

Corporate Criminal Liability in UAE: What You Should Know

Omar Khodeir - Senior Counsel - Litigation

o.khodeir@tamimi.com - Dubai International Financial Centre

Andrew Hudson

March 2015

Introduction

Corporations often seem surprised to be involved in criminal proceedings when their controlling officers had believed that the company was acting in accordance with the law. However as will be explained below, the fact that corporate officers or employees were not aware of the criminal laws applying to them does not absolve them of potential criminal liability.

In this article, we shed some light on issues that may be useful when facing allegations of criminal conduct, by setting out a series of questions and answers related to the criminal procedure in the UAE.

The Authorities And Their Roles

Q1. What authorities are involved in a criminal case?

The main authorities involved in criminal proceedings are the Police Department, the Public Prosecution and the Criminal Courts. In addition to the Police and Public Prosecution, various other persons are authorised to gather evidence in criminal investigations. These include:

- Officers of the armed forces.
- Border Guards and Coastguards.
- Immigration Officers.
- Municipalities' Inspectors.
- Inspectors of the Ministry of Labour and Social Affairs.
- Inspectors of the Ministry of Health.

Q2. What are the roles of the Police and the Public Prosecution?

The role of the Police is to safeguard the general public, take initial statements from complainants and witnesses, arrest suspects, carry out investigations and execute orders from the Public Prosecution to assist in the investigation process.

The Public Prosecution is part of the Judiciary (see Article 5 of the Criminal Procedures Law (Fed. Law No. 35 of 1992, as amended) ("CrPL")). The Prosecutor's role is:

- to oversee and give directions regarding the investigation of crimes, including gathering evidence and questioning witnesses;
- to review the allegations and evidence comprising the case file; and
- to assess whether a crime may have been committed.

to direct the Police to gather further evidence, where appropriate, such as witness evidence (i.e. further

statements from the complainant or existing witnesses and statements from additional witnesses), forensic reports or real evidence (i.e. tangible evidence such as tape recordings, photographs, cash and other items).

The criminal investigation is recorded in an official case file, which is passed between the Police and the Prosecution as and when each is performing its function. Once the case file is finally passed to the Prosecutor, he will decide whether to issue an Indictment Order against the accused and refer the matter to Court, or to dismiss the complaint.

Article 7 of the CrPL bestows exclusive jurisdiction on the Public Prosecution to initiate and prosecute criminal proceedings. However, there are specific statutory conditions to this in certain circumstances. For example, Article 10 of the CrPL provides that criminal action may not be initiated without a written or verbal complaint of the victim or the victim's legal representative for certain crimes, which include:

- Theft, breach of trust and the concealment of the proceeds thereof, if the victim is a spouse of the perpetrator or one of the perpetrator's ascendants or descendants and the proceeds are not seized judicially or administratively or encumbered by a lien in favour of another person.
- Abstention from delivering a minor to, or taking the minor away from, the authority of the minor's custodian.
- Insult, slander and other crimes as specified by the law.

Q3. How does the Court system operate?

The Criminal Courts of the UAE are comprised of Courts of First Instance, Courts of Appeal and a third tier of courts, which differ depending on the Emirate. Abu Dhabi and Ras Al Khaimah use a dual system of local courts (Court of First Instance, Court of Appeal and Cassation Court) and Federal courts (Court of First Instance, Court of Appeal and Union Supreme Court). Ajman, Fujairah, Sharjah and Umm al Quwain use the Federal courts system and Dubai uses only the local courts system.

In most cases, a criminal complaint will be referred by the Public Prosecutor to the Court of First Instance. Notable exceptions to this are cases of extradition, which are sent directly to the Court of Appeal. Other examples include crimes committed abroad but falling within the jurisdiction of the UAE Criminal Courts, which will be heard in the Courts of the Capital, and matters relating to national security, which are sent directly to the Union Supreme Court.

Once the Court of First Instance renders its judgment, the parties have 15 days in which to lodge an appeal, except the Attorney General, who has 30 days. Appeals to the Cassation or Union Supreme Court may be filed within 30 days of the Court of Appeal judgment or its notification to the parties. In limited circumstances, essentially amounting to the discovery of evidence of innocence, a conviction may be subject to Review, which can be lodged by the Public Prosecutor or the convicted person (via the Public Prosecutor).

Governing Laws

Q4. What laws regulate criminal conduct in the UAE?

The Federal sources of the UAE's criminal law are Federal Law No. 3 of 1987, as amended ("Federal Penal Code") and the CrPL. These laws apply throughout the UAE including in the free zones. The Dubai International Financial Centre Courts do not, and the Abu Dhabi Global Market Courts will not (when they become operational), have jurisdiction over criminal matters.

In addition to the Federal Penal Code, several laws impose penalties for subject-specific criminal conduct. For example:

- Federal Law No. 4 of 2002 (as amended) on Anti-Money Laundering and Combating the Financing of Terrorism imposes penalties for individuals and institutions that launder money, finance terrorist or other criminal organisations or fail to report known acts of money laundering in their business to the Financial Information Unit of the Central Bank.
- Federal Law No. 5 of 2012 (known as “the Cyber Crime Law”) tackles IT security, financial and commercial matters along with State Security and Political Stability issues. This law imposes penalties for, among other things, unauthorised access to networks or data systems, tampering with data, cloning credit cards and using information technology to commit a variety of non-IT offences.
- Federal Commercial Companies Law No. 8 of 1984 (as amended) which, among other things, imposes penalties on directors if they distribute profits in violation of the provisions of the law or the articles of incorporation or association of the company, or intentionally state false information in relation to the company’s profits and losses.
- Federal Law No. 18 of 1993 (known as the “Commercial Transactions Law”), imposes a penalty on the board of directors if they committed certain acts at the time of bankruptcy of the company, such as concealing, destroying the company’s books or acknowledging debts that they know are not payable by the company.
- Federal Law No. 8 of 1980 (known as the “Labour Law”), imposes penalties on employers who hire a foreigner without obtaining a work permit or those who hire a foreigner without sponsoring him.

It is worth bearing in mind that each incident may be criminalised by one or more laws and several of the above-listed laws state that the punishment specified for a particular criminal act is without prejudice to the availability of greater punishment under alternative laws.

Q5. What is the legal basis for corporate liability?

Article 65 of the Federal Penal Code provides that juridical persons, with the exception of governmental agencies, are responsible for any criminal act committed for their account or in their name by their representative, director or agent. Where the penalty for a criminal offence would be non-financial, the penalty that may be imposed against a convicted corporation is limited to a maximum fine of AED 50,000. However, this does not represent the maximum financial liability of a corporation that is found to have committed a crime. Article 22 of the CrPL allows the victim to make a claim against the company (and any other perpetrator) for civil compensation in respect of harm suffered as a result of the crime.

Article 65 explicitly states that the financial penalty imposed on the corporate offender does not prohibit punishment of the individual offender.

Application

Q6. What types of crimes can companies be subject to?

In theory, a corporate entity may be subject to any crime committed in the circumstances described by Article 65 of the Federal Penal Code (as summarised in the answer to Q5 above). We have had experience assisting clients who have claimed, or been accused of the following:

- Fraud and Breach of Trust
- Bribery & Corruption
- Embezzlement of public funds
- Money Laundering
- Forgery
- Dishonoured cheques
- Director & Officer liability for mismanagement or stating false information in company records
- Cyber Crimes
- Labour issues and violations of safety regulations which cause the death of one or more employees
- Criminal cases against employees for theft, breach of trust or disclosing confidential information.

Conclusion

Corporate criminal liability is a real risk in modern business. As seen from various laws highlighted above, there is wide scope for falling foul of the law and businesses should ensure that measures are in place to mitigate against this possibility. Where companies have been subject to criminal liability, it has often been because of a failure to implement and properly maintain corporate governance. Successfully navigating a criminal case, and being aware of the appropriate applications and arguments at each stage, requires detailed knowledge of the relevant laws and procedures.

For further information relating to issues of corporate criminal liability, please contact either of the authors.