

# The fight against fraud

Eversheds Sutherland writes about UAE's ongoing commitment to combatting financial crime and protecting its economy.

**T**here is no doubt that the UAE's focus on combatting financial crime has significantly increased over the last few years and that last year's mutual evaluation visit from the Financial Action Task Force ("FATF") had its own positive role to play in this development. FATF is an inter-governmental international body tasked with the objective of setting best practice standards and promoting effective controls and measures against money laundering, terrorist financing and other threats.

## FOCUS ON FINANCIAL CRIME

Since the implementation of effective legal measures is considered key to any country's efforts towards safeguarding the integrity of its financial system, it is no surprise that the UAE has implemented significant legislative changes over the last few years. These changes have also helped demonstrate to FATF that the UAE is taking tangible

steps to align itself with the international best practice standards that FATF seeks to promote. Such changes include:

- » The Federal Law of 2018 on Anti-Money Laundering (the "AML Law") which clarified predicate offences, increased penalties, increased investigative powers and channels and largely followed the FATF recommendations to ensure that the region is complying with international standards. The changes also imposed AML compliance obligations on Designated Non-Financial Professions and Businesses ("DNFPBs") (which include law firms, real estate brokers and accounting firms), brought electronic or digital assets within the scope of the AML regime and increased suspicious transaction reporting obligations.
- » The introduction of an independent Financial Crime Prevention Unit ("FCPU") at the Central Bank. The FCPU was created as a result of the AML Law with its main functions being to receive, analyse



and investigate suspicious transaction reports (“STRs”), engage in international cooperation, conduct outreach research and oversee AML/CTF systems and controls. The FCPU also recently announced the launch of a new AML reporting platform (“goAML”) designed, amongst other things, to detect trends in suspicious transactions and help gather, analyse and investigate STRs.

» Various developments within the UAE’s freezones. The Dubai International Financial Centre (“DIFC”) enacted the DIFC Law No. 6 of 2018 which imposed obligations on DNFBPs to register with the Dubai Financial Services Authority, appoint a designated Money Laundering Reporting Officer, identify their senior management and Ultimate Beneficial Owners and comply with enhanced obligations regarding Customer Due Diligence. The Abu Dhabi Global Market (“ADGM”) similarly enhanced its regulatory framework requiring DNFBPs to register with its regulator the Financial Services Regulatory Authority and to comply with their respective AML obligations. The ADGM has also implemented its own FCPU.

» The expansion of the UAE Penal Code in 2018, which broadened the scope of the Anti-Bribery and Corruption laws by including bribery involving foreign public officials and incorporating an extra territorial reach where the act has an effect in the UAE or involves UAE persons or residents.

Whilst there is additional investment needed to meet all these increasing standards, the benefits that follow are now much more widely acknowledged and accepted by the business community. The obvious key advantage is the eradication of money laundering and terrorist financing in the region which damages the economy, the wider society and impedes the growth of the country.

However, the benefits go much wider than that. Rigorous controls attract greater foreign investment, an outcome which is clearly aligned with the UAE’s Vision 2021, its roadmap to safeguarding the economy and diversifying away from oil. We have seen a number of regulatory and legislative initiatives designed to help achieve this goal and to give investors’ confidence that the right legislative structure exists to protect and support businesses in the region. These go beyond the realms of financial crime

but each have their own important role to play in supporting the UAE’s vision and economy:

» Most notably, the Federal Decree Law No. 19/2018 (the “Foreign Direct Investment Law”) will allow up to 50 – 100 per cent foreign ownership in UAE companies in certain sectors. This has only been possible in freezones to date. The Foreign Direct Investment Law has introduced a positive list which identifies various activities available to foreign investors. There are over 120 activities included on the positive list to date and with a committee responsible for its management, it will no doubt grow in size, with those demonstrating the use of innovation, modern technology and added value to the economy most likely to be added.

» Changes to immigration law will make it easier for those with specialist skills to stay in the country for longer and for investors to stay after retirement.

» Dispute resolution laws are increasingly becoming focused on expedited debt recovery. The increased use of Payment Orders to obtain swift judgments for undisputed debts is already proving popular and the ability to enforce foreign court judgments and arbitral awards before the enforcement judge in a matter of days is also considered a major step forward for creditors.

» Other changes include the publication of guidelines and best practice procedures by the Abu Dhabi Global Market Arbitration Centre which parties can elect to use, and changes to the corporate insolvency regime to include two new procedures, rehabilitation and administration, enabling the rescue of financially troubled businesses.

#### COMMITMENT TO INTERNATIONAL STANDARDS

The UAE is committed to achieving international best practice standards which gives a clear signal to international investors of the nation’s business viability and economic security. Its efforts to combat financial crime are just one part of this overall aspiration and determination to lead the way.

Such efforts are frequently recognized in global league tables, the recent publication of the Transparency Corruption and Perception Index (“TCPI”) being just one example. The TCPI ranks 180 countries



**Rigorous controls attract greater foreign investment, an outcome which is clearly aligned with the UAE’s Vision 2021, its roadmap to safeguarding the economy and diversifying away from oil.”**



and territories by their perceived levels of public sector corruption on a scale of 0-100 (100 being considered 'very clean'). The UAE scored 71 out of 100 and ranked 21 in the league table in the most recent 2019 results, a steady improvement from a score of 70 and 25 in the league table in 2018. Notably, the UAE continues to lead the way in the rankings among the MENA region and is recognised as the "best performer" compared to an average regional score of 39.

The DIFC also had recent cause to celebrate as it achieved position 8 in the Global Financial Centres Index. In just a short space of time, the DIFC has consistently climbed the ranks of this league table since it launched 12 years ago, now holding its top ten position alongside other renowned financial hubs such as New York, London and Singapore. Its recent position was awarded as a result of its strength in several areas including business environment, infrastructure and reputation.

The UAE has also been ranked 16th in the Ease of Doing Business Index 2020. In a league table of 190 countries, this achievement showcases the UAE's position as one of the top-ranking countries, leading the way in the Middle East and Arab region.

The 8th session on the Conference of the States Parties to the United Nations Convention against Corruption held in Abu Dhabi in December 2019 concluded with the President of the State Audit Institute presenting the "Abu Dhabi Declaration". This included a reaffirmation of cooperation with international organisations and making use of relevant information to prevent and combat corruption.

#### WHAT NEXT?

FATF feedback will be instrumental for future enhancements to the AML/CTF framework, which is expected in April this year. In the February plenary, FATF commended the measures implemented by the UAE to date but also gave some early indications of recommendations to follow. These include enhancing money laundering investigations and prosecutions and international cooperation and increasing focus on preventing abuse of legal persons / arrangements and overall supervision.

FATF is also communicating its expectations of the AML/CTF requirements in the cryptoassets industry in line with global efforts. Last year FATF set out extensive guidelines in this area, including

collection of KYC information for all entities dealing with cryptocurrency transactions. G20 countries were recently urged to implement the FATF standards which could mean huge changes to the industry if translated into law and regulation by G20 countries and FATF members.

Meanwhile, UAE regulators continue their endeavors to strike the right balance between Fintech innovation and regulation. We have seen the introduction of new accelerator and sandbox programmes along with a raft of increased regulation across the region, with the DIFC introducing its Innovation Testing Licence for Fintech ideas, the ADGM becoming the first regulator in the Middle East to implement cryptoasset regulations and the SCA introducing draft regulations to regulate cryptoasset activities outside of the freezones. No doubt the FATF guidelines will have its part to play in the UAE's ongoing efforts to foster an environment that manages risk without impeding innovation.

It is clear that the evolving legal and regulatory framework needed to tackle financial crime and safeguard the economy highlights the importance of embedding a culture of compliance at all levels. It is increasingly important for firms to develop a robust risk management framework, implement compliant systems and controls by ensuring adequate training, tone from the top, monitoring, escalation and reporting in line with international standards. As much as the environment changes, there is no substitute for these well-established principles of good risk management conduct. 📈



Text by:

**1. REBECCA COPLEY**, partner and head of corporate crime and investigations/financial services disputes and investigations & head of litigation and dispute management – Middle East, Eversheds Sutherland

**2. SHIBANI KAPUR**, senior associate, Eversheds Sutherland

**3. GILLIAN FLANNIGHAN**, associate, Eversheds Sutherland