



Bribery & Corruption

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UAE

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Brief overview of the law and enforcement regime

Overview of the laws

There is no single piece of legislation governing bribery and anti-corruption in the UAE. The key laws relating to bribery and corruption at the federal level are the following:

- Federal Law no. 3 of 1987 (“**UAE Penal Code**”).
- Federal Decree Law no. 11 of 2008 (“**Federal Human Resources Law**”).

In the Emirate of Dubai, the following legislation will apply as well:

- The Penal Code 1970 (“**Dubai Penal Code**”).
- Dubai Law 37/2009 on the Procedures for the Recovery of Illegally Obtained Public and Private Funds (“**Financial Fraud Law**”).
- Dubai Law no. 27 of 2006 (“**Dubai Human Resources Law**”).

Other forms of corruption, including money laundering and terrorism financing, are regulated by a series of further legislations which include:

- Federal Law no. 4 of 2002 regarding the Criminalization of Money Laundering (and its amendments).
- Dubai Law no. 4 of 2016 on the Dubai Economic Security Centre.
- Federal Law no. 7 of 2014 Combatting Terrorism Crimes.

UAE Penal Code

The UAE Penal Code is the main source of legislation used for bribery and anti-corruption convictions. Articles 234–239 govern bribery and crimes pertaining to public offices and public officials. The provisions of the UAE Penal Code also specify the corresponding penalties for breaching the law.

- Art. 234 of the UAE Penal Code stipulates that temporary imprisonment shall be imposed upon any public official or person assigned to a public service, foreign public official, or international organisation official who solicits, accepts or promises any gift or privilege of any kind for the official or for the benefit of someone else in return for the performance of an act or omission in breach of his duties.

This provision is intended to apply upon any acceptance of a bribe, even if the public officer or individual never intended to commit any act in return.

- Art. 235 of the UAE Penal Code imposes a prison sentence not exceeding 10 years for any public official or person assigned to public service who requests or accepts, whether for himself or for the benefit of someone else, a gift of any kind in order to

commit or omit an act which breaches his/her duties.

- Art. 236 imposes a prison sentence not exceeding five years for any public official or person assigned to public service who accepts any gifts for himself or another in order to commit or omit an act which is not part of their duties.

Furthermore, a prison sentence not exceeding five years shall also be imposed for any individual within the private sector who directly or indirectly accepts or requests any gift or privilege of any kind in return for the performance of an act or omission of his/her duty.

- Art. 237 of the UAE Penal Code imposes a prison sentence not exceeding five years for any individual who promises, offers or presents a public official or person entrusted with a public service with a gift of any kind in order to commit or omit an act in violation of the person's duties. This provision further imposes the same sentence for anyone who acts as a mediator between the briber and the receiver of the bribe.
- Arts. 238 and 239 stipulate that fines shall be made equivalent to that of the bribe. There are no limitations in time for civil or criminal proceedings in relation to bribery offences. In addition, an intermediary or briber who comes forth and confesses to the bribery offence before its discovery shall be exempt from punishment.

Federal Human Resources Law

The Federal Human Resources Law governs employees working in the public sector. Art. 70 of the Federal Human Resources Law stipulates that officials shall be prohibited from accepting any gifts unless they are promotional or advertisement/symbolic gifts and provided that the relevant ministry has decided the organisational unit is allowed to accept the gifts.

Art. 70 further provides that officials shall be prohibited from accepting, presenting or requesting bribes. A "bribe" has been defined as any financial sum, a certain service, or any other item with material or moral value to any public official used in order to corrupt the course of work by taking any procedure to either expedite a task, prohibit the official from carrying out a task, or mediate to complete a transaction which breaches the legislation in any way.

Furthermore, federal employees are also bound by their own code of ethics and professional conduct, which has been enacted pursuant to Ministerial Services Council no. 1118/g/9 of 2010. The objective of the code of conduct is to enhance professional values of federal employees. Section 4 of the code of conduct instructs public servants to avoid any conflict of interest and to refrain from activities that may affect their civil service duties and performance.

Dubai Penal Code

The Dubai Penal Code contains provisions on corruption and the abuse of public office within articles 118–122 of the Code, which are similar to the UAE Penal Code. Articles 118–119 prohibit the acceptance of any gifts in exchange for official acts, or to influence public servants to conduct an official act. Article 120 prohibits the offering or providing of any gifts to a public servant. Articles 121–122 prohibit the acts of obtaining or offering anything of value without consideration in return for a business transacted by the public official.

Financial Fraud Law

The Financial Fraud Law relates to any person convicted of a crime with regards to illicit funds, or improperly obtained public funds. Illicit funds have been defined as any funds

obtained directly or indirectly as a result of an act constituting an offence punishable by law. Public funds have been defined as any funds that are owned by the government or governmental authorities or the corporations or companies affiliated with the government or government authorities, where the government owns shares or funds.

The law stipulates the following prison sentences for illicit funds:

- Imprisonment for a period of five years for illicit funds in the amounts of 500,000 AED–1,000,000 AED,
- Imprisonment for a period of 10 years for illicit funds in the amounts of 1,000,000 AED–5,000,000 AED
- Imprisonment for a period of 15 years for illicit funds in the amounts of 5,000,000 AED–10,000,000 AED
- Imprisonment for a period of 20 years for amounts claimed that are over 10,000,000 AED.

Dubai Human Resources Law

The provisions of the Dubai Human Resources Law are very similar to those of the Federal Human Resources Law. Article 11 of the Dubai Human Resources Law stipulates that all government employees shall avoid all types of corruption or bribery. Bribes under the Dubai Human Resources Law have been defined as a payment or a service of either commercial or moral value to a public employee in order to pervert the course of work by taking improper or illegal action, or to enable a process that government employees are required to perform to be speeded up.

Art. 11 strictly forbids the acceptance of any material gift, except those of a symbolic or promotional nature, which bear a logo and the name of a presenting party. In addition, the relevant departments are allowed to establish a unit which exclusively accepts gifts on its behalf, and such gifts would be distributed within the department at its discretion.

Overview of enforcement activity and policy during the last year

Recent enforcement policies

In 2015, an anti-corruption unit was established within the Abu Dhabi Accountability Authority for the purposes of investigating financial irregularities or crimes, corruption, and identifying gaps in the legislation and internal audit regulations. The Dubai Economic Security Center was also established in 2016 in an effort to protect the Emirate's investments from crimes that would harm its economy. Its aims include fighting corruption, fraud, bribery, embezzlement, counterfeiting, money laundering, financing terrorism, illegal organisations and any other similar act.

Recent case law

There is no specific focus on any particular sector, or any specific types of bribery or corruption in the UAE, that is more prevalent than others. Enforcement varies widely from sector to sector, and the UAE does take a strict stance on bribery, regardless of the amount involved. Some examples of the most recent case law include the following:

- In March 2016, a decision was issued from the Ras Al Khaima Court of Cassation which upheld a prison sentence of six months for both a prisoner and a prison official who accepted a mobile phone as a gift in exchange for allowing the said prisoner to slip in a mobile device into the Central Prison of RAK. In upholding its decision, the RAK Court of Cassation referred to articles 234 and 236 of the UAE Penal Code.

- Similarly, in August of 2018, the Dubai Court of First Instance issued a prison sentence of six months for both a driving student and an RTA (Road and Transport Authority) official who had accepted a payment of 5,000 AED in order to assist the student in passing his driving test, in violation of the UAE laws. The court referenced articles 234 and 236 of the UAE Penal Code and further issued a fine of 5,000 AED to both the student and the RTA official.

Law and policy relating to issues such as facilitation payments and hospitality

Facilitation payments are strictly forbidden under the UAE laws. The UAE Penal Code forbids bribery in exchange for any acts or omissions. Similarly, the Federal Human Resources Law prohibits any gifts in exchange for any act which includes expediting a task, forbidding the official from carrying out a task, or influencing another official to complete a transaction which breaches the UAE laws in any way.

Both the Federal Human Resources Law and the Dubai Human Resources Law prohibit accepting any gift unless it is a promotional product which bears the name and logo of the institution providing it. Additionally, gifts can only be given in the name of a ministry. The Dubai Human Resources Law further stipulates that a certain department can be established which deals with the acceptance of such promotional or symbolic gifts, which are to be distributed equally amongst the department.

Key issues relating to investigation, decision-making and enforcement procedures

The police in each emirate and the public prosecution are the first public bodies to oversee issues of corruption. They are responsible for enforcing the measures and carrying out the prosecution of the individuals who are accused of bribery and corruption. Other public bodies include: the Dubai Economic Security Center; the Abu Dhabi Accountability Authority; the Dubai Financial Services Authority (for the DIFC); the Financial Services Regulatory Authority (for the Abu Dhabi Global Market); and the Anti-Money Laundering and Suspicious Cases Unit at the Central Bank of the UAE. All these organisations are in charge of several factions of anti-corruption and bribery, mostly in relation to the private sector.

There is no process of plea bargaining in the UAE or deferred plea agreements. Generally, any individual can file a police complaint in the UAE for criminal matters. It is then up to the public prosecutor to proceed with the case, depending on the evidence. The law focuses on criminal prosecution; however, any corporate body or individual that has suffered a loss due to bribery or corruption may always file a civil case as well.

The UAE Penal Code makes it clear that an intermediary or briber may be exempt from punishment if they confess to the crime before its discovery. Dubai Law no. 4 of 2016 further stipulates some protection for whistle-blowers with regard to certain financial crimes. There is no such protection at a federal level, however.

Overview of cross-border issues

The UAE has signed the UN Convention against corruption in August 2005 and incorporated it into the UAE law in February 2006 by virtue of Decree no. 8 of 2006 on the United Convention Against Corruption. The UAE has also ratified the Arab Convention to Fight Corruption in 2010. Transparency International has ranked the UAE as no. 21 out of 180 in the *Corruption Perceptions Index*.

Federal Law no. 39 of 2006, concerning International Judicial Assistance in Criminal Matters, governs judicial assistance and extradition in the UAE. Article 43 of this law specifies the types of judicial assistance that are available, such as determining the identities and location of the suspects, conducting search operations, and obtaining evidence. The UAE generally follows the principle of reciprocity when considering extradition matters and judicial assistance.

Corporate liability for bribery and corruption offences

According to Art. 236 of the UAE Penal Code, members of the board of directors of a company, managers and employees can all be held personally liable for demanding or accepting a bribe. With regards to corporate liability for bribery, there are no specific laws regulating such corporate criminal liability; however, Art. 65 of the UAE Penal Code stipulates that corporations, with the exception of governmental agencies, shall be criminally liable for crimes committed by their representatives, directors or agents acting on their behalf. This can be widely construed to include bribery and corruption offences, as well as other crimes.

Proposed reforms / The year ahead

The most recent reforms have taken place in 2016 with regards to the establishment of the Dubai Economic Security Center; there are no other proposed reforms in this sector. The UAE generally takes a very strict approach on bribery and corruption cases. Each of the authorities mentioned above are in charge of overseeing bribery and corruption matters and referring them to the relevant department or judicial sections.

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Sarra Alsamarrai is part of the corporate and commercial practice group at Fichte & Co. She specialises in company formations, M&A, joint ventures, and general corporate advisory. She also has considerable experience in dealing with commercial matters including drafting of commercial contracts of various values, labour and employment matters and disputes, wills and succession, tax law and real estate.

Prior to joining Fichte & Co, Sarra worked in both private practice and in-house in the UAE for the past six years. She worked for a leading regional brand name distributor, dealing with mostly commercial contracts and real estate matters. Prior to working in the UAE, Sarra worked in a litigation firm in Toronto, Ontario where she had qualified. Sarra is a member of the Law Society of Upper Canada.

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Before joining Fichte & Co, Alessandro practised in Italy with a top-tier insurance law firm, during which time he also assisted the Chair of Maritime Law at the University of Bologna. Alessandro Tricoli has been named as a recommended lawyer in *The Legal 500* EMEA since 2011.

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