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Strategic evolution in
governance regulation:
Navigating the new
amendments from the
UAE Securities and
Commodities Authority

April 2024



Introduction



In the ever-evolving regulatory landscape of the United Arab Emirates (UAE), the recent amendments by the Securities and Commodities Authority (SCA) mark a critical shift towards strengthening the corporate governance, internal controls system and risk management regime for listed entities. The UAE's forward-thinking strategy in refining its regulatory framework demonstrates its unwavering commitment to align with global best practices. This thought leadership paper explores the significant impact of the SCA regulatory updates, highlighting the critical assessments that companies must undertake to evaluate their ecosystem and their alignment with the UAE's updated Governance Code.



Building on the strong base set by the 2020 Governance Code (Decision no. 3/R.M), the SCA has made significant updates to its corporate governance requirements, shown in the latest changes from Decision no. 2/R.M of 2024. The main changes include :



Internal controls



The external auditor may issue a separate report with their opinion on the company's internal control systems' effectiveness and compliance with their control framework, identifying areas for improvement and recommending corrective actions as stipulated in Article 73(4);

01



Companies are mandated to implement a robust internal control framework (preferably Committee of Sponsoring Organizations of the Treadway Commission Framework (COSO)) for effective risk and control management, as outlined in Article 14(7); The audit committee is tasked with the annual responsibility of reviewing and assessing the remedial action plan for significant deficiencies identified within the internal control systems, as directed by Article 61 bis; and

02



The amendment requires the creation and enforcement of comprehensive internal policies and guidelines that encompass every operational aspect of the company, including corporate governance, performance evaluation, staff appointments and terminations, along with the process of approval of these policies and guidelines, as specified from Article 14(32) to Article 14(39).

03





Governance



The audit committee is obligated to compile an annual report that encompasses several critical areas such as review of significant financial matters, evaluation of the external audit's independence and effectiveness process, external auditor appointments, review of high and medium risks issued by internal audits, corrective measures for risk management and internal control deficiencies, and review of related-party transactions, as highlighted in Article 61 bis.

01



The board of directors sets and oversees governance rules aligned with the Governance Code issued by SCA, where it may establish a governance committee of non-executive members to implement the Governance Code, ensuring compliance, updating these rules, and awareness of the board members of global leading practices in corporate governance. This committee is obligated to prepare an annual corporate governance report, to confirm that it has met the requirements specified in this Governance Code as stipulated in Article 63 bis.

02



The internal audit function must remain distinct and cannot be merged with any other function within the company, as specified by Article 67(1) (D).

03



Applicability

These SCA regulations, along with their relevant amendments, are applicable to Public Joint-Stock Companies (PJSCs or Companies) in the UAE, effective from January 2024 and applicable for year ending from 30 June 2024 and 31 December 2024 onwards. All the public joint stock companies are expected to comply with the rules. The SCA, being the regulatory authority supervising listed companies, shall oversee the application of this Guide.



A night cityscape with blurred lights and a red semi-transparent box containing text. The background shows a city at night with various lights and a grid-like pattern of red lights. A red semi-transparent box is overlaid on the left side of the image, containing the text '01' and 'Strengthening controls: Enhancing oversight through rigorous assessment and framework implementation'. A yellow square is located in the bottom right corner of the image.

01

Strengthening
controls: Enhancing
oversight through
rigorous assessment
and framework
implementation

How should I prepare for an external auditor's opinion of internal control systems?



In today's increasingly dynamic business landscape, the regulatory framework that underpins corporate governance is also evolving. The recent introduction of significant amendments in the area of internal controls stands testament to this continuous progression. These changes are designed to bolster corporate integrity and foster a robust control environment across various sectors. The following amendments offer valuable insights for PJSCs, equipping them to prepare for and adapt to these regulatory enhancements:



The external auditor's role in assessing internal control systems:

01

Separate auditor's report on internal control system

The external auditors of the company may issue a separate report on the company's internal control system which represents a critical advancement. This independent opinion will offer a clear insight into the robustness of internal controls, furnishing stakeholders with a neutral perspective on the company's governance efficacy. Companies must enhance and update their internal control systems, incorporating a robust framework and evaluating the effectiveness of internal controls prior to external audit. This proactive approach aims to secure an unqualified auditor's opinion on internal controls, thereby enhancing the trust and accountability within the corporate ecosystem.

Identifying and addressing deficiencies

External auditors, along with management, may identify deficiencies in internal control systems with the aim of improving the design and operational effectiveness of controls. This pinpoint identification allows PJSCs to strategically prepare and enact focused corrective actions. By addressing these areas, PJSCs can significantly reinforce their governance frameworks, leading to improved operational efficiency, risk management, and overall corporate integrity. This process not only underlines the value of external audits but also emphasises the ongoing commitment of PJSCs to uphold high standards of governance in line with regulatory expectations and best practices.



How should I prepare for an external auditor's opinion of internal control systems?



Adopting and implementing the internal control framework (COSO framework is recommended):

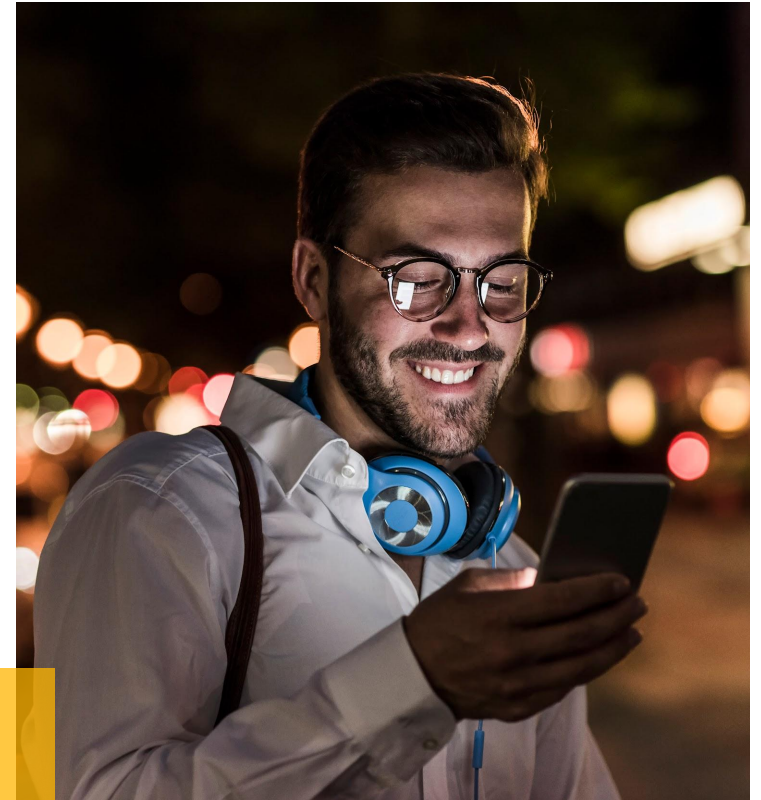
02

Making COSO framework your internal control's blueprint

The COSO (Committee of Sponsoring Organizations of the Treadway Commission) framework emerges as a leading standard for organisations aiming for a methodical approach to risk and control management. Its integration signifies a dedication to adhering to global best practices, providing an exhaustive guideline for the creation, execution, and refinement of internal controls. This framework not only facilitates a robust control environment but also equips entities with the necessary tools to effectively manage risk, ensuring operational efficiency, and compliance with regulatory requirements.

Design, development, and supervision of internal control framework

The board must adopt a rigorous process for incorporating the COSO framework (preferred framework), which encompasses the design, development, and supervision of a tailored internal control and risk management framework. This process should focus on the continuous monitoring of internal control systems, evaluating their effectiveness, and taking corrective measures to enhance their performance and reliability.



How should I prepare for an external auditor's opinion of internal control systems?



The audit committee's role on monitoring internal controls:

03

Annual reporting includes review of internal controls deficiencies

Key to the recent amendments is the enhanced role of the audit committee, especially their responsibility to provide detailed information about the remedial action plans for significant deficiencies in internal controls within the audit committee annual report. This duty is crucial for building trust with stakeholders by providing clear evidence of the organisation's dedication to reinforcing its internal control systems.



Developing and enhancing internal policies and guidelines:

04

Policy development and its continuous improvement:

The amendments place significant emphasis on the development and ongoing refinement of internal policies and guidelines, which are crucial for covering the entirety of the company's operations. These comprehensive policies play a key role in establishing a culture of compliance and governance excellence within the organisation. By outlining expectations and procedures, they serve as the backbone for operational integrity, guiding employees and management alike in maintaining high standards of conduct and decision-making. This systematic approach to governance ensures that all aspects of the company's activities are conducted within a framework that prioritises ethical practices, risk management, and regulatory adherence.

Where do you fall in the UAE governance regulatory scheme? Explaining the need for ICFR vs COSO among different entities in the UAE

In light of the different regulatory environments in the UAE, we have presented a comparative analysis to shed light on the specific requirements set forth by the SCA and the Abu Dhabi Accountability Authority (ADAA) outlining the difference between COSO (Committee of Sponsoring Organizations of the Treadway Commission) and ICFR (Internal Control Over Financial Reporting). This comparison aims to equip companies with a clear distinction of the two mandates, thereby facilitating their journey towards achieving compliance and enhancing their internal control systems. Our objective is to serve as a navigational tool for companies, guiding them through the complexities of their regulatory and internal control responsibilities with clarity and precision. By describing the nuances between the SCA and ADAA mandates, we strive to support PJSCs in their efforts to align with these standards, ensuring a robust framework for governance, risk management, and financial reporting integrity.

Criteria 	COSO (SCA mandate) 	ICFR (ADAA mandate) 
 Regulator	Securities and Commodities Authority (SCA)	Abu Dhabi Accountability Authority (ADAA)
 Region	UAE Nationwide	Specifically Abu Dhabi
 Applicability	All listed PSJC companies in the UAE	Abu Dhabi Government-owned entities, both directly and indirectly more than 25% of their capital
 Focus	Broad focus on entity wide risks and controls	Specifically focused on financial reporting risks and controls
 Scope	Comprehensive, covering governance, risk management, and internal control practices	Focused scope on enhancing the accuracy and reliability of financial reporting risks and controls
 Best standards	Recommended to adopt COSO as a leading framework for internal controls, encouraging best practices in governance and risk management	Adopts specific company based guidelines aimed at ensuring integrity and reliability in financial reporting
 Approach	Offers a structured, flexible approach to internal control, applicable across various operational and financial processes	Concentrates on the internal control mechanisms specifically related to financial reporting processes
 Opinion from external auditors	May require an opinion on the overall effectiveness of the internal control systems	Mandatory to requires an opinion specifically on the effectiveness of internal controls over financial reporting

Assessing your company's operating model: Are you fully prepared to comply with SCA's internal control regulations?



The initial step in the design and implementation of internal controls involves evaluating the sophistication and development of your organisation's existing operating model. This assessment provides vital early insights into the organisation's foundational readiness to accommodate regulatory changes. Understanding the current state of your operating model is critical for determining the preparedness of your company to adopt and effectively implement these regulatory modifications



Consider the following questions to thoroughly evaluate your current operating model for internal controls:

Is there a defined operating model within the organisation that outlines the design, implementation, and monitoring of internal controls?

01

Has the organisation conducted a review and assessment to determine if management has established a defined internal control framework?

02

What level of maturity does the internal controls currently exhibit – is it at the initial, informal, formalised, monitored, or optimised stage?

03

Have process owners been identified and assigned to oversee key business processes?

04

Is there any existing management reporting on the assessment of internal controls? If so, what is the process, and who are the recipients?

05



Assessing your company's operating model: Are you fully prepared to comply with SCA's internal control regulations?

Has the organisation adequately identified risks and controls at the entity level, within business processes, and IT processes?

06

Has the organisation evaluated the sources of assurance regarding the design and operational effectiveness of controls?

07

Have the responsibilities for operating and monitoring internal controls been clearly established?

08

Does the organisation possess a system for governance forums to review and solicit feedback on corrective measures for identified gaps?

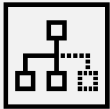
09

Are the arrangements for addressing control deficiencies thoroughly integrated throughout the organisation, or are they disorganised in their implementation?










10



Identifying critical success factors for achieving internal control objectives under the SCA regulations



The establishment and implementation of a strong internal controls framework in an organisation depends on numerous key success factors. The critical question for all companies is whether they have recognised the success factors required for the efficient implementation and oversight of internal controls. **Highlighted below are the key success factors that the organisation needs to evaluate and address:**

 Success factor	Right team 	Tone from the top 	Effectiveness of the organisation's functions 	Get the scope right 	Know your third party environment 	Standardisation 	Make it sustainable 
 Success factor	Is there a dedicated team with the right skill set in your organisation (whether in-house or outsourced team) capable of swiftly addressing changes in the internal control environment.	Is accountability clearly outlined and enforced by governance forums (Board, Audit Committee etc.) or their equivalent?	Have appropriate systems and policies been identified and established to achieve the objectives of effectiveness?	What approach are you taking to develop the scope of your internal control assessment? Are you concentrating on the entities, operations, and processes that are most critical?	Have you conducted a thorough examination and acquired a comprehensive understanding of your reliance on processes and information managed by external parties?	Have you established a clear and standardised approach, including processes and controls?	Are you leveraging tools for control automation and employing technology to enhance efficiencies?

A close-up photograph of two business people shaking hands over a desk. One person is wearing a light blue shirt, and the other is wearing a dark suit jacket with a white shirt cuff. In the foreground, a tablet computer displays a data visualization. In the background, a laptop keyboard is visible. The image is overlaid with a red semi-transparent box on the left containing text, and a yellow square in the top right and a white square in the bottom right.

02

Enhancing
transparency through
a strengthened audit
committee and annual
corporate governance
report

Understanding the necessary improvements for the audit committee report



With the revision of existing corporate governance rules, it is crucial to implement transformative updates to the audit committee report, enhancing its role within the broader corporate governance framework. These updates aim to provide stakeholders with a more comprehensive and insightful view into the company's governance practices. Under the new mandate, the audit committee must prepare an annual report on its activities, which requires the formal approval of the audit committee's chairperson. This report will then be included as a separate section in the company's annual corporate governance report, aligning with the latest Governance Code requirements. Additionally, the presence of the audit committee's chairperson at the annual general assembly meeting is essential to address any questions regarding the audit committee's annual report, ensuring transparency and accountability.

The following summary outlines the improvements required for PJSCs:

Significant matters affecting the financial statement

A



The report should comprehensively outline the significant issues pertaining to financial statements that the audit committee has reviewed, along with the actions undertaken to resolve these matters.

Independence and effectiveness of external auditors at the time of appointment

B



The report should explain how the audit committee assessed the independence and effectiveness of the external audit process, including details on the appointment of the auditing firm.

Recommendation of external auditors

C



The report must include a statement of the audit committee's recommendations for the appointment, reappointment, or dismissal of the external auditor, and if applicable, along with the rationale why the board might not have accepted or implemented the recommendations of the management.

Ensuring auditor independence during the term of engagement

D



The report needs to articulate strategies to maintain the external auditor's independence, especially when they offer services beyond the standard external audit.

Understanding the necessary improvements for the audit committee report

Addressing control deficiencies in risk management

E



The report should clearly describe the actions that the audit committee has taken or intends to take to address any identified deficiencies or weaknesses in internal control or risk management.

Reviewing of significant internal audit findings

F



The report should provide evidence of the audit committee's thorough examination of all high and medium risks issued by internal audit, with a particular focus on significant deficiencies or weakness in control or risk management.

Corrective treatment plans for open controls deficiencies

G



The report must provide detailed information on remedial action plans to address significant deficiencies in risk management and internal controls.

Related party transactions

H



The report should include findings from the audit committee's review of transactions with related parties, highlighting compliance with applicable accounting framework and laws of the company.



Embracing change: Annual corporate governance report for SCA code compliance



Highlighting the dynamic advancement of corporate governance in the UAE, the SCA has made critical amendments designed to strengthen governance frameworks across companies. This initiative reflects a profound dedication to harmonise corporate governance practices with both UAE regulatory standards and global best practices. Here is a summary of the key components and strategic changes arising from these amendments:



Governance rule formulation and its evaluation: A

The board of directors has been entrusted with the vital responsibility of formulating a governance rule that adheres to the SCA's Governance Code, as outlined in **Decision no. (2/R.M) of 2024**, to incorporate the robust process of corporate governance. Their role expands beyond mere rule formulation to encompass continuous supervision, enactment, and ongoing assessments of effectiveness, guaranteeing that governance practices advance in alignment with both the regulatory environment and the company's management needs.



Governance committee establishment and composition: B

Under the latest amendment, the board has the discretion to establish a permanent governance committee, which focuses on enhancing the company's governance framework through targeted oversight and effective implementation. This committee may consist of three to five non-executive board members, who possess deep leadership insight and a sophisticated grasp on corporate governance principles. Significantly, this amendment permits the appointment of external members to the board if existing members lack adequate expertise in the governance domain.

Embracing change: Annual corporate governance report for SCA code compliance



Annual reporting and continuous improvement:

C

The governance committee plays an essential role in reporting, tasked with delivering annual reports and recommendations to the board across various critical domains:

SCA Governance Code compliance verification:

01

A core duty of the governance committee involves guaranteeing the organisation's compliance with the SCA's Governance Code, necessitating a thorough and systematic review process.

Company's governance rule review:

02

The governance committee is tasked with examining and revising a company's governance rules to stay abreast of regulatory changes and align with international leading governance standards.

Training governance committee members:

03

The governance committee is required to inform the committee members about the latest developments and global leading practices in corporate governance, ensuring they remain knowledgeable and effective in their governance roles.

Annual corporate governance report:

04

The governance committee is tasked with the annual responsibility of preparing the corporate governance report issued by the company. This duty is carried out with a commitment to meet all the requirements specified in this Governance Code in SCA's Decision no. (2/R.M) of 2024.



Companies must prioritise the integration of these amendments into their governance frameworks, adopting a proactive stance towards compliance and governance innovation. This involves a commitment to continuous learning, adaptive rule-making, and the strategic leveraging of external expertise to enhance governance standards.

03

Navigating other
amendments and
requirements for
companies



Article No. 	Article name 	Key essence 	New / Amendment / Deleted 	What are the key considerations for corporate evaluation? 
--------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------

Board of Directors








Article 7(c)	Chairman of the board	The managing director must not hold the position of CEO or general manager in any other company.	Amendment	<ul style="list-style-type: none"> Determine if the managing director serves as the CEO or general manager in a separate company.
Article 29(2)	The remuneration of the chairman and board members	<p>A board member can receive a one-time payment of up to AED 200,000 (two hundred thousand dirhams) at the end of the fiscal year. This is only allowed if the company's rules agree, and the general assembly approves it under these conditions:</p> <ul style="list-style-type: none"> If the company didn't make any profits; If the company did make profits, but a board member's share is less than AED 200,000. However, this fixed amount cannot be added to any other board payment. 	New	<ul style="list-style-type: none"> Does the Article of Association specify the remuneration for board members? Has the general assembly approved the remuneration for the board? Is the fixed remuneration being combined with any profit-based board remuneration within the same fiscal year?

Article No. 	Article name 	Key essence 	New / Amendment / Deleted 	What are the key considerations for corporate evaluation? 
--------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------

Board of Directors



Article 29(5)	The remuneration of the chairman and board members	The remuneration policy should outline how to determine the pay for board members and executive management. It should also include a comparison of these planned salaries with those in the private sector and similar companies within the same industry, looking at average rates locally, regionally, and internationally.	New	<ul style="list-style-type: none"> • Does the board remuneration policy outline the method for calculating the pay of the board members? • Does the company have a process to benchmark the planned salaries of board members within the industry and companies?
Article 40/bis	General assembly meeting via modern technology	The guidelines permit public joint-stock companies to conduct general assembly meetings via audio-video technology, with exceptions for the constitutive general assembly, annual general assembly, and meetings that necessitate special resolutions, which require a physical attendance option. For conducting remote meetings outside these specified cases, obtaining approval from the SCA is mandatory. The chairman is responsible for announcing the count of shares represented both in person and remotely for quorum establishment and during the voting process. Moreover, when organising remote meetings, companies are obliged to comply with several stipulations, including adherence to the provisions of the UAE Companies Law, detailing the process for electronic registration of attendance, securing shareholder approval for remote participation, ensuring real-time communication and verification of identities, archiving recordings of meetings for a decade, addressing technical glitches swiftly, and, if necessary, conducting a revote due to technical disruptions that impact remote shareholder votes. The SCA retains the authority to introduce further requirements as deemed necessary.	New	<ul style="list-style-type: none"> • Compliance with SCA regulations and the UAE Companies Law is crucial when organising general assembly meetings, particularly in facilitating remote participation. • Has the necessary approval been secured from the SCA to conduct general assembly meetings remotely, beyond the specified exceptions? • Have mechanisms been established for electronic registration in the general assembly invitations to enable remote participation? • Has consent been obtained from shareholders for the use of remote participation technologies, and has their understanding of these mechanisms been ensured? • Are the meetings recorded and stored in audio and video formats for a minimum of ten years, and made available to the SCA upon request? • Is the company in compliance with all other requirements specified by the SCA for conducting general assembly meetings?

Article No. 	Article name 	Key essence 	New / Amendment / Deleted 	What are the key considerations for corporate evaluation? 
Article 53(3)	Board committees	For boards with five or fewer members, combining the audit and risk committees is permissible.	Deleted	<ul style="list-style-type: none"> Are the risk and audit committees merged in cases where there are five or fewer members? If yes, has the appropriate measures been taken to restructure the committees?
Article 59(13)	Nomination and remuneration committee	A current follow-up and succession plan for the company's senior executives and the chairpersons of the board of directors' committees should be established.	New	<ul style="list-style-type: none"> Has the company developed and maintained an updated follow-up and succession plan for the company's senior executives and chairperson of the board?

Organisation structure



69(5)	Compliance officer	The function of the compliance officer must be kept separate from any other position or role within the company.	Amendment	<ul style="list-style-type: none"> Is the compliance function distinctly separated from other functions within the company's organisational structure?
67(1)(D)	Risk management	The internal audit role must remain separate and not be merged with any other position or role within the company.	New	<ul style="list-style-type: none"> Is the internal audit function maintained as an independent entity from other functions within the organisation's structure?



Legends

New: A full article or clause has been introduced in the SCA's regulations

Amendment: Modifications made to an original article or clause in the SCA's regulations.

Deleted: An original article or clause was removed from the SCA's regulations.



Disclaimer

1. The points mentioned above represent the significant changes introduced. For a complete overview of the amendments according to SCA regulations, please consult the SCA Board of Directors' Decision No. (2/RM) of 2024.
2. We are currently awaiting further details from the SCA, as certain aspects of the amendments require further clarifications.



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