



## The changing landscape in the insurance industry

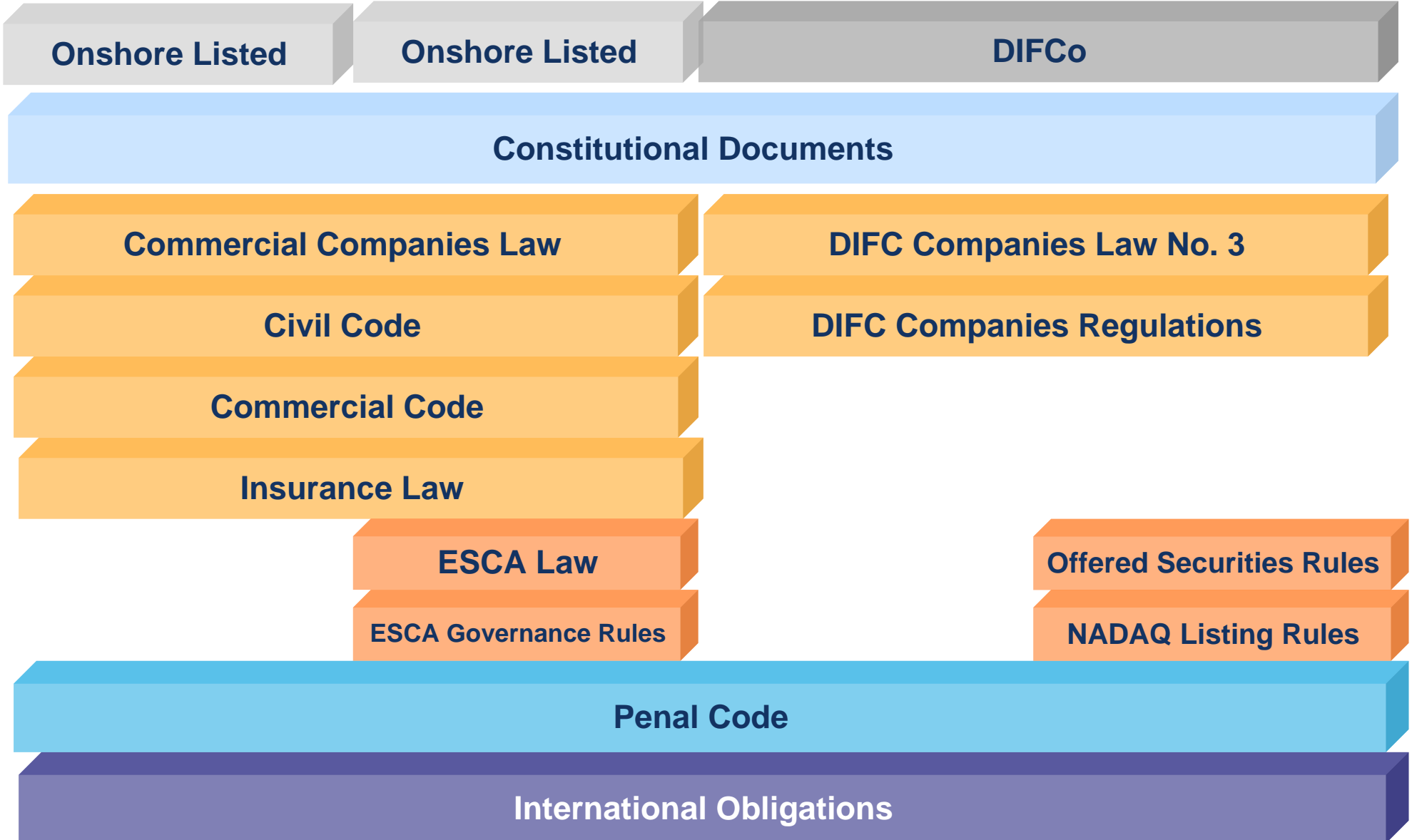
### Directors & Officers duties and liabilities

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Hamish Walton, Partner & Peter Hodgins, Partner  
Clyde & Co Middle East

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***PLC 'Which Lawyer': Middle Eastern Law Firm of the Year, 2010***



## Some key points

- The law in the UAE: difference between “onshore” and “offshore” – different laws apply
- Note difference between directors and company “managers” recognised by law on the one hand and having legal duties and “management” on the other who are just employees
- For ADX and DFM companies, the new Corporate Governance Rules (discussed in another session) apply and deal with board composition, meetings, education, compliance and duties such as honesty and faithfulness
- To some extent, different laws apply to directors of offshore companies with UAE branches

## The Law in the UAE

- The Law:
  - onshore UAE: Mainly Commercial Companies Law, plus Commercial Code and Civil Code, and for ADX and DFM companies, the new Corporate Governance Rules
  - DIFC: Mainly Companies Law 2009
  - other Free Zones have their own civil laws
  - Penal (Criminal) Code – applies onshore and across all free zones
- Other sources of rights / obligations:
  - constitutional documents
  - contracts – employment, indemnities etc

## The Law in the UAE

- **Duties and Liabilities – Directors/Managers**
  - onshore: more in the negative under the Commercial Companies Law. Fraud, breach of law, “mismanagement” are breaches
  - DIFC: more in the positive under the Companies Law 2009 - requires honesty, good faith, lawful acts, best interests of the company, reasonable care and diligence etc. Common law concepts

## The Law in the UAE

- Theft and Fraud:
  - onshore: Companies Law – includes signing documents containing false information, breach of company confidence
  - DIFC: Fines levied/damages awarded for breaches including:
    - breach of directors' duties
    - failure of directors to disclose conflicts of interest
    - false declarations
  - onshore and DIFC - Penal Code:
    - fraud, embezzlement
    - disclosing confidential information of the Company for personal benefit
    - writing company cheques when insufficient funds

## The Law in the UAE

- Other onshore liabilities under the Commercial Companies Law:
  - conceal, alter, destroy books
  - misappropriation of assets
  - distribution of fictitious profits
- Liabilities to Shareholders:
  - onshore – JSC’s – shareholders can institute court proceedings to revoke board resolutions against company’s interests
  - onshore – shareholders holding at least 25% of share capital can ask the Ministry of Economy to investigate breaches of the Commercial Companies Law
  - DIFC – shareholders can apply to a court for a range of orders against the company and its directors if the company’s affairs have been conducted in an unfairly prejudicial way to those shareholders

## The Law in the UAE

- Conflicts:
  - generally, disclosure is required - both onshore and DIFC
  - onshore: directors/managers can't compete with the company
- Penalties:
  - onshore Commercial Companies Law – fines, imprisonment
  - DIFC – fines, damages
  - Penal Code applies across all jurisdictions – fines, imprisonment

Branches of  
foreign  
companies:

onshore and  
free zone

- Directors obligations:
  - subject to duties and liabilities set out in the laws of the jurisdiction of incorporation
  - not subject of UAE law specifically dealing with directors
  - exception for branch managers
- UAE Codes – Commercial, Civil and Penal:
  - still apply to acts committed in the jurisdiction by directors of offshore companies having branches in the UAE

## Indemnities and Insurance

- Can you get indemnities and insurance?
  - indemnities: onshore, not prevented, but must not be in respect of breaches of law
  - indemnities: DIFC – permitted but certain requirements need to be satisfied
  - indemnities: foreign companies with UAE branches – depends on laws of “home” jurisdiction and constitutional documents
  - insurance (D&O) – yes, available, both onshore and in the DIFC

## The Insurance Law

- **Directors' qualifications:**
  - Article 30 of the Insurance Law
  - Article 26 of Board Resolution No. 2 of 2009
  
- **AML – Board Resolution No. 1 of 2009**
  
- **Restrictions on Directors Activities:**
  - participation in the management of another competing or similar insurance company;
  - competition with the business of the company or perform any action or activity that conflicts with the interest of the company;
  - carrying out the business of an Insurance Agent or Insurance Broker;
  - receiving a commission from any re/insurance business.

Insurance  
directors' duties  
to come?

- Insurance Authority Board Resolution No. (2) of 2009 - Executive Regulations
  - Article 45 – Insurance companies must comply with the principles of corporate governance to be issues by the Insurance Authority's Board in the future

Mismanagement  
(1)

- Article 111 of the Companies Law:

“The chairman and members of the board of directors shall be liable towards the company, the shareholders and third parties for all acts of fraud, abuse of power, violation of the Law or the Companies Articles and for mismanagement as well.”

## Mismanagement (2)

- Potential exposures in relation to:
  - licensing & registration requirements
  - dealing with unlicensed intermediaries
  - policy wordings
  - handling of claims
  - reserving / solvency
  - investments
  - AML
  - Shari'a compliance (for Takaful operators)

... etc.

## International obligations

- Potential exposures where:
  - listed outside of the UAE
  - deal with counterparties / investors outside of the UAE
  - employ non-UAE nationals
  - subject to foreign legislation with extra-territorial effect (e.g. OFAC, FCPA and UK Bribery Act 2010)

## The UK Bribery Act

- Effective 8 April 2010
- Applies to British citizens, British nationals overseas and individuals ordinarily resident in the UK (Section 12)
- Elements of section 6 offence of “Bribery of Foreign Official”:
  - foreign public official (‘F’)
  - offer, promise or giving of financial or other advantage
  - ‘F’ is neither permitted nor required by law to be influenced by such advantage
  - intention to influence said official
  - intention to obtain or retain business or advantage in business

**Thank you**

**Questions?**

# Clyde & Co international footprint



For further  
information

**Peter Hodgins** Partner – Corporate Insurance/Takaful

T +971 50 900 1633

E [peter.hodgins@clydeco.ae](mailto:peter.hodgins@clydeco.ae)

**Hamish Walton** Partner – Corporate M&A / governance

T +971 50 708 5638

E [hamish.walton@clydeco.ae](mailto:hamish.walton@clydeco.ae)