

An aerial photograph of a city skyline, likely Dubai, featuring numerous skyscrapers and a river with several boats. The sun is low on the horizon, creating a strong lens flare and casting a warm, golden glow over the entire scene. The image is used as a background for the document cover.

SPECIAL PUBLICATION

Alsuwaidi & Company Legal Guides

Understanding the Fundamentals in the
UAE for Anti-Money Laundering and
Countering the Financing of Terrorism

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Preface

Are you familiar with the current landscape of the Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) regime in the UAE?

This guide has been written as an aid to provide users and potential users of legal services with an overview of the legal processes within the United Arab Emirates (UAE) which may be available in any given situation.

As the world becomes interconnected, there is a greater risk for money laundering and terrorist financing activities to proliferate. In the past years, UAE significantly improved its AML/CFT regime by strengthening its policies and crafting practical solutions for its effective implementation. This guide has been prepared to provide you an understanding of the various fundamental aspects and elements required to build an effective AML/KYC framework.

An aerial photograph of the Dubai skyline at sunset. The Burj Khalifa is the most prominent building, reaching towards the top of the frame. Other skyscrapers are visible in the background, and a complex highway interchange is in the foreground. The sky is a mix of orange, yellow, and blue.

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About the corporate and commercial practice

For more than twenty years, Alsuwaidi & Company's Corporate & Commercial practice has provided legal and advisory services to some of the United Arab Emirates' top corporates and institutions. This has helped us maintain our rank and reputation as one of the leading law firms in the United Arab Emirates.

At Alsuwaidi & Company, we provide a full spectrum of corporate and commercial services for businesses ranging from start-ups to SMEs to global corporations.

We provide specialist legal services by lawyers who are experts in their areas.

Our corporate and commercial services serve our clients' transactional, commercial and corporate needs with quality, efficiency and value.

We possess the skill and legal background ideal for performing these functions and work in unity to provide high-quality services at a lower cost.



Case studies

Example 1:

Situation: A law firm was engaged to help a client make asset purchases. Prior to completing Customer Due Diligence on the client, the client deposited the funds into the law firm's accounts but without any further instructions provided. Subsequently, the client communicated that the purchases will no longer push through and for the deposited money to be sent to a third-party account rather than returned to the origin client account.

Notable circumstances for investigation:

- The cancellation of the transaction after the funds have been deposited
- The client request to transfer the funds to a third part account instead of returned to same account

Potential actions to consider:

- Complete CDD procedures prior to allowing clients to deposit funds
- Establish the purpose of the transaction ensuring there are no money laundering risks

Example 2:

Situation: Law firms acting for the seller of property may receive funds from the buyer. If the proceeds are transferred directly without prior authorization, the transfer poses a money laundering risk for the law firm. In a particular situation, Law Firm A receives the purchase price entirely in cash, without prior notice from the purchaser located in an emerging market. Law Firm A raises the matter with its internal money laundering reporting officer and decides to make an STR to the FIU and temporarily hold on to the funds. Law Firm A also needs to consider whether it can inform its client without tipping off or prejudicing the investigation.



Notable circumstances for investigation:

- The purchase price was paid in cash and transferred direct to the law firm's account instead of the seller's account
- The purchaser is located in a high risk, emerging market jurisdiction and did not seek prior approval for the transfer.

Potential actions to consider:

- If funds are transferred directly into client account without prior notice, lawyers should not immediately return the facts until the facts are investigated further
- Consider any reporting obligations and seek guidance when in doubt.

Example 3:

Situation: A corporate client passed a law firm's CDD and provided documentation confirming who the ultimate beneficial owners. A previously unidentified individual starts to attend meetings and appears to make decisions on behalf of the client. The client is then ultimately controlled by the individual's relative who turns out to be the subject of an arrest warrant in another country.

Notable circumstances for investigation:

- Documented ultimate beneficial owner owns shares on behalf of another or takes instructions from another individual
- Client requesting an apparently unrelated individual to attend meetings without any explanation of the individual's involvement

Potential actions to consider:

- Understand client motives to establish whether the client is really the controlling party
- Confirm the only circumstances where certain jurisdictions would allow lawyers to take instructions from third parties.



Overview

The global financial system is now more integrated than ever. Cross-border financial transactions have become more seamless given the infrastructure, technology and systems in place to facilitate such movements. While this trend has benefited key players in the global economy, there is also a downside through greater risk for money laundering and terrorist financing activities to proliferate. Such activities undermine the financial stability, macroeconomic performance, development growth and even the political stability of a country. In the past years therefore, the UAE significantly improved its regime for anti-money laundering and countering the financing of terrorism (AML/CFT) by strengthening its policies and crafting practical solutions for its effective implementation.

In the Mutual Evaluation Report (April 2020) for UAE on anti-money laundering and counter-terrorist financing measures, it was observed that the strong feature of the UAE's financial intelligence framework is that authorities have access to a broad range of financial information sources to aid financial investigation. However, said financial intelligence is not fully utilized in response to other significant risks or in relation to the recovery of the crime's proceeds.

The 'Higher Committee Overseeing National Strategy on Anti-money Laundering and Countering the Financing of Terrorism' was formed headed by His Highness Sheikh Abdullah bin Zayed Al Nahyan, Minister of Foreign Affairs and International Cooperation to further promote UAE's interest in its commitment to enforcing its AML/CFT legislation. From the period 2020-2023, UAE's approach is to enhance its response system to money laundering crimes and combating the financing of terrorism.

Federal Decree Law No. 20/2008 on Facing Anti-money Laundering and Combating the Financing of Terrorism and Illegal Organisation (the "**UAE AML/CFT Law**") and its Cabinet Decision No. 10 of 2019 Concerning the Implementing Regulation of the UAE AML/CFT Law (the "**Implementing Regulation**") provide UAE's legal framework on money laundering and terrorist financing including the implementation of the procedures and measures to counter such crimes.

Definition of Money

Money laundering is the processing of the criminal proceeds to disguise their illegal origin. This is basically all profit generating crime that is a threat to the good functioning of a country's financial system. Thus, each country endeavors to develop stringent regulatory measures and controls in developing and implementing comprehensive anti-money laundering regimes.

Paragraph 1 of Article 2 of the **UAE AML/CFT Law** defines the crime of money laundering as:

“Any person, having the knowledge that the funds are the proceeds of a felony or a misdemeanour, and who wilfully commits any of the following acts:

- a. Transferring or moving proceeds or conducting any transaction with the aim of concealing or disguising their illegal source.
- b. Concealing or disguising the true nature, source or location of the proceeds as well as the method involving their disposition, movement, ownership or rights with respect to said proceeds.
- c. Acquiring, possessing or using proceeds upon receipt.
- d. Assisting the perpetrator of the predicate offense to escape punishment.”



Definition of Terrorism Financing and Financing of Illegal Organisation

The offences of terrorism financing are defined in Articles 29 and 30 of Federal Law No. 7/2014 which provide that:

“Article 29: Life imprisonment or temporary imprisonment for no less than 10 years shall be imposed on whoever:

1. Offers, collects, prepares, obtains or facilitates the obtainment of funds for the purpose of using same although aware that they will be used, in part or in whole, in the commission of a terrorist offence;
2. Offers funds to a terrorist organisation or person or collects, prepares, obtains or facilitates the obtainment of funds for such terrorist organisation or person, although aware of the their or purpose;
3. Acquires, takes, manages, invests, possess, transmits, transfers, deposits, keeps, uses or disposes of funds or carries out any commercial or financial bank transaction although aware that all or part of such funds are collected as a result of a terrorist offence, owned by a terrorist organisation or intended for the financing of a terrorist organisation, person or offence.”

“Article 30: Life imprisonment or temporary imprisonment for no less than 10 years shall be imposed on whoever is aware that the funds are, in whole or in part, collected as a result of a terrorist offence, owned by a terrorist organisation, illegal, owned by a terrorist person or intended for the financing of a terrorist organisation, person or offence, and commits any of the following acts:

1. Transfers, transmits, deposits, or replaces funds for the purpose of concealing or camouflaging their truth, origin or illegal purpose;
2. Conceals or camouflages the truth, origin, place, method of disposition, movement and ownership of the illegal funds or the rights related thereto;
3. Acquires, possesses, uses, manages, keeps, invests, replaces or deals in the funds for the purpose of concealing or camouflaging their truth, origin or illegal purpose.”

Supervisory Authority

The UAE AML/CFT Law identifies the Federal and local authorities which are entrusted by legislation to supervise financial institutions, designated non-financial businesses and professions (DNFBPs) and non-profit organisations or the competent authority in charge of approving the pursuit of an activity or a profession in case a supervisory authority is not assigned by legislations.

The Ministry of Economy is the supervisory authority entrusted with the supervision of the DNFBPs sector at the state level and commercial freezones with regard to AML/CFT. The categories that fall under these sectors are as follows:

1. Real estate brokers and agents;
2. Dealers in of precious metals and gemstones;
3. Independent accountant and auditors;
4. Corporate service providers;
5. Legal consultancy firms (without advocates or notaries).

Concerning lawyers (with advocates), notaries and independent legal professional, the Ministry of Justice issued the Lawyers' Guide on Anti-money Laundering and Combating the Financing of Terrorism and Financing Illegal Organisations. Said guide provides a comprehensive direction for lawyers and/or law firms in ensuring adherence to the UAE AML/CFT Law and Implementing Regulation, protecting lawyers from the use of their law firm in money laundering the terrorism financing crimes, identifying the core duties and obligations of lawyers as enshrined in the UAE AML/CFT Law, illustrating the reporting modalities and mechanism for reporting suspicious transaction and promoting the credibility of the UAE financial system.

Compliance with the UAE

Financial institutions and DNFBPs are mandated to do the following:

1. Identify the crime risks within its scope of work as well as continuously assess, document, and update such assessment based on the various risk factors established in the Implementing Regulation and maintain a risk identification and assessment analysis with its supporting data to be provided to the Supervisory Authority upon request;
2. Take the necessary due diligence measures and procedures and define their scope, taking into account the various risk factors and the results of the national risk assessment and retain the records received during the implementation of this process;
3. Refrain from opening or conducting any financial or commercial transaction under an anonymous or fictitious name or by pseudonym or number, and maintaining a relationship or providing any services to it;
4. Develop internal policies, controls and procedures approved by senior management to enable them to manage the risks identified and mitigate them, and to review and update them continuously, and apply this to all subsidiaries and affiliates in which they hold a majority stake;
5. Prompt application of the directives when issued by the competent authorities in the state for implementing the decisions issued by the UN Security Council under Chapter (7) of UN Convention for the Prohibition and Suppression of the Financing of Terrorism and Proliferation of weapons of mass destruction, and other related directives;
6. Maintain all records, documents, and data for all transactions, whether local or international, and make this information available to the competent authorities promptly upon request;
7. Any other obligations as stipulated in the Implementing Regulation and as directed by the Supervisory Authority from time to time.



Customer Due Diligence (CDD)

Having an effective CDD procedures can assist companies in identifying and assessing money laundering risks. Appropriate CDD measures should be employed by the financial institutions and DFNPs in compliance with the UAE AML/CFT laws in the following cases:

1. Before establishing business relationship;
2. Carrying out occasional transaction in favour of a customer for amounts equal to or exceeding AED 55,000 (either carried out in a single or multiple linked transactions);
3. Carrying out occasional transaction in the form of wire transfer for amounts equal to or exceeding AED 3,500;
4. There is suspicion of crime;
5. There are doubts about the veracity or adequacy or previously obtained customer's identification data;

In performing the due diligence, the following are key concepts that are important to understand:

A. Compliance Officer: A natural person who ensures that the establishment complies with the internal policies and external regulatory and legal requirements embodied in the UAE AML/CFT Law and Implementing Regulation. A compliance officer should have the knowledge, competency and necessary training to detect transaction relating to such crimes; receive, review and scrutinize data concerning suspicious transaction and/or maintain records of the transaction; review the internal company policies relating to AML/CFT and their consistency with the updated laws and regulations; prepare, execute and document ongoing training and development programs for the employees; and collaborate with the Supervisory Authority and Financial Intelligence Unit (FIU).

B. Know Your Client (KYC): This method is used to obtain more information of the client by verifying whether such client or owner is a natural or legal person, or with a legal arrangement before or during the establishment of the business relationship or before executing a transaction for a customer with whom there is no business relationship.

A publicly listed company or a company listed on a regulated stock exchange subject to disclosure requirements through any means that require adequate transparency requirements are exempted from further identification of the identity of the shareholder or beneficial owner.

C. Politically Exposed Persons (PEPs): The Implementing Regulation defines them as natural persons who are or have been entrusted with prominent public functions in the State or any other foreign country such as Heads of States or Governments, senior politicians, senior government officials, judicial or military officials, senior executive managers of state-owned corporations, and senior officials of political parties and persons who are, or have previously been, entrusted with the management of an international organization or any prominent function within such an organization and the definition also includes the following:

1. Direct family members (of the PEP, who are spouses, children, spouses of children, parents).
2. Associates known to be close to the PEP, which include:
 - a. Individuals having joint ownership rights in a legal person or arrangement or any other close business relationship with the PEP;
 - b. Individuals having individual ownership rights in a legal person or arrangement established in favor with the PEP.

In case the customer or beneficial is a PEP, the standard due diligence procedure is to:

1. Take reasonable measures to establish the source of fund and evaluate its legitimacy including making reasonable investigation into the professional and financial background of PEP;
2. Obtain senior management approval before establishing a business relationship or continuing an existing one;
3. Conduct ongoing monitoring over such relationship.

D. Enhanced Due Diligence (EDD): Any clients or customers that present higher money laundering should be subject to enhanced due diligence measures whereby additional information and documentation are required to be furnished or provided. Approval of the senior management is required before establishing any business relationship with a customer. When taking such EDD, the lawyer or compliance officer should pay particular attention to the reasonableness of the information obtained and evaluate any possible inconsistencies and/or unusual or suspicious activity or transaction.

E. Suspicious Transaction Reporting (STR): Suspicious transactions are those related to funds for which there are reasonable grounds to believe that they are earned from any misdemeanour or felony or related to the financing of terrorism or of illegal organisations, whether committed or attempted. In case there is reasonable ground to suspect a money laundering crime, the following shall be done:

1. Directly report STR to the FIU without any delay through the goAML system;
2. Respond to all additional information requested by the FIU.

Financial institutions and DNFBPs, their directors, officers, employees and authorised representatives must not disclose, directly or indirectly, to the client or customer or any other person that they reported; or they are about to report about suspicious transaction or information and data related to them; or that there is an investigation thereof, for the purpose alerting the client or customer. Lawyers attempt to persuade the customer not to act against the law is not considered as disclosure.



National and International Sanction

Financial Institutions DNFBPs should register in the automatic reporting system for sanctions lists to obtain automatically the updated list of targeted financial sanctions from the United Nations Security Council consolidated sanctions lists and domestic terrorism lists. The subscription can be made online through the website of the Committee for Goods and Material Subjected to Import and Export Control – see:

www.uaieec.gov.ae/en-us/united-nations-security-council-sanctions



Conclusion

Full implementation and compliance with the UAE AML/CFT and Implementing Regulation are certainly important in reinforcing the policy objective of UAE's commitment to anti-money laundering and combating terrorism financing. As the UAE has more than 40 different company registries, the risk of criminals being able to misuse "legal person" in the UAE remains high. With the recent implementation on the mandatory disclosure of Ultimate Beneficial Owners (UBO) under Cabinet Decision No. 58/2020, the criminal can no longer his/her identity either through a complex company structure and/or nominee or other legal arrangements.

We have seen numerous changes and developments in the AML/CFT regulatory structure and controls. Imposition of administrative penalties such as warnings, fines, suspension of business license, etc. showed that the Supervisory Authorities are serious about their call for compliance. Building an effective AML/CFT compliance policy and program to implement this effectively plays a critical role in the protection of organizations against money laundering and crimes on financing terrorism.

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