

# Anti-Corruption Regulation 2021

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**Contributing editors****James G Tillen and Leah Moushey****Miller & Chevalier Chartered**

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Lexology Getting The Deal Through is delighted to publish the fifteenth edition of *Anti-Corruption Regulation*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology 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 Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

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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.

Lexology 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 editors, James G Tillen and Leah Moushey of Miller & Chevalier Chartered, for their continued assistance with this volume.



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## RELEVANT INTERNATIONAL AND DOMESTIC LAW

### International anti-corruption conventions

- 1 | 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.

### Foreign and domestic bribery laws

- 2 | 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 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 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

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

### Successor liability

- 3 | Can a successor entity be held liable for violations of foreign and domestic bribery laws by the target entity that occurred prior to the merger or acquisition?

In a general sense, successor liability would not be imposed as a matter of UAE law. However, if the entity in question was not wound up or dissolved, and instead merely went through a change in ownership or a change in form, then liability would continue.

### Civil and criminal enforcement

- 4 | Is there civil and criminal enforcement of your country's foreign and domestic bribery laws?

Yes, as demonstrated in a number of prosecutions that we have reported in this edition and in earlier editions of *Getting The Deal Through Anti-Corruption Regulation*.

### Dispute resolution and leniency

- 5 | Can enforcement matters involving foreign or domestic bribery be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial? Is there a mechanism for companies to disclose violations of domestic and foreign bribery laws in exchange for lesser penalties?

We are unaware of a plea bargain, non-prosecution agreement, deferred prosecution agreement or similar arrangement being utilised in the UAE. Under article 239 of the Federal Penal Code, an offender who reports a bribery offence to the authorities before it is discovered would not be subject to penalty for participation in that offence. A corporation that self-reports a violation and cooperates with the subsequent investigation could benefit from this same provision. A corporation that self-reports and cooperates even after the violation is discovered would not necessarily be eligible for a reduced sentence, but the sentencing judge could take the corporation's cooperation into account, and of course the corporation would not be exposed to prosecution for a separate offence of obstruction of justice.

## FOREIGN BRIBERY

### Legal framework

- 6 | 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. The Federal Penal Code extends to bribery of foreign public officials.

### Federal Penal Code

Articles 234, 235 and 237 of the Federal Penal Code apply to foreign public officials.

In terms of article 234, it is an offence for a foreign public servant to solicit, accept or take (whether directly or indirectly) for himself or herself or another person or party, a gift, benefit or grant or promise of the same that is not owed in consideration for committing an act or refraining from committing an act pertaining to the duties of office or

breaching the obligations of his office. The provisions of this article are stated to apply even if the intent of the said foreign public servant was in fact not to commit or refrain from committing the act or the breach of the obligations of his office, or if the request, acceptance or promise is made following the commission of the act, the refraining from commission of the act or the breaching of the obligations of his office.

Article 235 is similarly worded, but it applies to the commission of an act or the refraining from the commission of an act that is erroneously believed or alleged to pertain to the duties of office.

In terms of article 237, it is an offence for any individual to promise, offer or provide (whether directly or indirectly) to a foreign public servant a gift, benefit or grant that is not owed, whether for the benefit of the employee himself or herself or for another person or entity, in consideration for such employee committing or refraining from committing an act pertaining to the duties of office in breach of the obligations of his office.

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, 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 or her power, whether actual or presumed, to obtain, from a public department or authority, that unlawful benefit.

Article 237 (repeated) (2) provides that it is also an offence to act as mediator between the bribe maker or the bribe taker in the offering, soliciting, accepting, receiving or promising of a bribe.

### Definition of a foreign public official

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

Article 6 (repeated) (1) 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.*

This definition does not extend generally to employees of state-owned or state-controlled companies.

### Gifts, travel and entertainment

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

The prohibitions extend to the offer, promise or provision or anything of value. This would include gifts, travel expenses, meals and entertainment.

### Facilitating payments

9 | Do the laws and regulations permit facilitating or 'grease' payments to foreign officials?

No, in the context of a foreign public official.

### Payments through intermediaries or third parties

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

Paying or receiving a bribe through an intermediary is prohibited by article 237 of the Federal Penal Code. Intermediation is prohibited by article 237 (repeated) (2) of the Federal Penal Code.

### Individual and corporate liability

11 | 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.

### Private commercial bribery

12 | To what extent do your foreign anti-bribery laws also prohibit private commercial bribery?

In contrast with the domestic anti-bribery laws of the UAE, the foreign anti-bribery laws of the UAE do not extend to the private sector. A foreign company that commits a bribery offence in the UAE would be subject to the Federal Penal Code.

In addition, article 239 of the Federal Penal Code 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:

- 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
- 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.

### Defences

13 | What defences and exemptions are available to those accused of foreign bribery violations?

Article 239 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.

### Agency enforcement

14 | What government agencies enforce the foreign bribery laws and regulations?

The UAE has not assigned to any law enforcement agency the specific task of enforcing foreign bribery laws and regulations. Since these matters fall under the Federal Penal Code, enforcement would, therefore, lie with the police, the public prosecution and the other law enforcement authorities.

## Patterns in enforcement

15 | 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.

## Prosecution of foreign companies

16 | 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.

## Sanctions

17 | What are the sanctions for individuals and companies violating the foreign bribery rules?

### Federal Penal Code

#### Article 234

An offence under this article is punishable by temporary imprisonment. The provisions of this article are stated to apply even if the intent of the said foreign public servant was in fact not to commit or refrain from committing the act, or if the request, acceptance or promise is made following the commission of the act or the refraining from commission of the act.

#### Article 235

An offence under this article is punishable by temporary imprisonment.

#### Article 237

An offence under this article is punishable by imprisonment of not more than five years.

#### Article 237 (repeated)

An offence under this article is punishable by imprisonment of not more than five years.

#### Article 237 (repeated) (2)

An offence under this article is punishable by imprisonment of not more than five years.

#### 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 (repeated) (2) provides that there shall be no time bar or limitation period on a civil or criminal action for a bribery offence.

## Recent decisions and investigations

18 | 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 AND REPORTING

### Laws and regulations

19 | 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 second 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.

## Disclosure of violations or irregularities

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

The Federal Anti-Money Laundering Law (Federal Decree-Law No. 20 of 2018) imposes a general requirement on all financial institutions and designated non-financial businesses and professions to report suspected incidents of money laundering offences to the Financial Intelligence Unit, an independent unit of the Central Bank of the UAE. The Federal Anti-Money Laundering Law protects persons who make such suspicious transaction reports, and also contains general protections for whistle-blowers.

Interestingly, lawyers, notaries, other legal professionals and independent legal auditors shall be exempted from the requirement to report suspected incidents of money laundering if the information obtained in relation to the suspected money laundering offence is subject to professional confidentiality. The details of the suspicious transactions required to be reported as well as the rules and controls are to follow in the Implementing Regulations of the Law.

Other disclosure requirements contained in the new law include a requirement that any person entering or leaving the UAE disclose whether they bring in or take out any currency, bearer negotiable instruments or precious metals or stones of value in accordance with the disclosure system issued by the Central Bank. Guidance is expected to follow in the Implementing Regulations.

The Federal Penal Code also contains a general obligation that knowledge of a criminal offence must be reported to the authorities.

## Prosecution under financial record-keeping legislation

21 | 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 on parties licensed in the Dubai International Financial Centre for failure to observe the record-keeping and accounting requirements imposed by the DFSA in implementation of the Federal Anti-Money Laundering Law.

## Sanctions for accounting violations

22 | 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 Anti-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 of the Federal Anti-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;
- acquisition, possession or usage of such proceeds; or
- assisting the perpetrator of the predicate offence to escape punishment.

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 Anti-Money Laundering Law. The Federal Anti-Money Laundering Law contains a broad definition of predicate offences.

## Tax-deductibility of domestic or foreign bribes

23 | 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

### Legal framework

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

### The Federal Penal Code

Provisions are contained in articles 234 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, accept or take (whether directly or indirectly) for himself or herself or another person or party, a gift, benefit or grant or promise of the same that is not owed in consideration for committing an act or refraining from committing an act pertaining to the duties of office or breaching the obligations of his office. The provisions of this article are stated to apply even if the intent of the said official was in fact not to commit or refrain from committing the act or the breach of the obligations of his office, or if the request, acceptance or promise is made following the commission of the act, the refraining from commission of the act or the breaching of the obligations of his office.

#### Article 235

Article 235 is worded similarly to article 234, but it applies to the commission of an act or the refraining from the commission of an act that is erroneously believed or alleged to pertain to the duties of office.

#### Article 236 (repeated)

In terms of article 236 (repeated), it is an offence for any person who manages an entity or establishment that pertains to the private sector, or who is employed in any capacity by the same, to solicit or accept (whether directly or indirectly) for himself or herself or another person or party, a gift, benefit or grant or promise of the same that is not owed in consideration for committing an act or refraining from committing an act pertaining to the duties of office. The provisions of this article are stated to apply even if the intent of the said person was in fact not to commit or refrain from committing the act, or if the request, acceptance or promise is made following the commission of the act or the refraining from commission of the act.

#### Article 236 (repeated) (2)

This article provides that it is an offence for any person to promise, offer or provide (whether directly or indirectly) to a person who manages an entity or establishment of the private sector or who is employed in any capacity by the same, a gift, benefit or grant that is not owed, whether for the benefit of that person or another person, in consideration for committing an act or refraining from committing an act pertaining to the duties of his or her position.

**Article 237**

In terms of article 237, it is an offence for any individual to promise, offer or provide (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 owed, whether for the benefit of the employee himself or herself or for another person or entity, in consideration for such employee committing or refraining from committing an act pertaining to the duties of office in breach of the obligations of his office.

**Article 237 (repeated)**

This article 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, 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 or her power, whether actual or presumed, to obtain, from a public department or authority, that unlawful benefit.

**Article 237 (repeated) (2)**

This article provides that it is also an offence to act as mediator between the bribe maker or the bribe taker in the offering, soliciting, accepting, receiving or promising of a bribe.

**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: the taking of a gratification 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 that 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 or her 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 or her 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 or her 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 or her 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 that 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 that 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.

### Scope of prohibitions

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

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.

### Definition of a domestic public official

#### 26 | How does your law define a domestic 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:

- 1 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;
- 2 any office to which a person is appointed or nominated by law;
- 3 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 (1) or (2);
- 4 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
- 5 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.

### Gifts, travel and entertainment

#### 27 | Describe any restrictions on providing domestic officials with gifts, travel expenses, meals or entertainment. Do the restrictions apply to both the providing and the 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 gifts, travel expenses, meals or entertainment can be offered to or received by domestic officials.

### Facilitating payments

#### 28 | 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.

## Public official participation in commercial activities

### 29 | What are the restrictions on a domestic public official participating in commercial activities while in office?

#### 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.

#### 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 them:

- 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 the 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 33 of this Law prohibits an officer from accepting gifts, tips, donations or similar things from stakeholders 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.

#### Cabinet Resolution 4 of 2019

The federal tenders regulations are contained in Cabinet Resolution 4 of 2019, as amended by Cabinet Resolution 37 of 2020. This measure restricts officials of the federal government from having a personal or business interest in contracts awarded by the federal government (whether by a ministry or other agency funded by the federal government).

In particular, article 5 of the federal tenders regulations imposes the following restrictions on personnel of the federal government:

- they must avoid actual or potential conflicts of interest in performance of the tasks and duties assigned to them;
- they may not receive or accept any gifts or donations, whether financial or in kind, from any third party that is dealing with any federal government entity;
- they must disclose any kinship up to the fourth degree that may link them to any supplier to the concerned federal entity, and in such case must recuse themselves from all tasks relevant to the underlying procurement; and

- they shall be prohibited from participating in procurements through companies or businesses that they own or of which they are partners or agents.

### 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 involving expenses on a department, entered into for the supply of materials, the execution of works, or the provision of various types of services; or
- those contracts that are entered into for the generation of revenue to the department and that 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 in 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.

### Payments through intermediaries or third parties

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

Paying or receiving a bribe through an intermediary is prohibited by article 237 of the Federal Penal Code. Intermediation is prohibited by article 237 (repeated) (2) of the Federal Penal Code.

### Individual and corporate liability

31 | Can both individuals and companies be held liable for violating the domestic bribery rules?

The relevant provisions of the Federal Penal Code apply to any person who commits a bribery offence, whether an individual or otherwise.

### Private commercial bribery

32 | To what extent does your country's domestic anti-bribery law also prohibit private commercial bribery?

Bribery in the private sector is prohibited by articles 236 (repeated) and 236 (repeated)(2) of the Federal Penal Code.

### Defences

33 | What defences and exemptions are available to those accused of domestic bribery violations?

Article 239 of the Federal Penal Code 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.

### Agency enforcement

34 | What government agencies enforce the domestic bribery laws and regulations?

In general, the police and the public prosecutors enforce the bribery provisions of the Federal Penal Code.

### Patterns in enforcement

35 | Describe any recent shifts in the patterns of enforcement of the domestic bribery rules.

None observed.

### Prosecution of foreign companies

36 | In what circumstances can foreign companies be prosecuted for domestic bribery?

A foreign entity that commits a bribery offence in the UAE would be subject to prosecution under the Federal Penal Code.

### Sanctions

37 | What are the sanctions for individuals and companies that violate the domestic bribery rules?

### Federal Penal Code

#### Article 234

An offence under this article is punishable by temporary imprisonment. The provisions of this article are stated to apply even if the intent of the said foreign public servant was in fact not to commit or refrain from committing the act, or if the request, acceptance or promise is made following the commission of the act or the refraining from commission of the act.

#### Article 237

An offence under this article is punishable by imprisonment of not more than five years.

#### Article 237 (repeated)

An offence under this article is punishable by imprisonment of not more than five years.

#### Article 237 (repeated) (2)

An offence under this article is punishable by imprisonment of not more than five years.

#### Article 238

This article provides that the offender shall, in all the cases mentioned in the preceding provisions, 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.

#### Article 239 (repeated)

This article provides that the Federal Penal Code shall apply to any person who commits, outside the UAE, any of the crimes detailed in the foregoing provisions, 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 239 (repeated) (2)

This article provides that no criminal or civil proceeding under these provisions, nor any punishment, will be extinguished by the expiry of any time period limitation.

#### Dubai Penal Code

The sanctions contained in the Code for the offences related to domestic bribery 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.

#### 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 dirhams and not more than 1 million dirhams;
- imprisonment for 10 years if the illicit monies required to be settled are not less than 1 million dirhams and not more than 5 million dirhams;
- imprisonment for 15 years if the illicit monies required to be settled are not less than 5 million dirhams and not more than 10 million dirhams; or
- imprisonment for 20 years if the illicit monies required to be settled are more than 10 million dirhams.

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

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proper communication facilities between the convicted person and others 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.

#### Recent decisions and investigations

- 38 | Identify and summarise recent landmark decisions and investigations involving domestic bribery laws, including any investigations or decisions involving foreign companies.

As in previous years, the UAE continued to witness numerous incidents of low-level bribery and corrupt activity. Concerning foreign companies, a major civil case involving allegations of corrupt activity but not bribery per se on the part of a major commercial group from neighbouring Saudi Arabia resulted in a favourable judgment for the plaintiff, but no recovery as of the time of writing.

#### UPDATE AND TRENDS

##### Key developments of the past year

- 39 | Please highlight any recent significant events or trends related to your national anti-corruption laws.

The UAE maintains its hostility to corrupt activity, and there have been numerous reports of recent prosecutions and court actions. Measures to deter money laundering and terrorism financing have also been strengthened. The UAE remains the highest-rated country in the MENA region on anti-corruption measures.

**Coronavirus**

40 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

No official anti-corruption measures have been taken in specific response to the covid-19 pandemic in the UAE. As a general matter, the personal contact that is often necessary for the conduct of corrupt activity has been reduced during the covid-19 crisis. Moreover, the police and other law enforcement authorities have been focusing on violent crimes as opposed to non-violent property offenses. Special measures have been taken in the prisons of the UAE to ensure that the inmates are able to maintain social distancing, that testing is done as and when needed, and that affected inmates receive the appropriate treatment.

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