



The UAE's fight against bribery and corruption

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The UAE has in recent times strengthened its anti-corruption commitments, legislation and institutions by, among other things:

- Expressly extending anti-bribery legislation to the private sector;
- Extending the territorial reach of UAE anti-bribery legislation;
- Expanding the scope of public sector bribery;
- Creating a new Dubai economic security "super-regulator" to monitor and combat corruption, aimed at the Dubai financial services sector;
- Expanding seizure of bribery proceeds to the private sector; and
- Increasing the cap on fines to private companies tenfold.

These initiatives are part of a larger anti-corruption drive in the Gulf region generally toward enhanced transparency and increased anti-corruption scrutiny.

Companies will want to consider these changes to strengthen compliance policies and procedures and employee training programs. In this article, we discuss each of these changes.

First, a look at the existing laws

The UAE does not have a stand-alone anti-bribery law. Bribery and corruption are governed by several distinct and overlapping laws. Federal Law no. 3 of 1987 (the UAE Criminal Code), however, is the key source of law governing bribery. The UAE Criminal Code governs bribery across the seven Emirates and also applies to the economic free zones (such as the Dubai International Financial Centre and the Abu Dhabi Global Market) which are empowered to enact their own civil and commercial laws, but not criminal laws. In that sense, the anti-bribery provisions have broad application in the UAE.

A "bribe" is not expressly defined under the UAE Criminal Code. By implication from the bribery offences, a bribe is a gift, financial or other advantage offered or received, directly or indirectly, to induce or reward the improper performance of a relevant function or activity.

Bribery generally includes the request or acceptance, the offer or making of any promise or gift (or other advantage) to a public official or a person who manages or is employed by a legal entity, either directly or indirectly, in order to abet that public officer or person to abuse his power, whether actual or presumed, in order to obtain, from a public department of authority or a legal entity, an unlawful benefit.

Bribery offences in the UAE

Currently, under the UAE Criminal Code, the bribery offences comprise:

- Offering, promising, or giving of a bribe to another person who manages or is employed by a legal entity or who is a public official.
- Requesting, agreeing to receive, or accepting a bribe in the capacity as a public official.
- Knowingly assisting or abetting in the commission of a bribe.
- Acting as an intermediary for a bribery transaction.
- Bribery of a foreign (non-UAE) public official or an employee of an international organization to fulfill or fail to fulfill his or her public official functions.

Expanding anti-bribery legislation to the private sector

In 2016, the UAE amended the Criminal Code to include an express provision which makes bribery between private persons a criminal offence. The elements of the offence are:

1. the promise, offer or grant, directly or indirectly, of a bribe;
2. to another person employed at, directing or managing a private sector entity or establishment; and
3. to do or refrain from any of his or her duties.

All elements must be satisfied for the activities to constitute bribery.

Anti-bribery legislation now has extra-territorial effect

In 2016, the bribery provisions were amended to have extra-territorial effect. This means that the bribery offences set out above, apply outside the UAE where any of the following conditions are met:

- The criminal or victim of the bribery offence is a UAE national;
- The bribery offence is committed by a person employed by a UAE public or private company; or
- The bribery offence involves "public property", which in our view applies to moveable and immovable property owned, directly or indirectly, by any level of the UAE government, state enterprises or organisations.

How the court will interpret "public property" under the UAE Criminal Code is yet to be seen.

In certain circumstances, parent companies may also face liability for a subsidiary's involvement in bribery in the UAE.

Foreign public officials are now subject to anti-bribery legislation

In 2016, bribery in the "public sector" was also expanded to apply to bribery of or by foreign public officials and employees of international organisations (e.g. U.N. organisations or non-governmental bodies). The 2016 amendments also introduced a new definition for "foreign public official" which refers to "*any person in a legislative, executive, administrative or judicial position at another country, whether permanently or temporarily, be elected or appointed...*"

A person can be a foreign public official even if he or she is unpaid in a voluntary role.

Seizure of proceeds of crime extended to the private sector

Under the amended UAE Criminal Code, a bribe granted to any person entrusted with a public service or a public servant can still be confiscated. Furthermore, now, the Court must order seizure of proceeds of crime. As bribery has been extended to the private sector, this also includes seizure of bribes paid in "private sector" bribery.

Self-reporting defences remain

Self-reporting bribery is still a defence to the bribery offences. The UAE Criminal Code expressly states that a briber or intermediary who "self-reports" a bribery offence before it is discovered, shall be exempted from the penalty, however, it is not clear whether the self-reporter would be exempt from bribery, corruption or other related offences under other legislation.

No limitation periods on bribery offences

In 2016, to align the UAE with some other international jurisdictions, limitation periods for bribery offences under the UAE Criminal Code were removed. Furthermore, there is no limitation period for any civil actions brought in connection with bribery offences (detailed below).

Legal consequences

Companies and their employees will want to be aware of the serious legal consequences and increased legal risks under the current amendments to the anti-bribery law.

- Those found guilty of bribery offences face up to five years imprisonment and a fine equal to the bribe but not less than AED5,000, for each offence.
- Private companies are also liable for the criminal acts of their representatives, directors or agents, where such acts committed for the company's benefit, or in their name. In the case of bribery offences (which also carry imprisonment sanctions), the 2016 amendments increased the cap on fines for private companies tenfold from AED50,000 to AED500,000 for each offence (approximately USD136,000).
- Proceeds of crime (e.g. bribes paid in cash or kind) may be confiscated.
- Intermediaries and accessories to a bribery crime may also be liable. If subject to a regulatory investigation, companies also face business disruption and licensing risks.

Additional legal consequences may also apply if the activities constitute crimes under other laws such as competition or tender laws.

Related articles

*See also the authors' 2019 article, "Saudi Arabia expands anti-bribery legislation to the private sector."

*See also the authors' 2016 article "Dubai introduces new economic security centre regulator."

Please contact any of the authors to discuss further.

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