

ANTI-CORRUPTION COMPLIANCE IN THE UNITED ARAB EMIRATES

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INTERNATIONAL businesses must devote ever increasing resources to avoid involvement in anti-corruption offences. Of course, for decades the strict provisions of the U.S. Foreign Corrupt Practices Act, or FCPA, have applied to American corporations, defined broadly to include entities whose securities are listed on American stock markets. These provisions have led to many non-U.S. corporations being caught in FCPA violations.

More and more countries throughout the world are increasing their vigilance in combating corruption. A major advance a decade ago was the conclusion of a convention against bribery among the member states of the OECD. Many OECD members have tightened their anti-bribery laws and increased anti-bribery enforcement actions in the intervening years.

Here in the United Arab Emirates, a marked increase in anti-corruption activity has been observed. Of course, the U.A.E. has long had anti-bribery laws in effect. However, the U.A.E. business community lacked a widespread awareness of the requirements of those laws. In addition, a corporate culture developed in the U.A.E. in which the promising, offering and giving of things of value to government employees, often as courtesies and not inducements, was not only tolerated but actively encouraged. Corporations that did not part take in this culture were viewed as eccentric, at best. Nevertheless, this culture was at variance with the very strict requirements of black letter U.A.E. law.

Three separate developments over the past decade have changed this. First, a number of leading anti-corruption statutes were amended to take account of local practice. Second, the Federal Penal Code was amended so as to penalize the solicitation of bribes in the private sector, and not only the public sector. Third, the authorities in the U.A.E. adopted a new and strict approach toward corrupt activities. This article is a brief look at these three developments.

SOFTENING OF PROHIBITIONS

The U.A.E. has long had numerous statutes governing public sector employees that restricted outside activities of such employees. In Dubai, a member of the civil service was required to seek the permission of his supervisor for the conduct of any activities outside of office hours. The Dubai Civil Service Law was amended in 2006, and now provides that only the written permission of the supervisor is required for such activities by civil servants who are not nationals of the U.A.E.

Similarly, a member of the Federal Civil Service was required to obtain the permission of his or her supervisor for the conduct of activities outside of the obligations of the office. This restriction was amended in 2008, and made applicable only to non-U.A.E. nationals who are members of the civil service.

In a similar change, the Constitution was amended in 2009, removing a prohibition on Ministers serving as directors in local companies.

PRIVATE SECTOR BRIBERY

Prior to 2005, the Federal Penal Code contained strict but relatively conventional anti-bribery provisions. It penalized the promise, offer or provision of anything of value to a public official or person charged with a public service in exchange for the performance of any act (or refraining from performance of any act) in contravention of the obligations of the official's office. It likewise prohibited a civil servant from soliciting or accepting such a thing of value. Because the Federal Penal Code applied to a "public official or person charged with public service," it was restricted to persons in the public sector.

New provisions were introduced into the Federal Penal Code in 2005. The new provisions penalized any director, manager or employee of a company, private establishment, cooperative society or society for the public benefit who solicited or accepted a thing of value in exchange for the performance of any act (or refraining from performance of any act) in contravention of the obligations of the person's position. Thus, the solicitation or taking of a bribe in the private sector was criminalized.



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Curiously, the 2005 amendments did not criminalize the promise, offer or provision of a bribe to a person in the private sector.

ENFORCEMENT ACTIONS

The 2005 amendments to the Federal Penal Code made it possible to proceed with criminal actions against private sector personnel who solicited bribes. Indeed, the authorities in U.A.E. commenced several very high profile actions against persons accused of corruption.

The acts of the authorities were not restricted to the private sector. Many individuals throughout the U.A.E. who engaged in corrupt conduct, both in the private and public sectors, have been subject to investigation and prosecution in recent years. The economic downturn has exposed much wrongdoing and the harm that it causes. However, wholly aside from the recent economic situation, it remains official policy to end corruption in all its forms. The government's

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zero tolerance policy has been articulated repeatedly. Moreover, the local press has become increasingly zealous in reporting wrongdoing and naming the perpetrators.

Once, international businesses operating in the Middle East were concerned mainly with compliance with anti-bribery statutes in their home countries. However, it is now clear that international companies operating in the U.A.E. must be as concerned or perhaps more concerned with local anti-bribery statutes and regulations. Corrupt activities are no longer tolerated or overlooked. The old view that "everyone does it" will no longer protect wrongdoers from criminal investigation and prosecution or from exposure in the press. ■

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