

UAE Enhances Battle Against Money Laundering and the Financing of Terrorism

Khalid Al Hamrani - Partner, Head of Financial Crime - White Collar Crime & Investigations / Family Business

k.hamrani@tamimi.com - Dubai International Financial Centre

Omar Khattab

o.khattab@tamimi.com

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The draft law amends the name of the Former AML Law to become “Federal Law No. 4 of 2002 on Confrontation of Money Laundering Offences and Combating the Financing of Terrorism” (“New AML Law”).

The draft law is a response to the recent recommendations of the Financial Action Task Force (“FATF”) issued in February 2012. The FATF is an inter-governmental body established in 1989. It aims to develop policies to combat money laundering and terrorism financing. Such policies set standards for implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The primary policies issued by the FATF are the Forty Recommendations on money laundering and the 9 Special Recommendations on Terrorism Financing.

The FATF issued the initial Forty Recommendations in 1990, but they were completely revised thereafter. In February 2012, the FATF codified its recommendations and Interpretive Notes into one document (“FATF Recommendations 2012”). The FATF Recommendations 2012 include new rules on weapons of mass destruction, corruption and wire transfers.

The New AML Law aims to incorporate the FATF Recommendations 2012 into the UAE legal system. It replaces 17 of the 23 substantive articles of the Former AML Law and adds three new provisions. In this article, we will highlight the key provisions of the New AML Law and the main differences from the Former AML Law.

FEDERAL LAW NO. 4 OF 2002 ON CONFRONTATION OF MONEY LAUNDERING OFFENCES AND COMBATING THE FINANCING OF TERRORISM

The Former AML Law defined Property for the purposes of this law as being assets of every kind and the legal documents evidencing title of such assets or any rights related thereto. However, the New AML Law explains that the assets mentioned in this definition may include UAE currency and foreign currencies, while legal documents may include electronic or digital format.

The New AML Law provides a definition of Suspicious Transactions. It states that Suspicious Transactions are transactions, or attempted transactions, that relate to property in respect of which there are reasonable grounds for suspecting that such property is the proceeds of any felony or misdemeanor, or is related to the Financing of Terrorism or the Financing of Unlawful Organizations.

The main distinction between both legislations is the fact that the Former AML Law confined the crime of Money Laundering to dealings with the proceeds of certain crimes specified in that law (for example:

drugs, bribery or fraud), while the New AML Law expands the scope of Money Laundering to include dealing in the proceeds of any felony or misdemeanor with no restrictions.

The New AML Law explicitly mentions that Money Laundering offences are stand-alone offences and that the punishment of the offender for committing the predicate crime shall not preclude punishing him once again for the Money Laundering offence. Further, the New AML Law states that a conviction for the predicate offence is not required for evidencing the unlawful source of the proceeds being laundered.

WHISTLE-BLOWING

Although the Former AML Law does not address whistle-blowing and does not give protection to whistle-blowers (as witnesses for example), the New AML Law requires the relevant authorities to provide protection for witnesses or the accused in offences of Money Laundering, Financing of Terrorism and/or Financing of Unlawful Organizations. The Attorney General or the competent court shall request such protection whenever it is required or in case of fear for the lives of the witness or accused.

AIRPORT DECLARATIONS

The Former AML Law stipulates that the UAE Central Bank sets the maximum amount of cash that may be brought into the State without the need for declaration. The person in possession of any amount exceeding the limit set by the UAE Central Bank shall be obligated to declare that amount on arrival.

However, the New AML Law states that persons in possession of any currencies, bearer negotiable financial instruments, precious metals or high value stones shall declare their possessions at UAE Airports, as per the Declaration Regime to be set out by the Central Bank. The law requires such declaration to be made whether the person is entering or leaving the UAE.

ANTI-MONEY LAUNDERING AND SUSPICIOUS CASES UNIT (“AMLSCU”)

The Former AML Law established a Financial Intelligence Unit (“FIU”) within the UAE Central Bank, which is known as the AMLSCU. The New AML Law maintains the FIU but slightly amends its competencies.

The New AML Law requires the FIU to create and maintain a database of the information available at the Unit. Such information shall be made available for law enforcement authorities for the purpose of facilitating their investigations. The law allows the said unit to exchange information on Suspicious Transactions with their counterparts in other countries, pursuant to the international conventions to which the UAE is party, or on the basis of reciprocity. However, it limits the usage of the exchanged information to purposes of Combating Money Laundering, Terrorism Financing or the Financing of Unlawful Organizations.

The New AML Law indicates that the FIU studies reports of Suspicious Transactions. After doing so, it may refer the matter to the Public Prosecution to taking any measures deemed necessary. On the other hand, the Public Prosecution may seek the opinion of the FIU on reports brought directly to the Public Prosecution that relate to Money Laundering, Financing of Terrorism or Financing of Unlawful Organizations.

The FIU may request information on reports of Suspicious Transactions from all Financial Institutions. It may also request such information from non-profit organizations under certain circumstances.

EXPANSION OF THE ROLE OF THE UAE CENTRAL BANK

The New AML Law expands the supervisory and regulatory role of the UAE Central Bank, requiring it to oversee and monitor the operations of Financial Institutions and to ensure that they comply with and properly apply the law and its regulations.

The UAE Central Bank may issue resolutions to define rules that Financial Institutions must follow regarding Anti-Money Laundering and Combating the Financing of Terrorism and the Financing of Unlawful

Organizations and to report any suspicious transactions. It may also regulations relating to the administrative penalties imposed on Financial Institutions for violating the law.

PUNISHMENTS

In general, all the punishments set out in the New AML Law are harsher than under the Former AML Law. A highlight of some of those punishments is as follows:

- Any person who commits, or attempts to commit, a Money Laundering offence shall be punished by imprisonment of up to ten years and / or a fine of between AED 100,000 and AED 500,000. In cases of multiple perpetrators, the Court, subject to its discretion, may exempt a perpetrator from the imprisonment penalty if he takes the initiative and reports the crime to the competent authorities prior to the knowledge of such authorities and if his actions lead to the arrest of the other perpetrators or seizure of the laundered monies.
- Any establishment that commits an offence of Money Laundering, Financing of Terrorism or Financing of Unlawful Organizations, shall be punished by a fine of between AED 300,000 and AED 1,000,000.
- Failure to report a Suspicious Transaction shall be punishable by imprisonment and / or a fine of between AED 50,000 and AED 300,000.
- Tipping off a person being investigated regarding a Suspicious Transaction shall be punishable by imprisonment of up to one year and / or a fine of between AED 10,000 and AED 100,000.
- Violation of the requirements of Airport Declarations shall be punishable by imprisonment and / or a fine.
- Unlike the Former AML Law, the New AML Law regulates the confiscation of the proceeds of Money Laundering, the Financing of Terrorism or the Financing of Unlawful Organizations.

CONCLUSION

The New AML Law has harsher punishments with the aim of combating Money Laundering. Also, the law addresses the Financing of Terrorism and the Financing of Unlawful Organizations, which constitutes a step forward for the UAE as Money Laundering is often closely linked to the Financing of Terrorism or Unlawful Organizations.

The initiative of the UAE legislator to pass the New AML Law indicates that the UAE shall not tolerate financial crimes and emphasizes that the UAE does not want to be seen as a safe haven for perpetrators of such crimes. We believe that the New AML Law will have a positive impact on the UAE and the integrity of its financial system.

For any queries relating to Money Laundering and Financial Crime in the Middle East, contact the Regional Head of Al Tamimi's [Financial Crime Department](#): Khalid Al Hamrani – k.hamrani@tamimi.com