

Anti-Corruption Regulation

in 44 jurisdictions worldwide

2014

Contributing editor: Homer E Moyer Jr



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Miller & Chevalier Chartered

Getting the Deal Through is delighted to publish the eighth edition of *Anti-Corruption Regulation*, a volume in our series of annual reports that provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 44 jurisdictions featured. New jurisdictions this year include Algeria, Bermuda, Cameroon, Denmark, Ecuador, Malaysia, Peru and Portugal. There is also a new chapter on asset recovery, in addition to a global overview and the perspectives of Transparency International and the OECD.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.GettingTheDealThrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would also like to extend special thanks to contributing editor Homer E Moyer Jr of Miller & Chevalier Chartered for his continued assistance with this volume.

Getting the Deal Through

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Publisher

Gideon Robertson
gideon.roberton@lbresearch.com

Subscriptions

Rachel Nurse
subscriptions@gettingthedealthrough.com

Business development managers

George Ingledew
george.ingledew@lbresearch.com

Alan Lee
alan.lee@lbresearch.com

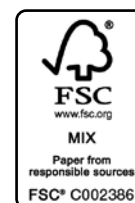
Dan White
dan.white@lbresearch.com



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United Arab Emirates

Charles Laubach

Afridi & Angell

1 International anti-corruption conventions

To which international anti-corruption conventions is your country a signatory?

The United Arab Emirates (UAE) ratified the United Nations Convention against Corruption (the Convention) pursuant to Federal Decree No. 8 of 2006.

2 Foreign and domestic bribery laws

Identify and describe your national laws and regulations prohibiting bribery of foreign public officials (foreign bribery laws) and domestic public officials (domestic bribery laws).

Domestic bribery laws

Bribery is punishable in the UAE according to articles 234 to 239 of the UAE Penal Code, Federal Law No. 3 of 1987 (the Federal Penal Code), which applies to the UAE as a whole. The Emirate of Dubai also has its own penal code, the Penal Code 1970 (Dubai Penal Code). In addition to the above, two further laws are directly related to bribery. These are Federal Decree-Law No. 11 of 2008 (also known as the 'Federal Human Resources Law') and more recently Dubai Law No. 37 of 2009 on the Procedures for the Recovery of Illegally Obtained Public and Private Funds (Financial Fraud Law). These are each discussed in the relevant sections of this chapter.

Foreign bribery laws

As discussed in question 1, the UAE has ratified the Convention pursuant to Federal Decree No. 8 of 2006.

Foreign bribery

3 Legal framework

Describe the elements of the law prohibiting bribery of a foreign public official.

The Convention as adopted by Federal Decree No. 8 of 2006 requires each state party to adopt such legislative and other measures as may be necessary to establish as a criminal offence the bribery of foreign officials and officials of public international organisations. The UAE has yet to meet the obligation to criminalise bribery of foreign public officials and officials of international public organisations. Applicable legislation is not yet in place in connection with prohibiting bribery of a foreign official and matters related thereto.

4 Definition of a foreign public official

How does your law define a foreign public official?

As mentioned in question 3, the UAE has not as yet enacted any legislation that criminalises bribery of foreign public officials.

5 Travel and entertainment restrictions

To what extent do your anti-bribery laws restrict providing foreign officials with gifts, travel expenses, meals or entertainment?

None, in the context of foreign public officials.

6 Facilitating payments

Do the laws and regulations permit facilitating or 'grease' payments?

None, in the context of a foreign public official.

7 Payments through intermediaries or third parties

In what circumstances do the laws prohibit payments through intermediaries or third parties to foreign public officials?

None, in the context of a foreign public official.

8 Individual and corporate liability

Can both individuals and companies be held liable for bribery of a foreign official?

In the context of a foreign official, there are no provisions under UAE law that are relevant.

9 Civil and criminal enforcement

Is there civil and criminal enforcement of your country's foreign bribery laws?

No legislation has been passed in the UAE determining the proceedings which may be resorted to in cases involving bribery against foreign officials.

10 Agency enforcement

What government agencies enforce the foreign bribery laws and regulations?

As the UAE has yet to promulgate laws in implementation of the Convention, there is presently no government agency that has been appointed to enforce foreign bribery laws and regulations.

11 Leniency

Is there a mechanism for companies to disclose violations in exchange for lesser penalties?

None, in the context of bribery of foreign public officials.

12 Dispute resolution

Can enforcement matters be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial?

No, in the context of bribery of foreign public officials, given the absence of relevant legislation.

13 Patterns in enforcement

Describe any recent shifts in the patterns of enforcement of the foreign bribery rules.

Not applicable. See questions 1 and 3.

14 Prosecution of foreign companies

In what circumstances can foreign companies be prosecuted for foreign bribery?

There is no specific set of laws in the UAE regulating the procedure to be followed in order to prosecute foreign companies with respect to foreign-related bribery.

15 Sanctions

What are the sanctions for individuals and companies violating the foreign bribery rules?

No sanctions are prescribed in the UAE for individuals and companies violating foreign bribery rules.

16 Recent decisions and investigations

Identify and summarise recent landmark decisions or investigations involving foreign bribery.

There are no decisions or investigations that we are aware of involving foreign bribery.

Financial record keeping**17 Laws and regulations**

What legal rules require accurate corporate books and records, effective internal company controls, periodic financial statements or external auditing?

Federal Law No. 8 of 1984 pertaining to Commercial Companies Law (the Commercial Companies Law) contains general provisions with respect to financial statements and the appointment of external auditors with respect to UAE companies. The following are required to be fulfilled with respect to the appointment of external auditors:

- they must be listed in the Register of Auditors and Accountants in accordance with Federal Law No. 22 of 1995 Regarding Organisation of Auditing Profession (Federal Law No. 22 of 1995), which regulates the professions of auditing and accountancy;
- the auditors appointed by the company may not hold positions as a participant in the company's establishment, be a member of the board of directors of the company or hold any technical, administrative or consultative position; and
- the auditors must not be partners or agents of any of the founders of the company or of any of the members of the board of directors of the company or related to any member of the board of directors up to the fourth degree.

Article 197 of the Commercial Companies Law (which applies to public joint-stock companies and private joint-stock companies) restricts a company from offering any type of cash loan to the chairman of the company or a member of the board of directors and also prohibits the company from guaranteeing a loan to the chairman or the member of the board of directors. Certain exceptions are made in the case of the chairman and board of directors of banks and credit

companies. In terms of article 198 of the Commercial Companies Law, a company (ie, a public joint-stock company or a private joint-stock company) is also restricted from making any loans or donations within two years of incorporation of the company unless these donations are made by way of customary gifts from the profits of the company. With regard to other gifts, in order that a donation be valid, authorisation of the board of directors based upon permission granted by the general meeting is required and must not be in excess of 2 per cent of the average net profits of the company during the two financial years preceding the year in which the donation is made.

Further, Ministerial Resolution No. 518 of 2009 Concerning Governance Rules and Corporate Discipline Standards apply to all companies and institutions whose securities have been listed on a securities market in the UAE and to their board members. The said Ministerial Resolution contains detailed provisions for internal control, the formation of an audit committee and the appointment of external auditors.

18 Disclosure of violations or irregularities

To what extent must companies disclose violations of anti-bribery laws or associated accounting irregularities?

UAE law does not make any specific requirements upon auditors to disclose any violation under anti-bribery laws. However, in terms of Federal Law No. 22 of 1995 and a circular issued by the Ministry of Economy in March 2003, there is a requirement for all auditors when necessary and in view of promoting the public interest, to furnish any information in respect of a company or establishment for which he was or still is handling the audit to the 'competent authorities' when required, provided that the competent authority must obtain authorisation from the competent judicial authority prior to requesting such information. Accordingly, any disclosure by an auditor in the UAE can only be pursuant to the foregoing.

19 Prosecution under financial record keeping legislation

Are such laws used to prosecute domestic or foreign bribery?

There are no known instances of such prosecutions.

20 Sanctions for accounting violations

What are the sanctions for violations of the accounting rules associated with the payment of bribes?

There are no specific sanctions against violations of accounting rules which are associated with the payment of bribes. However, Federal Law No. 4 of 2002 on the Criminalisation of Money Laundering (the Federal Money Laundering Law) provides that any individual who perpetrates or assists in the commission of any of the following acts in respect of property (as defined by article 2(e) of the Federal Money Laundering Law, which includes, inter alia, assets obtained through an offence of bribery, embezzlement and damage to public property) will be considered to have committed an act of money-laundering:

- transfer, conveyance or depositing of the proceeds with intention to conceal or camouflage the illicit source thereof;
- concealment or camouflaging of the nature, source, location, disposition, movement, pertinent rights or ownership of the proceeds; or
- acquisition, possession or usage of such proceeds.

Pursuant to this provision, it can be inferred that any auditor who commits or assists in committing any of the aforementioned acts would be liable under the Federal Money Laundering Law.

21 Tax-deductibility of domestic or foreign bribes

Do your country's tax laws prohibit the deductibility of domestic or foreign bribes?

The UAE is a tax-free regime and does not have provisions in law regulating any tax-deductibility in the country.

Domestic bribery**22 Legal framework**

Describe the individual elements of the law prohibiting bribery of a domestic public official.

The Federal Penal Code

Provisions are contained in articles 234 to 239 of the Federal Penal Code.

In terms of article 234, it is an offence for any public officer or person to whom a public service is assigned to solicit or accept for himself or for another person, a donation, an advantage of any kind or a promise or anything of the like in order to commit or omit an act in violation of the duties of his function. The provisions of this article are stated to apply even if the intent of the said public officer or individual entrusted with a public service was in fact to refrain from committing or omitting the act.

Under article 235, it is an offence for any public officer or any individual to whom a public service is assigned who solicits or accepts for himself or for another person a donation or advantage of any kind if he commits or omits an act in violation of the duties of his function.

In terms of article 236, it is an offence for any public officer or individual to whom a public service is assigned who solicits or accepts for himself or for another person a donation or an advantage of any kind or a promise of anything of the like in order to commit or omit an act which is not part of his function.

Article 236 further provides that it is an offence if any member of a board of directors of any of the companies, private establishments, cooperative societies or public utility societies and any manager or an employee in any of them who claimed for himself or for others, before or after having a promise of a gift, to perform or stop performing any of his duties or violating thereof and promises the convict with a bribe even if not intending to do the job or violating his duties and obligations.

It is also an offence if the claim, acceptance or attainment was in pursuance of the performance or stop of performance of the job or violating his duty obligations and was intending to have a reward even without any prior agreement.

In terms of article 237, it is an offence for any individual who offers to a public officer or to any person to whom a public service is assigned, a donation or an advantage of any kind or a promise of anything of the like in order to commit or omit an act in violation of the duties of his function.

Article 237 further provides that it is also an offence for any person who has acted as a mediator between the briber or the receiver in the offering, soliciting, accepting, receiving or promising of bribery.

Article 237 also provides that it is an offence for any individual who claims or accepted for himself or for others any gift, privilege or benefit of any sort whatsoever for his interference or the use of his power before a public officer to do or stop doing a job or to violate his duty obligations.

Articles 238 and 239 of the Federal Penal Code are discussed in question 29.

The Dubai Penal Code

The Dubai Penal Code 1970 (the Dubai Penal Code) contains provisions on the offences of corruption and the abuse of public office. These provisions prohibit the following:

- article 118 – the taking of a gratification by a public servant in respect of an official act;

- article 119 – taking a gratification in order, by corrupt or illegal means, to influence a public servant in respect of an official act;
- article 120 – offering or giving a gratification to a public servant in respect of an official act;
- article 121 – the obtaining of any valuable thing by a public servant, without consideration, from a person concerned in any proceeding or business transacted by such public servant; and
- article 122 – the offering of a valuable thing to a public servant without consideration, by a person concerned in any proceeding or business transacted by that public servant.

Financial Fraud Law

The Financial Fraud Law came into force on 31 December 2009. The provisions of this law are applicable to any person who is convicted of a crime in Dubai in relation to improperly obtaining public funds or illicit monies (or both). The aim of the Financial Fraud Law is to impose tougher sentences for financial crimes but simultaneously to be set aside upon repayment of funds. The Financial Fraud Law identifies two punishable acts:

- the receipt of illicit monies (monies earned whether directly or indirectly as a result of an action which constitutes a punishable crime); and
- the receipt of public funds (funds owned by the government, government authorities or institutions or companies owned by the government or government authorities or in which they hold shares).

The Financial Fraud Law also allows for the release of those convicted once the illegally obtained funds are returned or settlement agreements are concluded. In furtherance of this aim, the Financial Fraud Law allows accused persons access to all necessary external communications to facilitate the settlement of illicit monies or to reach a settlement with creditors.

Federal Human Resources Law

The Federal Human Resources Law governs most aspects of public service employment with the federal government of the UAE.

The Federal Human Resources Law sets forth specific provisions concerning the personal conduct of federal government employees generally, and more specifically in relation to gifts, bribes and conflicts of interest.

In addition to the federal law, local government employees are subject to local counterparts of the Federal Human Resources Law. For example, employees of the Dubai government are governed by the provisions of the Dubai Human Resources Management Law No. 27 of 2006 (the Dubai Human Resources Law). Generally, while not described below, the bribery and conflict of interest provisions of local government human resources law differ more in scope (ie, they affect only local government employees rather than federal employees) than substance from the provisions of the Federal Human Resources Law.

Article 70 of the Federal Human Resources Law prohibits an employee from accepting, requesting or offering bribes. The said law defines the term 'bribes' to mean offering any amount of money, or a particular service, or anything of material or moral value for an employee in exchange for the employee:

- accelerating any work that the employee is required by his work to do;
- failing to do assigned work; or
- to mediate to another to finish an application or take any procedure in violation of the applicable laws of the UAE.

The term 'employee' is defined in the said law to mean anyone who occupies one of the jobs contained in the general budget of the government of the UAE.

Code of Professional Conduct and Ethics

Cabinet Resolution No. 15 of 2010 Approving the Code of Professional Conduct and Ethics (the Code) was promulgated during 2010. The stated objective of the Code is to create and develop a corporate culture for the public servant, enhancing the professional values and the sense of responsibility as well as abiding by the highest ethics in dealing with superiors, colleagues or service beneficiaries according to the basic values of human resources and providing the best services to beneficiaries and strengthening the confidence and credibility in the government sector.

The term 'public servant' is defined in the Code to mean any person holding a position in one of the federal authorities. The term 'federal authority' in turn is defined to include ministries or federal public entities and institutions. The Code addresses the basic values and rules of professional conduct and ethics of public servants, commitments of the public servant, the federal authority's obligations towards its employees (ie, public servants) and certain general guidelines.

In the present context, the general guidelines are of particular interest. They provide that the public servant may not abuse his position, duties or relations established in the course of his work, position or powers to obtain any service, benefit or interest from any person for his personal interest or for the interest of any relative up to the fourth degree.

The general guidelines also provide that the public servant must avoid any actual or potential conflict of interest. The term 'conflict of interest' is defined by the Code to mean any official procedure, situation or decision taken by the employee causing a conflict of interest between his personal activities and the government interests. In particular, the Code provides as follows:

- the public servant shall not undertake any actions or tasks which are likely to give an impression of the existence of conflict of interest;
- neither the public servant nor any relative up to the fourth degree shall accept any gifts, hospitalities, or services from any person if it results in any obligation, if it has a direct or indirect effect on his objectivity in implementing his duties, if it might affect his decisions, or if it might make him subject to obligations in consideration of what he accepted;
- the public servant shall not participate in any official operation or decision which directly or indirectly affects the awarding of any procurement contract to any contractor or supplier related to him up to the fourth degree;
- the public servant shall not take part in any official operation or decision which is likely to cause the granting of any benefits, lands or licences to any of his relatives up to the fourth degree;
- the public servant shall not be involved in any operation or decision which might directly or indirectly affect the success of any supplier, contractor or business enterprise through obtaining a percentage, share or any material interest; and
- the public servant must not use his position to promote any product or service which does not form a part of the function of his employment contract, or reveal any information which he gains in the course of performing the duties of his position to attain certain goals or obtain any benefit or special consideration from any person.

23 Prohibitions

Does the law prohibit both the paying and receiving of a bribe?

As already mentioned in question 22, the Federal Penal Code and the Dubai Penal Code make punishable both the act of receiving a bribe as well as paying a bribe. The Federal Penal Code also provides for punishment of any individual who acts as an intermediary in the giving or receiving of the bribe. However, under the Federal Penal Code, the briber or the mediator is exempted from such punishments if the briber or the mediator informs the judicial or the administrative

authorities of the crime without delay, or if he confesses it before the case is communicated to the court. If confession is made after the case is communicated to court, it is considered an extenuating excuse.

24 Public officials

How does your law define a public official and does that definition include employees of state-owned or state-controlled companies?

Turning first to the Federal Penal Code, the term 'public official' is not defined but the term 'public service employees' is defined as follows:

- individuals who are entrusted with public authority and employees working in ministries and government departments;
- members of the armed forces;
- heads and members of legislative, advisory and municipal councils;
- any individual authorised by any of the public authorities to perform a job within the limits of the job assigned to him;
- chairmen of the boards, members, directors and all the staff of public bodies and institutions; and
- chairmen of the boards, members, directors and all the staff of public societies and public welfare institutions.

The Federal Penal Code further provides that, as entrusted with a public service, any individual who does not belong to any of the above categories and performs a job relating to public service by virtue of a mandate given to him by a public officer who is authorised to do so by the laws and regulations within the limits of the job assigned to him is also considered a public service employee or public official.

Turning to the Dubai Penal Code, the term 'public official' is not defined but the term 'persons employed with public service or public servant' is defined as any person holding any of the following offices or performing the duty thereof, whether as deputy or otherwise and whether with pay or without it:

- any office of any kind, the power of appointing a person to which or of removing from which is vested in the ruler or in any government department of the ruler or in any committee or council appointed by the ruler or by his order or under or in pursuance of any law;
- any office to which a person is appointed or nominated by law;
- any civil office, the power of appointing to which or removing from which is vested in any person or persons holding an office of any kind, included in either of the two prior bullet points;
- any office of any kind, the power of appointing a person to which or of removing from which is vested in the Trucial States Council or in any department or other organisation thereof; or
- any office of arbitrator or umpire in any proceeding or matter submitted to arbitration by order or with the sanction of any court, or in pursuance of any law, and the said term further includes:
 - any person employed to execute any process of a court;
 - all persons employed in any department of the Municipal Council; and
 - a person acting as a minister of religion of whatever denomination insofar as he perform functions in respect of the notification of intending marriage or in respect of solemnisation of marriage, or in respect of making or keeping of any register or certificate of marriage, birth, baptism, death, or burial, but not in any other respect.

The above definitions in the Federal Penal Code and the Dubai Penal Code would cover employees of state-owned or state-controlled companies.

25 Public official participation in commercial activities

Can a public official participate in commercial activities while serving as a public official?

The UAE Constitution

Article 62 of the UAE Constitution provides that during the term of office, the Prime Minister, his or her representatives or any federal minister may not exercise any professional, commercial or finance business, or engage in any commercial transaction with the federation's government or the UAE governments, or hold more than one official position in a UAE government.

The Federal Human Resources Law

The Federal Human Resources Law sets forth specific provisions concerning the personal conduct of federal government employees generally, and more specifically in relation to gifts, bribes and conflicts of interest.

Further, government employees are subject to prohibitions on performing any work or conducting any business other than that prescribed by official duties.

Article 66 of the Federal Human Resources Law provides a series of rules to guide employee conduct. Among these general rules are the following: to exercise professional functions in good faith; to adhere to the highest ethical standards; and not to exploit information obtained in the course of professional duties.

Article 70 of the Federal Human Resources Law provides that an employee shall not accept gifts unless they are symbolic advertising or promotional gifts and bear the name and emblem of the entity on behalf of whom the gift was presented. The article adds that each ministry shall define the organisational unit permitted to accept gifts on its behalf for distribution in accordance with the regulations and standards adopted by the ministry.

Article 70 goes on to state that an employee shall not distribute gifts received from outside the government except under the name of the ministry and gifts shall only be distributed through the organisational unit approved to do so by the ministry.

Article 71 of the Federal Human Resources Law provides that an employee shall in the course of performing his or her duties avoid any conflict of interest that may occur (or been seen to occur) between his or her interests and those of the government. The article provides that the employee must particularly avoid:

- participating in a formal decision or operation that may directly or indirectly affect the success of a contractor or supplier with whom the employee has a relationship;
- participating in any formal decision or operation that might directly or indirectly affect the ability of a supplier or contractor or a project to which the employee is a partner in any form to obtain a share or a percentage or a material benefit;
- participating in any decision that might lead to granting of benefits or any lands or permits to any of his relatives; and
- exploiting his career or divulging any information obtained by his work to achieve certain objectives or to obtain a service or special treatment from any party.

Article 72 of the Federal Human Resources Law prohibits a non-national employee of a federal government ministry from having any employment outside that ministry under any circumstances without the prior written consent of the ministry. Non-national employees are further prohibited from owning shares in companies other than public shareholding companies, without the prior written consent of ministry for which he or she works.

Federal Law No. 4 of 1998

Federal Law No. 4 of 1998, as amended by Federal Law No. 9 of 2008, governs a wide range of matters relating to the diplomatic and consular corps of the UAE. Included among these matters are conflict-of-interest rules.

Article 45 prohibits members of the federal diplomatic and consular corps from having any interest in any works or contracts related to the function of the Federal Ministry or office of which the diplomat or consul is a member. The said article also restricts such members from carrying out business in favour of third parties with or without salary even after official working hours, unless by permission of the minister.

Federal Law No. 6 of 2004

Federal Law No. 6 of 2004 (the Federal Armed Forces Law) concerns the service of officers in the armed forces. The law contains certain express provisions relating to the conduct of armed forces personnel with regard to conflicts of interest and gifts.

Article 47 of the Federal Armed Forces Law prohibits an officer from undertaking work for third parties under any circumstances without the permission of the chief of staff.

Article 48 of the Federal Armed Forces Law prohibits an officer from having any interest, whether personally or through an intermediary, in any works or contracts related to the armed forces with the exception to lease of property owned by him.

Federal Law No. 7 of 2004

Federal Law No. 7 concerns the service of enlisted personnel in the armed forces. This law prohibits the submission of bids on armed forces' tenders by members of the armed forces, the awarding of contracts to members of the armed forces and the purchasing of items from members of the armed forces.

Article 47 of this law prohibits an officer from accepting gifts of any sort whatsoever, whether directly or indirectly. No exceptions are specified.

The term 'armed forces' means the armed forces of the United Arab Emirates. The term 'officer' means any military rank holder under the provisions of the law.

Decision No. 12 of 1986

Decision No. 12 of 1986 of the deputy supreme commander of the armed forces prohibits a member of the armed forces from a direct or indirect interest in any works, agreements or contracts relating to the armed forces, with the exception of building tenancy contracts. The regulations also prohibit members of the armed forces from submitting bids on armed forces' tenders.

Ministerial Resolution No. 20 of 2000

Ministerial Resolution No. 20 of 2000, also known as the Federal Tenders Regulation, promulgated regulations restricting ministry employees from having an interest in contracts formed with the government departments of the UAE.

Article 11 of the Federal Tenders Regulation prohibits an employee of a UAE ministry from having a direct or indirect interest in contracting works or contracts pertaining to the ministry in which the employee is employed.

Dubai Law No. 6 of 1997

Dubai Law No. 6 concerns the rules and procedures regarding contracts formed with government departments of the emirate of Dubai.

Contracts to which the requirements of the law apply are: those contracts ensuing expenses on a department and which are entered into for the supply of materials, the execution of works, or the provision of various types of services; or those contracts which are entered into for the generation of revenue to the department and which are entered into for selling or leasing moveable or immovable assets, or any other contracts generating revenue.

Any person who enters into a contract with a government department must not be an employee of the department and must not be related to the first degree with the officials entrusted with the contracting.

'Department' means any government department including any government establishment, organisation or authority in the Dubai Emirate.

'Contract' means any written text of agreement together with all its appendices, as concluded between a department and any other public or private, natural or artificial person for the supply of materials, the execution of works, or the provision of services including materials purchasing orders and assignment orders issued for works and services on their acceptance.

Dubai Human Resources Law

In addition to the federal law, local government employees are subject to local counterparts of the Federal Human Resources Law. For example, employees of the Dubai government are governed by the provisions of the Dubai Human Resources Law. Generally, the bribery and conflict of interest provisions of local government human resources law differ more in scope (ie, they affect only local government employees rather than federal employees) than substance from the provisions of the Federal Human Resources Law.

26 Travel and entertainment

Describe any restrictions on providing domestic officials with gifts, travel expenses, meals or entertainment. Do the restrictions apply to both the providing and receiving of such benefits?

Given the position in the Federal Penal Code, the Dubai Penal Code, the Federal Human Resources Law and the Dubai Human Resources Law with respect to bribes, gifts and conflicts of interest, we do not believe that gifts, travel expenses, meals or entertainment can be offered to or received by domestic officials.

27 Gifts and gratuities

Are certain types of gifts and gratuities permissible under your domestic bribery laws and, if so, what types?

The Federal Human Resources Law and the Dubai Human Resources Law both prohibit any government employee from accepting any gifts unless they are symbolic advertising or promotional gifts and bear the name of the emblem of the entity presenting them. The ministry can, however, specify the organisational units which are allowed to accept such gifts and government employees are allowed to accept gifts made in the name of the concerned ministry. A public official is further prohibited from making or distributing gifts except under the name of the ministry and the organisational unit approved by the ministry.

28 Private commercial bribery

Does your country also prohibit private commercial bribery?

Yes. See article 236 of the Federal Penal Code discussed in question 22.

29 Penalties and enforcement

What are the sanctions for individuals and companies violating the domestic bribery rules?

Federal Penal Code

Article 234: An offence under this article is punishable by temporary imprisonment. Where the commission or the omission of the act is a legitimate duty of the public officer or person to whom a public service is assigned, the penalty shall be imprisonment for a period not exceeding 10 years. The provisions of the present article shall apply even if the intent of the said public officer or individual entrusted with a public service was in fact to refrain from committing or omitting the act.

Article 235: An offence under this article is punishable by imprisonment for a period not exceeding 10 years. If the commission or

omission is a duty which the public officer or individual to whom a public service is assigned is supposed to perform as part of his function, the penalty shall be confinement.

Article 236: An offence under this article is punishable by imprisonment for a period not exceeding five years.

Article 236 (repeated): An offence in connection with a board of directors or manager or employee under this article is punishable by imprisonment for a period not exceeding five years. The article further provides that the convict shall be punished by the same punishments if the claim, acceptance or attainment was in pursuance of the performance or stop of performance of the job or violating his duty obligations and was intending to have a reward even without any prior agreement.

Article 237: An offence under this article is punishable by confinement for a period of not more than five years. The article further provides that it is punishable by confinement for a period of not more than five years for any person who has acted as a mediator between the briber or the receiver in the offering, soliciting, accepting, receiving or promising of bribery.

Article 237 (repeated): An offence where any individual who claims or accepted for himself or for others any gift, privilege or benefit of any sort whatsoever for his interference or the use of his power before a public officer to do or stop doing a job or to violate his duty obligations, is punishable by confinement for a period of not less than one year and by fine of not less than 10,000 dirhams.

Article 238: This article provides that the offender shall, in all the cases mentioned in the preceding paragraphs, be punished with a fine equivalent to what he solicited or accepted, provided that it shall not be less than 1,000 dirhams. Furthermore, the donation accepted by or offered to the public officer or the individual to whom a public service is assigned shall be confiscated.

Article 239: This article provides that the briber or the mediator shall be exempted if he informs, without delay, the judicial or administrative authorities of the crime or if he confesses to it before the case is committed to court. If confession is made after the case is communicated to court, it shall be considered an attenuating excuse.

Dubai Penal Code

Article 118 provides for imprisonment for a term not exceeding three years, or a fine not exceeding 5,000 riyals, or both.

Article 119 provides for imprisonment for not more than three years or to a fine not exceeding 5,000 riyals, or to both.

Article 120 provides for imprisonment for a term not exceeding two years or to a fine not exceeding 3,000 riyals or to both.

Article 121 provides for imprisonment for a period not exceeding one year, or to a fine not exceeding 1,000 riyals, or to both.

Article 122 provides for imprisonment for a term not exceeding one year or to a fine not exceeding 1,000 riyals or to both.

(Reference to 'riyals' should be read as UAE dirhams.)

The Financial Fraud Law

Article 2 provides that if it is established through a final and conclusive judgment that the convicted person (debtor) collected illicit monies and failed to settle the same for whatever reason, the judge shall issue an order upon request by the (creditor) to imprison the convicted person for the following periods:

- imprisonment for five years if the illicit monies required to be settled are not less than 500,000 dirhams and not more than 1 million dirhams;
- imprisonment for 10 years if the illicit monies required to be settled are not less than 1 million dirhams and not more than 5 million dirhams.
- imprisonment for 15 years if the illicit monies required to be settled are not less than 5 million dirhams and not more than 10 million dirhams; or
- imprisonment for 20 years if the illicit monies required to be settled are more than 10 million dirhams.

Article 3 provides that if it is established through a final and conclusive judgment that the convicted person (debtor) collected public funds and failed to settle the same for whatever reason, the judge shall issue an order upon a request by the (creditor) to imprison the convicted person according to the periods and amounts set out in article 2 of the Financial Fraud Law.

Article 4 provides that the convicted person (debtor) sentenced under the provisions of this law shall be imprisoned away from those convicted in penal cases. The Prison Administration shall provide the proper communication facilities between the convicted person and others in order to settle the illicit monies or to reach a settlement with the creditors.

Article 5 provides that without prejudice to any other penalty to which the debtor is sentenced under any other law, the convicted person shall be released before the expiry of the imprisonment term if the amounts are settled or if a settlement is reached with the creditor.

Article 6 provides that if the debtor is a legal entity, the imprisonment order shall be issued against the person to whom the failure to pay back the debt is attributed.

30 Facilitating payments

Have the domestic bribery laws been enforced with respect to facilitating or 'grease' payments?

There are no known instances. However, see question 31.

31 Recent decisions and investigations

Identify and summarise recent landmark decisions and investigations involving domestic bribery laws, including any investigations or decisions involving foreign companies.

The past year has witnessed several cases involving allegations of corruption and bribery.

Perhaps the highest-profile case involved the apprehension of the former chief executive of Deyaar, one of Dubai's major property developers. After four years in custody, the chief executive was released on bail in 2012, following which he fled the country. He was later caught and returned to the UAE and thereafter convicted (along with other senior executives of Deyaar) on charges of embezzlement. Investigations are proceeding on additional embezzlement charges against the same individuals.

In March 2012, an Indian court asked a government intelligence agency to look into allegations of money-laundering against a Dubai-based Indian businessman. The businessman had earlier been hailed as a philanthropist for paying millions of dirhams in blood money to free several Indian convicts in UAE jails. Allegations later emerged that the funds were the proceeds of illegal activity.

In another reported matter, a municipality engineer in Dubai admitted to accepting bribes from shop owners in return for approvals of extension plans.

AFRIDI & ANGELL
LEGAL CONSULTANTS

Charles Laubach

claubach@afриди-angell.com

Emirates Towers Offices, Level 35
PO Box 9371
Dubai
United Arab Emirates

Tel: +971 4 330 3900
Fax: +971 4 330 3800
www.afриди-angell.com

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