

## “THE OBLIGATIONS OF THE AUDITOR UNDER UAE AND EGYPTIAN LEGISLATION: A COMPARATIVE ANALYTICAL STUDY”

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### Abstract

It is worth noting that the auditor occupies one of the most significant legal positions in the operation of commercial companies in general, and capital companies in particular. The importance of this role stems from the auditor’s responsibility for monitoring and auditing the company’s financial matters in accordance with the principles of impartiality, transparency, and confidentiality. For this reason, legislators have imposed a number of essential obligations that cannot be disregarded, as they are necessary for the proper fulfilment of the auditor’s duties. These obligations are regulated under commercial company laws as well as legislation governing auditing and accounting.

Despite such regulation, a key issue arises: whether the legislator has overlooked certain obligations that are applied in practice, in addition to other related challenges. This study therefore examines the full scope of the auditor’s obligations, whether under the Commercial Companies Law, the auditing and accounting legislation, or in relation to corporate governance rules and the extent of compliance with them.

Through the application of a comparative analytical methodology, the study reached several important findings and recommendations. Chief among these is the absence of legislative provisions regulating the auditor’s duty to comply with corporate governance rules. Furthermore, the UAE Law on the Regulation of the Auditing Profession lacks provisions on the rules, standards, and principles that constitute the foundations of the auditing profession— an omission that we hope legislators will address in future reforms.

**Keywords:** Auditor - Corporate Governance - General Assembly of Shareholders - Company Budget - Accounting Reports.

### Introduction

It should be noted that the auditor is one of the important legal positions that has been subject to regulation by the legislator, whether under company laws or under other laws relating to auditing, accounting, or review. Given that the tasks entrusted to the auditor are of a serious nature—being directly connected to financial reports, company balance sheets, shareholders’ interests, and the supervision of all financial transactions in general, within a framework of transparency and impartiality—there has arisen a necessity to impose certain genuine obligations upon the auditor in order to safeguard the public interest of shareholders in commercial companies, as well as other legal stakeholders. The observance of these obligations functions as a preventive mechanism within the broader framework of liability rules. It is therefore necessary to identify and set out all the obligations in force within this scope.

Accordingly, in this study we address three categories of obligations. The first concerns the obligations regulated by the legislator under company laws, whether under the Emirati or the Egyptian approach. The second relates to the auditor’s obligations contained in the relevant laws on auditing, accounting, and review. The third concerns the auditor’s obligation to comply with the rules of corporate governance.

### Scope of the Study

The scope of this study is defined by its focus on the obligations of the auditor, which must be considered from two perspectives. The first perspective restricts the study to obligations only, excluding the rights granted to the auditor by law; therefore, the study does not address the legal rights organized for auditors. The second perspective limits the discussion to the Emirati and Egyptian legislations specifically, thereby excluding any analysis of other legal systems.

### Problem of the Study

The primary problem addressed by this study is whether the legislator has overlooked certain obligations that fall upon the auditor in practice, and whether the legislator's regulation of these obligations is exhaustive, whether under the Emirati or the Egyptian legal framework. In addition to this main problem, several subsidiary issues arise, which are presented as follows:

- Do the auditor's obligations provided in the legislation relate to public order, and does the Emirati position differ from that of the Egyptian legislator?
- Is there a substantial difference between the auditor's obligations under company law and those stipulated in auditing and accounting laws?
- What principles should be considered authoritative when discussing the auditor's duty toward corporate governance in commercial companies?

### Significance of the Study

The significance of this study is manifested in several aspects. First, the study clarifies the legal rules applicable to auditors, combining general principles with the provisions of specialized laws, thereby covering both general and specific regulatory frameworks. Second, by highlighting all auditor obligations under both Emirati and Egyptian legislation, the study provides a practical application for limiting liability. Third, the study constitutes a valuable resource for legal and accounting professionals as well as researchers, enriching the academic literature through detailed analysis and in-depth discussion of the subject matter.

### Research Methodology

In this study, the researcher adopts the comparative analytical methodology, which is considered the most suitable for the subject matter. The analytical approach enables the examination, scrutiny, and interpretation of the legislator's intent in regulating legal texts, while also highlighting the doctrines of legal scholarship and judicial precedents, both of which serve as authoritative sources in clarifying and evaluating the legislator's position. The comparative approach, on the other hand, seeks to identify and analyze the similarities and differences between the Emirati legal framework on one hand, and the Egyptian legal framework on the other.

### Research Plan

- **Chapter One:** Auditor's Obligations under Commercial Companies Laws.
- **Chapter Two:** Auditor's Obligations under Auditing and Accounting Laws.
- **Chapter Three:** Auditor's Compliance with Corporate Governance Rules in Commercial Companies.

### Chapter One: Auditor's Obligations under Commercial Companies Laws

In this chapter, we aim to highlight the positions of both the Emirati and the Egyptian legislators regarding the regulation of the auditor's obligations as stipulated in the commercial companies laws. The discussion is structured as follows.

## Section One: Auditor's Obligations under UAE Commercial Companies Law

The Emirati legislator, under the previously mentioned Federal Commercial Companies Law, has organized the auditor's duties into two categories: general duties, regulated by Article [248], and specific duties, covered by Articles [247], [249], and [251]. These two categories are presented as follows:

### 1) General Duties:

Article [248] of the aforementioned Companies Law outlines the general duties of the auditor, which include:

#### a) Obligation to Audit the Company's Accounts:

The audit of the company's accounts constitutes the primary duty of the auditor and must be diligently observed<sup>3</sup>. In fulfilling this obligation, the auditor is required to adhere to established professional principles and standards recognized in auditing practice<sup>4</sup>. Jurisprudence has emphasized that the required standard of care corresponds to that of a reasonable person, or "reasonable care," a position with which we concur<sup>5</sup>.

Given that the auditor performs the examination of the company's accounts, a pertinent question arises: Do technological advancements, digitization, and the adoption of intelligent systems affect the auditor's execution of auditing tasks?

In addressing this question, it is acknowledged that while intelligent systems have exceptional computational capabilities, performing accounting audits through such systems still requires the auditor to input the necessary data and information. Therefore, auditors may benefit from these intelligent systems in conducting audit procedures, but this cannot replace traditional auditing methods. At the same time, auditors are not permitted to delegate the entire auditing task to such systems, as final intervention and professional judgment remain essential. Intelligent systems are incapable of performing certain discretionary assessments that require human evaluation, particularly in matters that necessitate professional discretion<sup>6</sup>.

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<sup>3</sup> Hafou, Muhammad, *The Scope of Criminalization under Article 405 of the Moroccan Joint-Stock Companies Law: A Comparative Study*, *Journal of Law and Business*, Issue [18], Business Law Research Laboratory, Faculty of Legal, Economic and Social Sciences, Hassan I University, 2018, p. 22.

<sup>4</sup> Abdul-Taie, Raghad, *The Issue of Applying Commercial Custom*, *Al-Ghura Journal of Economic and Administrative Sciences*, Issue (13), Faculty of Administration and Economics, University of Kufa, 2009, pp. 197 et seq.

<sup>5</sup> Awad, Basem, *Obligations and Responsibilities of the Legal Auditor*, *Journal of Financial and Tax Research*, Issue [52], Egyptian Association for Public Finance and Taxes, July/August 2008, p. 165.

<sup>6</sup> Cafeera, Ricardo, *Logique pour l'Informatique et pour l'Intelligence Artificielle*, Hermes Science Publication, Paris, France, 2011, p. 16; and Wooldridge, M., & Jennings, N.R., *Intelligent Agents: Theory and Practice*, *The Knowledge Engineering Review*, Vol. 10, No. 2, June 1995, pp. 115–152.

### **b) Examination of the Balance Sheet**

The examination of the company's balance sheet constitutes a complementary task to the auditor's primary duty of auditing. Reviewing the balance sheet requires considering it in terms of assets and liabilities, i.e., the credit and debit sides. Scrutinizing each aspect reflects the true financial position of the company, which the auditor seeks to clarify.

### **c) Profit and Loss Accounts**

The auditor's duty in examining the company's profit and loss accounts has a fundamental impact that stems from both reviewing the balance sheet and monitoring the transactions entered into by the company. The auditor's responsibilities in this regard are manifested as follows:

- Addressing the debit side by preventing any potential breaches or irregularities from occurring in the future.
- Considering whether it is necessary to carry forward losses to the following fiscal year, given that profit and loss accounts are calculated on an annual basis.

### **d) Submission of the Audit and Review Report**

Some scholars contend that the auditor's primary duty is to prepare a report outlining the results of their work. This report should be submitted to the company's general assembly, a copy sent to the Securities and Commodities Authority, and another copy to the relevant local authority overseeing company affairs in the UAE <sup>7</sup>

### **e) Review of the Accuracy of Accounting Records and Their Agreement with the Company's Accounts**

The importance of this duty lies in the fact that accounting records serve as a true reflection of the company's accounts. Any discrepancy or lack of alignment between the records and the accounts indicates errors in the financial statements, which can materially affect the company's financial position, whether such errors arise from intent or mere negligence <sup>8</sup>.

## **2) Specific Duties**

The Emirati legislator has established certain specific duties for the auditor, which are as follows:

### **a) Duty to Issue the Audit Report:**

Article [247] of the Commercial Companies Law regulates this duty, obliging the auditor, after reviewing the accounts, to issue accounting reports that reflect the accuracy of their work. When multiple auditors are appointed, audit tasks must be distributed among them, with each auditor issuing a separate report on the portion of work they conducted. Ultimately, a consolidated accounting report covering all work must be submitted jointly, reflecting joint and several liability among the auditors. The auditor must record and sign their name on the report. The report should also indicate whether the accounts were prepared in accordance with the

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<sup>7</sup> Mubarak, Ahmed, *The Auditor in Egypt: His Rights and Duties*, 13th Tax Conference: Recent Developments in Accounting and Auditing and the Future of the Accounting and Auditing Profession in Egypt, in: *Trade in Services and New Financial, Tax, and Economic Variables*, Vol. [2], Egyptian Association for Public Finance and Taxes, Cairo, September 2007, p. 21.

<sup>8</sup> Al-Qawmi, Farhat, *The Auditor and the Offense of Article 85 of the Commercial Journal*, Legal Studies Journal, Issue [4], Faculty of Law, Sfax, 1996, pp. 93 et seq.

relevant decree-law and whether they present a true and fair view of the company's financial position.

Although the auditor's duty to issue the report is a result of their work, the law highlights several critical points:

- **Multiple auditors:** If the company has more than one auditor, tasks must be allocated among them, and each auditor must submit a separate report for their assigned portion.
- **Consolidated report:** A detailed joint report should summarize all work performed by each auditor individually, emphasizing joint liability among the auditors<sup>9</sup>.
- **Compliance with legislation:** Auditing must be conducted according to the mechanisms set forth by the law regulating the auditing profession, including amendments, and the auditor must sign the reports to ensure accountability.

Some scholars note that auditor reports may be either **general** or **special**<sup>10</sup>.

#### **General Reports:**

These reports are submitted annually to the general assembly and represent the culmination of the auditor's exercise of due care. General reports may be:

- **Clean (unqualified) reports:** Indicating that the company's management acts are accurate and consistent with the company's books and records.
- **Qualified reports:** Expressing reservations if there are unusual errors in the accounts or violations of applicable accounting principles.
- **Adverse reports:** Highlighting serious errors or discrepancies that prevent a true and fair view of the company's financial position.

#### **Special Reports:**

These reports are issued in connection with specific agreements between the company and its management. Scholars indicate that such reports must meet certain disclosure standards, including<sup>11</sup>:

- Whether the financial statements have been prepared in accordance with recognized accounting principles.
- Whether each principle has been consistently applied over time.
- Whether the statements reasonably disclose necessary information unless the report specifies otherwise.

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<sup>9</sup> Idris, Musab, *Joint Liability in Limited Liability Companies under the Saudi Companies Law, Judicial Ijtihad Journal*, Vol. [12], Issue [2], Research Lab on the Impact of Judicial Ijtihad on Legislative Development, Mohamed Khider University of Biskra, October 2019, pp. 261–262.

<sup>10</sup> Al-Abd Lawi, Fatima, *The Auditor within Joint-Stock Companies, Al-Manara Journal of Legal and Administrative Studies*, Special Issue, October 2017, pp. 114 et seq.; Saqr, Muhammad, *The Role of the Auditor in Protecting Company Assets and Ownership – A Comparative Analytical Study, Journal of Legal and Economic Research*, Issue [58], Part [4], Faculty of Law, Menoufia University, October 2023, pp. 635 et seq.

<sup>11</sup> Al-Abji, Kawthar, *Auditor's Liability in the United Arab Emirates – A Theoretical and Empirical Study, Gulf and Arabian Peninsula Studies Journal*, Year [13], Issue [51], Scientific Publishing Council, Kuwait University, July 1987, p. 232.

- The auditor's opinion on the statements as a whole; if the auditor cannot express an opinion, the report must include the reasons and extent of responsibility borne.

### **b) Maintaining the Confidentiality of Company Data**

This duty constitutes one of the most important obligations of the auditor<sup>12</sup>. It is regulated under Article [249] of the Commercial Companies Law, which stipulates that “*The auditor shall maintain the confidentiality of the company's data...*” This provision explicitly establishes the auditor's duty of confidentiality, particularly as the nature of the auditor's work grants access to the company's records and documents at any time. The auditor may verify the company's assets, investigate issues, assess the true financial position, identify strengths and weaknesses, and gain other essential information<sup>13</sup> that, if disclosed to third parties or shareholders in the event of conflicting interests, could affect the company's financial position and interests. Accordingly, the legislator has introduced several key safeguards that must be considered regarding this duty:

- Disclosure of any data or information by the auditor is only permissible during a general assembly meeting, at which point the risk of breach is eliminated<sup>14</sup>.
- Violation of this duty may lead to the auditor's dismissal. The application of dismissal for breaching confidentiality does not conflict with general liability rules, as the legislator typically clarifies that it does not affect other forms of accountability. This allows the company to hold the auditor liable for damages arising from their actions, provided that a fault can be attributed to them. The liability in such cases remains personal rather than objective, requiring proof of an error to justify compensation. Accordingly, dismissal and liability may be applied without prejudice to criminal responsibility if the auditor's conduct constitutes a punishable offense, subject to the principle of legality<sup>15</sup>.

### **c) Duty to Report Crimes and Violations**

Article [251] of the aforementioned UAE Commercial Companies Law regulates the auditor's duty to notify the Securities and Commodities Authority of any violations that constitute criminal offenses upon the auditor's knowledge. Interestingly, the law requires notification to this Authority, even though reporting crimes is generally considered the exclusive domain of the Public Prosecution under general legal principles. From an analysis of the text, the following points emerge:

- **Scope of notification:** Notification is restricted to the Securities and Commodities Authority, whose jurisdiction in this matter is exclusive. A question arises: can the auditor notify the Public Prosecution despite the statutory directive? While reporting to the Public Prosecution has its merits, some scholars argue that doing so may weaken

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<sup>12</sup> Mubarak, Ahmed, *The Auditor in Egypt: His Rights and Duties*, pp. 12–13.

<sup>13</sup> Awad, Basem, *Obligations and Responsibilities of the Legal Auditor*, p. 168.

<sup>14</sup> Kamil, Tarek, *Disclosure of Information Related to Public Joint-Stock Companies under UAE Legislation*, *King Saud University Journal*, Vol. [33], Issue [2], Faculty of Law and Political Science, July 2021, pp. 116 et seq.

<sup>15</sup> Al-Shazly, Fatouh, *Principles of Criminology and Punishment*, Egypt, University Press, 2020, p. 301; Muhammad, Amin, et al., *Criminology and Punishment*, Vol. 2, Egypt, University Press, 2016, p. 20.

the auditor's position within the company, as the auditor would act as the "conscience of society" rather than reporting solely to the designated Authority. We maintain that notifying the Public Prosecution in such cases is acceptable, especially since this duty is obligatory for the auditor rather than being a discretionary right. The mandatory language of Article [251] does not preclude reporting to the Public Prosecution if the act constitutes a criminal offense that must be reported.

- **Sanctions for non-compliance:** The legislator imposes a penalty for failing to fulfil this reporting duty, within the Authority's discretion. The Authority may either suspend the auditor from performing auditing tasks for a period not exceeding the statutory limit or remove the auditor from the relevant registers. The choice between these sanctions lies solely with the Authority.
- **Timing of sanctions:** Any penalty may only be imposed if the auditor fails to notify the Authority of the violation within ten (10) days of its discovery. Prior to this period, no penalty can be applied.

#### Section Two: Auditor's Obligations under the Egyptian Commercial Companies Law

The Egyptian Commercial Companies Law establishes several obligations for the auditor,<sup>16 17</sup> which constitute binding prohibitions that cannot be bypassed. According to the legislator, any work performed in violation of these duties is considered null and void. These obligations include:

##### **a) Prohibition on Combining Auditing Work with Participation in Company Formation<sup>18</sup>:**

Article [104] of the aforementioned law regulates this prohibition. The primary rationale behind this rule is the avoidance of conflicts of interest. An auditor may not combine their auditing duties with company formation activities, membership in the board of directors, or any technical, administrative, or advisory role in the company. Additionally, the auditor may not partner with anyone who engages in such activities or is related to them up to the fourth degree. This prevents bias or lack of impartiality<sup>19</sup>, which could result in intentional or negligent shortcomings in the audit. The legislator prescribes that any violation of this

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<sup>16</sup> Ghuanmah, Abdul Hamid, *The Supervisory Role of the Companies Control Department over Public Joint-Stock Companies: A Study in Jordanian Law*, *Egyptian Journal of Legal and Economic Studies*, Issue [7], March 2016, pp. 233 et seq.

<sup>17</sup> Abdel Rahman, Khaled, *The Role of the Auditor in Evaluating Company Assets and Liabilities during Mergers: A Comparative Study*, *Journal of the Faculty of Sharia and Law, Assiut University*, Issue [34], Part [4], Al-Azhar University, Egypt, July 2022, pp. 633 et seq.

<sup>18</sup> Al-Ghannami, Naif, *Regulatory Controls over the Activities of Saudi Joint-Stock Companies*, *Journal of the Faculty of Sharia and Law, Tanta University*, Issue [34], Part [3], Al-Azhar University, Egypt, 2019, p. 536.

<sup>19</sup> Al-Naghi, Mahmoud, *Auditor Independence between Theory and Practice*, *Scientific Journal of Economics and Commerce*, Faculty of Commerce, Ain Shams University, 1982, pp. 589–590.

prohibition renders the auditor's work absolutely null and void, with no possibility of rectification.

**b) Prohibition on Holding Management Positions for a Specified Period:** Article [107] of the Egyptian Commercial Companies Law addresses this prohibition. The legislator requires the auditor to respect a temporal restriction regarding holding positions as a company manager or member of the board of directors, or performing any administrative, technical, or advisory work—whether permanent or temporary<sup>20</sup>—within the same company where the auditor was employed. This prohibition lapses legally after a period of three years following the cessation of employment. The legislator prescribes two sanctions in cases of violation:

**a- Nullity Report<sup>21</sup>:**

If the statutory provisions are violated, the resulting act is considered null and void. The nature of the provision reveals its binding and mandatory character, which clearly places it within the scope of **absolute nullity**<sup>22</sup>.

**b- Restitution:**

Restitution requires that the violator return any remuneration or compensation received from the company to the state treasury. From a legal standpoint, this penalty is considered **civil** because it involves monetary assets—specifically, the remuneration and compensation—making it primarily a civil sanction regardless of the court issuing it.

**c) Duty of Confidentiality:**

Article [108] of the Egyptian Commercial Companies Law regulates the auditor's duty to maintain company secrets. Scholars emphasize the importance of safeguarding professional secrets that the auditor encounters by virtue of their work. The nature of auditing grants access to company books, records, and documents at any time, requiring the auditor to verify assets, examine crises or problems, assess the company's financial position, identify weaknesses and strengths, and express opinions on these matters. Accordingly, the legislator explicitly mandates the protection of such confidential information.<sup>23</sup>

The provision establishes an **absolute prohibition** against disclosing company secrets, whether at the general assembly or elsewhere. Breaching this duty triggers the auditor's liability and obligation to compensate for damages. The UAE Commercial Companies Law adopts a similar approach to that of the Egyptian legislator.

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<sup>20</sup> Abu Zeid, Ahmed, *The Auditor's Role in Convening the General Assembly of a Joint-Stock Company: A Comparative Study in Egyptian and Syrian Legislation*, *Journal of Legal and Economic Thought*, Year [6], Issue [1], 2016, pp. 40 et seq.

<sup>21</sup> See in detail: Al-Sharqawi, Jamil, *The Theory of Nullity of Legal Acts*, Dar Al-Nahda Al-Arabiya, Cairo, 1999, pp. 139 et seq.; Abu Al-Saud, Ramadan, *Sources of Obligation*, Dar Al-Jami'a Al-Jadida, Egypt, 2016, pp. 169 et seq.; Al-Jamal, Mustafa, *Sources of Obligation*, Dar Al-Matbou'at Al-Jami'a, Egypt, 1999, pp. 188 et seq.

<sup>22</sup> Voir; J.FLOUR, J.L. AUBERT. *Droit Civil Les obligations*. v,1. L'acte Juridique, 1975. No. 3220, P. 240. Ph.Malaurie, L. Aynès, *Droit Civil, les obligations*, 1985, No. 361, P. 225, et. S. v. G. GouTuRIER, *La Confirmation des actes nuls*, Thèse Paris, 1969, L.G.D.J. 1977, Préface, J. Flour.

<sup>23</sup> Awad, Ahmed, *Civil Liability of Auditors: An Analytical Study in Light of Saudi Regulations*, *Scientific Journal, King Faisal University – Humanities and Administrative Sciences*, Vol. [22], Issue [1], 2021, pp. 16–17.

We observe that the scope of regulating the auditor's duties under UAE legislation is broader than that relied upon by its Egyptian counterpart. This is attributable to the more expansive regulatory framework established by the UAE legislator, which imposes multiple obligations on the auditor. Despite the relatively limited obligations organized under Egyptian legislation, particularly the Commercial Companies Law, there exist several additional duties. These will be presented and detailed as follows:

### 1- Duty to Exercise Professional Care According to Accepted Standards:

Auditing, in this context, is a structured process that examines the steps necessary for preparing, documenting, organizing, processing, summarizing, and presenting accounts. Its main objective is to gather the maximum amount of reliable evidence and indicators to help form an impartial opinion. The auditor's primary aim is to verify the accuracy of data in the books, ensure proper processing and summarization, and confirm the correctness of their presentation in the financial statements<sup>24</sup>.

The essence of the auditor's task is to provide a neutral technical opinion through the report<sup>25</sup> submitted to the general assembly of shareholders. This report includes the results of the examination and audit, based on the auditor's review of the company's books and records, inspection of financial statements, verification of assets, and collection of all evidence and indicators necessary to issue this opinion. Many legislations specify the information that must be included in the auditor's report, such as Article 106/3 of the Egyptian Companies Law, which requires the report to indicate<sup>26</sup>:

- Whether the auditor obtained information and explanations deemed necessary.
- Whether there were any violations by the company that conflict with company regulations or applicable law during the financial year.

Accordingly, Article 159 of the Egyptian Companies Law emphasizes the auditor's right to inspect the company's books, records, and documents at any time, as well as to request data and explanations necessary for performing their duties. The board of directors must facilitate this process. The adequacy of auditing and review procedures is primarily the auditor's responsibility; therefore, the report must indicate whether any limitations or violations were encountered during the audit.

It is important to note that the auditor's obligation to supervise the company's documents, accounts, and assets<sup>27</sup> does not imply **continuous daily presence**<sup>28</sup>. It is practically impossible for an auditor—regardless of their competence or number of assistants—to perform a comprehensive daily review. Moreover, dedicating oneself entirely to a single company would compromise auditor independence. Instead, the auditor may conduct their duties through periodic visits, ongoing communications, and follow-up procedures to identify deficiencies in

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<sup>24</sup> Awad, Basem, *Obligations and Responsibilities of the Legal Auditor*, p. 155.

<sup>25</sup> Mubarak, Ahmed, *The Auditor in Egypt: His Rights and Duties*, p. 21.

<sup>26</sup> Awad, Basem, *Obligations and Responsibilities of the Legal Auditor*, pp. 156 et seq.

<sup>27</sup> Mubarak, Ahmed, *The Auditor in Egypt: His Rights and Duties*, p. 21.

<sup>28</sup> Awad, Basem, *Obligations and Responsibilities of the Legal Auditor*, p. 157.

the accounting system and detect potential violations of accounting principles or applicable law.

An auditor who fails to perform systematic auditing, testing, and careful analysis of the company's systems, size, and activities, or who does not maintain continuous engagement to deepen knowledge of the company's operations and issues, cannot provide a sound, impartial opinion based on reasonable grounds. Such failure constitutes a breach of the legal duty to exercise the professional care required by the profession and its standards.

**2- The duty to monitor the validity of the company's incorporation, the subscription procedures in its share capital, the amounts paid upon the purchase of its shares, and the extent to which such actions comply with the law and the company's articles of association.** Subscription is a technical process that entails the distribution of the company's shares among shareholders, depending on each shareholder's desire to acquire such shares. The auditor's supervision over this process is essential, as fictitious subscription leads to serious consequences that may afflict the company<sup>29</sup>, which cannot be remedied except by the most difficult means. Accordingly, the auditor's role in this regard is preventive in nature. For this reason, Article (13) of the Executive Regulations of the Egyptian Companies Law requires that the prospectus for the subscription of company shares be accompanied by a report from the auditor attesting to the accuracy of the information contained therein and its compliance with the requirements of the law and the regulations. Naturally, this is not achieved by mere inspection alone, but rather by a detailed review of the figures stated in the prospectus regarding the company's capital, types of shares, founders' shares, dates of opening and closing, the percentage of shares reserved for Egyptians, and other requirements set forth in the aforementioned regulations<sup>30</sup>.

3- The duty to verify the existence of shares<sup>31</sup>, their value, their non-transferability, and that they have been deposited with an accredited bank within the prescribed deadlines in accordance with the procedures laid down by law. The auditor must disclose any violation of these rules in his report before the general assembly of shareholders<sup>32</sup>.

4- The duty to verify the validity of the procedures relating to the convening of the company's general assemblies. This duty<sup>33</sup> includes ensuring that the notice of invitation to the shareholders' meeting contains all the information required under Article (202) of the Executive Regulations of the Egyptian Companies Law, and confirming the status of those

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<sup>29</sup> ) See: Hussein, Faryad, *Subscription in the Capital of the Private Joint Stock Company: An Analytical Study*, Journal of the College of Law for Legal and Political Sciences, vol. [5], no. [18], University of Kirkuk, 2016, p. 165 et seq.; Al-Barak, Mohammed, *Subscription and Redemption in Islamic Financial Markets: A Study in Light of Jurisprudential Provisions*, Journal of the Faculty of Islamic and Arabic Studies for Girls in Alexandria, no. [38], Al-Azhar University, 2022, p. 467 et seq.

<sup>30</sup> Awad, Bassem, *Obligations and Responsibilities of the Statutory Auditor*, p. 159.

<sup>31</sup> Nassim, Chriet, *Disposition of Guarantee Shares in Joint Stock Companies*, Arab Journal of Human and Social Sciences, vol. [12], no. [3], year [13], July 2020, p. 749 et seq.

<sup>32</sup> See Article (91) of the Egyptian Commercial Companies Law; also Article (241) of its Executive Regulations.

<sup>33</sup> Awad, Bassem, *Obligations and Responsibilities of the Statutory Auditor*, p. 159 et seq.

present at the meeting, since attendance is restricted to shareholders, either in person or by proxy<sup>34</sup>.

Some scholars hold that the auditor is entitled to receive notices of general assembly meetings sent to shareholders and that he is also obliged to attend such meetings. However, this does not preclude one of his assistants, provided they participated in the audit process, from attending on his behalf<sup>35</sup>. In our view, the absence of the auditor should only occur for necessary and reasonable grounds.

It must also be noted that if the minimum quorum required for the first meeting is not met, a second meeting must be convened within thirty days thereafter. In this context, the resolutions of the ordinary general assembly are adopted by an absolute majority of the shares represented at the meeting, unless the articles of association provide otherwise<sup>36</sup>. Voting is strictly prohibited if exercised by any member of the board of directors whenever the resolution concerns their salaries, remuneration, or the discharge of their liability in connection with the management of the company<sup>37</sup>.

#### **5- Obligation to monitor the resolutions adopted by the general assembly of shareholders:**

The purpose of this obligation is to ensure respect for the application of the principle of equality in the rights and duties of partners, on the basis of which their intention to participate in achieving the company's purposes was formed. This principle constitutes one of the special elements of the company contract and a distinguishing criterion that separates it from other contracts. Breach of this principle undermines a fundamental pillar of the company contract. Ensuring equality, as referred to above, means verifying that shareholders<sup>38</sup> holding the same class of shares (preference shares, ordinary shares, etc.) enjoy equal rights and benefits associated with those shares, and that such rights are not altered or restricted except by a resolution of the extraordinary general assembly, with the approval of two-thirds of the shareholders concerned by the modification. This implies that the auditor is empowered in this respect to protect minority shareholders from unlawful interference with their financial entitlements.

#### **6- Obligation to verify the distribution of genuine profits:**

The auditor must ensure, first, that the company has achieved real profits available for distribution, and that the general assembly, in adopting its resolution to distribute them, has complied with applicable rules. He must also ascertain that such a distribution has not caused the company to default on its monetary obligations within the prescribed timeframes<sup>39</sup>.

#### **7- Obligation to ensure proper disclosure:**

The auditor must ascertain that all data and information disclosed in the balance sheet are presented in an appropriate and acceptable manner ( ).

#### **8- Obligation to verify the accuracy of financial records:**

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<sup>34</sup> Saad, Nabil, *The General Theory of Obligations: Sources of Obligation*, Dar Al-Jame'a Al-Jadida, Egypt, 2019, p. 147 et seq.

<sup>35</sup> Mubarak, Ahmed, *The Auditor in Egypt: His Rights and Duties*, p. 21.

<sup>36</sup> See Article [60/2] of the Egyptian Commercial Companies Law.

<sup>37</sup> Awad, Bassem, *Obligations and Responsibilities of the Statutory Auditor*, p. 162.

<sup>38</sup> 'Abd al-Wāḥid, Ḥamdāwī, *The Role of Auditors in Protecting Minority Shareholders in Joint-Stock Companies*, *Muḥākama Journal*, No. [3], October 2007, p. 108.

<sup>39</sup> 'Awaḍ, Bāsīm, *Obligations and Responsibilities of the Legal Auditor*, p. 163–164.

The auditor must ensure that share capital, reserves, provisions, and all assets and liabilities are properly represented in the balance sheet, and that all revenues and expenditures have been duly recorded in the accounts ( ).

#### **9- Obligation not to interfere in management:**

The auditor is not entitled to interfere in shaping the company's policy, nor to supervise the mechanisms by which the board of directors implements this policy, nor to render judgments regarding the appropriateness of its decisions from a commercial or financial perspective. Doing so would amount to placing himself in the position of the company's directors, thereby encroaching upon their legal prerogatives. The auditor must not abuse his supervisory powers, nor influence shareholders to vote in a particular direction. His role is strictly to present the facts concerning the company's accounts, balance sheet, and financial developments with complete neutrality and objectivity, together with the reasoning underlying his opinion, leaving the final decision to the general assembly of shareholders.

The principle of non-interference in management has two significant consequences<sup>40</sup>:

- First: the auditor may not represent the company vis-à-vis third parties, as this lies at the very core of management's responsibilities. This is expressly provided for under Articles (53) and (55/1) of Egyptian Companies Law No. 159 of 1981 ( ).
- Second: the auditor may not criticize the acts or policies of management, or the appropriateness of its decisions, nor may he become a permanent advisor to the company whose accounts he audits ( ). This prohibition is expressly set forth in Articles (104) and (107) of Egyptian Companies Law No. 159 of 1981, which prohibit the auditor from engaging on a permanent basis in any technical, administrative, or advisory work within the company he audits.

Despite this general obligation, there are exceptions dictated by the very nature of the auditor's mission, including<sup>41</sup>:

1. **Providing occasional advice or consultation:** Many companies may approach the auditor for his opinion on bookkeeping methods, internal control over accounts, organizational issues, or the tax consequences of certain legal acts. Occasional advice does not constitute management activity.
2. **Right to convene the general assembly:** The auditor may call the general assembly to meet, provided his request specifies the reasons for the call and the matters to be addressed. This right, established as a precautionary measure, is available when, for example, the board of directors fails to convene the assembly. The auditor must, however, exercise caution in using this right.
3. **Obligation to notify the Public Prosecutor:** The auditor must report any violations that fall under criminal provisions. Unfortunately, the Egyptian legislator has not expressly addressed this obligation<sup>42</sup>.
4. **Obligation to take precautionary warning measures:** The term "warning" here refers to the duty of the board of directors to be alerted to any circumstance discovered by the auditor in the course of his mission that could expose the company to risk. The auditor bears the burden of proving such facts—especially when the company under audit requests judicial liquidation of its assets or protective composition<sup>43</sup> with creditors before the commercial or first instance court.

<sup>40</sup> 'Awaḍ, Bāsim, *Obligations and Responsibilities of the Legal Auditor*, p. 166 ff.

<sup>41</sup> 'Awaḍ, Bāsim, *Obligations and Responsibilities of the Legal Auditor*, pp. 167–168.

<sup>42</sup> 'Awaḍ, Bāsim, *Obligations and Responsibilities of the Legal Auditor*, p. 170.

<sup>43</sup> 'Alī, Yahyā, *Protective Composition in Bankruptcy*, *Journal of Legal and Economic Studies*, Vol. [7], No. [1], Faculty of Law, Sadat University, Egypt, August 2021, p. 5.

If the company's board of directors fails to take action in response to the auditor's request, or takes measures that the auditor deems inadequate, the auditor must prepare a report describing the event that threatens the company's continuity, together with the actions taken, and direct it to the shareholders and the project committee. If necessary, he may also call an extraordinary general assembly to convene<sup>44</sup>.

## Chapter

Two

### Auditor's Obligations in Accounting and Auditing Laws

The UAE legislator has issued a specific law, namely the Federal Law Regulating the Accounting and Auditing Profession. The Egyptian legislator followed the same approach by issuing its own law, the Law on Practicing the Accounting and Auditing Profession. We will examine the auditor's obligations under these two laws in the following two sections.

### Section One

#### Obligations of the Auditor under the Law Regulating the Accounting and Auditing Profession in the UAE

The aforementioned law addressed the duties of the auditor in Article (16) of Federal Decree-Law No. (41) of 2023 on the Regulation of the Accounting and Auditing Profession. This provision distinguishes between the obligations imposed on the licensed accountant as a natural person and those imposed on the accounting firm. We shall discuss each in turn as follows:

#### **First: Obligations of the Licensed Accountant**

The legislator has placed a number of important obligations on the licensed accountant, which may be summarized as follows:

1. Exercising due professional care in the course of his work and ensuring the accuracy of the data reflected in his work results.
2. Preparing the required reports himself or through employees working under his supervision.
3. Practicing the profession, or any related activity, exclusively through a licensed accounting office or branch that holds both a professional license and an economic license.
4. Complying with the provisions of this Decree-Law, its executive regulations, related resolutions, and any other legislation connected to the profession.
5. Fulfilling any other obligations specified in the regulations.

#### **Second: Obligations of the Accounting Firm**

The aforementioned law imposes a number of important obligations on accounting firms, which can be summarized as follows:

##### **1. Implementing an Internal Control System** that includes:

- Systems and procedures ensuring compliance with the rules of professional conduct and ethics, insofar as they are approved.
- Work methodologies and techniques for delivering professional services in line with the approved professional standards.
- A system for monitoring professional performance and quality in accordance with quality control standards approved by the Ministry.
- Continuous professional development for its employees.
- Safeguarding the confidentiality of data-related information.
- A governance framework or system.
- Effective mechanisms to prevent involvement in money laundering.

<sup>44</sup> 'Awad, Bāsim, *Obligations and Responsibilities of the Legal Auditor*, p. 171.

- The use of a Ministry-approved signature by the licensed accountant on issued reports, with his name and license number accompanying the name and professional license number of the firm.
  - Ensuring the soundness and accuracy of the professional services it provides.
- 2. Insurance:** Securing professional liability insurance for the accounting firm and its licensed accountants, with the firm bearing full responsibility for premium payments.
- 3. Reporting to the Ministry:** Providing the Ministry, upon request, with issued reports, supporting documents, and working papers, in the manner prescribed by the Ministry.
- 4. Supplying Information:** Furnishing the Ministry, whenever required, with necessary data concerning its activities.
- 5. Mandatory Reporting of Fraud and Money Laundering:** Notifying the Ministry and competent authorities, as appropriate, of any fraud, money laundering, or suspicion thereof discovered in the course of providing professional services.

These duties encompass the following:

- Properly executing the assigned work in accordance with applicable laws, regulations, and established practices. Jurisprudence often considers the auditor's certification of a company's financial position as conclusive legal evidence of<sup>45</sup>:
  - The credibility of the annual balance sheet.
  - The credibility of company transactions.
  - The credibility of accounting books.
  - The credibility of documents.
  - The credibility of accounts concerning profits and losses.
  - The accuracy of obtained financial information.
  - The truthfulness of the financial position presented by the board of directors.
- Preparing reports on the assigned work, whether completed personally or by employees under supervision.
- Complying with any further obligations set forth by the Executive Regulations of Federal Decree-Law No. (41) of 2023 on the Regulation of the Accounting and Auditing Profession, once issued.
- Exercising the requisite level of professional care in carrying out assigned work<sup>46</sup>. This implies that the licensed accountant is not obliged to guarantee specific results but is bound to exert his utmost efforts to accomplish the work, measured against the standard of a reasonable person under similar circumstances.
- Adopting all necessary mechanisms to avoid unlawful practices.

**Conclusion:** The obligations and duties set out under Article (16) of the current Federal Decree-Law No. (41) of 2023 are broader in scope than those prescribed by the repealed law.

Section Two:

Obligations of the Auditor under the Egyptian Law on Practicing Accounting and Auditing  
The aforementioned law does not address the legal status of the auditor, as its provisions are limited to accountants and auditors only. Moreover, it does not include substantive duties for these specified groups. It should be noted that, although this law does not explicitly address the aforementioned matters, it remains applicable in other contexts, particularly because it is a

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<sup>45</sup> Al-Majali, Ahmad, *The Civil Liability of the Auditor under Saudi Regulations: A Comparative Analytical Legal Study*, King Saud University Journal, Vol. [28], No. [1], Faculty of Law and Political Science, 2016, pp. 21, 81.

<sup>46</sup> Awad, Ahmad, *The Civil Liability of the Auditor*, p. 345 et seq.

specialized law and is connected to the Commercial Companies Law, with the general law subordinated to the specialized one. This is due to the fact that the functional role of the accountant or auditor corresponds to the legal status prescribed for the auditor, emphasizing the importance of meaning over terminology and formal expressions.

### Chapter Three

#### The Auditor's Commitment to Corporate Governance Rules in Commercial Companies

We aim to divide our discussion into two sections: **Section One**, which addresses the auditor's compliance with governance rules in UAE legislation, and **Section Two**, which addresses the auditor's compliance with governance rules in Egyptian legislation. Each will be treated separately.

#### Section One

##### The Auditor's Commitment to Corporate Governance Rules in UAE Legislation

A question arises: Is the auditor bound by the corporate governance rules, particularly in connection with laws on anti-money laundering, and does the auditor comply with these laws or not? To answer this, the **Guideline for Corporate Governance Rules for Listed Companies in Arab Financial Markets** provides specific rules for auditors, as outlined in **Chapter Six** of this guide, summarized as follows<sup>47</sup>:

1. The auditor shall be appointed according to general regulatory criteria, including adequate competence and experience.
2. The auditor is appointed by the general assembly based on a nomination from the board of directors, following the recommendation of the audit or review committee. The appointment is for **one year**, renewable for a maximum of **four consecutive years**. After this period, the auditor may be reappointed for audit tasks only after a minimum of **two years** from the end of the previous term.
3. The auditor must maintain **independence** in accordance with internationally recognized auditing standards.
4. The auditor must ensure **independence and impartiality**, and may not hold the following legal positions during the audit: founder, shareholder, or board member; nor may they have a family relationship up to the **second degree** with any board member, or be a partner or employee of the company, or perform any permanent technical, consulting, or administrative work for it.
5. The auditor is prohibited from entering into any additional contractual work with the board of directors related to audit activities unless approved by the audit or review committee. This work must also not fall under legally prohibited activities.
6. No employee of the auditor's office may be appointed to the company's senior executive management unless **one year** has passed since leaving the company's audit.
7. The audit or review committee, when approving the auditor's performance of additional work and determining fees, must ensure it does not affect the auditor's independence, and must disclose it in the **general assembly of shareholders** and in the **annual report**<sup>48</sup>.

### Key Duties of the Auditor

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<sup>47</sup> See: Arab Securities Institutions Union, *Guidance Manual on Corporate Governance Rules for Companies Listed in Arab Financial Markets*, Dubai, United Arab Emirates, June 2017, pp. 44-45.

<sup>48</sup> Hijazi, Ibrahim, *Auditor Independence: A Behavioral Perspective*, *Money and Trade Journal*, Vol. [14], No. [159], Trade Club, 1982, pp. 16 et seq.

1. Perform assigned tasks in a manner that ensures **neutrality and independence**<sup>49</sup>.
2. Monitor company operations.
3. Adhere to **international auditing standards**.
4. Examine the company's **financial and administrative systems**, as well as **internal control systems**, and provide a professional opinion on their compliance with the company's legitimate operations and financial framework.
5. Ensure the company's **assets are legally owned** and its **liabilities are lawfully incurred**.
6. Attend **general assembly meetings**.
7. Respond to shareholder questions regarding any financial statement or closing account during general assembly meetings.
8. Verify the **fairness of the company's financial statements**. If the auditor finds them unfair, they must request **immediate adjustment**, as this is a core aspect of **transparency**.
9. Report any **negative findings regarding the company's status** to the relevant authorities, regardless of whether they constitute legal, financial, or administrative violations.

Section

Two

#### The Auditor's Compliance with Corporate Governance Rules in Egyptian Legislation

This guide regulates several important rules specifically related to the auditor, which can be summarized as follows<sup>50</sup>:

- The annual general assembly must appoint the auditor at its meeting, and the decision to renew the appointment and determine the auditor's fees falls solely within the competence of the annual general assembly. The founders may be granted an exception to appoint the initial auditor, provided that the appointment is ratified at the next general assembly.
- The company's board of directors, following the recommendations of the audit committee when the auditor is nominated, must ensure compliance with legal requirements. These conditions include competence, reputation, and sufficient experience, in a manner that corresponds to the size and activity of the company and its stakeholders.
- The auditor must maintain independence from the company and its board members<sup>51</sup>.
- The auditor must comply with auditing standards and ethical rules in substance, not merely in form.
- The auditor or their representative must be invited to attend the company's general assemblies.
- No additional work may be contracted between the board of directors and the auditor—or work unrelated to the auditor's role—under the requirements of the Capital Market Law, the stock exchange regulations, tax laws, or other relevant legislation, unless the audit committee's opinion has been obtained and provided that the additional work is not among the tasks prohibited for the auditor. The fees for such additional work must

<sup>49</sup> See: Qureit, Issam, *Consulting Services and Their Impact on Auditor Neutrality in Jordan*, *University of Damascus Journal of Economic and Legal Sciences*, Vol. [24], No. [1], 2008, pp. 15 et seq.; Al-Shamali, Abdelilah, *Auditor Independence in Joint-Stock Companies*, *Law and Business Journal*, No. [23], 2023, pp. 221 et seq.

<sup>50</sup> Ministry of Investment in Egypt, Egyptian Directors' Center, *Guide to Corporate Governance Rules and Standards*, Arab Republic of Egypt, February 2011, pp. 18-19.

<sup>51</sup> Qreit, Essam, *Consulting Services and Their Impact on Auditor Independence in Jordan*, p. 16 et seq.

be proportionate to the nature and volume of the required tasks. The committee must ensure that approving additional work and determining its fees does not compromise the auditor's independence.

- Neutrality and independence must be maintained in all tasks handled by the auditor, so that their work remains free from pressure by the board of directors<sup>52</sup>.
- In accordance with banking laws and instructions issued by the Central Bank of Egypt, the issue of appointing an auditor is regulated. The auditor may not be appointed for more than five years; if reappointment is desired, a lapse of at least two years after the first term must occur.
- The auditor must submit a copy of their accounting report, adhering to the relevant procedural guidelines. The report is prepared according to the company's prescribed format, demonstrating compliance with corporate governance principles<sup>53</sup>, and must also be submitted to the Financial Regulatory Authority only. It must be submitted at least three days before the date of the company's annual general assembly. It is also preferable to provide the same report to the company's general assembly.

### Conclusion

The study entitled "*Auditor Obligations in UAE and Egyptian Legislation*" reached several important findings and recommendations, which can be summarized as follows:

First: Findings:

1. Corporate laws do not include any provision regarding the auditor's obligation to comply with corporate governance rules, and there is no difference between the stance of the UAE legislator and its Egyptian counterpart. What exists is merely guidance through an advisory manual.
2. The UAE Federal Law Regulating the Accounting and Auditing Profession does not regulate the rules, standards, and principles of auditing practice.
3. Article (348) of the UAE Commercial Companies Law does not provide any legal solution for the auditor in case actual violations are found during profit distribution, nor does it address the auditor's refusal to certify such distribution.
4. All obligations mentioned by the legislator in the Companies Law or in the special law regulating the accounting profession fall under the category of public-order obligations.

Second: Recommendations:

1. It is proposed that the UAE legislator amend the Commercial Companies Law to include the auditor's obligation to comply with corporate governance rules, given that this constitutes a key responsibility of the auditor.
2. It is recommended that the UAE legislator amend the Federal Law Regulating the Accounting and Auditing Profession to establish a specific legal provision organizing the rules, standards, and principles related to the conduct and ethics of the auditing profession.
3. It is suggested that the UAE legislator amend Article (348) of the Federal UAE Commercial Companies Law to impose an obligation on the auditor to notify the general assembly immediately in the event of refusing to certify profit distributions.

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<sup>52</sup> Al-Shamli, Abdullah, *Auditor Independence in Joint Stock Companies*, p. 219 et seq.

<sup>53</sup> See in detail: Ibrahim, Nabil, *A Positive Proposal to Reduce the Negative Effects of Corporate Governance Rules on Auditor Independence*, Egyptian Journal of Commercial Studies, Vol. 34, No. 1, Faculty of Commerce, Mansoura University, 2010, pp. 445 et seq.

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