

CORPORATE GOVERNANCE IN KSA

HOW DOES IT COMPARE WITH
THE REST OF THE WORLD?

CHAPTER 6: CONFLICTS OF INTEREST





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 “conflicts of interest”.

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.

Faheem Piracha



ARTICLE 43: CONFLICTS OF INTEREST POLICY

KSA



MAIN POINTS:

Explicit written policy dealing with conflicts of interest includes

- Importance of avoiding situations that may lead to conflicts
- Providing examples of relevant conflicts of interest situations
- Obligation to disclose conflicts of interest
- Procedure for disclosing conflicts
- Procedure for obtaining approval for commencing activity that could lead to conflict
- Obligation to abstain from voting or taking part in decision making
- Procedure for entering into contract with related parties.
- Procedure for when policy is violated

POINTS MENTIONED IN OTHER JURISDICTIONS BUT NOT IN KSA

Though the main areas are similar between different codes in broader terms, the following points have been 'explicitly mentioned' in other jurisdictions and not in the code of corporate governance of KSA.

Corporate governance in the UAE Legislation:



- 1. The role of committees in conflict of interest situations**
In case of any conflicts of interest, the Board of Directors may form a committee for the purpose of dealing with any such issues and presenting their opinion in front of the board.

POINTS MENTIONED IN KSA BUT NOT IN OTHER JURISDICTION

The following points have been 'explicitly mentioned' in KSA and not in the corporate governance documents of other jurisdictions.

- 1. Procedure for entering into contracts with related parties:**
"Clear procedures when the company contracts or enters into a transaction with a related party, this shall include notifying the authority and the public without any delay of that contract or transaction if it equals to or exceeds 1% of the company's total revenues according to the last annual audited financial statements."

ARTICLE 44: AVOIDING CONFLICTS OF INTEREST

MAIN POINTS:

- Prioritising Interests of the company
- Avoiding situations of conflict
- Notifying board
- Disallowing member with a conflict of interest to vote
- Protect confidentiality of information
- Prohibiting board members from misusing or benefiting from company assets/information/investment opportunities (extends to members that have resigned)

None

The following points have been 'explicitly mentioned' in KSA and not in the corporate governance documents of other jurisdictions.

- 1. Avoiding situations of conflict even after resignation**
In the occasion that a board member resigns, he/she is prohibited from directly, or indirectly using information or investment opportunities that came to his/her knowledge during his/her membership in the board.



ARTICLE 45: DISCLOSURE OF CONFLICTS OF INTEREST BY THE NOMINEE

KSA



MAIN POINTS:

At the time of nomination, a nominee is required to disclose conflicts of interest in the following scenarios:

- Having direct or indirect interest in a contract or business that the company has entered into.
- Being in competition with the company

POINTS MENTIONED IN OTHER JURISDICTIONS BUT NOT IN KSA

None

POINTS MENTIONED IN KSA BUT NOT IN OTHER JURISDICTION

'Disclosure of conflicts of interest by the nominee' has been presented in the code for KSA however none of the other jurisdictions mention membership requirements in the same light.

ARTICLE 46: COMPETING WITH THE COMPANY

MAIN POINTS:

In the case that a member desires to engage in a competing business, the following is required

- Notify board
- Abstain from voting
- Chairman will inform ordinary general assembly
- Obtain authorisation from ordinary general assembly
- Annual renewal of said authorisation will take place

None

'Competing with the company' has been presented in the code for KSA however none of the other jurisdictions mention the procedure requirements for this situation in the same way.



ARTICLE 47: CONCEPT OF THE COMPETING BUSINESSES

KSA



MAIN POINTS:

The following is deemed as participation in a business that may compete

- Board member of a similar company
- Owner of a similar company
- Controlling share in similar company
- Acting as commercial agent of a similar company

POINTS MENTIONED IN OTHER JURISDICTIONS BUT NOT IN KSA

None

POINTS MENTIONED IN KSA BUT NOT IN OTHER JURISDICTION

'Concept of the competing business' has been presented in the code for KSA however none of the other jurisdictions explain this concept.

ARTICLE 48: REJECTING THE RENEWAL OF AUTHORISATION

MAIN POINTS:

If the general assembly rejects renewing the authorisation granted pursuant to articles (71) and (72) of the companies law and article (46) of these regulations

- Relevant member is either to withdraw from contract, transaction or competing venture
- or resign from post
- or will be terminated

None

'Rejecting the renewal of authorisation' has been presented in the code for KSA however none of the other jurisdictions mention these conditions.

ARTICLE 49: ACCEPTING GIFTS

MAIN POINTS:

- A member cannot accept any gift if it leads to conflict of interest

None

'Accepting gifts' has been presented in the code for KSA however none of the other jurisdictions mention this condition.