

Financial Institutions: Obligations under the new AML Law

Mark Brown - Partner, Head of Projects - Banking and Finance / Projects
m.brown@tamimi.com - Abu Dhabi

Alex Peng Shi
p.shi@tamimi.com

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The UAE has now passed a new anti-money laundering law. Federal Law No.9 of 2014 (Amending Certain Provisions of Federal Law No. (4) of 2002 Concerning the Combating of Money Laundering Crimes) (the "New AML Law") was passed by the UAE Federal National Council on 30 April 2013 and was gazetted and came into force on 30 October 2014. We summarised the amendments to be introduced by this law when it was in draft form in our May 2014 edition of Law Update. The purpose of this article is to highlight the main amendments in the New AML Law that require the attention of financial institutions in the UAE and to remind such institutions of their key obligations under this law.

1. Scope of Money Laundering Crime

One major development of the New AML Law is that the scope of money laundering crime is significantly expanded. This is accomplished through the following ways:

- clarifying the definition of "fund": "property" (equivalent to the term "fund" under the New AML Law) was defined as "assets of every kind, material or immaterial, moveable or immovable, and the legal documents or instruments evidencing title to those assets or any rights related thereto" under the previous law. The New AML Law clarified that definition by stating that assets include national currency and foreign currency and documents and instruments may be in electronic or digital form which provides clearer guidance to all stakeholders;
- expanding the scope of source of funds: the previous law provided a list of certain crimes and confined the crime of money laundering to dealings with funds derived from such crimes. The New AML Law expands the scope of money laundering by removing the restrictive list under the previous law and providing that dealing in the proceeds of any offence or misdemeanor (with no restrictions) may be classified as a money laundering crime;
- expanding the scope of money laundering activities: the New AML Law added four activities that can be considered money laundering crime, i.e. saving, investing, exchanging or managing any proceeds with the intention to conceal or disguise its illicit origin; and
- expanding the scope of jurisdiction: the New AML Law expands its scope of jurisdiction beyond anti money laundering to combating terrorism financing crimes which include financing of terrorism and terrorism organizations.

Financial institutions in the UAE would need to examine and update their internal anti-money laundering policies and procedures to ensure the same apply to the expanded scope of money laundering crime.

2. Supervision of Financial Institutions

The New AML Law specifically provides that the UAE Central Bank shall supervise financial institutions in relation to their compliance with the New AML Law and any regulations and resolutions issued thereunder. The New AML Law further sets out the authorities of the Central Bank which include issuing directives,

guidelines, and resolutions in respect of imposing certain administrative sanctions on financial institutions.

The New AML Law also takes into consideration the transferring of regulatory responsibilities of certain financial services (i.e. financial consultation and financial analysis services) from the Central Bank to Securities and Commodities Authority (“SCA”) by amending the definition of “financial institutions” as “any bank, finance company, money-exchange establishment, financial and cash broker or any other financial institution licensed by the Central Bank or the Authority (SCA), whether publicly or privately owned”. The New AML Law also allows the Central Bank to delegate certain regulatory powers under the law to SCA.

3. Administrative Sanctions

Unlike the previous law, the New AML Law has specified the administrative sanctions that the relevant supervising authority may impose on an entity which has committed a money laundering crime. In respect of financial institutions, the Central Bank (or SCA, if so delegated by the Central Bank) may issue resolutions to impose certain administrative sanctions on financial institutions in breach of the provisions of AML laws, which range from warnings, fines and restricting the powers of senior management (including directors and managers) to appointing temporary observers, suspending activity for less than one month and cancelling the institution’s license. This poses bigger challenges to financial institutions as the New AML Law gives the Central Bank more extensive administrative powers than the Federal Law No. 10 of 1980 (the Central Bank Law) and makes the Central Bank more powerful when investigating money laundering offences committed by financial institutions.

4. Harsher Criminal Punishments

In addition to the administrative sanctions introduced above, financial institutions are also subject to criminal punishment (fines) for committing a money laundering crime. Chairmen, directors, managers and employees of financial institutions may be personally subject to criminal punishment (imprisonment and/or fine) for failing to inform the Financial Information Unit in the Central Bank of any offence that occurs within their respective institution. While the New AML Law holds the same position as the previous law in this regard, it substantially raises the severity of criminal punishment that can be imposed.

5. Exemption

To encourage reporting of money laundering crimes and whistle-blowing, the New AML Law, in addition to the general exemption given to, among others, financial institutions and their directors, employees and authorized representatives (the same position as under the previous law), requires the relevant authorities to provide protection for witnesses or the accused in offences of Money Laundering, Financing of Terrorism and/or Financing of Unlawful Organizations. The Attorney General or the competent court shall request such protection whenever it is required or there are fears for the lives of the witness or accused. This will give the witness (i.e. employees of a financial institution) and the accused more comfort when reporting money laundering crimes to the relevant authorities.

6. Conclusions

With the New AML Law now in force, and in light of UAE’s commitment to combating money laundering and the financing of terrorism and terrorist organizations, all financial institutions in the UAE should review and amend their internal anti-money laundering policies and procedures to reflect the major amendments in the New AML Law. They should also revise employee training manuals and courses to update such materials for the New AML Law, provide training to relevant employees and directors on the New AML Law and re-emphasise the importance of applying anti-money laundering and anti-terrorism financing procedures. Employees should be reminded of the need for diligence when conducting KYC and other anti-money laundering and anti-terrorism financing investigations.

Postscript: Just prior to deadline, the UAE Cabinet issued implementing regulations to the New AML Law. These impose further compliance obligations on financial institutions and took effect on 5 November 2014.

For queries relating to Banking and Regulatory issues, please contact Alex Peng Shi or Mark Brown. For all criminal matters, please contact Khalid Al Hamrani Partner, (k.hamrani@tamimi.com) or Ibtissem Lassoued, Partner (i.lassoued@tamimi.com) of our Financial Crime department.