

Anti-money laundering regulation in the UAE

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The introduction of anti-money laundering (AML) legislation in the United Arab Emirates in 2002 significantly changed the legal and business landscape in the country. A draft law containing further measures was approved by the Federal National Council (FNC) in early May this year and is approaching enactment, which will bring further changes.

Money laundering was formally criminalized under the AML Law of 2002, but it had long been a crime to knowingly possess the proceeds of criminal activity, at least as regards criminal activity carried out in the UAE. Moreover, many techniques used to conceal the origins of funds (like forging documents) are themselves crimes under the UAE's Penal Code.

Current law

Nevertheless, the law issued in 2002 was a major change. It defined and formally criminalized money laundering. Money laundering was defined as the handling of funds that resulted from criminal acts committed anywhere in the world. Therefore, a person who had committed no crime in the UAE could be subject to criminal prosecution.

The law also imposed reporting obligations, so parties must file a suspicious transaction report (STR) with the Anti-Money Laundering and Suspicious Cases Unit of the UAE Central Bank if a party has a reason to believe a specific transaction involves funds of doubtful origin. These obligations apply throughout the UAE, including the free zones.

Perhaps the most significant provision of the AML Law appears in article 11, where agencies that are concerned with licensing and supervising financial institutions and other businesses are required to establish appropriate mechanisms to ensure compliance with AML

rules. Under this general obligation, the UAE's regulators have imposed detailed AML compliance requirements on banks and other parties in the UAE.

The most important steps have been taken by the Central Bank, with regard to banks and other financial institutions; the Insurance Authority; the Federal Ministry of Economy, regarding auditors; the Emirates Securities and Commodities Authority (ESCA), regarding publicly traded companies; and the Dubai Financial Services Authority (DFSA), regarding parties licensed in the Dubai International Financial Centre (DIFC).

The result is a high level of compliance in these specific sectors. For example, in the DIFC, a regulated entity must file an annual anti-money laundering report detailing the reporting entity's AML policies and stating the steps it takes to verify its clients' identities, sources of wealth and sources of funds and details of the particulars of the STRs that were filed in the relevant year. This approach leaves little scope for irregular transactions.

Outside of these specific sectors, far fewer anti-money laundering safeguards are in place. Nevertheless, throughout the UAE, the general impact of the AML Law has been to discourage improper financial transactions, make the UAE a less hospitable location for suspect financial activity, and increase the likelihood of irregular financial practices being disclosed and investigated.

New measures on the way

According to reports, the new AML bill recently approved by the FNC will expand the list of predicate (underlying) offences, expressly protect whistleblowers, and provide for increased sanctions for non-compliance. As predicate offences, the bill would add the crime of financing terrorist organizations or illegal organizations. Indeed, the objective of

preventing terrorist financing would be added to the title of the statute.

The new statute would expressly state that the crime of money laundering is a stand-alone, independent offence separate and distinct from any underlying predicate offence. Finally, a person could be charged with and convicted of money laundering even without a conviction for the underlying offence. The new law would also direct the authorities to provide protection to witnesses and accused people.

While the previous law required people entering or leaving the UAE to declare any currency above amounts established by the Central Bank, the new law would require a declaration of currencies, negotiable instruments and precious metals and gems. The Central Bank would still have power to promulgate AML rules for financial institutions in the UAE, and the licensing authorities would retain the power to regulate and promulgate AML rules for entities other than financial institutions.

Moving forward, the objective of improved AML compliance will be advanced not simply by strengthening the law and adding new penalties, but also by introducing a workable framework to achieve the law's purposes. The successful approach adopted by the Central Bank, the Insurance Authority, the Ministry of Economy, ESCA and DFSA could be followed in other sectors of the economy. The enabling provisions are in the AML Law, which authorizes relevant authorities in the UAE to issue resolutions for achieving AML compliance. It may be hoped that the high level of compliance that is currently observed in the limited sectors described above will spread through the economy in general.

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