

Related party transactions for public joint stock companies

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In a step to further enhance corporate governance standards in the UAE, the Ministry of Economy issued a ministerial resolution in 2014 (Ministerial Resolution 250 of 2014) setting out new requirements with which public joint stock companies (PJSCs) must comply before entering into a related party transaction.

Prior to Ministerial Resolution No. 250 of 2014 the rules in relation to related party transactions did not require such transactions to be approved by the shareholders of the company. They only required the related party to disclose its interest in the transaction to the board of directors of the company.

The new regime is broadly as follows:

- related party transactions must now be evaluated to determine whether they have a value equal to 10 per cent or more of the asset value of a company as set out in its most recent audited accounts (a Material Related Party Transaction);
- if a related party transaction is classified as a Material Related Party Transaction then it can only be entered into by the company if:
 - the terms of the transaction have been evaluated by an expert in the sector of the transaction; and
 - the transaction is approved by the board of directors and the general meeting of the company;
- the company has an obligation to disclose the following to the UAE Securities and Commodities Authority (the SCA) immediately on signature of the documentation in respect of the Material Related Party Transaction:
 - data and information on the related party;
 - details of the transaction;
 - nature and extent of the benefit to the related party in the transaction; and
 - written confirmation from the board of directors of the company that the terms of the transaction are fair, reasonable and to the benefit of the shareholders of the company. It appears that the requirement to obtain an expert's report on the terms of the transaction will assist the board in getting comfortable that this confirmation can be provided;
- the related party must also make certain disclosures to the board of directors of the company immediately following the transaction. Immediately upon receipt of such disclosures the board must itself disclose the information provided by the related party to the market on which it is listed; and
- the details of Material Related Party Transactions entered into during the course of any financial year must be

included in the audited accounts of the company to be laid before the general meeting.

In addition to imposing these approval, evaluation and disclosure requirements, Ministerial Resolution 250 of 2014 has also extended the definition of related parties. Related parties include the chairman and members of the board of directors and members of the senior executive management, companies controlled by any of these persons, allied companies, sister companies and subsidiary companies (as was previously the case) but also persons who have control of the company, first degree relatives of any of the above and/or any person or company which over the past year was a shareholder holding 10% or more of the share capital of the company, was a parent or allied company, or was a member of the board of directors of the company.

The new requirements are not designed to prevent PJSCs from entering into related party transactions. They are meant to implement a process to ensure that dealings with related parties are transparent as well as for the benefit and interest of the company and its shareholders. PJSCs should review their internal compliance policies to assess and, to the extent required, amend them to reflect the changes to the related party transactions regime introduced by Ministerial Resolution 250 of 2014.

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