

Combating fraud and money laundering in the UAE



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AS RECENT EVENTS IN TUNISIA AND Egypt have shown, the mention of fraud or corruption in the Middle East and Northern Africa (MENA) region prompts people to think about governments and civil servants, rather than private corporations that are considered, wrongly, less concerned by this ordeal.

FRAUD IN EMERGING MARKETS

For this reason, most regulations are directed towards civil servants rather than employees of private corporations. An example is found in Articles 234 to 247 of the UAE Criminal Code, relating to corruption and abuse of power, with the exception of Article 236 (added in 2005), which provides for:

'The imprisonment of up to five years of any board member of any private corporation... or any manager or employee that has requested for himself or for any other person or has accepted or taken, a promise or a donation to perform an act or to refrain from performing an act related to his employment or to breach his/her obligations and the concerned shall be considered a criminal even if his/her intention was to refrain from performing an act or not to breach his employment obligations.'

This is a relatively stringent provision, caused by the slow, but sure, penetration of corporate governance ideas in the UAE due to increased sophistication in the jurisdiction, heightened interaction with the developed world and the high volume of foreign companies established in the region.

Aside from Article 236 above, there are very few regulations that directly target private corporations.

ANTI-MONEY LAUNDERING AND TERRORISM FINANCING IN THE UAE

There are three stages of a successful money laundering operation detailed as follows:

- 1) the placement of money into the financial system;
- 2) layering, which involves moving money around to make it difficult for authorities to link the funds to the ultimate beneficiary; and

- 3) integration of money into the legitimate financial system.

The UAE has a range of regulations to combat money laundering and terrorism financing. There are provisions in the UAE Criminal Code dating back to 1987, and over the years the UAE Central Bank has issued several directives to combat money laundering. The main piece of legislation, however, is the UAE Anti-Money Laundering Law (AML), which was issued on 22 January 2002. AML contains relatively similar provisions to the UK Proceeds of Crime Act (POCA) 2002, with five offences, namely: concealment, arrangements and acquisition, use and possession (Article 2 of AML), failure to disclose (Article 15 of AML), and tipping-off (Article 16 of AML).

AML, however, unlike POCA 2002, does not make provision for the objective test to be carried out, where there are reasonable grounds to suspect money laundering activity. Instead, special provision was made under Article 20 of AML that exempts financial institutions and other commercial and economic establishments, as well as their directors, employees and authorised representatives, from any criminal, civil or administrative liability arising from confidentiality obligations if they provide the required information.

Since the issuance of AML, several ministries and other UAE governmental agencies have been active in issuing circulars to combat money laundering and terrorism, with the Ministry of Justice alone having issued four circulars between 2008 and 2010, including two that were directed at lawyers and two directed at notaries public.

In circular no 8 of 2010, the Ministry of Justice obliges lawyers to inform the National Anti-money Laundering Committee if they have substantive reasons for suspecting that clients' transaction funds may be related to money laundering or terrorism. Notaries public are also required to do the same.

There is, however, no guidance given to lawyers or notaries public, allowing them to conduct the 'objective test', and instead resolution no 1 of 2009, issued by the Insurance Authority, contains reference to the three stages of money laundering and provides for an objective test approach.

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Resolution no 1 of 2009 defines the three stages of money laundering and, in Articles 12 and 13, provides for an objective test approach with examples of when there should be increased suspicion on behalf of insurance companies, such as a life insurance policy with a high premium fully paid in advance, cancelling a life insurance policy shortly after its execution, insuring goods by opening a letter of credit through immediate payment, or large insurance premiums.

The Emirates Securities and Commodities Authority (ESCA) has issued resolution no 17/r of 2010, which also refers to an objective test approach. Article 9 of this resolution gives examples of objective test scenarios, such as where there is a substantial increase in cash deposits without a clear reason in a short span of time, numerous cash deposits that are below the suspicion threshold (AED 40,000), and large telegraphic transfers of funds to be paid in cash in a foreign country.

Article 5 of the ESCA regulations mentions politically exposed persons (PEPs). However, those targeted are, oddly, PEPs in a foreign country (not the UAE) and if a customer is a PEP in a foreign country, approval should be sought from the managing director of the investment firm before accepting such a person as a client.

Article 6 of the ESCA regulations also directs investment firms to classify their clients according to their risk.

Both the Insurance Authority resolution and the ESCA regulations provide for the appointment of skilled and independent compliance officers whose duty is to regularly report to the anti-money laundering unit.

Both regulations also insist that firms within the same jurisdiction perform the necessary due diligence for different types of customers, for example, the know-your-customer compliance regulation.

It could be said that the UAE has fairly comprehensive legislation for combating money laundering and terrorism financing, and that the regulations have

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placed obligations on investment firms and insurance companies to ensure they have systems and controls in place that are appropriate for the prevention of money laundering and terrorism financing.

UAE CORPORATE GOVERNANCE AND GOVERNMENT-RELATED ENTITIES

Corporate governance is starting to be taken seriously in the UAE after the financial crisis served as a wake-up call for many private corporations in the Gulf region in general and the UAE in particular. However, more needs to be done for corporate governance to be properly embedded at all levels and to enable the UAE to seriously combat fraud.

ESCA has regulations with respect to corporate governance (regulation 518 of 2009). However, the regulations only apply to publicly listed companies and it remains to be seen whether they are being fully complied with. Currently, there are no corporate governance regulations for other types of company, although, at an individual level, some non-publicly traded companies are installing their own codes of corporate governance. This is particularly evident in government-related entities.

The credit crisis in Dubai resulted in increased scrutiny being exercised over many government-related entities due to the realisation that several high-profile government figures were benefiting illegally from the misappropriation of public funds. This prompted the Ruler of Dubai to issue Dubai law no 37 of 2009, relating to the recovery of public funds and money collected illegally. It also provides for the imprisonment of those that benefited illegally, with the opportunity for the culprit to reduce or escape a prison sentence where they reimburse the illegally appropriated

funds. This has prompted some to believe that this law targets only specific individuals. In 2010 the Ruler of Dubai issued law no 8 relating to the Audit Finance Department. The law grants the the department have extensive powers over government entities and any company in which the government of Dubai holds 25% or more of the shares. Any person that refuses to co-operate with, or that obstructs the investigations of the Department, may be deferred to the police.

ASSET TRACING

In the UAE, further transparency is also needed with regards to asset tracing. By way of example, the Commercial Register or the Land Registry are not public and therefore are only accessible by those directly concerned, or their representatives, making it almost impossible to access relevant information on assets or companies without a court order.

CONCLUSION

Although the UAE has made extensive provision for money laundering, it is apparent that more needs to be done with regards to the application of corporate governance and combating corporate fraud.

Arguably, as long as the MENA region lacks a fully transparent government system, free from fraud and corruption, it will remain difficult to implement better governance systems on private corporations.

This material is intended for general information only and should not be considered as legal advice. For further information, please contact us.

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