

# The updated UAE Federal Anti-Money Laundering Framework

The UAE has recently brought its anti-money laundering (AML) and combating terrorism financing (CTF) legal arrangements into closer alignment with the OECD's Financial Action Task Force's Recommendations (FATF Recommendations) by implementing significant changes and enhancements to the law.

There are two principal dimensions to the changes – one legislative and the other institutional.

## Legislative changes:

The UAE's first AML legislation, Federal Law No. 4 of 2002 concerning the Criminalization of Money Laundering (Old AML Law) has been amended by Federal Law No.9 of 2014 (AML Amendment Law), including changing its name from the law "concerning the Criminalisation of Money Laundering" to the law "concerning Combating Money Laundering and Terrorism Financing Crimes". This reflects the addition of CTF to the Old AML Law. A separate law to combat terrorism crimes, Federal Law No. 7 of 2014 (CTC Law), has been enacted. In this briefing, we refer to the Old AML Law, as amended by the AML Amendment Law, as the New AML Law.

## Institutional changes:

A comprehensive set of regulatory arrangements for AML/CTF in the UAE, set out in Cabinet Resolution No. 38 of 2014 concerning the Executive Regulation of Federal Law No.4 of 2002 Concerning Anti-Money Laundering and Combating Terrorism Financing (Cabinet Resolution), has been implemented. The Cabinet Resolution addresses (i) those to whom the framework applies, (ii) the powers of regulators and authorities responsible for overseeing the activities of those subject to AML regulatory requirements (in addition to the criminal law dimension of the New AML Law), and (iii) the minimum standards each regulator must impose on those subject to its jurisdiction.

**The New AML Law and the Cabinet Resolution came into force on 30 October 2014 and 5 November 2014 respectively.**

## What you need to know:

The UAE has brought out an updated and more comprehensive anti-money laundering framework which is now in force. The new law is applicable to all financial institutions and other regulated entities. We recommend affected firms review their internal governance systems to ensure they are aligned with the increased requirements or risk significant penalties.

This briefing provides a summary of the changes which fall into the two following categories:

- The widened scope of the UAE's money laundering (ML) and terrorism financing (TF) offences and higher penalties
- The UAE's new regulatory framework for the regulation of AML and CTF.

## CRIMINAL OFFENCES AND PENALTIES

### THE PRIMARY MONEY LAUNDERING OFFENCE

The primary money laundering offence is contained in Article 2 of the New AML Law: Committing or attempting to commit money laundering:

- *Whoever commits any of the following acts, despite being fully aware that such funds are derived from an offence or a misdemeanour, shall be deemed as a perpetrator of money laundering:*
  - *If converts, transfers, deposits, saves, invests, exchanges or manages any proceeds, with intent to conceal or disguise the illicit origin thereof.*
  - *If conceals or disguises the true nature, origin, location, way of disposition, movement, rights related to any proceeds or ownership thereof.*
  - *If acquires, possesses or uses such proceeds.*

The language of the New AML Law bears a superficially close resemblance to that used to describe the Primary Money Laundering Offence in the Old AML Law, but there are important differences which reflect the objective of achieving closer alignment with FATF Recommendations such as:

- (a) the meaning of "funds" which refers not only to money but any assets including assets in "digital or electronic form"
- (b) the offences to which money laundering relates (the so-called "predicate" offences"), are no longer identified by reference to a list, but by the catch-all: any "offence or a misdemeanour"
- (c) activities carried out with respect to assets now include: saving, investing, exchanging or managing
- (d) a conviction for the "predicate" offence is not a condition to proving the illicit source of funds.

### THE PENALTY STRUCTURE

The penalty structure has changed and the punishments are more severe:

**For Individuals** (New AML Law, Article 13(1))

- Jail: was up to seven years: **now up to ten years**, and/or

- Fine: was within a range of AED30,000 to AED300,000: **now the range is AED100,000 to AED500,000**
- Whistle-blowing incentive: where it is alleged that there may be multiple perpetrators of an AML or CTF offence, the court has discretion to exempt an informant from penalties, but the information must lead to the detection of other offenders. The TF offences and their penalties are contained in the CTC Law.

**For Institutions** (i.e. any entity) (New AML Law, Article 14)

Under the Old AML Law, penalties for Institutions were the same as for Individuals. Now the penalties have been increased substantially:

- Fine: within a range of AED300,000 to AED1 million for each offence
- **Forfeiture: Individuals and Institutions** (New AML Law, Article 5 bis under Article III)

The power of forfeiture, with respect to assets tainted by association with the Primary Money Laundering Offence under the New AML Law and/or tainted by association with any of the TF offences under the CTC, is now better addressed with the addition of tracing powers and the prospect of forfeiture of tainted assets that have been comingled with legitimate assets.

### SECONDARY MONEY LAUNDERING OFFENCES

#### 1. Failing to report a suspicious activity (the "Failure to Report Offence") (New AML Law, Article 15)

*The chairmen, directors, managers and employees of the Financial Institutions or Other Financial, Commercial and Economic Establishments who are aware of any offence, occurred within the establishments thereof; relating to money laundering, terrorism and terrorist organizations financing, yet refrain from the Financial Information Unit, shall be punished...*

The core elements constituting the Failure to Report Offence resemble the equivalent provision in the Old AML Law. However the meaning of "Financial Institutions or Other Financial, Commercial and Economic Establishments" has changed so as to bring those who fall within the scope of the Failure to Report Offence into closer alignment with FATF Recommendations.

The Failure to Report Offence requires an accused to be "aware of any offence..." but fail to report such offence. It would appear that for the *criminal* offence to be committed, mere *suspicion* is not enough. We would not recommend

any reliance on this apparent distinction since the regulatory requirements (breach of which result in administrative rather than criminal sanctions) employ the *suspicion* test, and not the higher actual knowledge test. Whether this distinction will be a relevant factor for a court in determining the guilt or innocence of an accused remains to be seen.

The Failure to Report Offence also now covers terrorism and the TF offences, as well as the Primary Money Laundering Offence under the New AML Law.

#### Penalties (New AML Law, Article 15)

- Jail: as before with no specified minimum or maximum term; and/or
- Fine: was within a range of AED10,000 to AED100,000, **now the range is AED50,000 to AED300,000.**

#### 2. "Tipping off" (Tipping Off Offence) (New AML Law, Article 16)

*Whoever informs any person of any proceedings under scrutiny relating to possible involvement in suspicious transactions, or that the competent authorities are investigating the same, shall be punished...*

The terms of the Tipping Off Offence remain broadly unchanged from the Old AML Law. However the offence can be committed by anyone, and not just those associated with institutions subject to AML regulation. Whilst a person outside a relevant institution is less likely than a person associated with an institution to be in a position to "tip off", such a scenario is not, by any means fanciful. In this respect, the UAE law goes further than the FATF Recommendations, which only recommend that the offence relates to those associated with a relevant institution.

Further there is now a definition of "**suspicious transactions**" (the New AML Law, Article 1). These are: *any transactions involving reasonable grounds for suspicion; in terms of being derived from an offence or misdemeanour, or related to terrorism or terrorist organisations financing; whether executed or planned to be executed.* This helps provide a yardstick by which organisations and individuals can assess whether, for example, a reporting obligation has been triggered.

As with the Failure to Report Offence, the Tipping Off Offence covers terrorism and terrorist financing offences.

#### Penalties (New AML Law, Article 16)

- Jail: as before, up to one year; and/or

- Fine: was within a range of AED5,000 to AED50,000, **now the range is AED10,000 to AED100,000**

#### 3. Failing to disclose or falsely making a report (the Failure to Disclosure Offence) (New AML Law, Article 18)

*Whoever intentionally refrains from disclosing or providing further information upon request, or deliberately conceals information necessary to be disclosed, or submits false information, in violation to the provisions of Article (6) hereof, shall be punished...*

Under the New AML Law, the disclosure requirements at points of exit/entry in the UAE are expanded to not only relate to cash, but now tradable financial instruments, gems and precious metals are also expressly covered under Article 6:

*In pursuance of the procedures of disclosure adopted by the Central Bank, whoever enters to or exits from the State shall disclose all currencies, tradable financial instruments, high value stones and precious metal therewith.*

#### 4. Breaching regulatory requirements offence?

Article 19 of the Old AML Law provided a 'sweep-up' penalty provision for breaches of the Old AML Law in respect of which no specific penalty had been provided. Violations under this provision are punishable with either an unspecified jail term or a fine in the range of AED10,000 to AED100,000.

The New AML Law did not expressly amend or remove Article 19, although three further sub-clauses were added including Article 12 bis which imposes an express obligation upon those institutions subject to the New AML Law to abide by the AML/CFT regulations applicable to them.

Therefore, on the face of it, this might mean that an insubstantive or mere breach of AML/CFT regulations could constitute the elements of a crime under Article 19.

We doubt that this was the intention of the legislators, and such a consequence cannot be drawn from following any FATF Recommendations. Whilst unlikely, we cannot say definitively that a prosecuting authority would never seek to invoke Article 19 in this way (e.g. in the case of a particularly egregious regulatory breach). We cannot be certain that a UAE Court would reject an argument that Article 19 was capable of being applied to mere regulatory breach.

## THE NEW UAE FEDERAL AML AND CTF INSTITUTIONAL ARRANGEMENTS

The Cabinet Resolution sets out the institutional arrangements that have been chosen for the regulation of AML and CFT in the UAE.

### 1. Which institutions are subject to specific AML/CTF regulation?

The overarching labels for those within the orbit of AML/CFT regulation have not changed, and remain "Financial Institutions and Other Financial Commercial and Economic Establishments".

However, the underlying definitions of these terms have been revised, and are to be applied in the context of the Cabinet Resolution so that regulatory requirements have the force of UAE law (as envisaged by the FATF Recommendations).

- (a) **Financial Institutions:** now include all financial institutions under the jurisdiction of the Central Bank and the Securities & Commodities Authority (SCA). Under the Old AML Law, reference was made only to the Central Bank.
- (b) **Other Financial Commercial and Economic Establishments:**
  - (i) *under the Old AML Law* – these were establishments licensed and supervised by agencies other than the Central Bank, such as insurance companies, stock exchanges and others
  - (ii) *under the New AML Law* – these are now defined as establishments licensed and supervised by departments other than the Central Bank and the SCA
  - (iii) *under the Cabinet Resolution* – a more detailed definition is provided, being establishments licensed and controlled by entities other than the Central Bank and of the [SCA], including non financial activities and professions such as real estate brokers, jewellery and precious metals and stone

*traders, lawyers, legal consultants, private and public notaries, and accountants.*

The Cabinet Resolution introduces categories of business broadly in line with those covered by the FATF list of designated non financial businesses and professions (DNFBPs), although the Cabinet Resolution list does not exactly mirror the FATF list of DNFBPs.

Whilst no reference is made to insurance companies (as was the case under the Old AML Law), these will be covered by both the definition in the New AML Law and the Cabinet Resolution.

### 2. Who makes and enforces the rules?

The Cabinet Resolution empowers "Control Authorities" to make and enforce compliance with AML/CFT rules to be applicable to those within their jurisdiction.

The relevant Control Authorities are:

- (a) The Central Bank and the SCA for financial institutions.
- (b) The Insurance Authority for insurance companies and brokers.
- (c) The Dubai Financial Services Authority (DFSA) for entities in the Dubai International Financial Centre that are regulated by the DFSA (whether financial services firms or DNFBPs) (we anticipate that the same principles would apply with respect to entities that fall to be regulated under the auspices of the governmental institutions that will administer the Abu Dhabi Global Market).
- (d) The Real Estate Regulatory Agency (RERA) and other relevant Emirate-level Land Departments for real estate brokers.
- (e) The Dubai Multi- Commodities Centre Authority (DMCCA) for Jewellery, precious metals and stone traders established in the Dubai Multi-Commodities Centre free zone, although the position is less clear for similar businesses located outside that free zone.
- (f) The UAE Ministry of Justice for lawyers, legal consultants, private and public notaries.
- (g) The UAE Ministry of Economy and Commerce and other relevant Emirate-level Auditing Regulators for accountants.

Some Control Authorities already have AML/CFT rules in place including the Central Bank, the SCA, the Insurance Authority, the Ministry of Justice, the DMCCA, and the DFSA.

### 3. What are the minimum AML/CFT standards to be applied and enforced?

For establishments already regulated by, for example, the Central Bank or the SCA, the minimum standards stipulated by the Cabinet Resolution do not necessarily represent a material increase in the weight of regulation already applicable to them. However, there may be differences between the Controlling Authority's current regulatory framework and that of the minimum standards set out in the Cabinet Resolution.

It should be anticipated that, in due course, relevant Controlling Authorities will review their frameworks to ensure alignment with the minimum standards set by the Cabinet Resolution. In the absence of any communication from a relevant Controlling Authority, it may be desirable for relevant establishments to inquire of their Controlling Regulator as to their plans, if any, with respect to the new framework, and the approach they are going to adopt with the establishments they supervise.

It may also be prudent to conduct a 'gap' analysis between the Controlling Authority's framework and the minimum standards set out in the Cabinet Resolution, and seek to comply with any 'gaps' found despite the fact that the Controlling Authority currently does not necessarily impose the equivalent obligation.

In any event, and particularly for those who are in doubt as to whether the new framework applies to them and the identity of their relevant Controlling Authority, we would recommend that specific legal advice is sought.

It is beyond the scope of this briefing to provide an outline of the minimum standards in any depth, but the following provides an indication of their scope:

- (a) Having proper systems to identify clients and their beneficial owners (and changes in details) (Cabinet Resolution, Article 4 (A)).
- (b) Specific minimum requirements for customer due diligence (CDD) applicable for individuals and corporate entities (including, for example, with respect to corporate entities, the requirement to identify and have details about those who own 5% or more of a business) (Cabinet Resolution, Article 4 (B)).

NOTE: the requirements of Article 4 (A) and (B) apply to members of an establishment's group located outside the UAE in the event that the AML/CFT regulatory arrangements in that location are not at least equivalent to the framework

applicable in the UAE. Whilst not free from doubt, we anticipate that this applies to branches and entities of which the UAE entity is to be regarded as the parent entity (Cabinet Resolution, Article 10).

- (c) Prohibition from: (i) dealing with 'fictitious banks' or (ii) opening bank accounts in false, pseudo or fictitious names or by numbers without names (Cabinet Resolution, Article 5 (1) & (2)).
- (d) Requirements to: (i) confirm source of wealth (i.e. not just source of funds) of politically exposed foreigners and their families and continually check on their transactions, and (ii) keep all CDD information up to date (Cabinet Resolution, Article 5 (3) & (4)).
- (e) Record keeping requirements with a five year minimum (Cabinet Resolution, Article 6).
- (f) The obligation to report suspicious transactions although please note the lower 'suspicion' threshold rather than the requirement of 'awareness' for the crime of Failure to Report in the new AML Law (Cabinet Resolution, Article 7).
- (g) The requirement to appoint a controller with respect to AML/CFT who is able to operate independently. The scope of the controller's responsibilities are set out, including: review of records, reporting suspicious transactions to the Financial Information Unit of the Central Bank (FIU), reviewing regulations and procedures, producing biannual reports, overseeing training, and liaising and cooperating with the FIU (Cabinet Resolution, Article 8).
- (h) The requirement for appropriate training programmes and workshops (Cabinet Resolution, Article 9).
- (i) Confidentiality requirements including the prohibition from 'tipping off' (Cabinet Resolution, Article 22).

The above represent minimum requirements only. Where a Controlling Authority imposes more stringent requirements (which in the case of the Central Bank, the SCA and the DFSA is likely to be the case), compliance with that Controlling Authority's rules is now required as a matter of Federal Law by virtue of Article 3 (A) of the Cabinet Resolution.

#### 4. What sanctions are Controlling Authorities empowered to impose for the breach of their rules?

Controlling Authorities may impose the following sanctions in respect of breaches by those they supervise of the relevant AML/CFT rules (New AML Law, Article 11(3)):

- (a) Warning
- (b) Fine in a range of AED50,000 to AED500,000
- (c) Prevention of the party in breach from working in the relevant sector for a specified time
- (d) Restriction on powers of the board, executive and supervisory directors, managers, dominant owners, including the power of appointment of a temporary observer
- (e) Suspension of activity for up to one month
- (f) Cancellation of license/authorisation

## THE COUNTER-TERRORISM LAW

The CTC Law, a new law on combating terrorism was promulgated with effect from 31 August 2014. The CTC Law introduces a considerable range of new (direct and indirect) offences in relation to terrorist activities, conspiracy to commit terrorist acts, the support and promotion of terrorism and terrorist organisations. The crimes introduced incur serious penalties, including life time imprisonment and death, and, importantly, the penalties relating to terrorism crimes set out in other laws in the UAE are expanded. Further to this law, the UAE has also released a list of organisations deemed as terrorists, and any involvement or suspected involvement with these organisations could result in punishment under the CTC Law. Some of the entities included on the list are known charities or other non-profit international organisations.

The new crimes enjoy a wide ambit and include any acts or abstinence from acts which could be construed as threatening the stability of the country, preventing the authorities from performing their duties or causing harm to social peace. In addition, any public announcements of hostility to the country or the government can be punished by imprisonment.

Further, the widened terrorist financing crimes relate to any acts connected to funds (including providing, collecting, preparing, maintaining, operating, investing, possessing, transferring, depositing, saving, or disposing of) which may be used for committing terrorist crimes or used for terrorist organisations (Article 29), as well as concealing or hiding the origins of funds (Article 30). These offences will apply 'despite of being aware' of the use of such funds, which diverges from other AML regulations in the UAE which allow a defence where appropriate risk assessments and procedures are put in place and/or where suspicious transactions are reported. It appears the CTC Law introduces a significant compliance regime, although it remains to be seen as to how it will be put into practice.

Whilst this briefing does not address the CTC Law in detail, the CTC Law should be read together with the AML/CTF Framework to ensure firms have in place adequate CTF policies and procedures to ensure compliance with the CTC Law.

The views expressed above are on the basis of the original Arabic text of the AML Law, the Cabinet Resolution and the CTC Law and of unofficial translations into English by external translation agencies. There are no official English translations. Should there be a conflict between the English text and the Arabic text; the UAE courts would treat the Arabic version as definitive.

## Key contacts



**James Abbott**  
Partner

T: +971 4 362 0608  
E: james.abbott  
@cliffordchance.com



**Tim Plews**  
Partner

T: +966 11481 9770  
E: tim.plews  
@cliffordchance.com



**Philip Jolowicz**  
Counsel

T: +971 4 362 0742  
E: philip.jolowicz  
@cliffordchance.com



**Christopher Young**  
Associate

T: +971 4 362 0616  
E: christopher.young  
@cliffordchance.com



**Ursula Gil**  
Compliance Manager, Middle East

T: +971 4 362 0702  
E: ursula.gil  
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

Clifford Chance, Building 6, Level 2, The Gate Precinct, Dubai International Financial Centre, P.O. Box 9380, Dubai, United Arab Emirates

© Clifford Chance 2015

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571. Registered office: 10 Upper Bank Street, London, E14 5JJ. We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications. Licensed by the DFSA.

[www.cliffordchance.com](http://www.cliffordchance.com)

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Jakarta\* ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

\*Linda Widyati & Partners in association with Clifford Chance.