

# A Regional Roadmap of Financial Crime Issues

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As a region, the Middle East witnesses constant development across a spectrum of financial crime issues. Over the past six months, each country has showcased its own approach to addressing the specific challenges faced in its jurisdiction. This article considers some of the more prominent campaigns.

## **Egypt – UNODC Anti-Corruption Campaign**

During Ramadan this year, Egyptian national television was flooded with anti-corruption adverts as part of a targeted media campaign. Building on the success of last year's initiative, the advert aimed to encourage public participation in Egypt's fight against corruption, and was strategically aired more than 650 times per day during the holy month to maximise its audience. The media campaign was developed in close partnership with the United Nations Office on Drugs and Crime (UNODC), which has been assisting Egypt's drive for anti-corruption through its project "Supporting Measures to Combat Corruption and Money Laundering, and to Foster Asset Recovery in Egypt" since July 2011. UNODC has been cooperating with the Administrative Control Authority (Egypt's monitoring body for corruption and financial integrity), Egyptian Ministries of Justice and Interior, the Public Prosecutors Office, and the Money Laundering and Terrorist Financing Combating Unit to improve anti-corruption awareness throughout the various branches of government. The project has taken a multifaceted approach, targeting soft strategic elements such as awareness, whilst also making more pragmatic advancements in developing the legal framework, improving institutional capacity in combative measures and enhancing reporting mechanisms.

The project concludes on 30th and Egypt will have to continue its anti-corruption efforts without the benefit of this particular source of UN, EU, Canadian and Romanian funding, which has contributed a total of more than \$3.5 million over the past 6 years. Egypt is currently ranked by Transparency International as 108th out of 176 on the Corruption Perceptions Index 2016, with a failing score of 34%, indicating that a great deal more needs to be done before Egypt will feel real benefit from reduced corruption. As a member of the UN Convention Against Corruption (UNCAC), Egypt is committed to eradicating corruption in the public and private sector, though its low scores indicate limited progress since ratification in February 2005.

The success of the campaign will not come to light for some time but, moving forwards, future initiatives might do well to emulate the inclusive nature of UNODC's program. Encouraging involvement across the civic sphere fosters an anti-corruption culture that, if properly sustained and utilised, could catalyse pro-active reform and a more robust political will to combat corruption.

## **Iran – Sanctions, Retaliation, and Escalation**

The Joint Comprehensive Plan of Action (JCPOA) involving Iran and P5+1 powers (US, UK, France, China, Russia and Germany) is on unsteady ground after escalatory actions on both sides of the deal. Additional sanctions imposed by the United States and the prospect of more to come is creating a convoluted web of measures that make compliance a difficult task.

For now at least, the JCPOA remains intact, and trade between Iran and other countries should be feasible save for issues that directly relate to Iran's missile programme, military procurement, terrorist and organised crime activity or the Revolutionary Guard Corps. In reality, even under the

extensive sanctions relief provided by the deal, many businesses are still utilising a de-risking strategy when appraising trade opportunities. This trend has arisen due to a combination of residual fear of punitive measures attached to sanctions violations and confusion over the remaining measures. De-risking strategy is a commonly used term referring to the general practice of banks and other financial institutions of avoiding high risk business ventures. According to an International Monetary Fund (IMF) report released in February 2017, no Tier 1 large banks have started correspondent relationships with Iranian banks since the implementation of the deal. A lack of trade between larger institutions can have a detrimental impact on both commerce and investment, putting large-scale operations and development out of reach. Aversion to opening trade with Iran has severely diminished the economic upturn that the deal was intended to provide and this is unlikely to improve whilst the trade climate is constantly confused by frequent changes to sanctions programs.

The complexity of the remaining sanctions is not the only barrier to trade. Any plan to deal with Iranian parties is still subject to a extremely high compliance burden in light of Iran's existing Anti-Money Laundering (AML) and Counter Terrorist Financing (CTF) deficiencies, as highlighted by the Financial Action Task Force (FATF). These challenges may dissuade interested parties, but doing business with Iran is still within the realm of possibility, provided that opportunities are viewed in parallel with adhering to internationally approved AML and CTF prevention programs. Subject to careful adherence to compliance standards and fastidious due diligence measures, being open to the possibility of new business could prove to be a lucrative avenue for institutions with big enough risk appetites.

### **Jordan – Pro-Enforcement Approach to New National Integrity and Anti-Corruption Strategy**

A delegation from the Saudi Ministry of Civil Service visited the Jordan Integrity and Anti-Corruption Commission (JIACC) on 1st August 2017 in order to review the programs and impending plans involved in Jordan's anti-corruption initiative. The visit marks the latest in a string of events that suggest the Jordanian national government are taking a much more effective pro-enforcement approach to the newest National Strategy for Integrity and Anti-Corruption (NSIAC), published in December 2016. The JIACC was established with the passing of Jordan's new Integrity and Anti-Corruption Law on 16th June 2016, which introduced more comprehensive and vigorous provisions to Jordan's anti-corruption legislation. As a fully independent body, the committee will assume primary responsibility for implementing the NSIAC over the coming 8 year period.

Awareness and receptiveness to corruption control seems to have gained momentum in Jordan since the publication of the Corruption Perceptions Index (CPI) 2016, which saw the country slide 12 places down the ranking to 57th in the space of just 12 months. Since its release in January 2017, parliamentarians have played a far more active role in advancing anti-graft measures, voting to refer more than 90 violations to the IACC in March alone, followed by a vote to refer three former ministers to the committee just one month later in April. Legislation has also been strengthened, with AML and CTF regulations expanded in April to apply to societies and non-profit organisations, at the recommendation of the National Committee for Anti-Money Laundering and Terrorism Funding. This measure, approved by the Council of Ministers, ensures that the services of such institutions cannot be co-opted for money laundering or terrorist financing purposes, and ensures that external funds received are legitimately spent. An Extraordinary Parliamentary Session was further convened in May to increase the penalties attached to crimes against public assets. These developments suggest that the government is prioritising corruption control in public office with genuine intent to close the gap between regulation and enforcement. Jordan's existing legislative framework for combating corruption is relatively comprehensive, largely due to its efficient adoption of international best practices since ratifying the UN Convention on Corruption (UNCAC) in 2005.

From a regional perspective, Jordan's renewed efforts are closely aligned with a wider regional trend of improving governmental transparency. Much of the anti-corruption agenda in Middle

Eastern countries is grounded in both ideological aspirations of transparency and integrity but also a more pragmatic objective of improving business and social conditions. Collective awareness and proactive governance in anti-corruption measures make it more likely that the efforts of individual countries will be sustained, especially if states are prepared to collaborate to develop the most effective responses, as the visit from the Saudi delegation would suggest. Further developments will provide insight into how Jordan is benefiting from the mutual drive for corruption control across the region and whether or not it is able to sustain its enthusiasm for a pro-enforcement approach.

### **Oman – Improved Protection Against AML and CTF**

Following the publication of its most recent Mutual Evaluation Report (MER) in April 2017, Oman has achieved a rating of at least Largely Compliant (LC) with FATF's standards of AML and CTF control. The Middle East and North Africa Financial Action Task Force (MENAFATF) report reviewed Oman's efforts to implement previous recommendations and considered its application to be moved to the biennial review process. Ultimately, the report concluded that Oman had successfully implemented key recommendations and had improved sufficiently to be moved to the lesser level of oversight, pending later approval at the 25th Plenary Session in April 2017.

The primary factor in its improved status was more robust implementation of the new AML / CTF legislation promulgated via the Sultani Decree No 30/2016 in June last year. Key improvements introduced by the new law included:

- Establishing the National Centre for Financial Information to operate with complete financial independence and autonomy;
- Strengthened preventative measures, including due diligence and Know-Your-Client (KYC) procedures, introducing greater accountability for financial and non-financial institutions in assessing their accounts and detecting suspicious transactions;
- Stiffened penalties across prison sentences and fines, with the Court granted discretionary powers for protecting whistleblowers; and
- New provisions to allow for international cooperation in cross-jurisdictional matters.

The MER denoted three primary areas of improvement that were instrumental in improving Oman's compliance rating. First, there was proper implementation of provisions that prohibited Financial Institutions (FIs) from opening accounts for anonymous customers or individuals providing fictitious names. FIs must now also conduct ongoing checks on business relationships, ownership structures and customer transactions in order to determine and assess the risk attached to each account.

Secondly, Customer Due Diligence (CDD) was another key area for extensive reform, with the law providing clarification over where CDD requirements were necessary and prohibiting services, or even terminating relationships, in situations where CDD is impossible. The final critical area of improvement related to deficiencies in tools for freezing and confiscating terrorist funds and fully implementing the Convention for the Suppression of the Financing of Terrorism. Overall, the report found that Omani legislation and implementation has improved sufficiently across all areas to be ranked as Largely Compliant and promoted to biennial review status.

The MENAFATF review emulates the oversight structure and standards of FATF regulations so provides an accurate indication of how Oman ranks in the framework of international best practice. Since Oman is not a regional or offshore financial hub, it does not attract the same level of AML or CTF risk as some of its Gulf neighbours, but being able to present itself as a lower risk destination for investment may pay dividends in future. Strengthening AML and CTF regulations improves its domestic economic security and lends confidence to prospective backers. As MENAFATF now progresses with its second round of mutual evaluations with new FATF methodology, marked

advancements like Oman's reflect the efficiency of the regional institution and enhances its drive for AML/CTF best practice.

### **Qatar – MENAFATF Counter Terrorist Financing (CTF) Training**

The Middle East and North Africa Financial Action Task Force (MENAFATF) and the UN Office of Drugs and Crime (UNODC) provided a four day regional training course in Doha in May 2017, aimed at improving states' capacity to track and prevent the flow of illicit funds and money laundering. The Qatar National Anti-Money Laundering Centre hosted the event where sessions were delivered by experts from relevant organisations, including the Terrorism Prevention and the Corruption and Economic Crimes Branches of UNODC, and the Global Programme Against Money Laundering. MENAFATF member states in attendance were instructed on global good practice and gained valuable insights regarding specialised techniques in recognising the operations of terrorist funding networks, identifying vulnerability and deploying effective disruption techniques to immobilise terrorist network operations.

MENAFATF's initiatives to improve CTF are aligned with wider international endeavours as global institutions have sought more effective ways of countering terrorist organisations, particularly Daesh and its affiliates. FATF reported on its progress in fighting terrorist financing to the G20 summit in Paris on 10th July and the UN Security Council issued Resolution 2331 calling on FATF and regional style bodies to conduct deeper analysis of terrorist financing flows, particularly where related to human trafficking.

International coverage of such events provides reassurance to the global community that MENA regional powers are adopting a pro-active approach to tackling issues related to CTF. Collective awareness and collaboration is a significant feature of MENAFATF's efforts given UNODC's emphasis on mutual cooperation as a vital tenet of combative measures and its long-term aim of helping member states to strengthen cross-border capacities. The initiative is not limited to terrorist financing but is intended to aid in developing a comprehensive responses to all fields of organised crime, trafficking, corruption and terrorism.

### **Saudi Arabia – Response to JASTA Cases in U.S. District Court of Manhattan**

On 1st August 2017, the Kingdom of Saudi Arabia (KSA) submitted a filing to the U.S. District Court in Manhattan requesting a U.S. Judge to dismiss a total of 25 lawsuits seeking damages against the Kingdom for its alleged role in the 9/11 hijackings. U.S. District Judge George Daniels, who presides over the litigation, has already dismissed the cases brought by the victims' families in 2015, but ruled to reopen them in light of the new provisions implemented by the Justice Against Sponsors of Terrorism Act (JASTA), enacted on 27th September 2016.

In his ruling on reopening the cases on 7th March 2017, Daniels stated that JASTA's legislative history made it clear that it had been written to provide the widest possible basis to eliminate the Kingdom's sovereignty defences. In allowing plaintiffs the assert direct claims against the KSA, removing non-textual judicial limitations on federal courts' jurisdiction under the Foreign Sovereign Immunity Act (FSIA), and eliminating judicial constrictions on the Anti-Terrorism Act (ATA), JASTA has deliberately and effectively strengthened civil claims beyond the KSA's routine defence of sovereign immunity.

The KSA's renewed request to dismiss was the widely expected response to the amended cases. However, uncertainty now arises regarding how JASTA will now be implemented, and whether or not it will have the legal teeth to override the ingrained principle of national sovereignty. Even if the decision goes against the KSA, the onus still lies with the plaintiff to prove that the KSA knowingly and intentionally facilitated the bombings; a feat that all previous efforts have failed to achieve. However, if the KSA successfully defends its right to sovereignty, the JASTA's legal potency will be

effectively eradicated with one hit. This will leave Congress with a political dilemma; to continue to pursue the means to hold the KSA accountable in its court system, or to abandon the project and preserve recently improved Saudi-US diplomatic relations.

The US is particularly concerned with maintaining non-abrasive regional relations in the current political climate of the Middle East as it seeks to find a diplomatic solution to the tensions between key allies in the Gulf. President Trump's recent meetings with the KSA leadership seem to have brought new strength to the relationship and has been matched by significant promises of economic investment to the American economy. Future governmental action surrounding JASTA or anti-Saudi rhetoric has dangerous potential to derail a key strategic alliance.

*For more insight into the Justice Against Sponsors of Terrorism Act (JASTA) and its regional implications, please refer to the article in our Dec-Jan 2017 edition of Law Update titled "Wait, JASTA Second... What about Sovereign Immunity? An Overview of the Controversial Justice Against Sponsors of Terrorism Act (JASTA) from a Middle East Perspective" by Ibtissem Lassoued*

### **UAE, Kuwait, Lebanon and Bahrain – Increased Powers to Combat Tax Crimes**

The UAE recently became the 109th jurisdiction to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters at the Organisation for Economic Cooperation and Development (OECD) headquarters in Paris on 21st April 2017. The agreement was formed as a means for implementing the Standard for Automatic Exchange of Financial Account Information in Tax Matters by the OECD and G20 countries. In practice, it works to improve cooperation between tax authorities and enhance their capacity to tackle offshore tax evasion and avoidance, whilst also reinforcing protections for tax payers' rights. Due to the proliferation of signatory countries and the multilateral nature of the agreement, the government will have a vastly upgraded ability to detect and prevent illicit tax activity.

Changes relating to the convention will not go into immediate effect in the UAE, but the first exchanges will start to occur as early as 2018. It includes provisions that will allow the Federal Tax Authority (FTA), established in September last year by Decree No. 13 of 2016, to automatically exchange financial account information with foreign tax administrations and implement the exchange of country-to-country reports detailing the tax affairs of multinational corporations on an automatic basis. Establishing such procedures will provide the FTA with streamlined access to an enormous base of information and will radically expedite incoming or outgoing tax enquiries. Improving the capacity of the FTA marks an important priority of the UAE government in light of the impending introduction of Value Added Tax (VAT), which will be introduced across GCC nations from 1st January 2018.

The UAE is not the only regional power to take this step towards greater tax control. Kuwait, Lebanon and Bahrain similarly followed suit and signed the agreement on 5th May, 12th May and 29th June respectively, becoming the 110th, 111th and 112th participating jurisdictions. Following the same timeline of enforcement, each country is expected to begin exchanging reports from the beginning of 2018. Aside from these recent additions, no other countries in the Middle East are signatory to the agreement, suggesting that there is some way to go before there is full transparency and mutual assistance across the region.

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