

Financial Fraud in Dubai, UAE: Dubai Laws to Assist Victims of Financial Fraud

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Whilst the State can seek to bring the perpetrators to justice, for the victims, punishment of those convicted of crime is only one element of their quest for justice. The other element is a desire to be restored to the position they were in prior to the commission of the offence. The path to restitution is a long and often difficult one. The perpetrators of financial crime, especially those who have sufficient experience of the financial sector will have taken safeguards to not only avoid detection, but in the event of detection to prevent the State from discovering where the criminal proceeds have been hidden.

UAE allows financial fraud victims to seek compensation

Unlike the common law jurisdictions such as the UK, civil law jurisdictions including the UAE allow the victims of crime to participate directly in criminal proceedings and seek compensation for the loss or damage they have suffered. Article 22 of the Federal Law No.35 of 1992 as amended ("Criminal Procedures Code"), states that *"those how have suffered a direct loss as a consequence of the crime are entitled to file a civil claim against the Accused, during the evidence gathering, the investigation stages, or at any stage before the criminal court prior to the completion of closing submissions..."*

In theory, the criminal court order the convicted offender to fully compensate the victim for the loss and damages caused by the accused. In practice, the criminal courts on conviction and sentence transfers the civil claim to the civil courts in accordance with article 26 of the Criminal Procedures Code. However, the fact of the conviction allows the civil court to assume liability and the only remaining issue for the civil court to decide is the quantum of damages. This task of the civil court is often a formality and the civil proceedings are often much less time consuming and costly. More often than not the criminal court would have also decided the value of the offence and the loss caused to the victim, therefore the primary task for the civil courts will be an endorsement judgment of that amount and enforcement.

Challenges faced by victims of financial fraud in the UAE

The biggest challenge facing the victims of financial crimes such as government entities and companies that suffer loss as a result of fraud, is not obtaining a conviction. The [Prosecution departments across the UAE](#) have significant and world class capability of brining the offenders to justice. The challenge for the victims is often in enforcement of their judgments and obtaining restitution.

By its very nature financial crime is committed by those who seek to unjustly enrich themselves. Those

who do commit fraud rarely decide to voluntarily return the proceeds of their crime. In the vast majority of cases the proceeds of any fraud would have long disappeared by the time the crime is discovered. Therefore by the time of enforcement, even if the offender had not spent the proceeds, he would have ensured that they have been hidden through a maze of companies and overseas jurisdictions.

The challenge of asset-tracing and restitution is one from which every Legal system suffers to a greater or lesser extent including the UAE. What made matters more challenging in the UAE was that up to 2009, with the exception of crimes involving public funds victims of fraud seeking restitution had no option other than to resort to the Civil Procedures Code. That law had its own limitation which is illustrated below.

As is often the case, the only real option facing a bank or corporation that successfully obtains a conviction and civil judgment against one of its expatriate employees for embezzling millions of dollars to an unknown foreign jurisdiction with no intention of paying it back, was to seek to imprison him under the enforcement procedures set out in Articles 324 to 330 of the Civil Procedures Code. Therefore, the stark choice for them was either to imprison the fraudster for a further period of time under Article 324, or to ban him from travel under Article 329. Both those provisions have their shortcomings. Imprisonment under Article 324 is limited to a maximum of 3 years. Even then, if the convicted fraudster is resident in the UAE, he cannot be imprisoned for more than 6 months at any given time, and must be released for a period of 90 days before commencing his second period of 6 months. In case of a fraudster who has the benefit of few million dollars kept in a foreign jurisdiction, 6 months at any given time in prisons whose conditions are often far better than their homes in their countries of origin is not a sufficient deterrent to make them cooperate by returning the stolen funds. Nor is a travel ban in circumstances where the fraudsters have ready access to funds to survive for a sufficient period likely to result in the return of the proceeds of crime, before the civil claimant gives up hope and the convicted criminal's pursuit.

In any fight against crime the biggest weapon is the deterrent effect of sentences following conviction, and the certain knowledge that crime does not pay. The former is primarily a concern of the law enforcement agencies, and the courts, who will take action and impose penalties commensurate to the seriousness of the offence and in conformity with the prevailing circumstances of the society and culture. Therefore, what may seem to be lenient sentence from an Anglo Saxon point of view may not be so from a Continental European point of view and so on. The latter issue of ensuring that crime does not pay is ultimately the concern of the victim of crime. Whilst punishment is an important factor to a victim of a fraud, their ultimate aim in the attainment of justice is the restitution of what was taken from them. With the limitation of the enforcement procedures under the Civil Procedures Code in mind, His Highness the Ruler of Dubai issued Dubai Law No. 37 of 2009 to deter those who commit frauds from refusing to return proceeds of their crimes. In a positive departure from previous criminal legislation that differentiated between public and private funds, the restitution provisions of this law abolished the distinctions, and provides for real deterrent for those who commit fraud and refuse to return the proceeds of their crimes.

In provisions very similar to those found in the UK, the law imposes heavy periods of imprisonment for those who are convicted of offences from which they receive financial gain, yet refuse to pay back the proceeds of their crimes. However, Law No. 37 is far simpler than the UK provisions, and can be considered superior to them in that it has the advantage of allowing those victims directly affected by fraud to seek restitution of the proceeds of crime. Unlike the UK, where the legislation is concerned primarily with confiscation of the proceeds of crime to the benefit of the State with no proceeds being given to the victim who actually suffered the loss, the UAE Federal Laws and Dubai Law No. 37 are primarily concerned with restorative justice to the real victims of fraud. It is scant consolation for any victim of fraud that a justice system of a State that uses very coercive methods to force fraudsters into giving up their ill-gotten gains, does so for the benefit of the State which suffered no loss and not the party that has had its money stolen.

With the passing of Law No. 37 in Dubai, for the first time the principle of restorative justice was transformed from a purely civil action, and connects it directly to the criminal justice system. It represents a very progressive and logical continuation to Article 22 of the Criminal Procedures Code, and it is compatible with all the international standards of human rights. Law No. 37 does not transform what was a

criminal liability into a civil debt. Therefore, in cases where the offender is facing extradition to the UAE from those countries which have signed and ratified the International Covenant on Civil and Political Rights, the wanted person cannot challenge the extradition on the basis of Article 11 of the Covenant which prohibits the imprisonment of a civil debtor. The law makes it clear that imprisonment is on the basis of a failure to comply with an obligation to return the proceeds of crime, which has time and again been found not to be a breach of human rights.

Obtaining illegitimate funds: Punishment for financial frauds in UAE

Law No. 37 relates directly to illegitimate funds, and public funds, and gives clear definitions of what are illegitimate funds, and what are public funds in Article 1.

Article 2 then expressly states that in the event that a final judgment is rendered proving that a person has obtained illegitimate funds as defined in Article 1, and fails to pay the money back for any reason, the enforcement Judge must, upon the request of the debtor (i.e. civil claimant/victim), order the imprisonment of the debtor (fraudster) for:

- A period of five years in the event that the illegitimate funds obtained are not less than AED500,000 and not more than AED1,000,000.
- A period of 10 years in the event that the illegitimate funds obtained are more than AED1,000,000 and not more than AED5,000,000.
- A period of 15 years in the event that the illegitimate funds obtained are more than AED5,000,000 and not more than AED10,000,000.
- A period of 20 years in the event that the illegitimate funds obtained exceed AED10,000,000.

In a progressive step which removes the distinction between public and private entities that have been defrauded, the Law in Article 3 then specifically states that the periods of imprisonment applicable in Article 2 are also applicable if the funds are deemed to be public funds.

Article 4 makes it clear that the sentence for failure to pay back the money stolen is in addition to the sentence imposed for the commission of the offence which had given rise to the illegitimate funds.

In most cases of fraud, a very big calculus to the fraudster is the potential gain against the risk of punishment in the event of apprehension. Law No. 37, in the Emirate of Dubai at least, is a very big deterrent in the fight against financial crime. A fraudster is less likely to embark on his criminality if he knows from the outset that in the event of conviction he faces the choice of up to 20 years in prison or the return of the money stolen.