

Kuwait: A new stance on Financial Crime

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Two major sources of concern for governments and financial institutions worldwide are money laundering and terrorism financing transactions. In order to curb the instances and effects of such transactions, the international financial community has made significant efforts to introduce policies aimed at setting certain criteria and recommendations related to raising awareness of money laundering and terrorism financing transactions.

Such policies also aim to reduce the damaging effects money laundering and terrorism financing have on a global, local, economic, social and political level.

New and improved governing principles and standards to protect local financial institutions

Although not a widespread problem in Kuwait, the Government has taken steps to address the aforementioned issues by passing Law No. 106 of 2013 Regarding the Combating of Money Laundering and Financing of Terrorism ('New Law'). The New Law supersedes the previous Law No. 35 of 2002 ('Old Law') and establishes new and improved governing principles and standards to protect local financial institutions from being used to launder money and finance terrorism. There were numerous issues with the Old Law, which were highlighted by the Middle East & North Africa Financial Action Task Force (MENAFATF) in their 2011 Mutual Evaluation of the 2002 Kuwaiti Anti Money Laundering Law.

The most pressing issue for the MENAFATF and the international community was that the Old Law failed to criminalise terrorist financing. Further, there were no measures in place that enabled the identification and freezing of terrorist assets. This was of great concern, especially when taking into consideration the plans of the Kuwaiti Government to create an international financial centre, along with the expected growth in their domestic economy as global economic recovery boosts the demand for oil. Adhering to the advice given by MENAFATF, terrorist financing has been criminalised under Article 3 of the New Law, which states:

A person who can be said to have committed a terrorist financing crime is any person that has directly or indirectly, willingly and illicitly, collected funds with the intention to use these funds for committing a terrorist act.

Measures were also put in place that enable the freezing of terrorist assets, implemented under Article 22 of the New Law. Article 22 gives power to the public prosecutor or his authorised public lawyers to freeze or confiscate funds or instruments, if sufficient evidence exists to suggest that they were obtained or used with regards money laundering or terrorism financing.

Additionally, The Central Bank of Kuwait has supplemented the New Law by issuing circulars and instructions to local financial institutions, instructing them on measures that should be taken to ensure that customer due diligence practices are adhered to, in order to give the new law the best possible chance of succeeding.

Due diligence was something that MENAFATF put great emphasis on in their analysis of the Old Law, as this was not provided for. Customer due diligence measures, if implemented correctly, act as a valuable whistle-blowing mechanism by which the relevant authorities are notified by the banks of transactions or persons they deem suspicious. The new due diligence measures are provided for under Article 5 of the New Law and detail the specific due diligence measures that should be undertaken by all banks and financial institutions in Kuwait. Emphasis is placed on

making sure that banks have suitable safeguards in place to ensure no accounts are opened for the purpose of terrorist financing or money laundering and that staff are trained to identify suspicious behaviour and transactions.

The Kuwaiti Government also implemented a fully independent Financial Intelligence Unit ('FIU'). The creation of the FIU was sanctioned under Article 16 of the New Law. The FIU will serve as the main investigative body and, as stipulated under Article 16, will be responsible for receiving, applying for, analysing and transferring information related to what is suspected of being the proceeds of money laundering or monies used to finance terrorism, either in part or in whole.

The introduction of the FIU demonstrates the Kuwaiti Government's level of commitment to combating both terrorist financing and money laundering and sends a strong message to the criminal and terrorist organizations that prey on the relatively new and inexperienced banking systems in the Middle East.

With new laws come new sanctions and penalties, something the New Law has covered quite thoroughly. Article 28 refers to the punishment for a breach of Article 2 and provides for a prison sentence not exceeding ten years and a financial penalty not exceeding the funds laundered in breach of Article 2. The punishment for breach of Article 3 (financing of terrorism) is not dissimilar and is provided for by Article 29. Article 29 states that any person found guilty of financing terrorism shall be subject to a prison sentence not exceeding 15 years and a fine of no less than the funds subject to the crime and no more than double their value. Both these penalties mark a stricter stance on money laundering and the financing of terrorism for Kuwait, something which the Kuwait Government recognised was an issue that needed to be addressed.

It is relevant to note that one of the biggest barriers to combating money laundering and the financing of terrorism in the Middle East are Hawaladars or 'Hawala' agents. These agents provide a no-questions-asked cross border cash courier service. Whilst the UAE have implemented a system of registration, whereby they require all Hawala agents to register themselves with the relevant authority in order to better regulate the service, Kuwait has gone one step further by including restrictive provisions covering such issues in the New Law. For example, as per Article 20 of the New Law, any person wishing to leave the State of Kuwait with currency or other negotiable financial instruments, whether they are in their possession for themselves or on behalf of another, is required to disclose to the Kuwaiti Customs Authority the value of these currencies or negotiable financial instruments. The FIU may also review this information whenever required.

A positive step

Under the New Law there have been implemented a number of key, important provisions that were worryingly absent from the law it superseded. As the law is still new, an evaluation of its effectiveness cannot yet be given. However, it is important to note that the recommendations made by MENAFATF have been acknowledged and taken on board by the Kuwaiti Government and thus included in the New Law. We will continue to monitor the application of the New Law and to report any related developments.

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