CORPORATE GOVERNANCE

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CHAIRMAN'S MESSAGE

As we usher in the New Year 2024, I am filled with immense joy and anticipation to welcome you to the next edition of our magazine which in fact first edition of year 2024, a dedicated resource for the vibrant community of governance professionals. May this year bring renewed energy, profound insights, and greater achievements in all our endeavors.

This magazine represents not just a compilation of articles and perspectives, but a leap forward in our continuous journey towards excellence in corporate governance. It is a testament to our commitment to foster a culture of knowledge, integrity, and innovation in our field.

In line with our mission to create a dynamic and interactive community, I am thrilled to announce our plan to conduct a monthly study circle meeting. These gatherings will serve as a platform for sharing experiences, discussing emerging trends, and collaborating on solutions to the challenges we face in our profession.

Moreover, we are set to host a series of quarterly seminars. These events will feature distinguished speakers and provide opportunities for professional development and networking, keeping us abreast of the latest developments and best practices in corporate governance.

The pinnacle of our endeavors this year will be the hosting of an international conference for governance professionals. This conference aims to unite experts, thought leaders, and practitioners from around the globe, fostering a dialogue that transcends borders and cultures. It will be an unparalleled opportunity for learning, networking, and setting new benchmarks in our field.

As we embark on this exciting journey together, I extend my warmest wishes for a prosperous and fulfilling year ahead. Your engagement and support are the cornerstones of this initiative, and I look forward to your active participation in our upcoming events.

Together, let's shape a future where corporate governance is not only about compliance but about creating sustainable value and ethical excellence.

Best regards,

R Lakshmanan

Chairman

MESSAGE FROM THE EDITOR'S DESK

Dear Governance Professionals,

Happy New Year! As we step into 2024 with hope and enthusiasm, I am delighted to extend a warm welcome to each one of you reading the next edition of our magazine. This year symbolizes a fresh start, filled with new opportunities and challenges in the dynamic world of corporate governance.

At the heart of our publication is the commitment to address the most pressing issues in our field.

Compliance continues to evolve rapidly, and staying ahead of the curve is crucial. We explore the emerging trends in compliance for 2024, offering a comprehensive overview of the latest regulatory changes and best practices. Additionally, our in-depth analysis of anti-money laundering provisions presents valuable perspectives on enhancing financial transparency and integrity

With technological advancements continuously reshaping the corporate landscape, privacy has emerged as a paramount concern. In this edition, we delve deep into the challenges surrounding data privacy and security, providing insights into how organizations can navigate this complex terrain effectively.

Another critical issue that demands our attention is global warming and climate change. Our articles tackle this urgent matter, discussing the role of corporate governance in environmental stewardship and how businesses can contribute to a more sustainable future.

Looking ahead, our next edition plans to shed light on the specific compliance requirements for the entire UAE region, encompassing both mainland and free zone areas. This focus aims to equip you with the knowledge and tools necessary to navigate the unique governance landscape of the UAE.

I would like to extend my heartfelt gratitude to all our contributors who have enriched this edition with their expertise and insights. Your contributions are integral to our mission of fostering a knowledgeable and connected community of governance professionals.

To our readers, your continuous engagement and feedback are the driving forces behind our efforts. We are committed to bringing you content that is not only informative but also inspires action and innovation in the field of corporate governance.

As we embark on this journey together, let's strive to elevate the standards of governance, ensuring that they align with the evolving demands of our time. Thankyou for being a part of this inaugural edition, and I eagerly anticipate your continued support and participation in the editions to come.

Warm regards,

Raghvendra Verma

Editor

RECENT REGULATORY DEVELOPMENT IN UAE

UAE PRESIDENT ISSUES LAW ESTABLISHING ARTIFICIAL INTELLIGENCE AND ADVANCED TECHNOLOGY COUNCIL

ABU DHABI: In his capacity as Ruler of Abu Dhabi, His Highness Sheikh Mohamed bin Zayed Al Nahyan, President of the UAE, has issued a law establishing the Artificial Intelligence and Advanced Technology Council (AIATC).

The council will be responsible for developing and implementing policies and strategies related to research, infrastructure and investments in artificial intelligence and advanced technology in Abu Dhabi.

His Highness has also issued a resolution appointing members of the new council. The Ruler's resolution appointed H.H. Sheikh Tahnoun bin Zayed Al Nahyan, the Deputy Ruler of Abu Dhabi, as Chairman of the AIATC, and H.H. Sheikh Khaled bin Mohamed bin Zayed Al Nahyan, Crown Prince of Abu Dhabi and Chairman of Abu Dhabi Executive Council, as Vice Chairman. The resolution also appointed Khaldoon Khalifa Al Mubarak, Jassem Mohamed Bu Ataba Al Zaabi, Faisal Abdulaziz Al Bannai, and Peng Xiao as members of the AIATC.

The establishment of the AIATC reflects a strong belief in the importance of technological leadership in building the economy of the future. The council will develop plans and research programmess in collaboration with local and global partners to enhance Abu Dhabi's status in the fields of artificial intelligence and advanced technology. It complements Abu Dhabi's strategy to position the emirate as a world-leading hub for investments, partnerships, and talent in the sector.

The establishment of the AIATC is a manifestation of the bold vision of His Highness Sheikh Mohamed bin Zayed Al Nahyan, President of the UAE, and His Highness' wise directives emphasising the importance of the sectors of the future. The council will contribute to enhancing and ensuring the continued development and prosperity of the post-hydrocarbon economy.

Source:- https://www.zawya.com/en/legal/policy/uae-president-issues-law-establishing-artificial-intelligence-and-advanced-technology-council-ee07xx8f

ADGM CONCLUDES A LANDMARK PARTICIPATION AT COP28: LEADING THE CHARGE IN GLOBAL CLIMATE FINANCE

Abu Dhabi, UAE:

Abu Dhabi Global Market (ADGM), the International Financial Centre (IFC) of the UAE's capital and the Principal Climate Finance Partner at COP28, proudly concludes its active participation in the Conference of the Parties (COP28). This pivotal event on the global environmental calendar, showcased ADGM's significant contributions, steering discussions and initiatives towards a sustainable future, further positioning ADGM as the Capital of Green Capital.

H.E Ahmed Jasim Al Zaabi, Chairman of the Abu Dhabi Department of Economic Development and Abu Dhabi Global Market (ADGM), said: "Our partnership with COP28 is a testament to ADGM's leadership in climate finance. The launch of the Alterra Fund and the Global Climate Finance Centre, in addition to the success of the ADSFF COP28 edition mark just the beginning. We remain to shaping a sustainable future and catalysing positive change."

Home to the World's Largest Private Investment Vehicle for Climate Change Action

ADGM is the international financial centre of the UAE's capital and the principal climate finance partner of COP28, is proud to be the home of ALTÉRRA. This newly launched catalytic climate vehicle, established by Lunate, the global alternative investment management company, and the world's largest private climate investment vehicle, stands as a historic initiative. The United Arab Emirates commitment of USD 30 billion in catalytic capital, positions ALTÉRRA to mobilize USD 250 billion globally by 2030, focusing on transforming emerging markets and developing economies.

Source:- https://www.zawya.com/en/press-release/companies-news/adgm-concludes-a-landmark-participation-at-cop28-leading-the-charge-in-global-climate-finance-dwtx08vy

TRANSFER PRICING REGULATION ADDED IN CORPORATE TAX

UAE has introduced transfer pricing regulations for financial years starting on or after 1 June 2023, pursuant to the Corporation Tax Law. The Corporation Tax Law sets out transfer pricing rules and documentation requirements to ensure that the pricing of transactions between related parties and connected persons, such as companies that are part of the same multinational enterprise group, comply with the arm's length principle. The transfer pricing documentation requirements aim to ensure taxpayers can prove the arm's length basis for pricing their transactions with related parties and connected persons using standardised files. Taxpayers must maintain transfer pricing documentation, if they meet certain conditions prescribed by the Minister of Finance.

Ministerial Decision No. 97 of 2023 sets out the requirements for maintaining transfer pricing documentation. Key requirements include that relevant taxpayers must maintain both a master file and a local file if either:

- **They are a constituent entity of a multinational enterprises group with a total consolidated group revenue of AED 3.15bn or more in the relevant tax period; or**
- **Their revenue in the relevant tax period is AED 200m or more.**

They must also submit a disclosure form when filing their annual tax return which includes information regarding transactions with related parties and connected persons.

The regime draws on Organisation for Economic Co-operation and Development (OECD) guidance on transfer pricing documentation, which requires multinational groups to provide tax administrations with information regarding their global business operations, transfer pricing policies and related party transactions.

UAE'S ANTI-MONEY LAUNDERING FRAMEWORK

Progressing Beyond Grey List Challenges towards Compliance Excellence

CS Hukam Rawat
Commerce graduate, Associate member of ICSI India and MBA in Finance from Middlesex University, UK.

INTRODUCTION

The Financial Action Task Force, an international body, sets 40 standards (FATF Standards) to help countries fight money laundering and terrorist financing. In March 2022, the UAE got on FATF's "grey" list, indicating more monitoring due to perceived weaknesses in dealing with these issues. This means UAE's banks must be more careful, and the global community watches UAE's financial system more closely, causing delays and extra costs. In response, the UAE committed to following FATF's 40 recommendations to get off the grey list.

The United Arab Emirates is the global financial hub, faces the responsibility of safeguarding its financial system against money laundering and terrorist financing threats. These challenges are interconnected globally, necessitating a united effort to combat these crimes. Money Laundering and Terrorist Financing are major risks that threaten any economic growth and social stability through the illicit flow of funds and illegal activities.

This article explores the complexities of money laundering, emphasizing the need for a collaborative, international approach. It provides insights into UAE's Anti-Money Laundering laws and recent developments, highlighting the nation's commitment to preventing financial crimes.

2.THE COMPLEX DYNAMICS OF MONEY LAUNDERING:

Money laundering is the process of disguising the origins of illicit funds to make them appear legal. Criminals achieve this by placing the money into the financial system, layering it through complex transactions, and integrating it to look clean and normal. There are three main steps: putting the money into the system (placement), shuffling it around to confuse (layering), and making it look clean and normal (integration). They use tricks like hiding cash, setting up fake companies, and investing in real estate to make it all seem legit. The goal is to make illegal gains seem legitimate and difficult for authorities to detect and prevent.

Money Laundering Cycle comprises three distinct stages, each contributing to the complexity of concealing the illicit origins of funds:

Placement (Stage One): This marks the initial phase, involving the physical disposal of cash or assets derived from criminal activities. Money launderers introduce these illicit proceeds into the financial system, often by integrating them into formal financial institutions. Examples of placement techniques include melding illegitimate funds with legitimate ones, engaging in foreign exchange by purchasing foreign currency with illegal funds, and employing the "breaking-up" tactic – dividing cash into smaller amounts and depositing them across multiple banks to avoid reporting requirements.

Layering (Stage Two): At this stage, the focus is on separating illicit proceeds from their source through a series of financial transactions designed to obscure their origin. This involves converting the crime proceeds into another form and creating intricate layers of financial transactions to conceal the source and ownership of funds. Layering techniques include transferring funds between financial institutions or accounts within the same institution, converting placed cash into monetary instruments, investing in real estate and legitimate businesses, and utilizing shell companies to mask the ultimate beneficial owner and assets.

Integration (Stage Three): The final stage revolves around supplying apparent legitimacy to illicit wealth by reintroducing funds into the economy through seemingly normal business or personal transactions.Money launderers, at this point, engage in transactions that create the perception of legitimacy, such as investing in real estate, financial ventures, or luxury assets. During the integration stage,distinguishing between legal and illegal funds becomes challenging. Examples of integration include purchasing luxury assets like property, artwork, jewelry, and high-end automobiles, as well as entering financial arrangements and ventures where investments can be made in various business enterprises.

Money Laundering Cycle is a sophisticated process, and the integration stage poses challenges in identifying illegal funds unless there are notable disparities between a person or company's legitimate activities and their wealth, income, or assets.

3.IMPACT OF MONEY LAUNDERING: ECONOMIC AND SOCIAL RAMIFICATIONS:

Money laundering is a result of any crime that generates profits for the criminal involved. It has significant economic and social consequences, affecting both individuals and nations at large. Here are some key consequences:

Undermining Financial Systems: - Money laundering weakens the integrity of financial systems by introducing illicit funds. This can lead to a lack of trust in financial institutions,undermining their

Economic Distortion: - Illicit funds injected into the economy can distort market competition and investment. Money laundering allows criminals to legitimize their proceeds, giving them the ability to influence economic activities.

Reduced Tax Revenues: - Money laundering often involves tax evasion, which reduces government revenues. This, in turn, limits the resources available for public services and infrastructure development.

Increased Crime Rates: - Money laundering is often linked to various criminal activities such as drug trafficking, terrorism, and corruption. These criminal activities can lead to increased crime rates, jeopardizing the safety and well-being of communities.

Increased Regulatory Burden: - To combat money laundering, governments and financial institutions need to implement and enforce stringent regulations. This places an additional burden on regulatory bodies and businesses, impacting their efficiency and resources.

Efforts to combat money laundering typically involve international cooperation, improved financial regulations, and increased transparency in financial transactions. These measures aim to mitigate the economic and social consequences associated with this illicit activity.

4. UAE AML/CTF FRAMEWORK AND REGULATORY OVERSIGHT:

The UAE has displayed a strong commitment to enhancing its Anti-Money Laundering (AML) and Counter- Terrorist Financing (CTF) measures. It has issued various legislation to combat money laundering. The AML laws in the UAE encompass a range of components, reflecting a holistic approach to preventing illicit financial activities. The main AML laws in the UAE are:

- Federal Law No. 20 of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and financing of illegal Organization (UAE AML Law): This law provides the legal framework for AML activities in the UAE. It defines offenses related to money laundering and terrorist financing, as well as the penalties for non-compliance. This law provides the overarching guidelines for AML efforts, emphasizing the importance of due diligence, risk assessment, and reporting mechanisms.
- UAE Cabinet Resolution No. 10 of 2019: This resolution outlines the procedures and requirements for entities to combat money laundering and terrorist financing concerning the Implementing Regulation of Decree Law No. (20) of 2018 on AML/CTF (Cabinet Resolution) and
- Federal Penal Law No. 31 of 2021 (Penal Code).

Despite being on the FATF grey list, a report released on 6 July 2023 by FATF highlighted substantial improvements in AML and CTF measures starting in 2022, bringing the country closer to international standards. Looking ahead, the FATF is scheduled to conduct its next review in April/May 2024, and expectations are that the UAE will intensify its AML and CTF initiatives, aiming for removal from the grey list.

The main regulatory and supervisory authorities in the UAE involved in combating AML/CTF include:

Central Bank of the UAE: The Central Bank plays a crucial role in implementing AML policies and guidelines. It issues regulations and circulars to financial institutions to ensure compliance.

Financial Intelligence Unit (FIU): The UAE FIU is responsible for receiving, analyzing, and disseminating information related to suspicious transactions. It operates under the Central Bank of the UAE.

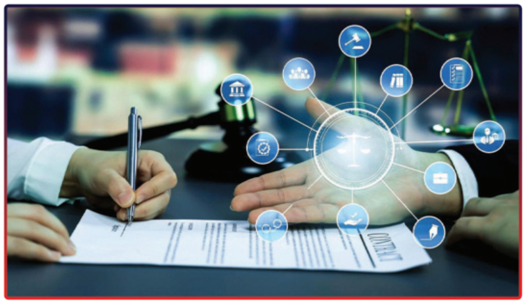
Securities and Commodities Authority (SCA): SCA regulates the securities and commodities markets in the UAE and is involved in implementing AML measures for entities under its jurisdiction.

Insurance Authority (IA): The IA oversees the insurance sector and is responsible for implementing AML regulations within the insurance industry.

5. AML COMPLIANCE FOR DNFBPS IN THE UAE: KEY REGULATORY MEASURES

The regulatory landscape for DNFBPs in the UAE has been characterized by a comprehensive framework designed to combat money laundering and terrorist financing. DNFBPs comprises of the entities engaged in specific commercial or professional activities listed hereinbelow:

Dealers in precious metals and stones
Real estate agents and brokers
Trust and corporate service providers
Auditors and independent accountants
Lawyers, notaries, and other legal professionals



DNFBPs play a crucial role in the AML ecosystem by ensuring the compliance under AML/CTF laws and meeting its obligations as under**:**

- **Regulatory Framework:** DNFBPs in the UAE are required to adhere to a robust regulatory framework that incorporates international best practices. Regular updates to policies are mandated ensuring responsiveness to any changes in regulatory requirements.

- **Know Your Customer (KYC):** DNFBPs are obligated to implement stringent KYC procedures, leveraging tools such as the World Check application for customer identity verification.

- **Money Laundering Reporting Officer (MLRO):** Each DNFBP must appoint a designated MLRO responsible for overseeing AML procedures. The MLRO conducts periodic sample reviews of KYC procedures and handles internal suspicious transaction reports, ensuring regulatory compliance.

- **Risk-Based Approach (RBA):** Senior management within DNFBPs is mandated to adopt a risk-based approach Comprehensive identification, assessment, and mitigation of business risks, including client risk, geographical risk, Politically Exposed Person (PEP) risk, and business risk.

- **Customer Due Diligence (CDD):** DNFBPs are required to obtain relevant customer details to ensure transactions align with customer profiles. Minimum CDD measures include verifying customer identity, understanding the purpose & nature of services, and monitoring of customer activity.

- **Enhanced Due Diligence (EDD):** DNFBPs implement additional procedures for EDD to gain a deeper understanding of customers, their sources of funds, and to verify the legitimacy of funds. Application of EDD is mandatory based on the relevance to the customer, or the nature and circumstances of services provided.

- **Reporting Suspicious Transactions:** Identify and report suspicious transactions to appropriate authorities and comply with directives from competent authorities and implement recommended measures.

6. ROLE OF THE AML COMPLIANCE OFFICER:

The AML Compliance Officer plays a critical role in safeguarding the integrity of financial systems and preventing illicit financial activities within an organization. The appointment of a qualified Compliance Officer is instrumental in navigating the complexities of national and international AML regulations.

The AML Compliance Officer is responsible for implementing AML/CFT frameworks,conducting risk assessments, and ensuring regulatory compliance. He ensures compliance with legal standards and prevents financial crimes. Here are some key responsibilities associated with the role:

- **AML Policy Oversight:** AML Compliance Officers actively shape and update organizational policies for Anti-Money Laundering (AML) efforts. They conduct periodic reviews, ensuring policies align with regulatory requirements. Additionally, the officer oversees the AML/CFT compliance program, aligning it with regulations and addressing specific risks faced by the entity.

- **Ensuring Regulatory Adherence:** AML Compliance Officers diligently track changes in the AML laws and regulations to guarantee the organization's continuous compliance with all pertinent legal requirements.

- **Employee Training and Awareness:** AML Compliance Officers oversee employee education on Anti-Money laundering regulations, conducting awareness programs to promote adherence. They conduct regular training sessions, familiarizing employees with AML rules, global best practices, andupdating training programs while maintaining accurate records.

- **Risk Assessment:** They assess the risk of the organization being used for money laundering or terrorist financing and implement measures to mitigate those risks.

- **Transaction Monitoring:** The AML compliance officer must detect transactions relating to any crime. They oversee the monitoring of financial transactions for suspicious activities, ensuring that any unusual or potentially illegal transactions are identified and reported.

- **Customer Due Diligence (CDD) and Enhanced Due Diligence (EDD):** AML Compliance Officers are responsible for implementing processes to verify the identity of customers and assess the risks associated with their business relationships.

- **Reporting Responsibilities:** The Compliance Officer reviews and evaluates suspicious transactions, reporting them through Suspicious Transaction Report (STR) and Suspicious Activity Report (SAR) to the UAE's Financial Intelligence Unit (FIU). This includes detecting and reporting suspicious transactions to senior management and relevant authorities in accordance with local laws. The officer also submits various reports, like Funds Freeze Report (FFR), Partial Name Match Report (PNMR), High-Risk Country Report (HRC), High-Risk Country Activity Report (HRCA), Dealers in Precious Metals and Stones Report (DPMSR), and Real Estate Activity Report (REAR) to the FIU as needed.

- **Record Keeping:** They ensure that the necessary records and documentation related to customer due diligence and transaction monitoring are properly maintained.

- **Collaboration with Authorities:** AML Compliance Officers work closely with law enforcement and regulators, offering information and support for investigations into money laundering and financial crimes. The officer coordinates with the Supervisory Authority and FIU, supplying essential data to combat Money Laundering and Terrorist Financing (ML/TF) risks.

7. STRINGENT ENFORCEMENT AND PENAL PROVISIONS:

The Ministry of Economy has released a list of penalties ranging from AED 50,000 to AED 1 million and can be doubled up to AED 5 million.

- Individuals found guilty of money laundering may face imprisonment ranging from one to 10 years and/or fine between AED100,000 and AED5 million.
- Companies for violation of AML/CTF laws and regulation could be fined between AED500,000 and AED50 million, with the possibility of additional penalties like a temporary operating ban or license revocation
- For specific circumstances, such as abuse of power, involvement in non-profit organizations (NPOs), association with organized criminal groups, or repeat offenses, the penalty may include temporary imprisonment and a fine between AED300,000 and AED10 million.
- Foreign nationals receiving a custodial sentence for money laundering may face deportation.
- Failure to report suspicious transactions intentionally or due to gross negligence can result in imprisonment or a fine ranging from AED100,000 to AED1 million.
- Anyone revealing ongoing reviews of suspicious transactions may face imprisonment for at least one year and a fine between AED100,000 and AED500,000.
- Upon conviction, the court may confiscate funds used or intended for the crime, or an equivalent amount from the perpetrator's assets if confiscation of the proceeds is not feasibl.

The UAE AML regulatory bodies have taken strict measures of enforcement of the AML Laws and regulations and in past have impose the fines and penalties, as listed hereunder:

- The UAE has issued fines exceeding AED 115 million related to money laundering.
- Over 600 off/onsite inspections by the UAE Central Bank resulted in fines nearing AED 70 million.
- The UAE Ministry of Economy conducted over 8,000 off/onsite inspections, with total fines of AED 16.5 million.
- Asset seizures more than AED 925 million were linked to AML practice and procedure breaches

These proactive regulatory enhancements and stringent enforcement actions underscore the UAE's unwavering dedication to upholding international AML and CTF standards, with an aim to strengthen its global standing. The nation is poised to intensify compliance efforts, with an eye on exiting the grey list.

8. STRENGTHENING THE AML/CTF REGULATIONS:

These following actions reflect the UAE's commitment to aligning with international standards and continuously enhancing AML/CTF framework to combat the AML-CTF, underscore the UAE's commitment to combating financial crimes. This section provides an insight into how these developments are strategically positioned amidst the FATF grey list.

The UAE has strengthened its rules in key areas and taken the following steps in this regard:

- **The Executive Office establishment:** Establishing the Executive Office with the aim of improving AML/CTF laws and regulations. In essence, the UAE Executive Office aims to substantially reduce serious and organized crime affecting the UAE and its interests by fostering improved information-sharing among law enforcement agencies and the private sector.

- **Specialized AML/CTF Courts:** Unique courts now handle money laundering and financial crime case with precision.

- **Guideline Adoption:** New AML/CTF guidelines for financial institutions and designated non-financial businesses and professions (DNFBPs) stress the importance of adherence to Anti-Money laundering and financial crime legislation, emphasizing risks and penalties.

- **goAML Reporting Platform:** The UAE introduced "goAML", a reporting platform for financial institutions to file Suspicious Activity Reports in response to suspicions of criminal fund involvement.

- **Legal Framework Enhancements:** Strengthened the federal legislative and regulatory framework by introducing new AML/CTF laws and Cabinet Decisions in line with FATF standards. Updates to AML/CTF laws and the legal framework for virtual assets strengthen risk mitigation procedures.

- **New Penal Code:** Enforcing a new Penal Code (Federal Decree Law No. 31 of 2021) from January 2022, adding to existing regulations against money laundering, bribery, and corruption.

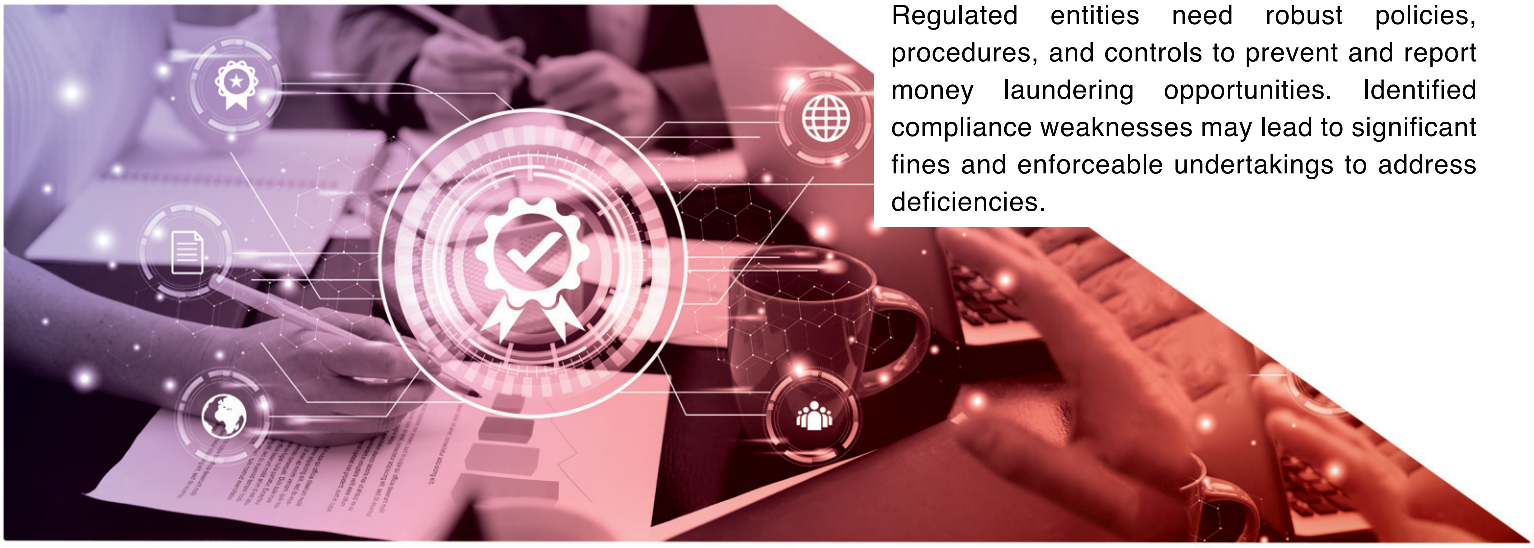
- **The DFSA's Business Plan for 2023-2024** emphasizes monitoring compliance systems, assessing financial crime risks in digital assets, and pursuing "firm but fair" enforcement for market integrity

9. PROACTIVE AML/CTF REFORMS TO ENHANCE EFFECTIVENESS:

In February 2022, the UAE pledged a strong political commitment to collaborate with the FATF and MENAFATF to enhance the effectiveness of its Anti-Money Laundering/Countering the Financing of Terrorism regime. During the FATF's October 2023 plenary, it was determined that the UAE has substantially fulfilled its action plan. Consequently, an on-site assessment is scheduled to verify the initiation and sustainability of AML/CFT reforms and to ensure the enduring political commitment required for sustained implementation.

The UAE has undertaken significant reforms, encompassing various key areas:

- Increased Outbound MLA Requests: Enhancing Mutual Legal Assistance (MLA) requests for expediting Money Laundering/Terrorist Financing (ML/TF) investigations.
- Improved ML/TF Risk Understanding and Risk-Based Customer Due Diligence (CDD): Enhancing comprehension of ML/TF risks and implementing risk-based CDD specifically for Designated Non-Financial Business and Professions (DNFBP) sectors. Applying effective and proportionate sanctions for AML/CFT noncompliance in both Financial Institutions (FIs) and DNFBPs. Additionally, increasing Suspicious Transaction Report (STR) filings for these sectors.
- Strengthened Financial Intelligence Unit (FIU): Allocating additional resources to bolster the FIU's capacity to provide financial intelligence to Law Enforcement Agencies (LEA) and leveraging financial intelligence from foreign counterparts to address high-risk ML threats.
- Increased Investigations and Prosecutions: Heightening efforts in investigations and prosecutions of money laundering, aligning with the country's risk profile.
- Effective Implementation of Targeted Financial Sanctions (TFS): Enforcing compliance with TFS by sanctioning noncompliance among reporting entities and demonstrating a better understanding of United Nations sanctions evasion within the private sector.



Regulated entities need robust policies, procedures, and controls to prevent and report money laundering opportunities. Identified compliance weaknesses may lead to significant fines and enforceable undertakings to address deficiencies.

10. ROADMAP TO FATF COMPLIANCE IN 2024

As per the MENAFATF's 3rd Enhanced Follow-up Report the United Arab Emirates is "compliant" with 15 of the forty FATF Recommendations, "largely compliant" with 24 Recommendations and "partially compliant" with one Recommendation. The country has no "non-compliant" ratings. However, it remains in the enhanced Follow-Up process and will report back to MENAFATF in April/May 2024

The FATF's next review in April/May 2024 holds great promise. The UAE is expected to escalate efforts to exit the grey list by ensuring regulated entities conduct risk-based due diligence, promptly report suspicious. activities, and increase investigations and prosecutions. Therefore, regulatory and enforcement actions are expected to rise.

To meet FATF standards and be removed from the grey list, the UAE must focus on implementing its action plan by:

- **Ensuring regulated entities perform risk-based due diligence and promptly report suspicious activities.**
- **Increasing investigations and prosecutions for various AML violations.**
- **Applying effective and proportionate sanctions on financial institutions and DNFBPs for non-compliance with AML/CTF requirements.**

In summary, the UAE is actively improving its measures against money laundering and terrorist financing, despite being on the FATF's watchlist.Through strong legislative frameworks, specialized courts, and advanced reporting systems, the country has made significant progress. The UAE's commitment to compliance, enhanced enforcement, and a focus on risk-based due diligence are evident. These proactive reforms position the UAE well for the upcoming FATF review in April/May 2024, indicating a strong determination to exit the grey list and maintain global standards in combating financial crimes.

HOT TOPICS IN 2024 IN CORPORATE GOVERNANCE

CS Ramchander Tumuluru
Business Advisor, Dubai, Member of Research & Publications
Committee of ICSI ME, ex CFO of a European Company in Brussels

INTRODUCTION

2023 has been eventful with volatility, wars in Ukraine and Gaza , interest rate spikes, elections, the post Covid Era return to normalcy, rapid, an initiation on non USD transactions by BRICS , the SVB collapse and the digital revolution. amongst others.

Closer to us in UAE we have also see the significant changes in legal and regulatory landscape and the introduction of corporate tax. COP 28 in Dubai 2023 has given a turbo start to climate change and all that is to do with green, carbon emissions and significantly the move to transition away from fossil fuels. The India UAE CEPAenhances multifold the business opportunities.

GOVERNANCE THEMES OF 2024

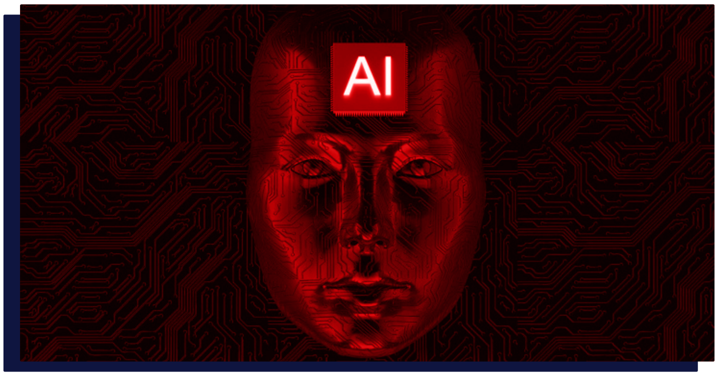
As we look into next year, now in December 2023, it is good to see the theme and hot topics that will strengthen and emerge in the Corporate Governance arena in 2024 and beyond.

When I moved to EU a decade ago I was pleasantly surprised to see our monthly Board meetings always began with Safety, Environment Employee Engagement and Governance before looking at the financials. It is commonly believed and perhaps even well established that an organisation that focusses on these topics are in general inherently more profitable. I suppose that also reflects the culture, values and vision.

While there is a wide array of topics, I would see the following main topics (not in any order or priority) that not only spark excitement and actually see a lot of senior management engagement in.

Artificial Intelligence AI

AI and Generative AI are intelligent automated mechanism which touches all aspects of industry and can help make things simple. For example in a corporate world we can have an automated comparison of financial reports of two entities with sharp detailed analysis. In our areas, AI can be used in governance checks across the organization and automated controls . Of course AI Governance itself is another topic.



Cybersecurity

The growing and deep integration of IT in every aspect of business make cybersecurity a key topics due to risks involved and how system meant to help us can be used against us by hackers etc. Have controls through compliance, internal audit and Board oversight is important.

Technological Integration

The advent of AI and technology makes it important that ALL aspects are integrated in an organization. We are not only look for a single source of Truth but to be effective all functions including legal and compliance must be informed updated integrated and compliant and self governing.

Board Composition and Culture

Board composition and competence is crucial with the need to include Members with Skills in Risk, AI and Technology, ESG and all the upcoming areas. The culture that the Board sets is also key as globalization technology and ecommerce take businesses to another level. Board Refreshment is critical. Candid evaluation and assessment of Directors helps. Ability to set vision and see far reaching implications and risks of the

Audit Committee

Never has the importance of Audit Committee been more than now, to go into , challenge and oversee the transparent reporting and compliances and internal controls of the organization

CEO Succession and Succession Planning

Board needs to be actively involved in support, evaluation and succession planning of the CEO and the organization itself (especially in family

Women Empowerment

While women directors are mandatory in certain countries, empowering women to take leadership positions and also constituting a good balance in the Board not only achieves the broader goals but also sees

Diversity and Inclusion

As organization globalize, diversity and inclusion is important to include competencies from different

Code of Conduct

These need constant review and updation and establish the Ethics and Compliance culture in a business.

Risk Management

A key role is for the Board and the organisation to constantly evaluate how resilient it is against numerous risks include compliance risks and concentration risks. I recollect in one fertilizer company which I was associated strategic planning continued as usual every year until one Board Member queried are we shock proof and future ready if subsidy is removed – it changed the entire mindset of the business.

Corporate Social Responsibility

Investors, Lending and the public especially the younger generation are particularly conscious of the CSR contribution of businesses aside from mandatory requirements in certain domains.

Reporting and Transparency

Every increasing disclosure requirements required under law as well as securities exchanges and also good practice is seeing vast changes here. Sustainability Board has also set new standards that need compliance.

Climate Change ESG Green Washing Environmental Strategy Carbon Footprint Biodiversity

Climate Change is not only 1.5/2 which itself is herculean nor is ESG a buzzword. Investors and Lenders are closely looking at the efforts of businesses and scorecards in ESG without any green washing. Carbon Footprint is also important and in certain domains needs carbon trading for deficits/surpluses. The Board needs to include Environment into Corporate Strategy so it touches everything from waste to reduce recycle reuse. So also CSR is not only giving donations to charitable organization but should include biodiversity.

Privacy and Data Protection

Largely the internet has made a lot of data available and while this can be helpful, privacy and protection are equally critical. It is not only a check compliance of acceptance for ecommerce, social media but the safeguards

Shareholder Activism

Large IPOs is not only adding or broadening the fund base but also must consider shareholder activism and preferences on environmental and other issues as well as on financial matters on valuation and divestment

Employee Engagement and Talent Retention Pay Equity

Not to be missed is Employee Engagement key in a world now used to hybrid and remote working and retaining top talent requiring newer skills and not the least pay equity and gender equality.

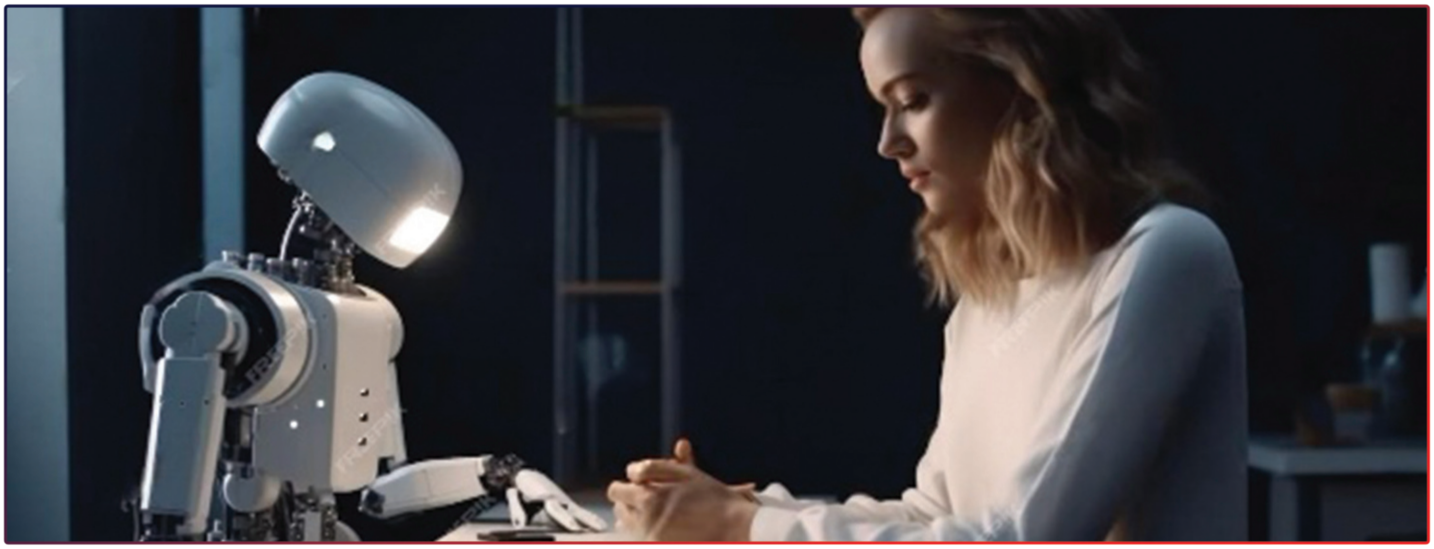
BOARD CONTRIBUTION

The Board has a crucial function to facilitate the business to shock proof itself from risks and environmental issues, oversight to be an active Board in audit and internal controls and strategy while also look at issues of employees engagement and touching lives as it is now put of the social side of business.

SUMMARY AND ROLE OF COMPANY SECRETARIES

One may wonder how AI and Climate to affect the mundane compliance role of a Company Secretary – but compliance and governance are now at the heart. As stewards of compliance and guides to the Board, CS role is crucial. And it is what we as a profession make of this huge opportunity in these areas and in this region.

Governance helps instill and restore trust and prevents sudden collapse of enterprises and even countries and with the focus on climate on the planet as well.



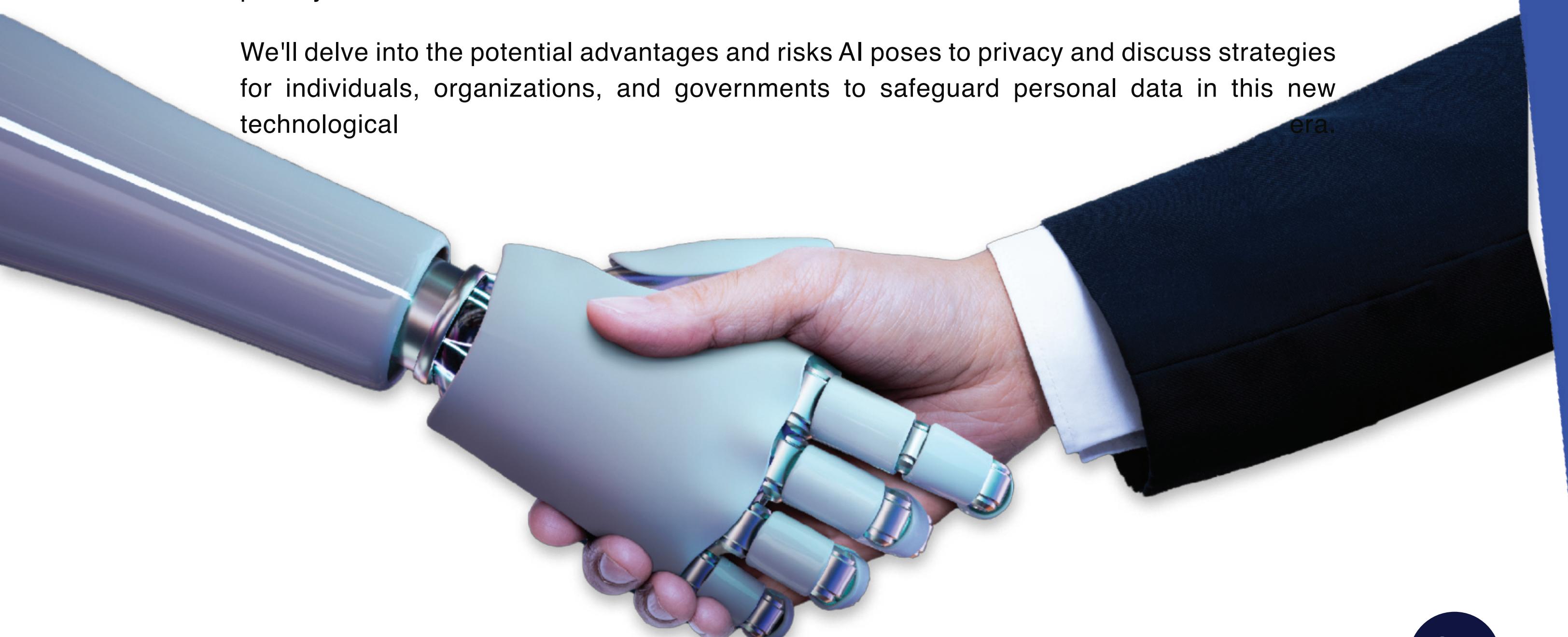
PRIVACY IN AN ERA DOMINATED BY AI

UNDERSTANDING THE RISKS, TACKLING THE CHALLENGES, AND SEEKING SOLUTIONS

CS Raghvendra Verma,
Law graduate, Company Secretary, Diploma in Cyber Security,

In an age where technology evolves rapidly, the integration of Artificial Intelligence (AI) into various aspects of our lives is becoming more common. This includes Virtual Assistants (such as Siri and Alexa), Autonomous Vehicles (like Tesla and Waymo), Natural Language Processing tools (like ChatGPT and Google Cloud), and Recommendation Systems (used by Netflix, Disney+, Spotify, etc.), along with its applications in healthcare diagnostics and task automation. From AI capable of generating content with simple prompts to smart home devices that adapt to our habits, AI is set to revolutionize our interaction with technology. However, with the surge in online data generation and sharing, privacy concerns are more crucial than ever. As a futurist, it's vital to explore how AI impacts our personal data and. privacy

We'll delve into the potential advantages and risks AI poses to privacy and discuss strategies for individuals, organizations, and governments to safeguard personal data in this new technological era.



THE VALUE OF PRIVACY IN THE DIGITAL AGE

In today's digital world, personal data is a highly prized asset. The enormous volume of data we generate and share daily enables businesses, governments, and organizations to gain insights and make informed decisions. Yet, this data often includes sensitive information that individuals might prefer to keep private or that is used without consent. This is where the importance of privacy is underscored.

Privacy is the right to keep personal information secure and protected from unauthorized access. It's a fundamental human right that allows individuals to control their personal data and its usage. With the continuous increase in data collection and analysis, privacy is more important than ever.

Privacy serves multiple purposes. It safeguards individuals from dangers like identity theft and fraud. It's crucial for maintaining autonomy and control over one's information, which is key to personal dignity and respect. Privacy also ensures that individuals can manage their personal and professional relationships without concerns of surveillance or intrusion. Lastly, it is a bulwark for our free will; without privacy, sophisticated recommendation engines could exploit our data, manipulating our choices and purchases.

In the realm of AI, maintaining privacy is critical to prevent AI systems from manipulating or discriminating against individuals based on their personal data. AI systems that make decisions using personal data must be transparent and accountable to avoid unfair or biased judgments

PRIVACY CHALLENGES IN THE AI-DOMINATED ERA

Artificial Intelligence (AI) presents unique challenges to the privacy of both individuals and organizations, largely due to the complexity of AI algorithms. As AI becomes more sophisticated, it's capable of making decisions based on intricate data patterns that are often imperceptible to humans. This can lead to scenarios where personal data is used in ways individuals are unaware of, resulting in invasive surveillance and heightened power imbalances, as well as unauthorized data collection which risks sensitive information and increases susceptibility to cyber attacks. These issues are further intensified by the dominance of BigTech companies, wielding massive datasets and considerable influence over data collection, analysis, and usage.

These Big Tech entities, like Google, Amazon, and Meta, have emerged as some of the most influential forces globally, impacting the economy and society. With AI's growth and the impending shift to the metaverse, their influence is poised to expand. These companies have access to immense data quantities, enabling them to significantly influence consumer behavior and shape the global economy.They also play a critical role in politics, having the power to sway public opinion and influence government policies.

One of the most notable impacts of AI technology is how it collects and utilizes data. AI systems are designed to learn and evolve through analyzing vast data amounts, leading to an ever-growing collection of personal data. This raises significant privacy and data protection concerns. The use of generative AI tools, such as ChatGPT and Stable Diffusion, exemplifies how our data (articles, images,videos, etc.) is being utilized, often without explicit consent.

Moreover, the utilization of personal data by AI systems often lacks transparency. The algorithms driving AI can be complex, making it difficult for individuals to grasp how their data informs decisions that affect them. This opacity can foster mistrust in AI systems and unease among users.

KEY PRIVACY CHALLENGES IN THE AGE OF AI

1 PRIVACY VIOLATIONS

AI's potential benefits are counterbalanced by significant challenges, including privacy violations. AI systems demand vast amounts of personal data, which, if misused, can lead to identity theft, cyberbullying, and other malicious acts

2 BIAS AND DISCRIMINATION

AI technology's susceptibility to bias and discrimination is a major concern. AI systems mirror the biases present in their training data, potentially leading to discriminatory outcomes based on race, gender, or socioeconomic status. It's imperative to train AI systems on diverse data sets and conduct regular audits to mitigate bias.

3 JOB DISPLACEMENT AND PRIVACY IMPLICATIONS

AI's advancement can lead to job losses and industry disruptions, necessitating new skillsets for workers. This shift also intersects with privacy concerns, as economic instability may compel individuals to compromise their privacy for employment opportunities, particularly in the gig economy. Moreover, AI's role in hiring processes, such as screening applicants via social media analysis, raises additional privacy concerns.

4 MISUSE AND DATA ABUSE

The potential misuse of AI by malicious actors is a significant worry. AI can create convincing fake images and videos, potentially spreading misinformation or manipulating public opinion. Sophisticated phishing attacks using AI can trick people into divulging sensitive information, posing serious privacy threats.

5 AI IN SURVEILLANCE

AI's role in surveillance is highly contentious. AI-based surveillance systems, used by law enforcement and security agencies, analyze data from various sources, including cameras and online activities. While beneficial for security, these systems risk privacy intrusions and raise civil liberty concerns. The lack of transparency in AI-based surveillance further erodes public trust and heightens unease about privacy

REAL LIFE EXAMPLE:-

1 GOOGLE'S LOCATION TRACKING CONCERNS

Google has faced significant scrutiny regarding its location-tracking practices. In 2018, an investigation by the Associated Press uncovered that Google continued to store users' location data even when location tracking was disabled. This revelation, a stark breach of user trust and privacy, prompted widespread criticism from both users and privacy advocates.

2 GOOGLE'S AI-DRIVEN RECOMMENDATIONS

The pervasive nature of Big Tech's data collection can be felt when we talk in house keeping our phone near by and suddenly after some time we start receiving related recommendations which we talked.This reall7 raises serious questions about the extent of Google's access to our app usage and activities.

This situation with Google's algorithm underscores the profound privacy concerns in the AI era. Google's ability to make targeted recommendations based on activities across different platforms raises ethical questions about privacy and data access. As reliance on AI and big data grows, ensuring privacy protection becomes crucial. This requires companies and policymakers to establish clear guidelines and regulations to safeguard fundamental human rights in the context of AI development and usage

3 AI IN LAW ENFORCEMENT

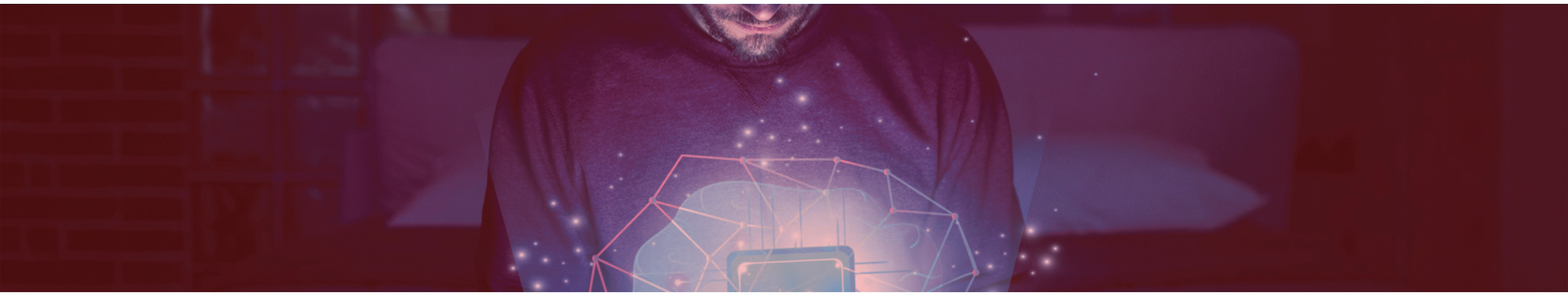
The use of predictive policing software and facial recognition in law enforcement, while innovative, poses risks of bias and civil liberty violations. It underscores the need for transparency, regulation, and accountability in these AI applications to prevent discrimination and protect individual rights.

4 AI IN HIRING PRACTICES

AI's role in recruitment, such as Amazon's biased AI recruiting tool, demonstrates its potential to amplify existing biases. This necessitates thorough testing and ethical considerations in the development of AI tools to promote workplace fairness and prevent discrimination.

STRATEGIES FOR DATA PRIVACY IN AI

Reflecting on the challenges of data privacy in AI, several strategies emerge for safeguarding user data and promoting responsible AI practices:



1

PRIVACY BY DESIGN (PBD)

PBD is an innovative, proactive approach to protecting user data, integrating privacy considerations right from the start of system and solution development. Privacy impact assessments are crucial at every development stage to identify and mitigate risks.

2

TRANSPARENT DATA MANAGEMENT

Building trust with users in AI systems requires clear data management policies. Users should be informed about how their data is stored and used when processed by AI systems.

3

ROBUST CYBERSECURITY PRACTICES

Enhancing data security in AI solutions involves implementing advanced cybersecurity practices and solutions to maintain data integrity and security.

4

COMPLIANCE WITH REGULATIONS

Adhering to data protection regulations, such as the GDPR, CCPA, HIPAA, and PIPL, is key to addressing privacy challenges. Notably, the EU Parliament's proposal to ban AI surveillance in public spaces, except in specific security scenarios, is a proactive step towards protecting individual privacy and ethical AI use.

5

ETHICAL AI DEVELOPMENT AND DEPLOYMENT

Embracing principles like fairness, accountability, and transparency is critical for ethical AI development. Such an approach ensures community and user benefit without compromising privacy privacy or security.

INSOLVENCY AND BANKRUPTCY IN UAE - BRIEF SNAPSHOT

CS Ramchander Tumuluru
Business Advisor, Dubai, Member of Research & Publications
Committee of ICSI ME, ex CFO of a European Company in Brussels

INTRODUCTION

On 31 October 2023 Law 51 of 2023 concerning Financial Restructuring and Bankruptcy (referred to as “New Law“) was published in the UAE Federal Gazette. The New Law will become effective from 1 May 2024.

Bankruptcy is always a last resort due to the complexity time effort and sacrifices it involves. However, strong resolution mechanism is required which considers interests of all parties and most important permits the business to operate to facilitate resolution of course within the legal framework.

Significant changes have been made to maintain interests of creditors and all parties and facilitates amicable settlement while preventing bankruptcy to maintain the vibrancy of the economy. The emphasis is on avoiding potential damage to the bankruptcy estate during restructuring.

PREVENTIVE SETTLEMENT

The debtor may submit an application, in specific cases including where he fears or is unable to pay some or all his debts when due, to open preventive settlement procedures if its business is viable.

The new Preventive Settlement mechanism is Court supervised and focuses on procedures initiated by the debtor to continue commercial activities and meet debts through an approved settlement proposal with the creditors. This new regime allows the debtor to manage the business and assets normally while exploring the settlement terms with creditors, and without the appointment of a trustee. Restructuring and liquidation alternatives remain.

CREATION OF BANKRUPTCY UNIT

A Financial Reorganisation and Bankruptcy Unit overseen by a senior Court of Appeal judge overseen by a senior Court of Appeal judge is intended to be formed to carry out its tasks related to preventive settlement, restructuring, or bankruptcy procedures.

Responsible for, processing requests under the law, notifying parties of court decisions,and ensuring compliance with the stipulated documentation, it will also oversee the debtor’s management of the business during the proceedings, facilitates creditors’ meetings, and summons relevant parties for inquiries, along with other duties assigned by judicial authorities or stipulated by law.

The Financial Restructuring Committee (“FRC”) will now be limited to assisting the Bankruptcy Court while overseeing the new online platform for the Bankruptcy Register, overseeing the training of judges and experts, and assisting the Bankruptcy Court in setting for trustees etc.

MORATORIUM

A key feature of the new law is it avoids separate enforcement proceedings for creditors.

The court can impose a moratorium on creditors' actions from the commencement ofjudicial and execution measures against debtors until the restructuring plan is ratified without a specified time limitation.

A Preventive Settlement decision results in a claims moratorium for three months following the date of issuance of the decision.

The Bankruptcy Court may, upon the debtor's request, extend the claims moratorium period for one or more times, provided that it does not exceed one month each time, and in all events, the claims moratorium period shall not exceed six months. The Bankruptcy Administration shall, upon the debtor's request, provide it with a certificate of claims moratorium and the duration thereof.

The moratorium following the issuance of the decision to open restructuring proceedings will remain open until the ratification of the restructuring plan. Employment claims however will remain Injection of Fresh Funds.

On approval of a Preventive Settlement Plan , the bankruptcy court may permit injection of fresh funds and issue a decision approving that new lien has an equal or higher ranking than the existing lien on the same funds, especially if the purpose of the new financing is to obtain materials or services necessary for the debtor's continued operations to generate returns to help settle its due debts.

BANKRUPTCY COURT - HIGHLIGHTS

These include

- Upon the issuance of a final judgement about opening a preventive composition plan, the court should determine in the judgement a date of debtor(s) ceasing payments, which will have important consequences on certain acts executed by the debtor(s) in the past.

- All bankruptcy court's decisions and judgements will be considered as a writ of execution and enforceable under the new law. The Bankruptcy Court can choose to reverse its own decision or suspend it on its own motion, or upon the request of the debtor,creditor, trustee, or other interested parties. The Court of Appeal in addition may also decide to suspend the enforcement of the decision.

- Have the power to issue precautionary decisions to suspend ongoing claims against the debtor(s) before issuing a final judgement opening a preventive composition plan or restructuring plan, which was not the case under the previous law.

- Pursuant to the creditor(s) refusal to proceed with the proposed restructuring plan, the debtor(s) will have the right to petition the bankruptcy court to request the restructuring plan's ratification. The bankruptcy court may ratify the plan after examination of the trustee's opinion, and the creditor(s) objections may ratify the restructuring plan under the condition that the creditor(s) rights under the plan will not be less than their rights in the event of bankruptcy. Under the previous law, if the creditor(s) rejected the restructuring plan, it would lead automatically to declaring the debtor's bankruptcy.

- All decisions and judgements issued from the bankruptcy court will be subject to appeal within 30 days from the date of issuance of the relevant decision or judgement.

TERMINOLOGY

New or Modified terms include “related parties”, the “debtor’s assets”, the “bankruptcy register”, “bankruptcy unit” “cessation of payment” amongst many others. “Debtor’s Assets includes all movable and immovable properties owned by the debtor, both domestically and internationally.

DE FACTO COMPANIES

Article 20 treats the partners of a de facto company will be treated in the same manner as partners in partnership companies (joint liability) under Article 244 of the New Law.

BOARD AND MANAGERS LIABILITY

Notably

- They may now be exempt from responsibility if proved that they pursued all efforts minimize potential losses to the debtor and creditors, or if they were not involved in the specified actions. Process followed and documentation of all decisions helps.
- Liability extends to de facto managers and any person responsible for the actual management of the company including controlling shareholders.
- The amount that may be awarded against the directors or manager who were established to be negligent leading the company to distress would relate to the degree of default.
- Provides a two-year limitation period from the date of the bankruptcy declaration in order to initiate liability proceedings against these individuals.

CHANGE IN SECURITY

Articles (66) and (108) of the New Law permits unifying, establishing, dissolving, selling, or replacing any security if necessary to implement the preventive settlement or the restructuring plan, provided that the secured creditor agrees.

PRACTICAL APPROACH

While keeping strict restrictions on debtors, the New Law is practical and allows for the payment of debts related to workers' rights, suppliers of essential business materials, and necessary living expenses for the debtor and their family, subject to bankruptcy court's approval. A helpful approach to ensure business continuity.

SUMMARY AND OPPORTUNITIES FOR COMPANY SECRETARIES

Federal Law Decree No. (51) of 2023, is a progressive and balanced step to simplifying and facilitating bankruptcy proceedings in the UAE and ensures stability in the economic environment and support to all parties in difficult financial situations. Company Secretaries being in a key position in the corporates and industry and business services can support their Management and Board or their clients to wade through this difficult process while ensuring compliance.

NOTE:

- Refer background on Insolvency and Bankruptcy in UAE by CS Ramchander Tumuluru in the Q4 2022 issue of this publication Corporate Governance
- Detailed Regulations including criteria eg minimum debt value for initiating bankruptcy proceedings are yet to be issued. Please keep a track of pronouncements and guidelines on this subject from time to time

CLIMATE CHANGE & FINANCIAL RISK:- BOARD OF DIRECTORS

CS Raghvendra Verma,
Law graduate, Company Secretary, Diploma in Cyber Security,

The relationship between climate change and financial risk is increasingly apparent and intertwined. Initially perceived as an ethical or environmental concern, climate change is now recognized as a critical factor in financial risk and opportunity assessment for businesses over short, medium, and long-term periods.

The urgency and magnitude of climate change risks and opportunities, especially in the shift towards a zero-carbon economy, gained significant attention in May 2021. This was marked by the International Energy Agency (IEA) releasing its first roadmap to achieve net-zero greenhouse gas (GHG) emissions by 2050 (NZE2050). The NZE2050 Scenario proposes an extensive range of actions necessary for the global economy to meet this net-zero target. These actions include substantial transformations in energy production, transportation, infrastructure, and the built environment by 2030. A key recommendation is the immediate halt of new fossil fuel exploration and development and a major shift in fossil fuel production to a few low-cost producing countries[1]

For industries facing either rapid decline or growth, the effects of the NZE2050 Scenario are significant. Companies in declining sectors are likely to face increased investor pressure to align their business models with these new projections and demonstrate resilience amidst the uncertainty of change. Failure to adapt could lead to difficulties in accessing capital. For company directors, this presents an additional challenge in risk and strategy planning in the boardroom.

As per the 2017 guidelines from the Task Force on Climate-related Financial Disclosures (TCFD), climate change represents one of the most substantial and intricate challenges for organizations[2]. The broad endorsement of the TCFD recommendations underscores a shared understanding among businesses, financial entities, and regulatory bodies about the financial and systemic risks posed by climate change. It also highlights the importance of integrating climate considerations into financial risk management, reporting, and regulatory oversight[3].

(1) IEA, ‘Net Zero by 2050: A Roadmap for the Global Energy Sector’ (May 2021) 20-21
<https://www.iea.org/reports/net-zero-by-2050>

(2) TCFD, ‘Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures’ (June 2017)
<https://www.fsb-tcfd.org/publications/final-recommendations-report/>.

(3) Ibid, 5-6: ; Mercer,‘Investing in a time of climate change’ (2015):
<https://www.mercer.com.au/content/dam/mercer/attachments/asia-pacific/australia/investment/sustainable-growth/mercer-climate-change-study-2015.pdf>

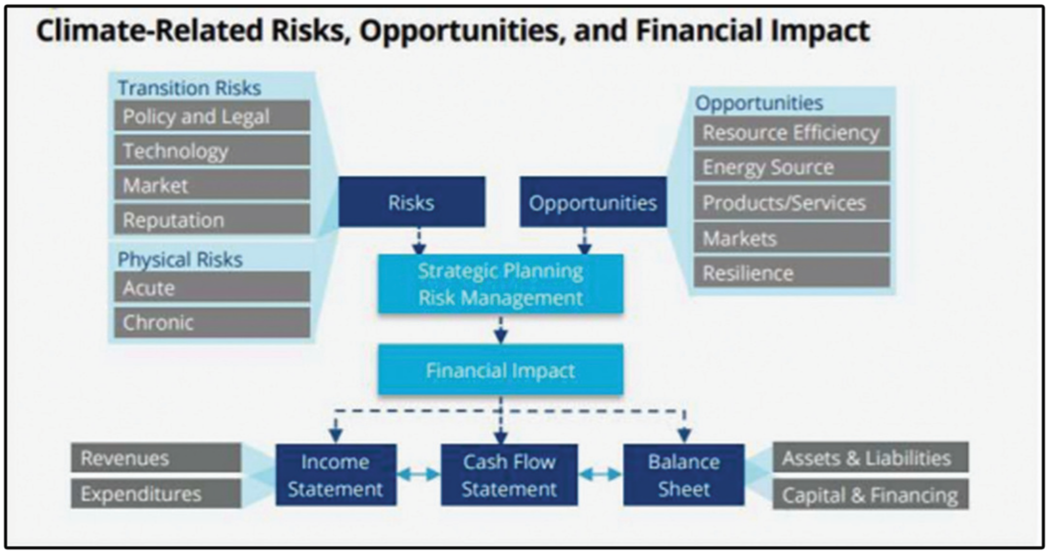


Figure 1: Climate-related financial risks to entities. Source: TCFD Final Recommendations (2017)

As the impacts of climate change and the shift towards a zero-emissions economy become increasingly evident, their financial and systemic risks have moved to the forefront of mainstream business concerns. In 2021, despite the ongoing pandemic,the World Economic Forum's Global Risks Report highlighted climate change and environmental challenges as four of the top five risks to the global economy, based on surveys of global executives. Infectious diseases were also listed among these to risks, with climate action failures by governments and human-induced environmental damage being particularly emphasized by board members.

Recognizing climate change as a significant financial and systemic risk and a key element in value generation, it now directly relates to the responsibilities and disclosure duties of corporate directors. In response, financial regulators are increasingly demanding effective disclosure and governance regarding climate risks. Similarly, investors are setting norms for director behavior and are more actively expressing these expectations through their voting and stewardship actions.

The 2021 proxy season saw a notable increase in investor demands for corporate accountability regarding climate strategies. In regions such as Europe, the U.S., Asia, and Australia, investors pushed for "Say On Climate" (SOC) proposals, challenging local laws to encourage boards to submit their climate transition plans for an annual advisory shareholder vote. While many companies voluntarily complied, others, especially in the U.S., were mainly targeted by shareholder proposals demanding more thorough disclosure of greenhouse gas emissions and the setting of more ambitious targets. With a more receptive U.S. Securities and Exchange Commission, which diverged from its predecessor's stance by allowing rather than rejecting shareholder climate change proposals, investors found it easier to influence corporate policies through voting, sending strong messages.

One of the most surprising events of the season was the proxy battle at ExxonMobil initiated by a small hedge fund. The fund nominated four alternative candidates for the company's board, leading to a remarkable outcome where three nominees were elected. This unprecedented event demonstrated a significant move by investors, both big and small, to leverage the voting process to drive strategic changes in climate policies at one of the largest U.S. companies.

DIRECTORS' DUTIES AND CLIMATE CHANGE

Directors serve as fiduciaries for a company, tasked with overseeing its performance, strategy, and risk management, ensuring compliance with legal requirements, sanctioning significant transactions, and managing corporate reporting and disclosure.

As fiduciaries, directors are bound by two fundamental responsibilities: the duty of loyalty and the duty of care and diligence. These duties can vary based on the legal jurisdiction. In common law regions, these fiduciary duties are defined by statutory laws and case law, shaped over time by judicial decisions. In civil law regions, statutory laws explicitly outline the duties of directors.

Despite differences across jurisdictions, the core principles of loyalty and care in corporate governance are universally recognized. Generally, the duty of loyalty demands that directors act with honesty and integrity, prioritizing the company's best interests, often defined in financial terms. The duty of care mandates that directors apply reasonable care, skill, and judgment in fulfilling their roles, including taking appropriate measures to prevent foreseeable risks.

These duties are dynamic and adapt to changes in factual circumstances, risk awareness, regulatory shifts, and market practices. What might have been considered a reasonable decision by a director several years ago may not be seen as such under current standards. This evolving understanding is particularly pertinent in the context of climate change, where the growing evidence of climate-related risks and regulatory developments increase the possibility of a tumultuous transition.

Therefore, to fulfill their responsibilities, directors need to incorporate climate-related risks and opportunities into their governance roles.

DISCLOSURE REQUIREMENT

Public companies in many countries are required by national laws to evaluate, manage, and disclose climate risks that are financially significant. Although the specifics can vary by jurisdiction, laws related to corporate reporting and securities typically mandate that listed companies reveal information crucial to their financial performance and future prospects in their reports and financial statements.

There is also a requirement for materiality in financial statement disclosures. In November 2019, Nick Anderson, a member of the International Accounting Standards Board, clarified the inclusion of climate risks within the existing framework of the International Financial Reporting Standards (IFRS). He indicated that while climate-related and other emerging risks are often discussed outside financial statements, the IFRS Practice Statement 2 on Making Materiality Judgements acknowledges that qualitative external factors, such as industry context and investor expectations, could render some risks 'material'. These risks may necessitate disclosure in financial statements, even if their numerical impact is not significant.

In November 2020, the IFRS Foundation released guidelines titled "Effects of climate- related matters on financial statements." This document advises that material climate- related financial information should be reported in accordance with various IAS and IFRS standards, including IAS 1, IAS 2, IAS 12, IAS 16, IAS 38, IAS 36, IAS 37, IFRS 7, IFRS 9, and IFRS 13. It further states that companies significantly impacted by climate issues must provide comprehensive disclosure.

Beyond these obligatory disclosures and the requirements for narrative and financial statement disclosures based on principles, there is a growing demand from investors and regulators for specific climate-related financial disclosures in financial filings, aligning with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). The TCFD's 2020 Status Report, released in October 2020, revealed that the TCFD reporting framework has received support from over 1,500 organizations worldwide, including more than 1,340 companies with a combined market capitalization of $12.6 trillion and financial institutions managing assets worth $150 trillion. In 2021, BlackRock, managing $8.67 trillion in assets, urged companies it invests in to reveal how their business models align with a net-zero economy, integrate this plan into their long-term strategy, and confirm board-level review. This request adds to BlackRock's 2020 policy, which encouraged alignment with the Task Force on Climate-related Financial Disclosures (TCFD) and the Sustainability Accounting Standards Board (SASB).

These climate disclosure standards bring significant responsibilities for corporate boards. Directors must ensure the accuracy and completeness of financial filings, with audit committee members tasked with verifying the reliability of climate scenario assumptions in audits.

Concerns about liability exposure from adhering to the TCFD reporting framework were addressed in a 2017 report by the CCLI. It clarified that worries about liability for misleading disclosures are often based on misunderstandings of the TCFD recommendations and the application of securities disclosure laws. In fact, complying with TCFD guidelines can help fulfill directors' duties and disclosure requirements.

To minimize liability for misleading disclosures, companies should specifically and relevantly disclose climate change-related forward-looking risks, including cautionary language about any uncertainties or limitations. While the exact analysis and disclosure will vary by company, following the TCFD recommendations is a key reference point for effectively assessing climate risks and opportunities and communicating them accurately and fairly to the market.

For disclosures, Indian companies need to report climate risks in securities issuances and ongoing obligations. This includes discussing the company’s strategy, environmental challenges, financial conditions, and material internal and external risk factors like climate risks. Annual reports must address risk management policies, energy conservation approaches, and continuous disclosure obligations include reporting on the impacts of climate events and strategies to address global environmental issues.

In India, there's a growing awareness among financial regulators about the extensive financial risks posed by climate change. The Reserve Bank of India, in its 2018-2019 banking report, acknowledged these risks and the opportunities in green finance. Additionally, a 2020 study by the Reserve Bank indicated climate change's significant effect on food price inflation.

In August 2020, the Securities & Exchange Board of India (SEBI) proposed that India’s top 1,000 companies should annually submit Business Responsibility and Sustainability Reports (BRSRs), detailing their strategies and initiatives to tackle climate change and transition to a low-carbon economy. This requirement was set to become mandatory from the 2021-2022 financial year.

Furthermore, in March 2020, India’s Insurance Regulatory and Development Authority, in collaboration with the OECD and Asian Development Bank, examined the impact of climate change on insurance models and the role of pension funds in sustainable finance.

Regarding directors' duties, these are mainly defined in section 166 of the Companies Act, focusing on trust, loyalty, and competence. Directors are obligated to act in good faith for the company's benefit, its employees, shareholders, the community, and environmental protection. This necessitates a balanced consideration of various stakeholders' interests.

In addressing climate risk, directors must conduct thorough assessments, seek expert advice, and develop and implement strategies, continuously reviewing their effectiveness. The duty of competence requires informed decision-making and oversight, with an objective standard of assessment. Failing to account for climate risk cannot be excused.

SEBI's 2015 regulations further underscore the need for a risk management framework and committee in large listed companies, raising the bar for risk, and by extension, climate risk management.

The necessary actions for directors to meet their duties and disclosure responsibilities vary depending on legal jurisdiction and the specific context of the company and situation.

PRACTICALLY, BOARDS SHOULD:

- Assign a team for climate risk assessment reporting to the CEO and board.
- Develop a climate transition roadmap to 2050, with interim targets, and regularly update the board.
- Task relevant board committees with integrating long-term strategies into decision-making processes.
- Work with disclosure counsel to create an external engagement plan and ensure accurate disclosure and accounting.

As a Compliance person, you should regularly inspect below questions and accordingly Here are some key questions to guide directors:

1. Is my board actively addressing the foreseeable financial risks related to climate change and considering their impact on our corporate risk management and strategy?

2. Am I effectively engaging with and evaluating the information and advice on climate-related risks presented to the board? Should I seek independent counsel on these matters?

3. If climate change is not a regular topic in board meetings or management reports, should I question its absence?

4. Does my board take into account climate risks in both our general strategic planning and risk management processes, as well as in specific projects or acquisitions that require board oversight?

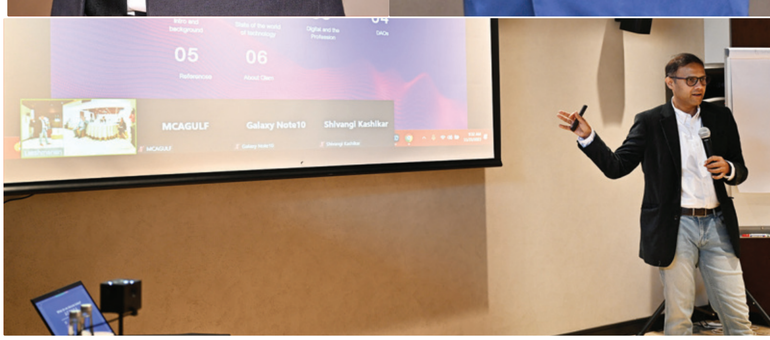
5. Has my company implemented solid processes to identify, actively manage, and report foreseeable and financially significant climate risks to the board, in our financial statements, and in other external communications?

6. Do I possess enough understanding of the various risks associated with climate change, such as physical, transitional, liability, and systemic risks, to effectively oversee their management? Is my board proactive in identifying any gaps in our knowledge and arranging necessary training or seeking independent expert advice to address these gaps?

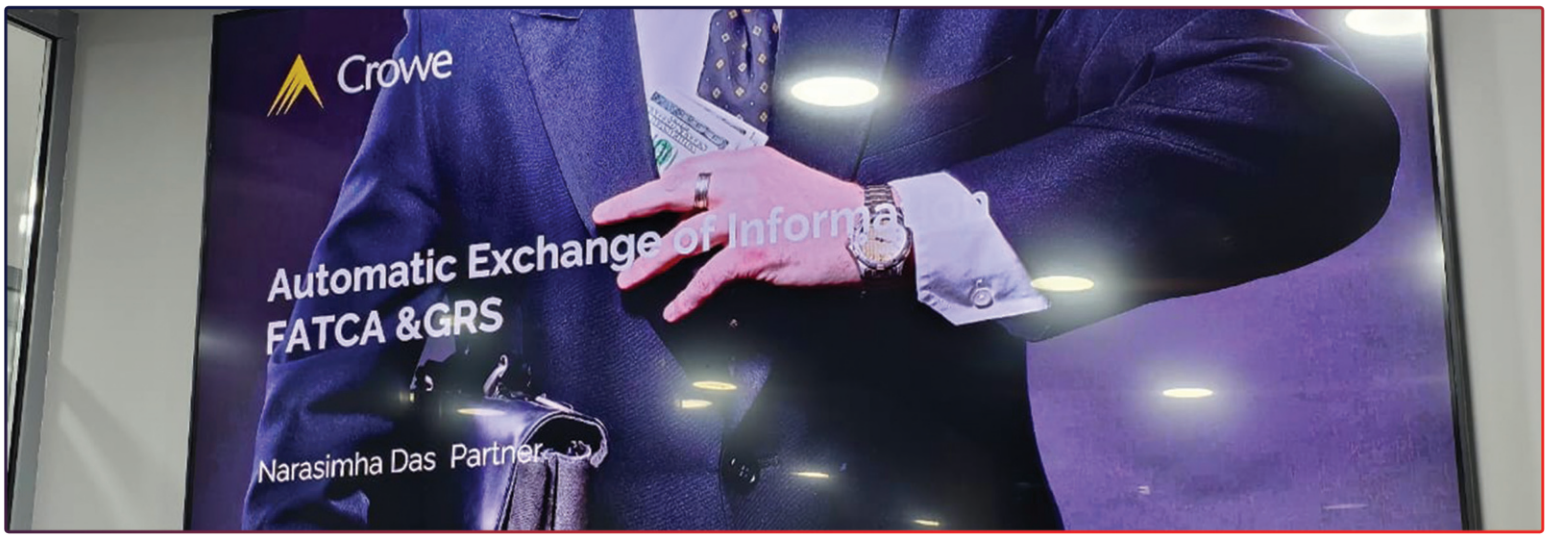
NEWS ICSINPIO ACTIVITIES

Legal system in UAE - 9 Sep 2023

ICSI NPIO Event - 25 Nov 2023



FATCA CRS study circle meeting - 19 Jan 2024



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CS Raghvendra Verma

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★ ★ ★

GET IN TOUCH

+971 4 352 9900

middleast.difc@icsi.edu

ICSI Middle East (DIFC) NPIO

Unit 203, 205, Level 2, Liberty House, Dubai International Financial Centre, P.O. Box No. 506705, Dubai, United Arab Emirates, DiFC License No. OL 3490