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Compliance and Sanctions of Anti-Money Laundering and Countering the Financing of Terrorism in the UAE

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As global financial flows get increased scrutiny this year, it is important to focus on the efforts being driven by the United Arab Emirates (UAE) to preserve and enhance its position as a global financial centre. The UAE has 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 their effective implementation. The recent updates to AML/CFT legislation in the UAE have meant that it is serious in upholding international standards and ensuring compliance to enhance the integrity of the global financial system.

The UAE authorities require all entities, except for government owned entities and those operating in the financial free zones, to disclose Ultimate Beneficial Owners (UBOs). Further, supervisory authorities mobilise covered institutions to register on the 'goAML' platform and employ the filing of suspicious activity reports ("SARs") to identify fraud schemes, and to subscribe to the automatic reporting system for sanctions lists. All these government measures directly contribute to these regulatory authorities' work to protect investors, consumers and other market stakeholders by ensuring markets operate fairly.

HOW DO AML REGULATIONS IMPACT ME/MY ORGANISATION?

Federal Decree Law No. 20/2018 on Facing Anti-Money Laundering and Combating the Financing of Terrorism and Illegal Organization and its implementing regulations as enshrined in Cabinet Decision No. 10/2019 (the "AML regulations") expanded coverage to entities aside from financial institutions, to cover those classified as Designated Non-Financial Businesses and Professions (DNFBPs) such as: (1) real estate brokers and agents; (2) dealers in precious metals and gemstones; (3) independent accountants and auditors; (4) corporate

service providers; and (5) legal consultancy firms, advocates and notaries.

Pursuant to the AML regulations, any person, having the knowledge that funds are the proceeds of a felony or a misdemeanour, who wilfully commits any of the following acts shall be considered a perpetrator of the crime of money laundering:

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

In the UAE, the Central Bank is primarily responsible for regulation of banks and financial institutions, while the 2 financial free zones (Abu Dhabi Global Market and Dubai International Financial Centre with Dubai Financial Services Authority) are responsible for regulating entities operating there. DNFBPs are regulated by multiple regulators, such as the Ministry of Economy and the Ministry of Justice.

Each of these supervisory authorities is committed to developing a strong regulatory framework and providing a safe environment for organisations, companies, and DNFBPs to work according to international best practices. They shall, within their respective areas of competence, conduct risk assessments, inspections and audits, issue circulars concerning the regulatory requirements, and impose administrative sanctions for noncompliance.



WHAT DO I NEED TO DO TO ENSURE I REMAIN COMPLIANT WITH AML REGULATIONS?

The AML regulations oblige firms to conduct a risk-based approach. Thus, UAE firms and companies should adopt policies and controls based on their risk-based assessments to guide them in the conduct of their due diligence process apt for customers by implementing a customer identification program to obtain all information.

The AML regulations oblige firms to conduct a risk-based approach.

In practice, developing an effective AML/CFT policy in an organisation that is commensurate to the organisation's contemplated risks is key to ensuring compliance. This includes having the following processes in place in your organisation:

- Appropriate Customer Due Diligence (CDD) policies and procedures to obtain more information about the client and their transactions in the following cases:
 - Before establishing a business relationship;
 - When carrying out occasional transactions in favour of a customer for amounts equal to or exceeding AED 55,000 (either carried out in a single or multiple linked transactions);
 - When carrying out occasional transactions in the form of a wire transfer for amounts equal to or exceeding AED 3,500;
 - If there is suspicion of crime; or
 - If there are doubts about the veracity or adequacy of a customer's previously obtained identification data.
- Appointment of a compliance officer, who has the knowledge and necessary training to detect transactions relating to such AML crimes, to receive, review and scrutinise data concerning suspicious transactions and/or maintain records of the transactions; review the internal company policies relating to AML/CFT and their consistency with updated laws and regulations; prepare, execute and document ongoing training and development programs for employees; and collaborate with the Supervisory Authority and Financial Intelligence Unit (FIU).
- Deployment of screening measures of customers or transactions that are considered high-risk. Enhanced due diligence measures are required in respect to politically exposed persons which include requirements for additional information and documentation with regard to establishing the source of funds and to evaluate the legitimacy thereof, including reasonable investigation into the professional and financial background of the PEP; obtaining senior management approval before establishing a business relationship or continuing an existing one; and conducting ongoing monitoring over such relationship.
- Development of indicators by which specific transactions can be identified and rise to the level of being "suspicious". 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 are related to the financing of terrorism or of illegal organisations, whether committed or attempted. If there is reasonable ground to suspect a money laundering crime:
 - directly transmit a Suspicious Transaction Report (STR) to the FIU, without any delay, through the "goAML" system (an online platform developed by the UN office on Drugs and Crime to report and curb organised crime with which all financial entities and DNFBPs have to register); and
 - respond to all requests for additional information 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 are about to report, anything regarding the suspicious transactions, or information and data related to them, or that there is an investigation thereof for the purpose of alerting the client or customer. Lawyers attempting to persuade a customer not to act against the law is not considered a disclosure.

WHAT ARE THE REPERCUSSIONS OF FAILING TO COMPLY?

The AML regulations outline the provisional measures and investigative procedures in curbing AML crime. The supervisory authorities, police (in the emirate level law enforcement), public prosecution (either at emirate level or federal) and competent courts are given the ability to investigate and prosecute offences. The Central Bank may order the freezing of funds which are suspected to be linked to an AML crime for an initial period of 7 working days that may further be extended by the public prosecutor or by a competent court. Any interested party shall have the right to contest the freezing or seizing order before the competent court of first instance. Any decision to dismiss the contest request is not subject to appeal. If the contest was rejected, it is not permissible to lodge a new contest except after a duration of 3 months from the date of rejecting the contest, unless a serious reason occurs before the period passes.

Even before the issuance of a verdict, the public prosecution or the competent court may dispose or sell the proceeds in public auction if it is believed that said proceeds will devalue over time. The amount of the sale shall be deposited in the State's treasury and, in the event of a final verdict or conviction, shall be safely kept until a bona fide third party makes legitimate claim for the same.

UAE also launched the Fawri Tick, a smart system that integrates details of financial crimes with various federal and local authorities concerned and facilitates communication and decision-making among them. It enables the authorities to take necessary action within a few hours. Fawri Tick helps the UAE's authorities to apply strict control measures to respond effectively to financial crimes relating to money laundering, financing of terrorism and other illegal activities.

There is no minimum monetary threshold for committing money laundering offenses and each offence is considered independently to the predicate offense. Further, there are no limitation periods governing offenses of money laundering, terrorism financing and financing of unlawful organisations.

Penalties for failure to comply with the AML regulations can fall into four broad categories: criminal, regulatory, employment and civil liability.

Penalties for failure to comply with the AML regulations can fall into four broad categories: criminal, regulatory, employment and civil liability. On the criminal side, a natural person can potentially face, amongst other things, a fine and prison sentence. A legal person can face a fine and other orders, such as publication of the judgment or order in relevant newspapers. In terms of regulatory penalties, there are consequences for the business and employees concerned. Their licence to operate can be revoked and the business can be shut down. Assets can also be confiscated. On the employment side, there are disciplinary actions which could see an individual or employee lose their (i) job, (ii) licence to practice, or (iii) other



employment entitlements. Finally, in terms of civil liability, injured parties can seek restitution or compensation in the civil courts.

A brief summary of the monetary fines under the AML regulations is as follows:

- Supervisory penalties – AED 50,000 to 5 million and bans on business activities, governance restrictions, arrests, and licence cancellation.
- Criminal penalties – AED 100,000 to 5 million and imprisonment for up to ten years.
- Corporate entity penalty – AED 500,000 to 50 million and confiscation of licence.
- Penalties for specific offences – AED 300,000–10 million and a temporary prison term for a) abuse of professional position; b) actions committed through a non-profit organisation; c) actions committed through an organised criminal group; or d) the criminal re-offending.
- Penalties for terrorism financing – between 300,000 and 10 million AED and life imprisonment or a temporary prison term of at least 10 years.

In December 2021, the Central Bank of the UAE (CBUAE) imposed a financial sanction of AED352,000 on the exchange house and AED 195 million to a UAE based bank for failing to achieve appropriate levels of compliance related to the AML/CFT regulations. The Ministry of Economy, on the other hand, announced in June 2021 the detection of 100 violations by DNFBP and the issuance of related fines amounting to a total value of AED 5 million. While in November 2019, over 200 law firms in the UAE faced suspension and cancellation of licences, including imposition of administrative fines ranging from AED 50,000 to AED 5 million.

The Ministry of Justice, in November 2020, issued ministerial resolutions on setting up specialised courts for money laundering crimes within the framework of the federal judiciary in

the courts of Sharjah, Ajman, Umm Al Quwain and Fujairah. Each court will have minor, major and appeals circuits for hearing AML crimes.

IS THE UAE A MEMBER OF SUPRANATIONAL ORGANISATIONS THAT ADDRESS MONEY LAUNDERING?

The UAE is a member of several multinational and international organisations, including the United Nations. Consequently, through the Cabinet Resolution No. 74 of 2020, the UAE is implementing the United Nations Security Council Resolutions on the suppression and combating of terrorism, terrorist financing, countering the financing of the proliferation of weapons of mass destruction and targeted financial sanctions regimes, as defined by the UN. Financial Institutions and DNFBPs should register with the automatic reporting system for sanctions lists to automatically obtain updated lists of targeted financial sanctions from the United Nations Security Council's consolidated sanctions lists and domestic terrorism lists. The subscription can be completed online through the website of the Committee for Goods and Material Subjected to Import and Export Control.

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