

United Arab Emirates



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Country Guides: Money Laundering

Last updated 10 November 2010

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Federal Law Number 4 of 2002 (the “**Law**”), which came in to effect on 22 January 2002 criminalizes money laundering in the United Arab Emirates. The Federal Law has universal application and extends to both financial free zones as well as commercial free zones throughout the United Arab Emirates. The United Arab Emirates has included Anti-money laundering provisions in the Federal Law Number 3 of 1987 concerning the promulgation of the Penal Code, which was in line with the then discussions, to prepare for the 1988 Vienna Convention, which the United Arab Emirates signed and ratified. Speaking of financial free zones, the Dubai International Financial Centre (the “**DIFC**”) is the only financial free zone and there are several other commercial free zones where non-financial business and commercial enterprises operate. The UAE Insurance authority has via its Board of Directors' Resolution 1 of 2009 issued Directives on Procedures for Anti-Money Laundering and Combating Terrorism Financing through Insurance Activities (the “**Directive**”). The Law as well as the Directive are summarised below.

Article two of the Federal Law identifies the illegal acts from which income may be derived. The wording of Article two reads “when a person intentionally commits or assists in commission of any of the following acts..”. The term “intentionally” requires determination of specific intent and covers those who aid or abet the crime such as narcotics and psychotropic substances; kidnapping, piracy and terrorism; offences committed in violation of the environmental laws; illicit dealing in fire-arms and ammunition; bribery, embezzlement and damage to public property; fraud, breach of trust and related offences and any other related offence referred to in international conventions to which the United Arab Emirates is a party.

Pursuant to the law, any person who commits the acts described above and/or intentionally attempts to disguise or conceal the illicit origin of such proceeds by conversion or transference of the proceeds; concealment or disguise of the true nature, source, location, disposition, movement and rights with respect to ownership of the proceed; or the acquisition, possession or use of such proceeds is considered to have committed a money laundering offence.

Article 3 of the Law contains provision that criminalizes the offence of Money Laundering if intentionally committed by financial institutions, and other financial, commercial and economic establishments operating in the United Arab Emirates in their respective names or for their account.

Article four provides for the freezing of bank accounts for a period that does not exceed seven days. In addition, a petition by the attorney general may be brought before a court to order a provisional attachment for undetermined periods on property, proceeds or instruments. The law has broadly defined "property" as "assets of every kind, whether corporeal or incorporeal, moveable or immovable, and legal documents or instruments evidencing title to those assets or any rights related thereto."

In line with requirements imposed under the Law, the Central Bank of the United Arab Emirates has formed a special unit for investigating fraudulent and suspicious transactions in July 1998 named 'Anti-Money Laundering and Suspicious Cases Unit the ("**AMLSCU**") in November 2000. The AMLSCU (also; a member of the Egmont Group since 2002) is authorised to exchange information on suspicious transactions with its counterparts in other countries in accordance with "international conventions to which the State is a party or on the basis of reciprocity". The AMLSCU is then charged with reporting cases of suspected money laundering to the attorney general for prosecution. The AMLSCU is also responsible for ensuring the availability of information to law enforcement agencies to facilitate their investigations.

Article 6 of the Law confers powers on the Central Bank to set ceiling for amount that may be brought into the United Arab Emirates in cash without the need for declaration. Any amount in excess shall be subject to the declaration system as established by the Central Bank. In accordance with provisions of Article (6), the Central Bank has approved and issued a regulation on 26 January 2002 setting out declaration when cash is brought in to the country through travellers, shipments, postal parcels and parcels of postal companies. Per the regulation, the minimal amount which should be declared was limited to AED 40,000 (UAE Dirhams forty thousand) (1 USD is equal to 3.67 UAE Dirhams) with regard to individuals aged 18 or above. The Central Bank has also issued regulations concerning Hawaladars for Registration and Reporting. The Regulations dated as of 1 April 2003 aims to committing hawaladars to provide the Central Bank with details regarding remittances (inward as well as outward) and to report fraudulent and suspicious transactions to the Central Bank. The term 'Hawala' means money or transfer of money outside the legal financial sector.

Pursuant to Article 9 of the Law, the Ministry of Finance and Industry is required to set up an anti-money laundering committee named "National Anti-Money Laundering Committee" (the "**NAMLC**"). The committee was set up under the chairmanship of the Governor of the Central Bank of the UAE. The Committee comprises of representatives from various judicial and ministerial authorities and is responsible for co-ordinating and implementing the anti-money laundering policies in the UAE.

Where a money laundering offence has been committed outside the UAE, and where the UAE has entered into a treaty to this effect or on condition of reciprocity, and provided the act is a criminal offence in the UAE, the state may, upon confirmation of an order of attachment or seizure from a court of competent jurisdiction in the requesting nation, order the pursuit, freezing or provisional attachment of property or proceeds derived from or instruments used in a money laundering offence.

The penalty for perpetrating the act of money laundering is imprisonment for a term not to exceed seven years, or by a fine not exceeding AED 300,000 or both. In addition, not only is the perpetrator subject to confiscation of the proceeds of the illegal activity, but also the equivalent if such proceeds were wholly or partially converted into or co-mingled with other property derived from lawful sources. The law also imposes penalties in the form of imprisonment and fines against officers, management and employees of financial institutions that fail to report suspected money laundering activity. At the same time, however, the law provides immunity from criminal prosecution, civil or administrative action to financial institutions, their directors and employees as a result of providing required information or violating a restriction imposed by legislative, contractual, regulatory or administrative provision for safeguarding confidentiality, unless the reporting was done in bad faith.

To protect the integrity of the pending investigation against suspected money laundering activity, the law has included a provision that penalises any individual that notifies the suspect of the impending investigation with imprisonment not to exceed one year, a fine not to exceed AED 50,000, or both.

THE DIRECTIVE

The Directive issued by the UAE Insurance authority (the “**Authority**”) came into force on 4 February 2010 and applies to all insurance companies incorporated in the State and foreign insurance companies, including takaful operators and reinsurers. The Authority is a federal organization and is under the control of Ministry of Economy. It has the power to pass legislation relating to insurance industry in the United Arab Emirates and extends to free zones. Whilst the Directive in itself is not a federal law, questions also arise in relation to application of the Directive in free zones including the DIFC as free zones are governed pursuant to internal regulations of respective free zones.

Under the Directive, "money laundering" is defined to mean each transaction that intends to conceal and/or change the identity of unlawfully generated funds to misleadingly appear as if they are generated from lawful sources, including funds used to finance terrorism or criminal activities. The Directive mandates insurance companies in the UAE to establish AML procedures, formulate Know your Client (KYC) policies, and subject themselves to compliance inspections by the Authority. The Penalties for non-compliance of the Directive (Article 18) are in range of AED 5,000 up to AED 1 million and/or imprisonment.

DIFC

The Dubai International Financial Centre is empowered to create its own specific legal and regulatory framework for all civil and commercial matters.

Whilst federal criminal law applies to the free zones (including the Law), the commercial and civil laws are restricted to those enacted specifically for the particular free zone within the individual city/emirate of the UAE. Accordingly, the regulations issued by the central bank with respect to compliance with anti-money laundering regulations are not deemed to apply to institutions registered within the DIFC. The regulatory framework and function is devised by the Dubai Financial Services Authority (DFSA) which has a wide range of powers and duties.

The DFSA guidance notes provide extensive information on due diligence, identification, beneficial ownership, risks, accounts monitoring, and so on. The DFSA policies further requires that suspicious transaction reports are filed with the AMLSCU and the DFSA supervision division.

• A seasoned attorney **Sunil Thacker** is often regarded as an expert in Middle East legal circles.. He is a highly regarded corporate lawyer and advises a wide varies of local and international clients on a broad range of issues, including issues relating to mergers and acquisition transactions (domestic as well as cross border), construction and real estate, capital markets, Corporate Law (including DIFC regulations), and dispute resolution.

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