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Anti-corruption legislation in the United Arab Emirates

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The UAE is one of the most resilient economies in the world. Its visionary rulers foresaw the dangers of over reliance on oil years back, and made determined efforts to diversify the economy. This created a myriad of opportunities in the market and businesses from across the world rushed to the UAE. However, it appears that many international companies, although clearly enjoying the market growth, are oblivious to the implications of such growth on compliance. In terms of anti-corruption, their attention is confined to the US Federal Corrupt Practices Act ([FCPA](#)) or the [UK Bribery Act](#) and they are unaware of the anti-corruption laws in the UAE.

Legislation on Corruption

It is true that the UAE does not have specific anti-corruption legislation. However, the UAE has taken many steps towards tackling corruption. There are comprehensive legislative provisions on the subject, though they are scattered throughout many pieces of legislation, from the UAE Penal Code (Federal Law No. 3 of 1987) to various codes of conduct. Many corporations are unaware of the existence of these provisions and end up violating them. It is important to note that any such violation by a company or its employees may result in serious consequences, including substantial fines and imprisonment.

Applicability of the Penal Code

The Penal Code imposes criminal liability on an individual who offers to a public official or any other person assigned with a public office, a gift or an advantage of any kind or a promise of anything of the like, in order to commit or omit an act in breach of such official's duties. The Penal Code extends the liability to any individual who mediates the bribe.

The Penal Code provides a broad meaning to the term 'public official' and includes '*any individual employed by a government ministry or a department and any individual who performs a job relating to public service by virtue of a mandate given to him by a duly authorized public official*'. There is one exception however and this occurs when a briber or a mediator informs the judicial or administrative authority of a crime before it is discovered. In this case, the briber or mediator may avoid liability and be exempt from sanctions.

The anti-corruption provisions of the Penal Code also cover 'non-public officials' (members of a company board of directors or of a private institution, or the manager or employee of such an entity). The Penal Code prohibits any non-public official from asking for himself or for a third party, or accepting, or taking a promise or gift, to do or abstain from doing an act included in his job or in breach of his duties. It is important to note that it is **assumed** that the criminal act has been committed even if the non-public official does not intend to do the task or breach his duties. Further, the same punishment will apply if a non-public official solicits or accepts a gift or a promise, after he performs an act or refrains from performing it in breach of his duties with the intention of being rewarded without any prior agreement.

The provisions of the Penal Code apply to all crimes committed in the UAE, including the free zones. More importantly, the Penal Code does not make any distinction between a domestic entity and a foreign entity. This may mean that a company or an individual involved in corrupt practices in the UAE may be held liable under the Penal Code even if they are not resident in the UAE.

Some argue that the UAE authorities have not yet taken firm steps to address corruption in the private sector. There is no provision to prosecute a person paying, or offering to pay a bribe to a non-public official (in case of public officials, the person offering the bribe is criminally liable, whereas the legislative provisions are silent on the guilt of a person offering bribes to a non-public official). However, many recent

measures adopted by the authorities against corruption clearly indicate that they are proceeding in the right direction. Accordingly, in all likelihood, the scope of the anti-bribery legislation will be extended to cover the private sector comprehensively.

Human Resources Laws

Another important piece of legislation that includes provisions on anti-corruption is the Federal Human Resources Law (Federal Law No. 11 of 2008). The law is extensive in its scope, and not only prohibits an employee from accepting, offering or requesting bribes, but also prohibits him from accepting any gifts from third parties unless they are symbolic advertising or promotional gifts bearing the name and emblem of the third party. The relevant ministry is required to nominate the organisational units which are allowed to accept such gifts on its behalf for distributing them as per the regulations and standards adopted by the ministry. Further, a public official is prohibited from making or distributing gifts except in the name of the ministry and the organisational unit approved by the ministry. Similar restrictions are included in the Dubai Human Resources Law (Dubai Law No. 27 of 2006).

Codes of Conduct

Various ministries and government departments have published several Codes of Conduct to ensure probity in their organizations. For example, the Ministry of Health has published a number of codes, which include codes for pharmacists, medical practitioners, other healthcare professionals and administrative staff. There are strict provisions in these codes to tackle corruption, which include prohibition of promotion, or supply of specific medicines or devices; prohibition of receiving financial benefits, gifts or hospitality; prohibition of offering unethical rebates to vendors; and restrictions on having direct or indirect commercial interests in organisations providing pharma or healthcare services.

Definition of 'bribe' and facilitation payments

It is interesting to note that the above-mentioned legislation does not provide a uniform definition for the term 'bribe'. The Penal Code does not mention 'bribe' anywhere in it, and refers to '*any gift or benefit, or a promise for the same*'. On the other hand, the Federal Human Resources Law defines 'bribe' as '*any amount of money or a particular service, or anything of material or moral value offered to a government employee that i) accelerates any work that the employee is required to do in the normal course of his duties, or ii) leads to the employee's failure to do an assigned work, or iii) leads the*

employee to mediate with another employee to finish an application or take any procedure in violation of the existing legislations’.

An important aspect to consider here is the inclusion of the wording – *accelerates any work that the employee is required to do in the normal course of his duties* – under the definition. This makes it amply clear the intention of the authorities to alleviate the practice of ‘facilitation payments’ (or ‘grease payments’) from the market. This is of particular significance to those multinational companies coming under the purview of the FCPA. The FCPA provides for certain exceptions where facilitation payments are considered legal, whereas the UAE law does not consider any such exceptions.

Employer’s liability for an employee’s action

It is possible that a company could be held liable for its ‘inaction’ irrespective of whether it was aware of the corrupt act in question. A typical scenario is where an employee pays, or offers to pay a bribe to a public official without the company’s knowledge. It may not be possible for the company to escape from liability in view of the principle of ‘vicarious liability’ enshrined under the Commercial Companies Law (Federal Law No. 2 of 2015) and the Civil Transactions Law (Federal Law No. 5 of 1985).

In accordance with the Commercial Companies Law, a company shall be held liable for the actions of its senior employees, if such employees commit a violation of any laws in the course of their duties. The company shall also be liable to indemnify third parties for any damages caused by such employees. Likewise, the senior management shall be liable to the company, its shareholders and third parties for any damages caused, resulting from fraud, misuse of power, violation of laws, or an error in management. Further, a company shall have civil liability under the Civil Transactions Law for the actions of its employees.

Restrictions on business courtesies

In addition to the legislative provisions and codes mentioned above, the authorities have issued various circulars including a myriad of restrictions aimed at alleviating corrupt practices. These include restrictions on inviting public officials for meals, sponsorship of public officials for events, organising educational events, etc.

Interestingly, none of the above legislation or codes prescribe the ‘benchmark’ for business courtesies extended by a company to a public official or a third party. Therefore, it is advisable that the company exercises due caution in such

circumstances. Certain key factors, including value of the courtesies offered, purpose of the offers, frequency of such offers and intended beneficiaries should be carefully considered prior to taking any decision in this regard. In all senses, it is better to avoid extending business courtesies benefiting an individual employee exclusively (for e.g. personal unbranded gifts or entertainment vouchers).

Recovery of Illegal Money

Dubai, one of the prominent emirates in the UAE and the region's commercial hub, is taking stringent measures to tackle corruption. The Dubai government has passed Law No. 37 of 2009 providing for a longer term of imprisonment, up to 20 years, if a person who has obtained 'Illegal Money' or 'Public Funds' fails to pay thereof. As per the law, if a final court order establishes that a person has obtained 'Illegal Money' or 'Public Money', he shall be imprisoned for a period varying from 5 to 20 years, the period of imprisonment being proportional to the money obtained. The law has given a broad definition to 'Illegal Money' and 'Public Money' and define them as "*any money obtained by a person directly or indirectly as a result of a deed that is a crime punishable under the law*" and "funds that are owned by, or due to, the government or governmental authorities, or corporations or companies owned or related to the government or governmental authorities" respectively. One of the few exceptions provided by the law to escape punishment is, paying off the money.

Conclusion

The UAE is a signatory to the United Nations Convention against Corruption, adopted by the UN General Assembly in 2003 and the Arab Anti-corruption Convention, adopted by the League of Arab States in 2010. It ranks 25 out of the 175 countries included in the Corruption Perceptions Index 2014 published by Transparency International (first among Arab countries). The authorities have realised the importance of tackling corruption to attain sustained economic growth and are taking comprehensive steps in this direction. Therefore, it is highly important that all the stakeholders in the business community take necessary safeguards to ensure compliance.

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