

Federal Anti-bribery Legislation in the United Arab Emirates

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Although the UAE has had anti-bribery legislation in place since the late 1980s in the form of the UAE Federal Penal Code (the “Code”), the businesses community in the UAE has, to a large extent, been unaware of the existence of the Code and how its provisions could impact their business operations locally. However, following the slowdown of the UAE economy, as a consequence of the global economic crisis, there has been a marked rise in prosecution of individuals suspected of corrupt practices in the UAE under the Code as authorities seek to enforce this law in order to curb such practices. In particular, certain high profile cases, which made the headlines, have highlighted the importance of being aware of the provisions of the Code and its implication for businesses in the UAE.

Due to the political and economic impact of corruption, both locally and internationally, there has been a sustained and concerted effort by the UAE authorities to focus on stamping out corruption at all levels of government. Although the focus of the authorities has primarily been on corruption at government level, it is important to note that the Code also contains provisions which apply to the private sector. Consequently, a lot more attention is being paid by businesses and individuals to the subject of corruption and enforcement of the Code by the authorities as they seek to understand what measures, if any, they can take in order to ensure that their business operation are compliant under the Code.

1. Scope of the Code

As mentioned above, the Code is the main federal law which regulates anti-bribery practices in the UAE. Articles 234 to 239 of the Code contain provisions which criminalise the bribery or attempted bribery of both public and private sector employees. Under the provisions of the Code, a bribe would be anything that confers a benefit on a public or private sector employee, as the case may be, with the intent to procure that such employee acts in a way that violates the duties assigned to his function or to commit an act which falls outside such duties (a “Bribe” or “Bribery” as the context requires).

(a) Public Sector

In relation to acts of Bribery committed by individuals in the context of the public sector, the relevant parties who would be subject to prosecution under the Code are those persons who accept, offer or facilitate a Bribe, irrespective of whether they obtain any direct gain from such action.

(i) The recipient

The recipient of a Bribe in the public sector is required by the Code to be a “public officer” who accepts a Bribe for himself or for another person in exchange for committing or omitting an act in violation of the duties of his function or an act which is not part of the duties of his function. This term would include employees working in ministries and governmental departments, chairmen and members of legislative, consultative and municipal councils and chairmen and members of boards of directors, managers and all other employees working in public organizations and corporations. In addition, the Dubai Court of Appeal has also recently interpreted the meaning of the words “public officer” to be sufficiently wide enough to include employees of state-owned or semi-state owned private sector entities who receive Bribes.

It is important to note that “public officers” would still be committing an offence and be subject to

prosecution under the Code in circumstances where they accept a Bribe but did so without the intent to commit or omit the act required of them by the person who offered the Bribe. Accordingly, the mere acceptance of a Bribe by a “public officer” would be sufficient grounds to prosecute that individual without having to prove that he had the intent to commit or omit the act required of him in exchange for such Bribe.

Apart from a “public officers” as described above, the provisions of Article 237(bis) of the Code also applies to recipients of Bribes who are not strictly “public officers” but who are none the less in a position to influence a “public officers” in the performance of their duties in exchange for a Bribe.

(ii) The offeror

Article 237 of the Code provides that the act of offering a Bribe to a “public officer” or to someone in a position to influence a “public officer” is a criminal offence irrespective of whether intended recipient accepts the Bribe or not.

(iii) The facilitator

Also under the provision of Article 237 of the Code, any individual who acts as a middle-man, mediator or contact person between the recipient and the offeror of the Bribe will also be guilty of an offence.

It should also be noted that the Emirates of Dubai and Abu Dhabi both have specific anti-bribery legislation in place which are aimed at curbing corrupt practices. In Dubai for instance, the Dubai Government Human Resources Management Law of 2006 contains a number of obligations intended to combat potential corrupt practices and ensure that employees of the Dubai Government adhere to the highest professional and ethical standards whereas in Abu Dhabi, Law No. 1 of 2006, which regulates the Abu Dhabi civil service, prescribes similar rules and standards of conduct for civil servants and also contains a number of provisions which are specifically aimed at curtailing corrupt practices.

(b) Private Sector

In relation to acts of Bribery committed by individuals in the context of the private sector, Article 236(bis) of the Code states that only the individual who accepts a Bribe, in exchange for committing or omitting an act in violation of the duties of his position would be guilty of an offence under the Code. The recipient, in this instance, is defined by the Code as any member of the board of directors of any private company, institution, cooperative association or public benefit association, as well as any manager or employee in any of these.

It should be noted that there is no provision in the Code which makes it a criminal offence to offer Bribes in the private sector or to act as a facilitator in these circumstances.

2. Penalties

As set out above, the Code draws a clear distinction between Bribery in the public and private sector and in keeping with this distinction, the Code prescribes different penalties to be applied to individuals found guilty of Bribery depending on the relevant sector.

(a) Public Sector

Any “public officer” who is found guilty of accepting a Bribe would be subject to a fine equivalent to the benefit accepted by them (provided the fine is not less than AED 1,000), confiscation of the actual benefit accepted and, depending on the circumstances of each case, imprisonment ranging from five to a maximum of ten years. In addition, individuals who are found guilty of accepting a Bribe in exchange for exerting their influence over a “public officer” would be subject to a fine not exceeding AED 10,000 and imprisonment of up to one year.

Individuals who offer a Bribe to a “public officer” or to an individual who is in a position to exert influence over a “public officer”, would be subject to a fine equivalent to the benefit they offered as a Bribe (provided the fine is not less than AED 1,000), confiscation of the actual benefit offered and imprisonment not exceeding five years. Similar penalties would apply to any individual who facilitates a Bribe between

the offeror and the recipient.

(b) Private Sector

Individuals who accept Bribes in the private sector would be subject to a fine equivalent to the benefit accepted by them (provide the fine is not less than AED 1,000), confiscation of the actual benefit accepted and imprisonment not exceeding five years.

Even though the UAE authorities have, as yet, not taken any firm steps towards addressing corrupt practises in the private sector, the Code does allow them to prosecute individuals suspected of such practices. Accordingly, there may eventually be a shift in direction by the authorities as they move to eradicate corruption not only at government level but also in the public sector. In doing so, it is conceivable that the authorities may very well in the future expand the provisions and application of Article 236(bis) of the Code to facilitate prosecution of Bribery in the private sector such that the offeror and facilitator of a Bribe would also be guilty of an offence.

In conclusion, it is important for international companies which carry on business in the UAE and also have business interests in other countries, for instance in the United States and the United Kingdom, to not only have regard to the provisions of the Code (including any comparable Emirate specific legislation) but to also be aware that there may be specific anti-bribery legislation in place in those countries, for instance the Foreign Corrupt Practices Act in the United States and the soon to be implemented Bribery Act in the United Kingdom, which they would be obliged to comply with. In appropriate circumstances, certain actions taken by these companies locally in the UAE could be classified as offences not only under applicable local anti-bribery legislation, but also under applicable foreign anti-bribery legislation which could result in multi-jurisdictional prosecutions of these companies.