

The Anti-Corruption Landscape in Saudi Arabia under Vision 2030

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The combatting of corruption has been a cornerstone of Saudi Arabia's efforts to modernize and create a thriving economy that is attractive to investors, ever since the launch of its ambitious Vision 2030 program more than 5 years ago in 2016. The approach, which the Kingdom has taken towards combatting corruption, is best described as "zero tolerance", and has led to a number of high-profile corruption investigations and settlements. According to a review conducted by the Council of Economic and Development Affairs in 2021 on the 5th anniversary of Vision 2030, the total money recovered by the public treasury following anti-corruption settlements reached 247 billion riyals over the past three years, which represents roughly 20 percent of the total non-oil revenues, in addition to tens of billions of non-cash assets transferred to the Ministry of Finance.

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The Role of Nazaha

Generally, corruption allegations in Saudi Arabia are reported to the Oversight and Anti-Corruption Authority ("*Nazaha*"), which is Saudi Arabia's independent body established by Royal Decree in 2011 to monitor and investigate all forms of financial and administrative corruption and which reports directly to the King. Nazaha has jurisdiction over all Saudi governmental officials, governmental entities and all private companies where the Saudi government owns not less than 25 percent of the shares.

Nazaha has the power to receive corruption related allegations or reports involving those who fall under its jurisdiction, and to investigate such allegations or reports. Upon concluding an investigation, it also has the power to refer corruption cases to the competent criminal court.

Saudi citizens and residents are encouraged to report cases of corruption directly to Nazaha, which has set up an online portal to receive reports from whistleblowers. The Saudi Royal Court issued a decree in 2018 ordering entities that fall under Nazaha's jurisdiction not to pursue disciplinary measures against whistleblowers who work for them.

Bribery of Public Officials

The primary anti-corruption provisions in Saudi Arabia are provided by the Anti-Bribery Law, issued by Royal Decree in 1996 and most recently amended in 2021. The Anti-Bribery Law primarily focuses on "*public servants*", as well as certain positions in the private sector that "*shall be treated as public servants*". This includes the personnel of joint stock companies, along with their board members and directors, employees of companies engaged in banking services, individuals working on government-related projects, such as consultants to government projects, including temporary contractors, experts appointed by the government or judiciary, and even employees of private companies contracted to provide public services.

The Anti-Bribery Law criminalises both active bribery (acts that involve the promising or giving of a bribe) and passive bribery (act of requesting or receiving a bribe) and as such, public servants are prohibited from accepting, receiving, or soliciting for themselves, or for any third party, any gift, or payment of any sort, or promise thereof exchange for:

- Performing their duties, even if the action taken is legitimate;
- Refraining from performing their duties;
- Breaching their duties; and,
- Exerting any actual or alleged influence over a public authority or government entity, including acting as an intermediary.

In order to capture as wide a range of potentially unlawful conduct as possible, the law does not provide strict parameters on what types of benefits may constitute a bribe. Furthermore, the law does not provide exemptions for gifts and hospitality and any benefit or privilege obtained by a bribee, regardless of its type or designation, material or otherwise, can be considered a prohibited gift or promise.

Bribery in the Private Sector & Trading in Influence

The Anti-Bribery Law extends its reach into the private sector by treating certain personnel in the private sector as public servants for the purposes of applying the law. However, amendments to Article 9 of the Anti-Bribery Law issued in 2018, extended the law's reach further into the private sector by criminalising both the active bribery of and passive bribery by *"any person working for private or cooperative societies, private organizations, companies, sole proprietorships, professional bodies, in any capacity."*

Further amendments to the law issued recently in 2021 included a key change to Article 5, which extends the law's reach into the private sector when engaged in business with public authorities by removing the term *"any public servant"* and replacing it with *"any person"*, thereby bringing the law into closer conformity with the United Nations Convention against Corruption by expanding the criminalisation of trading in influence to cover not only public servants, but also individuals operating in the private sector. After this amendment, Article 5 reads as follows:

"Any person who solicits, accepts, or receives for himself or for others a gift or payment of any sort, or a promise thereof, as consideration for using actual or alleged influence to obtain or attempt to obtain from any public authority, a contract, order, decision, commitment, license, supply agreement, job, service, or privilege of any type, shall be considered a bribe and shall be punished by the same penalty set forth in Article 1 of this Law."

This provision is applicable to parties that commit a passive bribery offence in exchange for exerting direct influence on decisions taken by public authorities. Where a company is involved in a tender process for a government project, this provision would apply to any circumstance where an intermediary or broker in the tender process requested a benefit in exchange for supporting the private company's bid. Article 5 would attach criminal liability to the intermediary only, but the bidder would attract criminal liability for an active bribery offence.

Exposure for Corporate Entities

Where the manager or any employees of a private company is convicted of any offence under the Anti-Bribery Law, and the offence was committed for the benefit of such company, the law provides for corporate liability through a fine not exceeding ten times the value of the bribe and/or a ban from entering into public procurement or project contracts. Such ban would be for a minimum period of five years. The briber can be exempted from punishment if he informs the authorities prior to the discovery of the offence,

and this may provide some means by which corporate entities can limit their exposure upon becoming aware of any apparent offences under the Anti-Bribery Law.

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Outlook and Recommendations

It is anticipated that Saudi Arabia will continue to focus on anti-corruption measures in coming years and we will see an increase in the number of investigations initiated by Nazaha. Therefore it is crucial that companies doing business in the Kingdom periodically review their policies and procedures, to ensure that they are up to date and compliant with the requirements of local anti-corruption laws and to provide adequate training to their personnel, particularly in light of the pace with which legislative reforms are taking place. This includes, but is not limited to, policies and procedures relating to gifts, promotions, hospitality, and facilitation payments to intermediaries and brokers.

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