurance service providers such as external auditors.
- Other external assurance providers such as sustainability and environmental auditors, external actuaries, and external forensic fraud examiners and auditors.
- Regulatory inspectors."

3. Stakeholders Relationship Management viz-a-viz Materiality and Quality

"- Determination of material stakeholders based on the extent to which they affect, or are affected by, the activities, outputs and outcomes of the organisation.
- Measurement of the quality of material stakeholder relationships, and appropriate responses to the outcomes."

4. Technology and Information Management

"The governing body should delegate to management the responsibility to implement and execute effective technology and information management."



The Principles of Corporate Governance in USA:

1. Deciding Company's Risk Appetite

"The board and senior management should agree on the company's risk appetite, and the board should be comfortable that the strategic plans are consistent with it."

POINTS MENTIONED IN KSA BUT NOT IN OTHER JURISDICTION

1. Determining Capital Structure and approving Budgets:

Determining the most appropriate capital structure for the Company, its strategies and financial objectives, and approving all kinds of estimated budgets.

2. Credit Relationships with Third Parties:

"Supervising the management of the Company's finances, its cash flows as well as its financial and credit relationships with third parties; "

3. Recommendations to the Extraordinary General Assembly

"Providing recommendations to the Extraordinary General Assembly as to what it deems appropriate regarding the following:

- a. Increasing or decreasing the share capital of the Company; and
- b. Dissolving the Company before the end of its term as specified in its bylaws or deciding the continuity of the Company. "

4. Recommendations to the Ordinary General Assembly

"Providing recommendation to the Ordinary General Assembly as to what it deems appropriate regarding:

- a. Using the consensual reserve of the Company, if such has been formed by the Extraordinary General Assembly and has not been allocated to a specific purpose;
- b. Forming additional financial allocations or reserves for the Company; and
- c. The method of distributing the net profits of the Company. "


5. Preparing and Approving Board Report

"Preparing the Board report and approving it before publishing it."



ARTICLE 23: DISTRIBUTION OF COMPETENCIES AND DUTIES

KSA



MAIN POINTS

- Develop and Approve Internal Policies (specifying responsibilities)
- Approving Policy for Identifying Power Delegated to Executive Management (and other relevant information including Authority Framework/Matrix)
- Identifying matters on which Board reserves power to decide

POINTS MENTIONED IN OTHER JURISDICTIONS BUT NOT IN KSA

None

POINTS MENTIONED IN KSA BUT NOT IN OTHER JURISDICTION

None



ARTICLE 24: SEPARATION OF POSITIONS

KSA



MAIN POINTS

- Appointment and Defining Competencies of the Chairman, Vice Chairman and Managing Director
- Ensuring Separation of Positions
- Ensuring no one has Unfettered Powers

POINTS MENTIONED IN OTHER JURISDICTIONS BUT NOT IN KSA

The Principles of Corporate Governance in USA:



1. Alternate Leadership Model


- "U.S. companies take a variety of approaches to board leadership; some combine the positions of CEO and chair while others appoint a separate chair. No one leadership structure is right for every company at all times, and different boards may reach different conclusions about the leadership structures that are most appropriate at any particular point in time. When appropriate in light of its current and anticipated circumstances, a board should assess which leadership structure is appropriate."
- "Independent board leadership is critical to effective corporate governance regardless of the board's leadership structure. Accordingly, the board should appoint a lead director, also referred to as a presiding director, if it combines the positions of CEO and chair or has a chair who is not independent."

POINTS MENTIONED IN KSA BUT NOT IN OTHER JURISDICTION

None



ARTICLE 25: OVERSIGHT OVER THE EXECUTIVE MANAGEMENT

<p>KSA</p> 
<p>MAIN POINTS</p> <ul style="list-style-type: none"> • Formulation Overseeing and Evaluating of Executive Management • Administrative Policy • Appoint CEO • Appoint Internal Audit Manager • Periodic meeting with Executive Manager • Develop Succession Plans

<p>POINTS MENTIONED IN OTHER JURISDICTIONS BUT NOT IN KSA</p>
<p>None</p>

<p>POINTS MENTIONED IN KSA BUT NOT IN OTHER JURISDICTION</p>
<p>None</p>



ARTICLE 26: COMPETENCIES & DUTIES OF THE EXECUTIVE MANAGEMENT

KSA



MAIN POINTS

- Implementing Company's Internal Policies and Rules
- Suggesting Comprehensive Strategy
- Suggesting Business Plans
- Suggesting and Implementing Mechanisms for Investment and Risk Management
- Proposing appropriate capital structure
- Proposing capital expenditures and Acquiring and Disposing Assets
- Proposing and Overseeing organizational & human resource structures
- Implementing and Overseeing Internal control systems (Conflict of Interest policy, applying financial and accounting procedures, appropriate control systems, forecasting risks, promoting culture of risk mitigation and transparent disclosures to board and stakeholders)
- Implementing Corporate Governance rules
- Ensuring compliance with Laws and Regulations
- Provide recommendations re: Share Capital, Deciding Continuity of Company, Using consensual reserves, forming additional reserves and method for Distributing Net Profits
- Proposing Remunerations Policy
- Preparing and Presenting Periodic Financial and Non-financial Reports (Progress Achieved)
- Managing Daily Business and Resources
- Building and Developing Culture of Ethical Values
- Implementing Internal Control and Risk Management Systems
- Ensuring compliance with Levels of Risks approved by Board
- Proposing and Developing Policies related to Business of Company
- Proposing Policy for Delegation to Executive Management
- Proposing Powers to be Delegated to Executive Management

POINTS MENTIONED IN OTHER JURISDICTIONS BUT NOT IN KSA

None

POINTS MENTIONED IN KSA BUT NOT IN OTHER JURISDICTION

The 'Competencies and Duties of the Executive Management' have been elaborately presented in the Code for KSA yet none of the other jurisdictions mention it in the same way or at all for that matter.