

Anti-Corruption Regulation 2018

Contributing editor
Homer E Moyer Jr



2018

GETTING THE
DEAL THROUGH 

GETTING THE
DEAL THROUGH 

Anti-Corruption Regulation 2018

Contributing editor
Homer E Moyer Jr
Miller & Chevalier

Reproduced with permission from Law Business Research Ltd
This article was first published in March 2018
For further information please contact editorial@gettingthedealthrough.com

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
James Spearing
subscriptions@gettingthedealthrough.com

Senior business development managers
Alan Lee
alan.lee@gettingthedealthrough.com

Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com

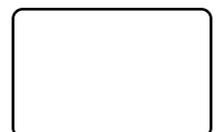


Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3780 4147
Fax: +44 20 7229 6910

© Law Business Research Ltd 2018
No photocopying without a CLA licence.
First published 2007
Twelfth edition
ISBN 978-1-912377-49-7

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between December 2017 and January 2018. Be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



CONTENTS

Global overview	5	Italy	84
Homer E Moyer Jr Miller & Chevalier Chartered		Roberto Pisano Studio Legale Pisano	
Current progress in anti-corruption enforcement	11	Japan	91
Michael Bowes QC * Transparency International UK		Yoshihiro Kai Anderson Mōri & Tomotsune	
Combating corruption in the banking industry - the Indian experience	13	Korea	96
Aditya Vikram Bhat and Shwetank Ginodia AZB & Partners		Seung Ho Lee, Samuel Nam and Hee Won (Marina) Moon Kim & Chang	
Risk and compliance management systems	15	Liechtenstein	102
Daniel Lucien Bühr Lalive		Siegbert Lampert Lampert & Partner Attorneys at Law Ltd	
Argentina	17	Mexico	107
Maximiliano Nicolás D'Auro, Manuel Beccar Varela, Dorothea Garff, Francisco Zavalía and Tadeo Leandro Fernández Beccar Varela		Daniel Del Río Loaiza, Rodolfo Barreda Alvarado and Julio J Copo Terrés Basham, Ringe y Correa	
Brazil	24	Nigeria	112
João A Accioly Sobrosa & Accioly Advocacia		Babajide O Ogundipe and Chukwuma Ezediaro Sofunde, Osakwe, Ogundipe & Belgore	
Canada	30	Norway	115
Milos Barutciski * Bennett Jones LLP		Vibeke Bisschop-Mørland and Henrik Dagestad BDO AS	
China	38	Portugal	120
Nathan G Bush and Ning Qiao DLA Piper		P Saragoça da Matta and José Ramos de Andrade Saragoça da Matta & Silveiro de Barros	
Denmark	46	Singapore	125
Hans Fogtdal Plesner Law Firm Christian Bredtoft Guldmann Lundgrens Law Firm		Wilson Ang and Jeremy Lua Norton Rose Fulbright (Asia) LLP	
France	53	Spain	135
Kiril Bougartchev, Emmanuel Moyné, Sébastien Muratyan and Nathan Morin Bougartchev Moyné Associés AARPI		Laura Martínez-Sanz Collados and Jaime González Gugel Oliva-Ayala Abogados	
Germany	59	Switzerland	139
Sabine Stetter and Stephan Ludwig Stetter Rechtsanwälte		Daniel Lucien Bühr and Marc Henzelin Lalive	
Greece	63	Turkey	146
Ilias G Anagnostopoulos and Jerina (Gerasimoula) Zapanti Anagnostopoulos Criminal Law & Litigation		Gönenç Gürkaynak and Ç Olgu Kama ELIG, Attorneys-at-Law	
India	68	United Arab Emirates	153
Aditya Vikram Bhat and Shwetank Ginodia AZB & Partners		Charles Laubach and Tara Jamieson Afridi & Angell	
Ireland	77	United Kingdom	161
Claire McLoughlin, Karen Reynolds and Declan Sheehan Matheson		Eve Giles, Caroline Day and Áine Kervick Kingsley Napley LLP	
		United States	171
		Homer E Moyer Jr, James G Tillen, Marc Alain Bohn and Amelia Hairston-Porter Miller & Chevalier Chartered	

Preface

Anti-Corruption Regulation 2018

Twelfth edition

Getting the Deal Through is delighted to publish the twelfth edition of *Anti-Corruption Regulation*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Portugal.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Homer E Moyer Jr of Miller & Chevalier, for his continued assistance with this volume.

GETTING THE
DEAL THROUGH 

London
February 2018

United Arab Emirates

Charles Laubach and Tara Jamieson

Afridi & Angell

1 International anti-corruption conventions

To which international anti-corruption conventions is your country a signatory?

The United Arab Emirates (UAE) ratified the United Nations Convention against Corruption (the UNCAC) pursuant to Federal Decree No. 8 of 2006. The Arab Convention to Fight Corruption (the Arab Convention) was signed on 21 December 2010 by 21 Arab countries, including the UAE.

2 Foreign and domestic bribery laws

Identify and describe your national laws and regulations prohibiting bribery of foreign public officials (foreign bribery laws) and domestic public officials (domestic bribery laws).

Domestic bribery laws

Bribery is punishable in the UAE according to articles 234 and 236 to 239 of the UAE Penal Code, Federal Law No. 3 of 1987 (the Federal Penal Code), which applies to the UAE as a whole. The Emirate of Dubai also has its own penal code, the Penal Code 1970 (Dubai Penal Code).

In addition to the above, two further laws are directly related to bribery. These are Federal Decree-Law No. 11 of 2008 (also known as the 'Federal Human Resources Law') and more recently Dubai Law No. 37 of 2009 on the Procedures for the Recovery of Illegally Obtained Public and Private Funds (Financial Fraud Law). These are each discussed in the relevant sections of this chapter.

Foreign bribery laws

As discussed in question 1, the UAE has ratified the UNCAC pursuant to Federal Decree No. 8 of 2006 and is a signatory to the Arab Convention. The Arab Convention was entered into with the aim of preventing corruption through the cooperation of the Convention's signatories, largely in respect of the recovery of assets involved in any circumstances of corruption.

Articles 234 and 236 to 239 of the Federal Penal Code have been amended to extend the bribery provisions to include bribery of foreign public officials.

Foreign bribery

3 Legal framework

Describe the elements of the law prohibiting bribery of a foreign public official.

The UNCAC, as adopted by Federal Decree No. 8 of 2006, requires each state party to adopt such legislative and other measures as may be necessary to establish the bribery of foreign officials and officials of public international organisations as a criminal offence. As noted in question 2, the Federal Penal Code extends to bribery of foreign public officials.

The Federal Penal Code

Articles 234 and 237 of the Federal Penal Code apply to foreign public officials (these provisions also apply to domestic public officials and are discussed in question 23).

In terms of article 234, it is an offence for a foreign public servant to solicit or accept (whether directly or indirectly) for himself, herself or

another person, a gift, benefit or other grant that is not due or a promise or anything of the like in order to commit or omit an act in violation of the duties of his or her function. The provisions of this article are stated to apply even if the intent of the said foreign public servant or employee was in fact to refrain from committing or omitting the act, or if the request, acceptance or promise is made after fulfilment or omission of such act.

In terms of article 237, it is an offence for any individual who offers (whether directly or indirectly) to a foreign public servant, a gift, benefit or grant that is not due, whether to the benefit of the employee himself or herself or for another person or entity, in order for such employee to commit or omit an act in violation of the duties of his or her function.

Article 237 further provides that it is also an offence for any person who has acted as a mediator between the briber or the receiver in the offering, soliciting, accepting, receiving or promising of bribery.

Article 237 (repeated) provides that it is an offence for any person to promise, offer, grant or give (whether directly or indirectly) a public officer or any other person, a gift, benefit or grant that is not due, to abet such person to abuse his or her power, whether actual or presumed, in order to obtain, from a public department or authority, an unlawful benefit for the benefit of the original abettor of such act or for the benefit of any other person. This article further provides that it is an offence for any public officer or any other person to request or accept a benefit, gift or grant that is not due, whether for himself or herself or for another person (whether directly or indirectly), so that such person abuses his power, whether actual or presumed, in order to obtain, from a public department or authority, that unlawful benefit.

4 Definition of a foreign public official

How does your law define a foreign public official?

Article 6 of the Federal Penal Code defines a foreign public official as:

[A]ny person in a legislative, executive, administrative or judicial position at another country, whether permanently or temporarily, be elected or appointed, and whether with or without pay and any person entrusted with a public service.

5 Travel and entertainment restrictions

To what extent do your anti-bribery laws restrict providing foreign officials with gifts, travel expenses, meals or entertainment?

See question 3.

6 Facilitating payments

Do the laws and regulations permit facilitating or 'grease' payments?

No, in the context of a foreign public official.

7 Payments through intermediaries or third parties

In what circumstances do the laws prohibit payments through intermediaries or third parties to foreign public officials?

See question 3.

8 Individual and corporate liability**Can both individuals and companies be held liable for bribery of a foreign official?**

The relevant provisions of the Federal Penal Code apply to any person who bribes a foreign official, whether an individual or otherwise.

9 Successor liability**Can a successor entity be held liable for bribery of foreign officials by the target entity that occurred prior to the merger or acquisition?**

This would be possible if there were corporate continuity, but no such instances are known to have been brought before local courts.

10 Civil and criminal enforcement**Is there civil and criminal enforcement of your country's foreign bribery laws?****Federal Penal Code****Article 234**

An offence under this article is punishable by temporary imprisonment. The provisions of the present article shall apply even if the intent of the foreign public servant was in fact to refrain from committing or omitting the act or if the request, acceptance or promise is made after fulfilment or omission of such act.

Article 237

An offence under this article is punishable by confinement for a period of not more than five years. The article further provides that it is punishable by confinement for a period of not more than five years for any person who has acted as a mediator between the briber or the receiver in the offering, soliciting, accepting, receiving or promising of bribery.

Article 237 (repeated)

An offence under this article is punishable with a fine equal to what is requested, offered or accepted, but no less than 5,000 UAE dirhams.

Article 238

This article provides that the offender shall, in all the cases mentioned in the preceding paragraphs, be punished with a fine equal to what he or she requested, offered or accepted, provided that such fine shall not be less than 5,000 dirhams. Furthermore, the gift accepted by or offered to the public officer or the individual to whom a public service is assigned shall be confiscated.

Article 239

This article provides that the briber or the mediator shall be exempted from penalty if he or she informs the judicial or administrative authorities of the crime before it is discovered. This article further provides that the Federal Penal Code shall apply to any person who commits, outside of the UAE, any of the crimes detailed in articles 234 and 237, if the criminal or the victim is a UAE citizen or if such crime is committed by an employee of the public or private sector of the UAE, or it involves public property.

Article 6 of the Federal Penal Code defines public property as:

- (i) *property that is fully or partially owned by any of the federal or local authorities, federal or local public establishments or institutions or companies owned, either wholly or partially, by the federal government, local governments, societies and associations of public welfare and*
- (ii) *any property that is subject to the management or supervision of any of the entities set forth in paragraph (i) or of which it has the right to use or exploit.*

Any criminal or civil lawsuit will not be terminated, and the punishment will not be extinguished, because of the expiry of any time period limitation.

11 Agency enforcement**What government agencies enforce the foreign bribery laws and regulations?**

As the UAE has yet to promulgate laws by the implementation of the UNCAC, there is presently no government agency that has been appointed to enforce foreign bribery laws and regulations.

12 Leniency**Is there a mechanism for companies to disclose violations in exchange for lesser penalties?**

No, in the context of bribery of foreign public officials. (See question 24.)

13 Dispute resolution**Can enforcement matters be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial?**

No, in the context of bribery of foreign public officials due to the absence of relevant legislation.

14 Patterns in enforcement**Describe any recent shifts in the patterns of enforcement of the foreign bribery rules.**

The Federal Penal Code provisions relating to foreign bribery rules entered into force in 2016, so there is no information available at this time to discuss patterns of enforcement of such rules.

15 Prosecution of foreign companies**In what circumstances can foreign companies be prosecuted for foreign bribery?**

The Federal Penal Code now applies to foreign entities, so would apply to any company or individual involved in corruption in the UAE, and such persons would be held liable even if they were not resident in the UAE.

16 Sanctions**What are the sanctions for individuals and companies violating the foreign bribery rules?**

See question 10.

17 Recent decisions and investigations**Identify and summarise recent landmark decisions or investigations involving foreign bribery.**

There are no decisions or investigations that we are aware of involving foreign bribery.

Financial record-keeping**18 Laws and regulations****What legal rules require accurate corporate books and records, effective internal company controls, periodic financial statements or external auditing?**

Federal Law No. 2 of 2015 on Commercial Companies (the Commercial Companies Law) contains general provisions with respect to financial statements and the appointment of external auditors with respect to UAE companies. The following requirements must be fulfilled with respect to the appointment of external auditors:

- they must be listed in the Register of Auditors and Accountants in accordance with Federal Law No. 12 of 2014 Regarding Organisation of Auditing Profession (Federal Law No. 12 of 2014), which regulates the professions of auditing and accountancy; and
- they must have at least five years' experience auditing private and public joint-stock companies.

The auditors appointed by the company may not:

- hold positions as a participant in the company's establishment;

- be a member of the board of directors of the company;
- hold any technical, administrative or executive positions;
- be partners or agents of any of the company's founders or members of the board of directors; nor
- be related to any member of the board of directors up to the fourth degree.

Article 153 of the Commercial Companies Law (which applies to public joint-stock companies and private joint-stock companies) restricts a company from offering any type of loan to a member of the board of directors.

This prohibition extends to the spouses, children and relatives to the second degree of a director and to any company that is at least 20 per cent owned by the director, his or her spouse, children or relatives to the second degree.

In terms of article 242 of the Commercial Companies Law, a company (ie, a public joint-stock company or a private joint-stock company) is also restricted from making any donations within two years of incorporation of the company. In order that a donation be valid:

- a special resolution is required;
- the donation must not be in excess of 2 per cent of the average net profits of the company during the two financial years preceding the year in which the donation is made;
- the donation must be for the benefit of society; and
- the beneficiary of the donation must be disclosed in the company's audited financial report and balance sheet.

Article 222 of the Commercial Companies Law prohibits a private or public joint-stock company from providing financial aid to any shareholder to enable him or her to hold shares, bonds or sukuk issued by the company, whether such financial aid takes the form of a loan, gift or donation, collateral security or third-party guarantee.

Further, Ministerial Resolution No. 518 of 2009 Concerning Governance Rules and Corporate Discipline Standards applies to all companies and institutions whose securities have been listed on a securities market in the UAE and to their board members. The said Ministerial Resolution contains detailed provisions for internal control, the formation of an audit committee and the appointment of external auditors.

19 Disclosure of violations or irregularities

To what extent must companies disclose violations of anti-bribery laws or associated accounting irregularities?

The Federal Money Laundering Law (Federal Law No. 9 of 2014) imposes a general requirement on all parties to report suspected incidents of money laundering offences to a unit in the Central Bank of the UAE known as the Anti-Money Laundering and Suspicious Cases Unit (AMLSCU). This obligation applies to companies and their auditors.

The Federal Money Laundering Law also grants protection from retaliation to parties making such reports (ie, whistle-blowers). This aside, there is no general obligation to report bribery offences and associated accounting irregularities.

20 Prosecution under financial record-keeping legislation

Are such laws used to prosecute domestic or foreign bribery?

There are no known instances of such prosecutions under the bribery laws. However, the Dubai Financial Services Authority (DFSA) has imposed sanctions recently on parties licensed in the Dubai International Financial Centre (DFIC) for failure to observe the record-keeping and accounting requirements imposed by the DFSA in implementation of the Federal Money Laundering Law.

21 Sanctions for accounting violations

What are the sanctions for violations of the accounting rules associated with the payment of bribes?

There are no specific sanctions against violations of accounting rules that are associated with the payment of bribes. However, the Federal Money Laundering Law provides that any individual who perpetrates or assists in the commission of any of the following acts in respect of property (as defined by article 2(e) of the Federal Money Laundering Law, which includes, among other things, assets obtained through an offence

of bribery, embezzlement and damage to public property) will be considered to have committed an act of money laundering:

- transfer, conveyance or depositing of the proceeds with intention to conceal or camouflage the illicit source thereof;
- concealment or camouflaging of the nature, source, location, disposition, movement, pertinent rights or ownership of the proceeds; or
- acquisition, possession or usage of such proceeds.

Pursuant to this provision, it can be inferred that any auditor who commits or assists in committing any of the aforementioned acts would be liable under the Federal Money Laundering Law. Unlike the predecessor statute, the Federal Money Laundering Law now contains a long and 'open' list of predicate offences.

22 Tax-deductibility of domestic or foreign bribes

Do your country's tax laws prohibit the deductibility of domestic or foreign bribes?

The UAE is a largely tax-free regime and currently does not have provisions in law regulating any such tax-deductibility in the country. However, value added tax (VAT) was implemented as of 1 January 2018, pursuant to Federal Decree-Law No. 8 of 2017 on Value Added Tax, which contains provision for further regulation regarding VAT recovery by government entities and charities.

Domestic bribery

23 Legal framework

Describe the individual elements of the law prohibiting bribery of a domestic public official.

The Federal Penal Code

Provisions are contained in articles 234 and 236 to 239 of the Federal Penal Code.

Article 234

In terms of article 234, it is an offence for any public officer or person to whom a public service is assigned, or a foreign public servant or employee of an international organisation to solicit or accept (whether directly or indirectly) for himself or for another person, a gift, benefit or other grant that is not due or a promise or anything of the like in order to commit or omit an act in violation of the duties of his function. The provisions of this article are stated to apply even if the intent of the said public officer, individual entrusted with a public service, foreign public servant or employee was in fact to refrain from committing or omitting the act or if the request, acceptance or promise is made after fulfilment or omission of such act.

Article 236

In terms of article 236, it is an offence for any person who administers an entity or establishment that pertains to the public sector, or who is employed by either one in any capacity, who solicits or accepts (whether directly or indirectly) for himself, herself or for another person, a gift, benefit or other grant that is not due or a promise of anything of the like in order to commit or omit an act which is not part of his or her function. The provisions of this article are stated to apply even if the intent of the said person was in fact to refrain from committing or omitting the act or if the request, offer or promise is made after fulfilment or omission of such act.

Article 236 further provides that it is an offence for any person who promises another person managing an entity or establishment of the private sector, or who is employed by him or her in any capacity, with a gift, benefit or grant that is not due, or who offers or grants the same (whether directly or indirectly) whether for his or her benefit or for the benefit of another person, to perform or stop performing any of his or her duties or violating thereof.

Article 237

In terms of article 237, it is an offence for any individual who offers (whether directly or indirectly) to a public officer or to any person to whom a public service is assigned, a foreign public servant or employee of an international organisation, a gift, benefit or grant that is not due, whether to the benefit of the employee himself or herself or for another

person or entity, in order for such employee to commit or omit an act in violation of the duties of his or her function.

Article 237 further provides that it is also an offence for any person who has acted as a mediator between the briber or the receiver in the offering, soliciting, accepting, receiving or promising of bribery.

Article 237 (repeated) provides that it is an offence for any person to promise, offer, grant or give (whether directly or indirectly) a public officer or any other person, a gift, benefit or grant that is not due, to abet such person to abuse his or her power, whether actual or presumed, in order to obtain, from a public department or authority, an unlawful benefit for the benefit of the original abettor of such act or for the benefit of any other person.

This article further provides that it is an offence for any public officer or any other person to request or accept a benefit, gift or grant that is not due, whether for himself, herself or another person (whether directly or indirectly), so that such person abuses his or her power, whether actual or presumed, in order to obtain, from a public department or authority, that unlawful benefit.

Articles 238 and 239 of the Federal Penal Code are discussed in question 30.

The Dubai Penal Code

The Dubai Penal Code 1970 (the Dubai Penal Code) contains provisions on the offences of corruption and the abuse of public office. These provisions prohibit the following:

- article 118: the taking of a gratification by a public servant in respect of an official act;
- article 119: taking a gratification in order, by corrupt or illegal means, to influence a public servant in respect of an official act;
- article 120: offering or giving a gratification to a public servant in respect of an official act;
- article 121: the obtaining of any valuable thing by a public servant, without consideration, from a person concerned in any proceeding or business transacted by such public servant; and
- article 122: the offering of a valuable thing to a public servant without consideration, by a person concerned in any proceeding or business transacted by that public servant.

Financial Fraud Law

The Financial Fraud Law came into force on 31 December 2009. The provisions of this law are applicable to any person who is convicted of a crime in Dubai in relation to improperly obtaining public funds or illicit monies (or both). The aim of the Financial Fraud Law is to impose tougher sentences for financial crimes but simultaneously to be set aside upon repayment of funds. The Financial Fraud Law identifies two punishable acts:

- the receipt of illicit monies (monies earned whether directly or indirectly as a result of an action which constitutes a punishable crime); and
- the receipt of public funds (funds owned by the government, government authorities or institutions or companies owned by the government or government authorities or in which they hold shares).

The Financial Fraud Law also allows for the release of those convicted once the illegally obtained funds are returned or settlement agreements are concluded. In furtherance of this aim, the Financial Fraud Law allows accused persons access to all necessary external communications to facilitate the settlement of illicit monies or to reach a settlement with creditors.

Federal Human Resources Law

The Federal Human Resources Law governs most aspects of public service employment with the federal government of the UAE.

This law sets forth specific provisions concerning the personal conduct of federal government employees generally, and more specifically in relation to gifts, bribes and conflicts of interest.

In addition to the federal law, local government employees are subject to local counterparts of the Federal Human Resources Law. For example, employees of the Dubai government are governed by the provisions of the Dubai Human Resources Management Law No. 27 of 2006 (the Dubai Human Resources Law). Generally, while not described below, the bribery and conflict-of-interest provisions of local

government human resources law differ more in scope (ie, they affect only local government employees rather than federal employees) than substance from the provisions of the Federal Human Resources Law.

Article 70 of the Federal Human Resources Law prohibits an employee from accepting, requesting or offering bribes. The said law defines the term 'bribes' to mean offering any amount of money, or a particular service, or anything of material or moral value for an employee in exchange for the employee:

- accelerating any work that the employee is required by his work to do;
- failing to do assigned work; or
- to mediate for another to finish an application or take any procedure in violation of the applicable laws of the UAE.

The term 'employee' is defined in the said law to mean anyone who occupies one of the jobs contained in the general budget of the government of the UAE.

Code of Professional Conduct and Ethics

Cabinet Resolution No. 15 of 2010 Approving the Code of Professional Conduct and Ethics (the Code) was promulgated during 2010. The stated objective of the Code is to create and develop a corporate culture for the public servant, enhancing the professional values and the sense of responsibility as well as abiding by the highest ethics in dealing with superiors, colleagues or service beneficiaries according to the basic values of human resources and providing the best services to beneficiaries and strengthening the confidence and credibility in the government sector.

The term 'public servant' is defined in the Code to mean any person holding a position in one of the federal authorities. The term 'federal authority' in turn is defined to include ministries or federal public entities and institutions. The Code addresses the basic values and rules of professional conduct and ethics of public servants, commitments of the public servant, the federal authority's obligations towards its employees (ie, public servants) and certain general guidelines.

In the present context, the general guidelines are of particular interest. They provide that the public servant may not abuse his position, duties or relations established in the course of his work, position or powers to obtain any service, benefit or interest from any person for his or her personal interest or for the interest of any relative up to the fourth degree.

The general guidelines also provide that the public servant must avoid any actual or potential conflicts of interest. The term 'conflict of interest' is defined by the Code to mean any official procedure, situation or decision taken by the employee causing a conflict of interest between his personal activities and the government interests. In particular, the Code provides as follows:

- the public servant shall not undertake any actions or tasks that are likely to give an impression of the existence of a conflict of interest;
- neither the public servant nor any relative up to the fourth degree shall accept any gifts, hospitalities, or services from any person:
 - if it results in any obligation;
 - if it has a direct or indirect effect on his or her objectivity in implementing his duties;
 - if it might affect his or her decisions; or
 - if it might make him or her subject to obligations in consideration of what he or she accepted;
- the public servant shall not participate in any official operation or decision which directly or indirectly affects the awarding of any procurement contract to any contractor or supplier related to him or her up to the fourth degree;
- the public servant shall not take part in any official operation or decision that is likely to cause the granting of any benefits, lands or licences to any of his or her relatives up to the fourth degree;
- the public servant shall not be involved in any operation or decision that might directly or indirectly affect the success of any supplier, contractor or business enterprise through obtaining a percentage, share or any material interest;
- the public servant must not use his or her position to promote any product or service that does not form a part of the function of his or her employment contract; and
- the public servant must not reveal any information which he or she gains in the course of performing the duties of his or her position

to attain certain goals or obtain any benefit or special consideration from any person.

24 Prohibitions

Does the law prohibit both the paying and receiving of a bribe?

As already mentioned in question 23, the Federal Penal Code and the Dubai Penal Code make punishable both the act of receiving a bribe as well as paying a bribe. The Federal Penal Code also provides for punishment of any individual who acts as an intermediary in the giving or receiving of the bribe.

However, under the Federal Penal Code, the briber or the mediator is exempted from such punishments if he or she informs the judicial or the administrative authorities of the crime before it is discovered.

25 Public officials

How does your law define a public official and does that definition include employees of state-owned or state-controlled companies?

Turning first to the Federal Penal Code, the term 'public official' is not defined but the term 'public servant' is defined as any person in a federal or local position, whether legislative, executive, administrative or judicial, whether appointed or elected such as:

- individuals who are entrusted with public authority and employees working in ministries and government departments;
- members of the armed forces;
- employees of security bodies;
- members of the judiciary, chairs and members of legislative, advisory and municipal boards;
- any individual assigned to a certain task by a public authority, to the extent of the delegated task;
- chairs and members of the boards of directors, directors and other employees of public authorities, institutions and companies owned, wholly or partially by the federal government or local government; and
- chairs and members of the boards of directors, directors and other employees of societies and associations of public welfare.

The Federal Penal Code further provides that, as entrusted with a public service, any individual who does not belong to any of the above categories and performs a job relating to public service by virtue of a mandate given to him or her by a public servant who is authorised to do so by the laws and regulations within the limits of the job assigned to him or her is also considered a public servant.

Turning to the Dubai Penal Code, the term 'public official' is not defined, but the term 'persons employed with public service or public servant' is defined as any person holding any of the following offices or performing the duty thereof, whether as deputy or otherwise and whether with pay or without it:

- (i) any office of any kind, the power of appointing a person to which or of removing from which is vested in the ruler, in any government department of the ruler, in any committee or council appointed by the ruler, or by his order or under or in pursuance of any law;
- (ii) any office to which a person is appointed or nominated by law;
- (iii) any civil office, the power of appointing to which or removing from which is vested in any person or persons holding an office of any kind, included in either (i) or (ii);
- (iv) any office of any kind, the power of appointing a person to which or of removing from which is vested in the Trucial States Council or in any department or other organisation thereof; or
- (v) any office of arbitrator or umpire in any proceeding or matter submitted to arbitration by order or with the sanction of any court, or in pursuance of any law, and the said term further includes:
 - any person employed to execute any process of a court;
 - all persons employed in any department of the Municipal Council; and
 - a person acting as a minister of religion of whatever denomination insofar as he or she perform functions in respect of only the following:
 - the notification of intending marriage;
 - in respect of solemnisation of marriage; or

- in respect of making or keeping of any register or certificate of marriage, birth, baptism, death, or burial.

The above definitions in the Federal Penal Code and the Dubai Penal Code would cover employees of state-owned or state-controlled companies.

26 Public official participation in commercial activities

Can a public official participate in commercial activities while serving as a public official?

The UAE Constitution

Article 62 of the UAE Constitution provides that during the term of office, the prime minister, his or her representatives or any federal minister may not exercise any professional, commercial or finance business, or engage in any commercial transaction with the federation's government or the UAE governments, or hold more than one official position in a UAE government.

The Federal Human Resources Law

The Federal Human Resources Law sets forth specific provisions concerning the personal conduct of federal government employees generally, and more specifically in relation to gifts, bribes and conflicts of interest. Further, government employees are subject to prohibitions on performing any work or conducting any business other than that prescribed by official duties.

Article 66 of the Federal Human Resources Law provides a series of rules to guide employee conduct. Among these general rules are the following:

- to exercise professional functions in good faith;
- to adhere to the highest ethical standards; and
- not to exploit information obtained in the course of professional duties.

Article 70 of the Federal Human Resources Law provides that an employee shall not accept gifts unless they are symbolic advertising or promotional gifts and bear the name and emblem of the entity on behalf of whom the gift was presented. The article adds that each ministry shall define the organisational unit permitted to accept gifts on its behalf for distribution in accordance with the regulations and standards adopted by the ministry.

Article 70 goes on to state that an employee shall not distribute gifts received from outside the government, except under the name of the ministry, and gifts shall only be distributed through the organisational unit approved to do so by the ministry.

Article 71 of the Federal Human Resources Law provides that an employee shall in the course of performing his or her duties avoid any conflicts of interest that may occur (or been seen to occur) between his or her interests and those of the government. The article provides that the employee must particularly avoid:

- participating in a formal decision or operation that may directly or indirectly affect the success of a contractor or supplier with whom the employee has a relationship;
- participating in any formal decision or operation that might directly or indirectly affect the ability of a supplier or contractor or a project to which the employee is a partner in any form to obtain a share or a percentage or a material benefit;
- participating in any decision that might lead to granting of benefits or any lands or permits to any of his relatives; and
- exploiting his or her career or divulging any information obtained by his or her work to achieve certain objectives or to obtain a service or special treatment from any party.

Article 72 of the Federal Human Resources Law prohibits a non-national employee of a federal government ministry from having any employment outside that ministry under any circumstances without the prior written consent of the ministry. Non-national employees are further prohibited from owning shares in companies other than public shareholding companies, without the prior written consent of ministry for which he or she works.

Federal Law No. 4 of 1998

Federal Law No. 4 of 1998, as amended by Federal Law No. 9 of 2008, governs a wide range of matters relating to the diplomatic and consular

corps of the UAE. Included among these matters are conflict-of-interest rules.

Article 45 prohibits members of the federal diplomatic and consular corps from having any interest in any works or contracts related to the function of the Federal Ministry or office of which the diplomat or consul is a member. The said article also restricts such members from carrying out business in favour of third parties with or without salary even after official working hours, unless by permission of the minister.

Federal Law No. 6 of 2004

Federal Law No. 6 of 2004 (the Federal Armed Forces Law) concerns the service of officers in the armed forces. The law contains certain express provisions relating to the conduct of armed forces personnel with regard to conflicts of interest and gifts.

Article 47 of the Federal Armed Forces Law prohibits an officer from undertaking work for third parties under any circumstances without the permission of the chief of staff.

Article 48 of the Federal Armed Forces Law prohibits an officer from having any interest, whether personally or through an intermediary, in any works or contracts related to the armed forces with the exception of the lease of property owned by him or her.

Federal Law No. 7 of 2004

Federal Law No. 7 concerns the service of enlisted personnel in the armed forces. This law prohibits the submission of bids on armed forces' tenders by members of the armed forces, the awarding of contracts to members of the armed forces and the purchasing of items from members of the armed forces.

Article 47 of this law prohibits an officer from accepting gifts of any sort whatsoever, whether directly or indirectly. No exceptions are specified.

Within this law, the term 'armed forces' means the armed forces of the UAE and the term 'officer' means any military rank holder under the provisions of the law.

Decision No. 12 of 1986

Decision No. 12 of 1986 of the deputy supreme commander of the armed forces prohibits a member of the armed forces from a direct or indirect interest in any works, agreements or contracts relating to the armed forces, with the exception of building tenancy contracts. The regulations also prohibit members of the armed forces from submitting bids on armed forces' tenders.

Ministerial Resolution No. 20 of 2000

Ministerial Resolution No. 20 of 2000, also known as the Federal Tenders Regulation, promulgated regulations restricting ministry employees from having an interest in contracts formed with the government departments of the UAE.

Article 11 of the Federal Tenders Regulation prohibits an employee of a UAE ministry from having a direct or indirect interest in contracting works or contracts pertaining to the ministry in which the employee is employed.

Dubai Law No. 6 of 1997

Dubai Law No. 6 concerns the rules and procedures regarding contracts formed with government departments of the Emirate of Dubai.

Contracts to which the requirements of the law apply are:

- those contracts ensuing expenses on a department and which are entered into for the supply of materials, the execution of works, or the provision of various types of services; or
- those contracts which are entered into for the generation of revenue to the department and which are entered into for selling or leasing movable or immovable assets, or any other contracts generating revenue.

Any person who enters into a contract with a government department must not be an employee of the department and must not be related to the first degree with the officials entrusted with the contracting.

'Department' means any government department including any government establishment, organisation or authority in the Dubai Emirate.

'Contract' means any written text of agreement together with all its appendices, as concluded between a department and any other public

or private, natural or artificial person for the supply of materials, the execution of works, or the provision of services including materials purchasing orders and assignment orders issued for works and services on their acceptance.

Dubai Human Resources Law

In addition to the federal law, local government employees are subject to local counterparts of the Federal Human Resources Law. For example, employees of the Dubai government are governed by the provisions of the Dubai Human Resources Law. Generally, the bribery and conflict-of-interest provisions of local government human resources law differ more in scope (ie, they affect only local government employees rather than federal employees) than substance from the provisions of the Federal Human Resources Law. Law enforcement and security personnel in Dubai are also subject to the anti-bribery and conflict-of-interest obligations that are imposed by Dubai Law No. 6 of 2012 Concerning Human Resources Management of Local Military Personnel Working in the Emirate of Dubai, which likewise are largely similar in coverage to the federal obligations that are described above.

27 Travel and entertainment

Describe any restrictions on providing domestic officials with travel expenses, meals or entertainment. Do the restrictions apply to both the providing and receiving of such benefits?

Given the positions in the Federal Penal Code, the Dubai Penal Code, the Federal Human Resources Law and the Dubai Human Resources Law with respect to bribes and conflicts of interest, we do not believe that travel expenses, meals or entertainment can be offered to or received by domestic officials.

28 Gifts and gratuities

Are certain types of gifts and gratuities permissible under your domestic bribery laws and, if so, what types?

The Federal Human Resources Law and the Dubai Human Resources Law both prohibit any government employee from accepting any gifts. (See question 26.)

29 Private commercial bribery

Does your country also prohibit private commercial bribery?

Yes. See article 236 of the Federal Penal Code discussed in question 23.

30 Penalties and enforcement

What are the sanctions for individuals and companies violating the domestic bribery rules?

Federal Penal Code

Article 234

An offence under this article is punishable by temporary imprisonment. The provisions of the present article shall apply even if the intent of the said public officer, individual entrusted with a public service, foreign public servant or employee was in fact to refrain from committing or omitting the act or if the request, acceptance or promise is made after fulfilment or omission of such act.

Article 236

An offence under this article is punishable by imprisonment for a period not exceeding five years.

Article 237

An offence under this article is punishable by confinement for a period of not more than five years. The article further provides that it is punishable by confinement for a period of not more than five years for any person who has acted as a mediator between the briber or the receiver in the offering, soliciting, accepting, receiving or promising of bribery.

Article 237 (repeated)

An offence under this article is punishable with a fine equal to what is requested, offered or accepted, but no less than 5,000 dirhams.

Article 238

This article provides that the offender shall, in all the cases mentioned in the preceding paragraphs, be punished with a fine equal to what he or she requested, offered or accepted, provided that such fine shall not be less than 5,000 dirham. Furthermore, the gift accepted by or offered to the public officer or the individual to whom a public service is assigned shall be confiscated.

Article 239

This article provides that the briber or the mediator shall be exempted from penalty if he or she informs the judicial or administrative authorities of the crime before it is discovered.

This article further provides that the Federal Penal Code shall apply to any person who commits, outside of the UAE, any of the crimes detailed in articles 234, 236 and 237, if the criminal or the victim is a UAE citizen or if such crime is committed by an employee of the public or private sector of the UAE, or it involves public property.

Any criminal or civil lawsuit will not be terminated, and the punishment will not be extinguished, because of the expiry of any time period limitation.

Dubai Penal Code

The sanctions contained in the Code for the offences listed in question 23 are as follows:

- article 118 provides for imprisonment for a term not exceeding three years, or a fine not exceeding 5,000 dirhams, or both;
- article 119 provides for imprisonment for not more than three years or a fine not exceeding 5,000 dirhams, or both;
- article 120 provides for imprisonment for a term not exceeding two years or a fine not exceeding 3,000 dirhams, or both;
- article 121 provides for imprisonment for a period not exceeding one year, or a fine not exceeding 1,000 dirhams, or both; and
- article 122 provides for imprisonment for a term not exceeding one year or a fine not exceeding 1,000 dirhams or both.

The Financial Fraud Law

Article 2 provides that if it is established through a final and conclusive judgment that the convicted person (debtor) collected illicit monies and failed to settle the same for whatever reason, the judge shall issue an order upon request by the (creditor) to imprison the convicted person for the following periods:

- imprisonment for five years if the illicit monies required to be settled are not less than 500,000 dirham and not more than 1 million dirham;
- imprisonment for 10 years if the illicit monies required to be settled are not less than 1 million dirham and not more than 5 million dirham;
- imprisonment for 15 years if the illicit monies required to be settled are not less than 5 million dirham and not more than 10 million dirham; or

- imprisonment for 20 years if the illicit monies required to be settled are more than 10 million dirham.

Article 3 provides that if it is established through a final and conclusive judgment that the convicted person (debtor) collected public funds and failed to settle the same for whatever reason, the judge shall issue an order upon a request by the (creditor) to imprison the convicted person according to the periods and amounts set out in article 2 of the Financial Fraud Law.

Article 4 provides that the convicted person (debtor) sentenced under the provisions of this law shall be imprisoned away from those convicted in penal cases. The Prison Administration shall provide the proper communication facilities between the convicted person and others in order to settle the illicit monies or to reach a settlement with the creditors.

Article 5 provides that without prejudice to any other penalty to which the debtor is sentenced under any other law, the convicted person shall be released before the expiry of the imprisonment term if the amounts are settled or if a settlement is reached with the creditor.

Article 6 provides that if the debtor is a legal entity, the imprisonment order shall be issued against the person to whom the failure to pay back the debt is attributed.

31 Facilitating payments**Have the domestic bribery laws been enforced with respect to facilitating or 'grease' payments?**

There appears to be a steady stream of incidents involving facilitation payment offences, which are indeed prosecuted and punished when detected. Most of them are not reported, largely in light of the low monetary values involved.

32 Recent decisions and investigations**Identify and summarise recent landmark decisions and investigations involving domestic bribery laws, including any investigations or decisions involving foreign companies.**

Several bribery incidents were reported in the local press during 2017, with a substantial range in the amounts of payments that were offered and the types of favours at issue.

In February 2017, two Indian men offered a bribe of 40,000 dirhams to Dubai Customs inspectors to clear a shipment of confiscated musical instruments. The men were jailed for one year in May 2017, the bribe was confiscated, and the men will be deported after completing their sentences.

In July 2017, an Emirati employee of a Dubai-based ports company was charged with soliciting bribes worth approximately 5 million dirhams from a range of contractors in return for helping them win construction project tender bids. Several of the contractors' managers have also been charged with offering a bribe to a public employee. No details of the outcomes have been reported yet.

AFRIDI & ANGELL

LEGAL CONSULTANTS

Charles Laubach
Tara Jamieson

claubach@afриди-angell.com
tjamieson@afриди-angell.com

Jumeirah Emirates Towers
Office Tower, Level 35
Sheikh Zayed Road
PO Box 9371
Dubai
United Arab Emirates

Tel: +971 4 330 3900
Fax: +971 4 330 3800
www.afриди-angell.com

In August 2017, a Dubai Petroleum employee was charged with seeking unspecified bribes as illegal commission from suppliers in his capacity as a public employee. No details of the outcome have been reported yet.

In September 2017, a Palestinian man was accused of offering a bribe of 120,000 dirhams to an officer at Dubai International Airport to allow him to travel to visit his gravely ill son (he had been blocked from leaving the UAE because of a criminal charge for a bounced cheque). The officer was also charged with accepting a bribe in his capacity as a public officer. No details of the outcomes have been reported yet.

Getting the Deal Through

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Appeals
Arbitration
Asset Recovery
Automotive
Aviation Finance & Leasing
Aviation Liability
Banking Regulation
Cartel Regulation
Class Actions
Cloud Computing
Commercial Contracts
Competition Compliance
Complex Commercial Litigation
Construction
Copyright
Corporate Governance
Corporate Immigration
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
Financial Services Litigation
Fintech
Foreign Investment Review
Franchise
Fund Management
Gas Regulation
Government Investigations
Healthcare Enforcement & Litigation
High-Yield Debt
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Joint Ventures
Labour & Employment
Legal Privilege & Professional Secrecy
Licensing
Life Sciences
Loans & Secured Financing
Mediation
Merger Control
Mergers & Acquisitions
Mining
Oil Regulation
Outsourcing
Patents
Pensions & Retirement Plans
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public-Private Partnerships
Public Procurement
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
Shipping
State Aid
Structured Finance & Securitisation
Tax Controversy
Tax on Inbound Investment
Telecoms & Media
Trade & Customs
Trademarks
Transfer Pricing
Vertical Agreements

Also available digitally

Online

www.gettingthedealthrough.com