Corporate Governance

Part 1 - Joint Stock Companies

2019

ANDERSEN TAX & LEGAL®

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Introduction.

This book has been prepared by the professionals at Andersen Tax & legal Egypt.

The contents of the book intend to describe the accounting and legal obligations imposed on joint stock companies after formation, to allow them to remain in operation in accordance with local regulations.

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After Establishment.

General Assembly

1) Composition of the General Assembly

A General Assembly shall be composed of all shareholders of the company, each according to his/her portion of shares. While the company's articles of association may stipulate that only shareholders with a specific number of shares may attend the General Assembly, this provision shall be deemed an exception to the rule that allows any shareholder to attend these meetings, and shall only apply when the number of shareholders is so large that it makes it difficult for the company to arrange for a place for the meeting. More importantly, it should be emphasized that the foregoing provision should not be used as a means to ignore or exclude the minority shareholders.

2) Participation in the General Assembly

Shareholders should be encouraged to attend the General Assembly. To this end, arrangements should be made for facilitating their participation, including, inter alia, choice of the appropriate place and time. Companies with a large number of members can use electronic means and different communication systems, according to the international best practices, for online transmitting or recording of the proceedings of the meeting for shareholders abroad or at home. Equally crucial is the facilitation of shareholders' participation procedures, provided that the company's bylaw and articles of association should be observed, in respect of the procedures of calling for the General Assembly and the method of running the meeting.

3) Voting in the General Assembly

Voting on the General Assembly's resolutions should be accurately recorded. If a dispute arises about the validity of some votes on all or any resolutions of the General Assembly, voting shall be taken, rendering such votes valid for one time, and invalid for another time.

Subject to applicable laws and the company's articles of association, minority shareholders holding not less than 5% of the company's share capital are entitled to place items on the General Assembly's agenda, and to raise objections with the administrative body on any General Assembly resolution. In turn, the administrative body shall suspend those resolutions passed in favor of the majority shareholders against the minority shareholders. Additionally, the General Assembly must be called when 3 % or more of shareholders make a request, as specified by law within the framework of protecting the minority shareholder rights.

The General Assembly secretary shall record in the minutes of the meeting all the discussions, events and resolutions brought about by the meeting. The company should disclose the resolutions passed and the material events occurred, to all shareholders simultaneously. Minutes of the company's General Assemblies should be posted on the company's website, and shall be made available to the public as much as practicable.

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Board of Directors.

The board's (BOD) main role centers on maintaining the affairs of the business on behalf of its shareholders. The board is directly accountable to the shareholders and must therefore provide periodic reports to shareholders on the performance of the company, as well as create strategies on the ways in which performance can be enhanced. The board is not responsible for the day to day running of the company.

Authorities

Egyptian Companies Law identifies the role of the board of directors as:

• Managing the company.

• Implementing regulations related to administrative, financial and personnel affairs.

• Implementing specific regulations for the organization of works, and meetings, and for the distribution of the authorities and liabilities.

• Dealing in the company's name to concude all contracts and transactions, in particular the appointment, suspension and isolation of employees of the company and determining their salaries, wages and bonuses, and the receipt and payment of all amounts. Additionally, the BOD has the right to purchase all materials, equipment, goods, movables and loans through credit, as well as having the right to borrow from banks and mortgage the company's funds and loans. Finally, the BOD has the right to authorize or delegate any person to carry out the above-mentioned matters on its behalf.

Composition

Subject to the law and the company's articles of association, the Board of Directors shall be made up of an adequate number of members that enable it to perform its functions and duties, including formation of committees. The majority of members must be non-executives, and at least two of them are independent members with technical and analytical skills for the benefit of the Board and the company. Guided by international best practices, the Board composition should ideally be made up of a diverse and unbiased mix. In all events, when electing independent non-executive members, consideration should be taken that a member can devote the necessary time and care to the company, and that there is no conflict of interest with any other commitments.

Sufficient information, data and description about the company should be furnished to incoming Members of the Board upon their appointment to ensure that they become acquainted with all the general aspects of the company and identify its strengths, weaknesses, administrative structure, budget elements, and anything else they may need to adequately fulfill their duties.

The board may choose a chairman and a managing director if they prefer to not give these two positions to the same person. However, this must be justified in the company's annual report. The managing director will then be responsible for managing the company and reporting to the board. The chairman is to manage the board of directors and ensure that it works no achieving its goals. They are also responsible for evaluation the performance of the board members, either personally or by using specialized bodies. Neither the chairman nor the board is to interfere with the day to day management of the company. Further, the chairman is responsible for ensuring that members of the board are familiar with the Egyptian Corporate Governance Regulations and their application by creating a training plan. The board is then to set out their mechanisms and methods for guaranteeing that the company abides to applicable laws and regulations, based on objective standards.

Terms

An executive member's term of contract should not exceed three years. The remuneration of the executive board members should be determined by a committee formed of three independent or non-executive members, negotiated with the executive board members, and in consultation with the managing director. The remuneration of the independent and non-executive members is to be determined by the general assembly.

Meetings

The board should meet at least once every three months. These meetings should be held at a venue and timing convenient for board members. They should be given adequate information regarding the topics to be discussed at the meeting, unless the matter is urgent. The board should also frequently revise the company's internal systems to ensure that they are updated and efficient. The board cannot carry out transactions involving more than 20% of the company's total assets without an ordinary general assembly.

The board can also create different committees, made up of its members as well as third party consultants, to carry out specific tasks for specific periods. The duties of these committees must be laid out clearly. Committees should include an audit committee, a risk committee, an investment committee, and remuneration, nomination and incentives committee.

It should also appoint a corporate secretary in charge of managing board files, meeting minutes, and reports. The secretary is to attend meetings and take minutes. The secretary is to act as a permanent link between the board members and the company, ensuring that both are provided with the information they need. The board must hence provide the secretary with the adequate authorization in order to allow them to fulfill their duties efficiently.

Annual Report

The board is to present an annual report to the shareholders, which should include:

• A comprehensive overview of the company's operation and financial status;
• A prospective vision of the company's activities for the upcoming year;
• The activities and operation status of subsidiaries, if any;
• A summary of any changes in the company's capital structure;
• Information on the board and its committees, including insurance of their compliance with Corporate Governance Regulations;
• The company's Corporate Social Responsibility (CSR) activities.

This list is non-exhaustive, as the more information may be required by industry-specific laws to be included in the report.

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Auditing.

There are a number of safeguards you can incorporate into your company's structure to ensure accurate and compliant accounting. The most essential of these are:

1) Internal Audit Department

The managing director is responsible for the appointment, dismissal, and financial terms of the internal audit department's head. The internal audit department is different from the audit committee of the board. The internal audit department must be headed by a senior executive working as a full-time officer. They are to report to the managing director. The head must have the authorization necessary to allow them to carry out their duties. The department must also be provided with the necessary means, tools, and equipment. Their duties include the evaluation of the risks concerning management means, systems, and procedures, as well as ensuring the proper and solid implementation of the Corporate Governance Regulations.

The head must attend audit committee meetings and must submit a quarterly report to the board and its audit committee concerning the extent of the company's compliance with the company's regulations and with national Corporate Governance Regulations. The board is to then issue a written, detailed decree about the department's objectives, duties, authorities, as well as the names of its heads and assistants.

2) External Auditor

The general assembly, in its annual meeting, is to appoint an external auditor. The only exception is the first external auditor, who is appointed by the company's founders, subject to the approval of the first following general assembly. The Central Bank of Egypt has issued instructions stipulating that the external auditor should not be appointed for periods longer than five years at a time. They also cannot be re-appointed until after two years have passed from when they ended work with the company as its external auditor. The board's decision should be based on the audit committee's recommendation, focusing on someone with adequate experience in the accounting and auditing profession. The board cannot assign additional non-audit services to the external auditor, whether directly or indirectly, unless they consult with the audit committee.

A key point is that the external auditor must be totally independent from the company and its board. They cannot be a shareholder, a member of the board, or an employee in any capacity. They must be independent and objective in all their opinions. They must adhere to Egyptian auditing standards as well as their professional code of ethics. The external auditor, or a representative of them, must be invited to the company's general assembly meetings.

3) Audit Committee

The audit committee is part of the board and should be formed of at least three independent members, one of which being a financial and accounting expert. If there are not enough independent members, it can include non-executive members as well. The committee may include one or more members from outside of the company. The committee's chairman must be independent.

The audit committee is to:

• Assess the competence of the financial manger and the rest of the finance department staff;
• Examine the internal control system and prepare

a report with opinions and recommendations;
• Examine the company's accounting policies and provide opinions and recommendations;
• Review the auditing plan with external auditors;
• Review the external auditor's comments on the financial statements;
• Assess the qualifications, performance, and independence of the external auditor, proposing their appointment, fees, and dismissal;
• Approve the additional non-audit services to be performed by the external auditor;
• Review and discuss the efficiency of the internal audit department's plan;
• Review the internal audit reports and the actions they impose;
• Review and assess and assess the early warning system set by the company;
• As well as carry out any other duties assigned by the board.

The committee should meet at least once every three months. The chairman of the committee should create a report assessing the committee to be presented to the company's annual general assembly.

Transparency and Disclosure

In order for the company to adequately make decisions, evaluations, and correct determinations of their status, they must have accurate and up-to-date information. For that reason, transparency and disclosure of financial and non-financial issues are among the main pillars of corporate governance.

Disclosure entices that the company issues an annual report compromised of its financial statements as well as any other information that could be important to the shareholders or other stakeholders. This report should be done in simple, easy-to-read language, preferably in both Arabic and English. Moreover, companies listed on the stock exchange should preferably have websites on the Internet, again, in both Arabic and English, where they should keep accessible financial and non-financial updates. Given the above, the company should appoint an investor relations office responsible for managing company disclosures and for responding to shareholders' enquiries.

In turn, the company must also disclose information to shareholders and other stakeholders, such as audited financial statements, auditors' reports, and any other financial information that could be important to shareholders and other stakeholders. The company should disclosure non-financial information, such as the composition of the board and its committees, the board members' curriculum vitaes, the company's ownership structure and that of affiliates and subsidiaries, environmental and social policies, the company's annual reports, their reports of compliance with the Corporate Governance Regulations, as well as any other material information or events that could be important to shareholders and other stakeholders. The company should also publish, on their website, their annual general assembly meeting minutes. They should, at least once a year, disclose their environmental, social, safety, and health policies to shareholders. These policies should be clear and not misleading, and should include the company's plans – including plans in terms of employee development, change in employment size, employee training and social welfare programs. Finally, companies are also motivated to disclosure any international agreements concerning social or environmental issues.

Rules for Avoiding Conflict of Interest

Each company must have a clear, approved system concerning the prevention of conflict of interest. This system must be complied with by all board members, managers, and staff.

This system must first of all prohibit any member of the company from trading the company's shares before the announcement of its operation results or financial statements or any other information that could influence its stock price. It is also not acceptable to trade company shares right after sudden events liable to affect the company's financial status or share price until such information is disclosed to the public.

The company should also set professional codes of conduct covering:

• Dealing with the company by selling or buying;
• Authorization regarding dealing with the company;
• Plans to disclose new company policies;
• Existing health and safety standards;
• Sound professional standards for interaction between staff and managers, and between them and any other external party;
• Any other issues deemed necessary by the audit committee to be internally regulated.

The company should also set an internal system to supervise the implementation of such professional codes of conduct.

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Tax Calendar.

Months	Subject				
	Salary Tax		Withholding Tax	Corporate Tax	VAT
	Salary Tax Payment	Annual & Quarters Returns			
January					
February (1st year)	Pay January salary tax due from day 1 to day 15				
March	Pay February salary tax due from day 1 to day 15				Pay & submit January VAT due before end of March.
April	Pay March salary tax due from day 1 to day 15	Submit the quarter declaration (form No. 4 salaries) for the previous three months	Submit form No. 41 WH Tax for the 1st quarter and pay the tax due through the month		Pay & submit February VAT due before end of April.
May	Pay April salary tax due from day 1 to day 15				Pay & submit March VAT due before end of May.
June	Pay May salary tax due from day 1 to day 15				Pay & submit April VAT due before 15th of June
July	Pay June salary tax due from day 1 to day 15	Submit the quarter declaration (form No. 4 salaries) for the previous three months	Submit the form 41 WH Tax for the 2nd quarter and pay the tax due through the month		Pay & submit May VAT due before end of July.

Months	Subject				
	Salary Tax		Withholding Tax	Corporate Tax	VAT
	Salary Tax Payment	Annual & Quarters Returns			
August	Pay July salary tax due from day 1 to day 15				Pay & submit June VAT due before end of August.
September	Pay August salary tax due from day 1 to day 15				Pay & submit July VAT due before end of September.
October	Pay September salary tax due from day 1 to day 15	Submit the quarter declaration (form No. 4 salaries) for the previous three months	Submit form 41 WH Tax for the 3rd quarter and pay the tax due through the month		Pay and submit August VAT due before end of October.
November	Pay October salary tax due from day 1 to day 15				Pay & submit September VAT due before end of November.
December	Pay November salary tax due from day 1 to day 15				Pay & submit October VAT due before end of December.
January (2nd year)	Pay December salary tax due from day 1 to day 15 Annual salary tax reconciliation for previous year before January 31 st	1. Submit annual salary tax reconciliation and annual salary tax return, and pay the reconciled amount. 2. Submit quarterly declaration (form No. 4 salaries) for the previous three months	Submit form 41 WH Tax for the 4th quarter and pay the tax due through the month		Pay & submit November VAT due before end of January.
February (2nd year)					Pay & submit December VAT due before end of February.

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Notes.

Salary Tax

1. The company should review the annual salary tax reconciliation and pay the difference, if any.

2. The company should withhold and pay the monthly salary tax due within the period from day 1 to day 15 of the next month.

3. Submit **quarterly** declaration (form No. 4 salaries) for the previous three months.

Withholding Tax

1. The company should submit form No. 41 for local withholding tax and pay the withholding tax due on a quarterly basis within the next month of the quarter to the tax authority.

2. In case of any foreign service/royalty charges on the Egyptian company, fulfillment of form No. 11 and payment of withholding tax on foreign services which is due the **day after payment**.

Corporate Tax

Administration

Partnerships, corporations, branches and banks should file income tax returns before May 1st of each year, or four months after the financial year-end. Income tax returns should be signed by the taxpayer and external chartered accountant, and submitted within the above-mentioned deadlines. The submission should be done electronically through the Egyptian Tax Authority portal except for individuals and partnerships. In addition, a local Transfer Pricing report should be submitted to the Egyptian Tax Authority during two months following the income tax return submission (subject to certain conditions).

Taxes arising from the tax return should be paid after deducting the withholding on payment or the advance payment, and the excess amount is refundable. The taxpayers may file a request for a tax return due date extension provided they pay an estimated amount of tax. This should be done within 15 days at the latest before the end of April **(since the end of the financial year is December)**. The extension period may be up to 60 days.

Amended tax returns may be filed within 30 days from the due date, and they should be considered an original tax return. A late penalty is applied with the credit and discount rate issued by the Egyptian Central Bank as of January each year plus 2%. Any tax due must be paid when the tax return is filed.

VAT

Change to VAT returns should be filed electronically through the Egyptian Tax Authority portal within a maximum of 60 days from the month end, **except for April's tax return which should be filed before June 15th**.

If the above is not complied with, an additional monthly tax at the rate of 1.5 % will be due.

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