



United Arab Emirates- Global bribery offenses guide

11 January 2022

By: Adam Vause

1) What is the legal framework governing bribery in the UAE?

In the UAE, there is no standalone bribery law. Bribery and corruption are governed by several distinct and overlapping laws. Federal Law no. 3 of 1987 (the UAE Criminal Code) is, however, the key legislation governing bribery.

Other laws that combat bribery include:

- the Federal Human Resources Law (Federal Decree No. 11 of 2008).
- the Law on Procedures for the Recovery of Illegally Obtained Public and Private Funds (Dubai Law 37 of 2009).
- Federal Law 4 of 2002 regarding the Criminalisation of Money Laundering.
- Federal Law 7 of 2014 regarding the Combating of Terrorism Crimes.
- the Dubai Law 4/2016 on Financial Crimes.

The UAE is a federation of seven emirates. Laws are enacted both at federal and emirate level. In addition, the UAE has economic free zones (e.g. the Dubai International Financial Centre and the Abu Dhabi Global Market), which are distinct juridical zones with the ability to issue civil and commercial but not criminal laws. The free zones are subject to federal criminal laws.

All article references in this summary refer to the UAE Criminal Code.

2) What constitutes a bribe?

A bribe is not expressly defined under the UAE Criminal Code.

By implication from the bribery offenses, 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.

The United Nations Convention Against Corruption, which was adopted in the UAE by means of Federal Decree No. 8 of 2006, defines 'bribery' as a criminal offence where the following is committed intentionally:

“(a) The promise, offering or giving, to a public official either directly or indirectly, of an undue advantage, for the official himself or another person or entity. In order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of

his or her official duties."

3) What are the principal offenses under this legal framework?

- Bribery generally includes the request, acceptance, offer of or making of any promise or gift (or other advantage) to a public official 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, an unlawful benefit (arts. 234).
- The offering, promising, or giving of a bribe to another person who manages or is employed by a private sector legal entity (art. 236(bis)) or who is a public official.
- Knowingly assisting or abetting in the commission of a bribe.
- Acting as an intermediary for a bribery transaction (art. 237(bis)(2)).
- 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 (art. 237).

4) What is the jurisdictional reach of the legal framework.?

The bribery offenses above apply outside the UAE where any of the following conditions are met:

- the perpetrator or victim of the bribery offense is a UAE national;
- the bribery offense is committed by a person employed by a UAE public or private company; or
- the bribery offense 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 organizations, although this is yet to be tested by the UAE courts.

5) Who may be liable for bribery? (Public officials, private individuals, legal entities, etc.)

Private individuals, public officials, legal entities, managers, directors, agents, intermediaries, and any person who aids or abets a bribery offense can be prosecuted for bribery offenses.

6) Can a parent company be liable for its subsidiary's involvement in bribery?

Yes, however the circumstances in which this may occur are fact-specific. Some possibilities include where:

- the subsidiary is established as a branch in the UAE in which the principal parent may be directly liable for
- the acts of the subsidiary;
- the parent company acts as an intermediary in the bribery offense; or
- the parent company acted directly or indirectly in the commission of the bribe.

Article 65 provides that legal persons, with the exception of the government associations and public organisations are criminally responsible for crimes committed by their representatives, directors or agents acting in favour of or on their behalf.

7) Are facilitation payments (i.e. small payments to speed up routine governmental action) considered bribes?

Yes. Provided they meet the criteria set out under articles 234 and 237, facilitation payments are considered bribery, no matter how small the amount. The penalties provided under the same articles apply.

8) Does the legal framework restrict political and charitable contributions?

There are no express provisions under the UAE Criminal Code that restrict political or charitable contributions.

There are, however, restrictions under fundraising and charity laws that could apply to charitable contributions. Fundraising and the establishment of charities in the UAE is highly regulated, in part, to mitigate the risk of terrorism financing and money laundering. Outside of the UAE International Humanitarian

City (which is also highly regulated), charities are closely scrutinized and regulated and fundraising is only permitted in partnership with locally established charities.

As the UAE is a constitutional monarchy, "political contributions" are not applicable.

9) Does the legal framework place restrictions on corporate hospitality?

Articles 234 and 237 of the UAE Criminal Code regulate the acceptance of any benefits and state that public servants or persons entrusted with a public service, foreign public servants or employees of international organisations may not request or accept, whether directly or indirectly, gifts, benefits or other grants not due. It is therefore strictly prohibited for such public officials to accept any form of hospitality, travel or entertainment expenses of any kind. Any financial or other advantage given in that context would be assessed by reference to the remaining provisions described in this note.

Whether hospitality amounts to a bribe would likely be assessed on the basis of whether there was sufficient evidence to show that it was given with the intention of inducing conduct that amounts to a breach of an expectation that a person will act in good faith, impartially, or in accordance with a position of trust. In the UAE, this would not be applied as a clear test and the regulators would have more discretion than in western common law jurisdictions.

There are various further restrictions on corporate hospitality under other anti-bribery legislation in the UAE. For instance, federal employees are prohibited from accepting any gifts unless they are promotional or symbolic gifts bearing the name and logo of the presenting party and would not influence the federal employee in any decision-making.

10) Are there any defenses for bribery offenses?

The UAE Criminal Code states that a briber or intermediary who "self-reports" a bribery offense before it is discovered shall be exempted from the penalty (art. 239). However, it is not clear whether the self-reporter would be exempt from bribery, corruption or other related offenses under other legislation.

Article 234 expressly confirms that the lack of an intention to commit a bribery offence is not a defence to bribery.

With respect to companies, a pre-existing implementation of anti-corruption compliance programmes is likely to be considered a mitigating circumstance by the UAE courts, which have wide discretion to consider the circumstances of each matter and any mitigating factors that may apply on a case by case basis.

Notably, there is no limitation period for bribery offenses under the UAE Criminal Code. Further, there is no limitation period for any civil actions in connection with bribery offenses (art. 239(bis) (2)).

11) What are the key regulatory or enforcement bodies with regard to bribery?

- In addition to the police and public prosecution offices, the State Audit Institution's Anti-Corruption
- Department investigates any financial irregularities discovered in federal organizations.
- The Abu Dhabi Accountability Authority.
- The Dubai Financial Audit Department.
- The Dubai Economic Security Centre (DESC), which has broad powers over governmental and private bodies and charitable societies.

12) What are the legal consequences of being found guilty of bribery offenses?

Penalties differ between companies and individuals.

Individuals can face up to five years of imprisonment or a fine equal to the bribe or of AED 5,000 (whichever is higher). Penalties for offences committed by companies may consist of fines or administrative penalties.

Legal Consequence	Application
For each offense:	Public official who requests or accepts a bribe (art. 234).

<ul style="list-style-type: none"> • up to five years' imprisonment; and • a fine equal to the bribe but not less than AED 5,000 (art. 238) 	<p>Any person who promises, offers or gives a bribe to either a public official or a private person (art. 236 (bis) and art. 237).</p> <p>Intermediaries involved in bribery transactions (art. 237 (bis) (2)). In general, accessories to a crime may also be liable.</p>
<p>Confiscation of the proceeds of crime (art. 238)</p>	<p>Bribes paid to public officials.</p> <p>Proceeds of crime refers to the bribe itself.</p>

Additional legal consequences may apply if the acts constitute crimes under other laws, such as the UAE competition law.

13) Are deferred prosecution agreements (DPAs) or other similar settlement mechanisms available?

Bribery offenses are not currently capable of being settled by way of DPA under UAE anti-bribery legislation. No formal settlement mechanisms are available under the UAE Criminal Code.

On an informal basis, settlements can be discussed with the regulator at any stage during investigations or prosecution, but no consistent or transparent mechanisms currently exist in the UAE for settlement.



[Return to Overview page](#)

AUTHORS



Adam Vause
 Partner
 Dubai | T: +971 4 438 6100
adam.vause@dlapiper.com