HERBERT SMITH FREEHILLS

ANTI-CORRUPTION REGULATIONS

THE MIDDLE EAST

LEGAL GUIDE
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Contents

Preface

Welcome to the first edition of our Anti-Corruption Regulation Legal Guide for the Middle East.

We are delighted to launch this publication, which presents the legislative framework regulating bribery and corruption across a range of Middle East jurisdictions, drawing upon the combined knowledge and experience of our lawyers, as well as qualified and experienced counsel in each of the jurisdictions covered. We understand this guide to be unique in terms of scope and content.

As Middle East countries continue to introduce new laws, regulations and initiatives to help in the fight against bribery and corruption, we hope you find this guide both timely and useful.

We extend our warmest thanks to all of our contributors as well as our own lawyers for their extensive work on this guide. Contact details can be found at the end of each chapter.

We look forward to answering any questions you may have.

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Introduction

The Middle East region presents various anti-corruption challenges for businesses. These include the difficulty in identifying politically exposed persons, the prevalence of intermediaries in the conduct of business relationships and the widespread difficulty in accessing company ownership and financial records.

Combined with this, the enforcement environment is tightening, with legislation such as the US Foreign Corrupt Practices Act and the UK Bribery Act representing key tools for punishing corrupt activity.

What many companies doing business in the Middle East may not appreciate is the extent of domestic anti-corruption legislation and how those laws are applied in practice. Enforcement activity is on the increase.

For example, the Saudi Arabian authorities are, at the time of writing, implementing a substantial investigation into alleged corruption by a large number of prominent Saudi public officials and businessmen stretching back decades. It is reported that many of those concerned have paid many billions of US dollars by way of compensation or to retain their freedom.

All the jurisdictions in this guide have in place laws regulating bribery and corruption activities which often carry with them severe financial and penal punishments.

It is therefore essential for companies and individuals currently operating (or those who would like to operate) in the Middle East to have knowledge of anti-bribery and corruption (ABC) offences.

Each chapter in this guide focuses on a different Middle East jurisdiction and explains how the legislative framework regulating bribery and corruption activities operates, including the powers of local law enforcement and regulators to investigate and prosecute offenders, the sanctions that can be imposed, and a summary of what is on the anti-bribery and corruption horizon.

The Kingdom of Bahrain

THE LAW

1. What is the source of:

ABC legislation and regulations?

- Articles 186-193 of the Bahrain Penal Code, promulgated by Decree Law No.15/1976, as amended by Law No.1/2013 (the "**Penal Code**" or the "**Law**"), cover the offence of bribery in relation to civil servants. Articles 417-427 of the Amendment to the Penal Code (Law No.1/2013) cover the offence of bribery in the private sector.
- Bahrain has also signed and ratified the United Nations Convention against Corruption in Law ("**UNCAC**"), which has been implemented under Law No.7/2010. As UNCAC is mainly directive in nature, the anti-bribery provisions of the Penal Code are the main points of reference in investigations and prosecutions relating to bribery and corruption.

Local regulatory guidance in relation to the following types of activities: gifts, meals, entertainment, travel, sponsored training/conferences and other similar hospitality events?

- Local law/regulations do not provide guidance in respect of specific categories of bribes, rather the law provides provisions broadly prohibiting any bribes made in the form of *substantial gifts or privileges of any kind whatsoever or a promise to be given the same.*

2. What constitutes an ABC offence in Bahrain?

- The Penal Code criminalises bribery of civil servants entrusted with a public service as well as workers in private corporations. It is an offence to receive or offer gifts or privileges to a civil servant, company employee, board member or corporate trustee of a private corporate entity, as consideration for doing an act or omitting to do an act involved in his duties. It is also an offence to promise to give a gift or privilege of any kind in consideration of performing certain work or abstaining from performing the same, in breach of ones duties or in a manner detrimental to the interests of the employer or private corporate entity.
- It is immaterial whether the official, employee, board member or corporate trustee actually intends to perform or abstain from performing the act in question, and whether the act or omission does not constitute part of his duties. This is the case even if he/she has alleged or wrongly believed it to be part of their duties, and whether the bribe has been demanded or offered after having completed doing the act, or omitting to do such act, in violation of the duties of their office, or in relation to corporations, in a manner detrimental to the interests of the employer or private corporate entity.
- In early 2014, eight Bahraini officials were suspended in connection with 25 major corruption cases under investigation following National Audit Office report revelations. These include 13 violations at the Municipalities and Urban Planning Affairs Ministry, seven at Alba and one each at the Bahrain Flour Mills Company, the Bahrain Chamber for Dispute Resolution (BCDR-AAA), Bapco, the Works Ministry and the Housing Ministry.
- As of 21 January 2015, the Public Prosecution Office had received 36 corruption-related cases: 10 of these cases were referred to the Criminal Court for criminal prosecution, 12 were reserved for no further action and 14 cases are still pending investigation.

3. Are there any statutory defences provided under the relevant legislation, eg *de minimis* exceptions – payments that are legal in the country in which they are offered, etc? What considerations will be taken into account, for example the purpose and frequency of the gift/event, the cost to the organiser, the value of the benefit offered to the individual?

- The Penal Code provides for one mitigating factor, which is where a partner reports the offence to the judicial authorities or admits it before reference of the case to the court, the judge may exempt him from punishment, if such course of action is justified.
- Although the law does not entail monetary thresholds in respect of bribes, but criminalises bribery *per se*, the considerations which will be taken into account are the connection between the bribe, in whatever form offered or requested, and the action or omission expected or offered in return. In respect of events, the relation between the subject matter of the event and the person's specialisation, whether in public office or a private company, and whether such are related or not, will be considered.

4. What kinds of gifts/entertainment/ advantages will be considered acceptable?

- The law does not specifically provide a limit on gifts offered or accepted. A gift of "modest value" may be permitted. For example, seasonal inexpensive gifts such as calendars and diaries can be given without concern. Further, gifts of modest value such as pen sets, company plaques, etc, particularly if they bear the donor's name or logo, are customary and acceptable. However, other gifts which are offered individually may give rise to the appearance of impropriety and thus contravene the anti-bribery provisions.
- Travel and reasonable related expenses which are related to the invitees' specialisation may be permitted, so long as no favour is being received or expected to be received in return. Also, it is customary that meals and hospitality may be provided when, for example, an official is visiting the donor's facility.

5. What kinds of gifts/entertainment/ advantages will be considered unacceptable?

- The Penal Code does not provide a definition of "gift", and the term is regarded rather generally. Moreover, the offence of bribery is covered by offering or accepting gifts and privileges, which allows for a wide interpretation of the term. Thus, gifts and lavish lunches and entertainment should be avoided as such may give rise to suspicion of intention to influence a favourable decision, in which case it may be considered to fall within the context of the bribery provisions of the Penal Code.

6. Are there any exemptions, for example "facilitation payments" – defined as payments made to procure "routine governmental action" – that "do not involve an exercise of discretion", payments that "are legal in the country in which they are offered", and "reasonable and *bona fide* expenses directly relating to the promotion of products or services"?

- There are no specific provisions in the law prohibiting "facilitation payments" as such; however, they may fall within the general definition of bribery.
- Article 32 of Decree Law No.36/2002, in respect of Tenders and Government Procurement, requires that a tender be refused in the event of the tendering party offering a bribe or inducement of any kind to an employee of the procuring entity or any other governmental authority, even if the tender application has satisfied all the necessary prerequisites and requirements. In this context, there may be Penal Code implications in respect of both the party offering the bribe and the party asking for or accepting it, in both the public and private sectors.

7. Does the law cover gifts/entertainment/ advantages which are given to spouses/relatives of public officers/civil servants, and/or companies in which the public officers/civil servants are directors/shareholders?

- Yes. The offence of bribery covers offering gifts or privileges or promises of the same in consideration of an act or omission involved in the duties of the officer or employee whether such bribe is accepted by himself or another person acting on his behalf.

8. What is the position in respect of charitable contributions to the Government and/or politically exposed persons (PEP)-connected local charities?

- There are no specific provisions under Bahrain law that prohibit making charitable donations. So long as such donations are not "facilitation payments" and that nothing is being received in return for the donation, then this may be permissible. In the event of such donation being asked for, accepted or offered in exchange of some favour, it may be considered a bribe under the Penal Code, and thus constitute an offence thereunder.

9. Do the ABC laws/regulations apply to the private sector or do they relate to the bribery of public individuals and/or bodies only?

- Yes. The offence of bribery has recently been extended by the Penal Code to cover the private sector, meaning the persons subject to anti-bribery laws shall include: (a) workers who are defined as every natural person employed for a wage of any kind and under the employer's management and supervision; (b) every person who does or works or provides a service in any capacity without being under the management and supervision of the person for whom he performs the work or service; (c) private corporate persons; and (d) board of directors, board of trustees, chairmen, deputy chairmen and all members of the board irrespective of designation or formation.

10. What is the definition of a public body? Would it include persons working in state-owned/controlled companies? Who is a public/ civil servant?

- The Penal Code provides a definition for civil servants only, who are entrusted with a public service, as: (a) persons in a position of authority, staff or government ministries, departments and local administrative units; (b) the armed forces personnel and servicemen; (c) members of councils and public representative units (whether elected or nominated); (d) every person authorised by a public authority to perform a particular task to the extent of the duties entrusted; (e) chairman or members of board of directors, managers and all staff of public institutions and organisations; and (f) chairmen and members of boards of directors, managers and staff of units belonging to public institutions and organisations. Term and nature of the relevant employment as well as remuneration do not have any bearing on the offence of bribery.

11. Would members of the Bahraini royal family be considered public officials by virtue of the fact that they are members of the royal family?

- No.

12. Does the Government issue internal regulations or codes of conduct applicable to public officers/civil servants?

- Such regulations are issued internally in the context of execution of the provisions of the law.

13. Are there any laws or regulations imposing obligations on persons to "whistleblow" or disclose suspected corruption within an organisation?

- No; however, it may be viewed that it is considered as part of the civil servant or employee's job to report such incidents to his supervisor or the relevant authorities.

14. Do the domestic ABC regulations have extra-territorial effect? (Is bribery of foreign public officials prohibited?)

- Domestic ABC regulations will not apply outside the jurisdiction of Bahrain. There are no discrete provisions relating to the bribery of a foreign public official.

REGULATION OF ACTIVITIES

15. What are the main bodies responsible for investigating and combating bribery and corruption, in Bahrain?

- The Public Prosecution Office
- The National Audit Office (the **NAO**)
- The Anti-Corruption Directorate of the General Directorate of Anti-corruption and Economic and Electronic Security

16. What does each of these authorities investigate?

- The Public Prosecution Office prosecutes all criminal cases. The National Audit Office (the **NAO**) is a non-governmental organisation which independently investigates suspicious activities and reports its findings to the Public Prosecution Office for prosecution. A report is submitted annually to the King of Bahrain and the latest report was submitted on 30 December 2014. The National Audit Office is very active and investigates all ministries, government agencies and companies owned by the Bahraini Government. It prepares an annual report, which is presented to the King of Bahrain. The last report was submitted on 3 December 2017 for the year 2016-17.
- The Anti-Corruption Directorate of the General Directorate of Anti-corruption and Economic and Electronic Security ("**Anti-Corruption Directorate**") is responsible for investigation and prosecution of offences related to corruption.

17. Do the authorities described above have the same powers of investigation?

- No. Refer to our response to question 16.

18. What actions may these bodies take in exercising their functions?

- Criminal Investigations and the Anti-Corruption Directorate will mainly be done through the Public Prosecution Office, which has the power to prosecute, investigate and collect and confiscate relevant evidence in crimes which have been detected, as well as question relevant individuals (suspects, witnesses, etc), request experts to report on certain issues, and detain suspects.
- The NAO has authority over all ministries and governmental authorities and organisations as well as the Cabinet and Parliament and Bahraini companies (among others), and it has authority under Decree Law No.16/2002 to audit, investigate, inspect and review any suspicious activities in this respect, and report the same to the Public Prosecution Office. The NAO has the authority to oblige the relevant authorities/companies to cooperate.
- In addition to this, please see our response to question 16.

19. What are the powers of arrest and detention of the relevant authorities?

- Powers of arrest and detention are exercised through the Public Prosecution Office.

20. What is the jurisdictional reach of these powers?

- Jurisdiction is limited to the Kingdom of Bahrain.
- If, however, a Bahraini citizen commits an offence under the Penal Code whilst abroad, he/she may be prosecuted on return to Bahrain even if he/she is punishable under the law of the country in which they have committed the offence and even if he/she lost or acquired Bahraini nationality after committing the offence.

21. Do the police and other local authorities assist the relevant regulatory authorities in their investigations?

- Yes. The general legal principle is that the Executive Authority shall obey the Judiciary, and as the Public Prosecution Office is a part of the Judiciary, the Executive's cooperation shall be extended to it. Further, it is usual that governmental authorities are extended a certain degree of cooperation.

22. How do the relevant regulatory authorities interact with overseas regulators?

- Bahrain is strict in applying ABC laws and is cooperative with overseas regulators.

23. Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

- The Penal Code requires confidentiality of investigations, especially in the context of not obstructing the course of justice; however, making the subject of a complaint or case public will not suffice to trigger confidentiality implications. Furthermore, the Bahrain courts are open to the public and as such any individual may attend any court hearing and thus be privy to such information if so presented in the court.

24. Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, for example in proceedings in a court of law?

- Yes. Information discovered in a criminal investigation may be used in a court of law to prosecute the offender, and may also be used in related civil proceedings (excluding negligence).

25. Are there protections available when responding to investigations by the relevant authorities, such as the right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

- Yes. Under Article 20 of the Constitution of the Kingdom of Bahrain, an accused person is innocent until proven guilty in a legal trial and has the right to defence at all stages of the investigation and trial. This includes, amongst other things, the accused's right to a lawyer to defend him with his consent and his right against self-incrimination. Article 29 of the Legal Practice Act covers legal professional privilege and prohibits a lawyer, who acquires in the course of his practice, knowledge of any incident or information, from disclosing it even after the expiry of his appointment as attorney, unless divulging such information is intended to prevent a crime or misdemeanour or report the occurrence thereof. Article 29 further stipulates that a lawyer may not be asked to testify in respect of any dispute for which he has been appointed as attorney or asked to give advice with regard thereto without the client's prior written consent.

SANCTIONS FOR WRONGDOING

26. What disciplinary sanctions/sentences may these authorities impose?

- A civil servant, employee, board member or corporate trustee who asks for or accepts for himself or others a bribe for acting or omitting to act in relation to his duties shall be liable for a term of imprisonment not exceeding 10 years. In respect of civil servants, this is reduced to a maximum of five years' imprisonment in the event the civil servant demanding or accepting the bribe has promised to do an act, or omit to do an act, not constituting part of his duties, but had wrongly alleged or believed it to be so. Moreover, offering a bribe to an employee, board member or corporate trustee is also punishable by imprisonment not exceeding a term of 10 years. However, offering the same to an official in the public sector is punishable by imprisonment limited to a maximum term of three years.

- Further, apart from confiscation of the bribe, fines shall also apply to offenders, equivalent to the amount of the bribe requested, accepted, promised or offered, subject to a minimum fine of BD 100 in the public sector and a minimum of BD500 capped at BD10,000 in the private sector.

27. Do the relevant authorities have powers to freeze properties which may be proceeds of an ABC offence pending conclusion of their investigation?

- Yes, apart from the penalties described in question 26 above, the Penal Code provides for the confiscation of assets obtained by bribery.

28. Is it possible to enter into a settlement to resolve any enforcement action/prosecution by the relevant authorities?

- No, this is very unlikely, as Bahrain strictly applies ABC laws.

29. Where proper disclosure is made to the employer/public body concerning the details of the gift or event being offered, would that be sufficient to avoid any potential liability under the relevant legislation?

- The law does not provide guidance in this respect; however, any gift or privilege offered or accepted in exchange for a favour, regardless of it being reported to the supervisor or not, may trigger the provisions of the Penal Code in respect of bribes.

30. In practice, is it possible to obtain written/signed acknowledgement from the relevant supervisory level of the public body/state, which shows that the supervisor is aware of the advantage offered to an employee? Is there an official approval process available or channel to go through?

- The law does not provide guidance in this respect. Please refer to our response to question 29.

31. Are there provisions for defendants to appeal against any enforcement action/prosecution taken against them?

- Appeals in this regard may be done through the ordinary course of the criminal courts, ie by making applications to the Public Prosecution Office or Court requesting release for bail or appealing decisions rendered by the Court. Please refer to our response to question 3.

REFORMS

32. Are there likely to be any significant reforms in Bahrain in the near future?

- We are unaware of any reforms underway in respect of ABC laws.

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Arab Republic of Egypt

The Arab Republic of Egypt does not have specific ABC legislation. The sources of law relating to anti-bribery and corruption are contained in a number of laws, primarily in the Egyptian Penal Code.

THE LAW

1. What is the source of:

ABC legislation and regulations?

- The Egyptian Penal Code (the "**EPC**")
- The Illicit Revenue Law

Local regulatory guidance in relation to the following types of activities: gifts, meals, entertainment, travel, sponsored training/conferences and other similar hospitality events?

- Articles 103-111 of the EPC
- Article 77 of the State's Civil Servant Law
- Article 44 of the Public Sector Employees Law
- The Civil Servant Law No.81/2016 (the "**Civil Servant Law**")

2. What constitutes an ABC offence in the Arab Republic of Egypt?

- Under the EPC, any promise or gratuity is considered a bribe. Due to this very broad definition, any gifts or hospitality are typically seen as bribes and expose their giver, receiver, any intermediary and offeror to sanctions.
- Gifts or hospitality given for purposes other than to incite the recipient to act against his/her duties shall not be considered bribes.

3. Are there any statutory defences provided under the relevant legislation, eg *de minimis* exceptions – payments that are legal in the country in which they are offered, etc? What considerations will be taken into account, for example the purpose and frequency of the gift/event, the cost to the organiser, the value of the benefit offered to the individual?

- Although strictly speaking, gifts or hospitality given for purposes other than to incite the recipient to act against his/her duties will not be considered bribes, the broadness of the bribery legislation dictates that any gift or hospitality provided, especially to government officials or public servants, will *de facto* be considered as bribery, and the burden of proof will be on the parties involved to prove the contrary.
- Article 14(2) of Law No.106/2013 allows a maximum gift value of LE300 (equivalent to c. USD38) to be paid to government ministers.

4. What kinds of gifts/entertainment/advantages will be considered acceptable?

- Any gift/entertainment/advantage which is not deliberately meant to incite the recipient to act against their duties as an employee/official should be acceptable. However, the burden of proof is on the offeror to establish this.

5. What kinds of gifts/entertainment/advantages will be considered unacceptable?

- Any gift/entertainment/advantage which is deliberately meant to incite the recipient to act against his duties as an employee/official will be unacceptable.

6. Are there any exemptions, for example "facilitation payments" – defined as payments made to procure "routine governmental action" – that "do not involve an exercise of discretion", payments that "are legal in the country in which they are offered", and "reasonable and *bona fide* expenses directly relating to the promotion of products or services"?

- So long as such payments are not given to deliberately make the recipient act against his/her duties, they will not be considered bribes. However, the burden of proof is on the offeror, and there is a presumption of bribery as a result of the shift in the burden of proof.

7. Does the law cover gifts/entertainment/advantages which are given to spouses/relatives of public officers/civil servants, and/or companies in which the public officers/civil servants are directors/shareholders?

- Yes. Any gift/entertainment/advantage given to deliberately incite an employee/official to act against his/her duties will be considered a bribe, regardless of who it is given to.

8. What is the position in respect of charitable contributions to the Government and/or politically exposed persons (PEP)-connected local charities?

- There are no specific provisions.

9. Do the ABC laws/regulations apply to the private sector or do they relate to the bribery of public individuals and/or bodies only?

- Under Article 103 of the EPC, bribery laws apply to all public individuals as well as the board members of joint stock companies and managers and employees of foundations, companies, associations, organisations and establishments if an administrative authority contributes to its capital in any manner. The EPC is silent on whether bribery laws apply to the private sector.

10. What is the definition of a public body? Would it include persons working in state-owned/ controlled companies? Who is a public/ civil servant?

- Public bodies are mentioned as a category of juridical persons under the Egyptian Civil Code ("**ECC**"). The ECC provides that the state, governorates, cities and communities are considered juridical persons, as provided for by law. Further, public establishments (including public bodies and authorities) are also considered juridical persons as provided for by law (or case law in some instances). Therefore, a public body is considered as such on a case-by-case and by operation of law. State-owned and/or state-controlled companies and banks may also be considered as public bodies, in accordance with the laws of their establishment.
- As a matter of scope of application, the following persons have the status of a public employee (and would be covered by the bribery laws):
  - persons working for any authority affiliated with the Government or under its supervision;
  - members of local or general government councils, whether appointed or elected;
  - judiciary, Ministry of Justice experts, public prosecutors, liquidators and receivers;
  - all persons entrusted with a public service; and
  - members of boards of directors, managers and employees of any associations, companies, organisations and entities of which the Government is a shareholder or for which the Government provides funding.

11. Does the Government issue internal regulations or codes of conduct applicable to public officers/civil servants?

- We are not aware of any codes of conduct, guidance or internal regulations being issued or promulgated by ministries and/or governmental departments.

12. Are there any laws or regulations imposing obligations on persons to "whistleblow" or disclose suspected corruption within an organisation?

- There are no direct obligations imposed on individuals to disclose suspected corruption within an organisation. However, there is a general obligation in Article 26 of the Code of Criminal Procedure that all public employees who witness a crime in the course of their employment must report it directly to the Public Prosecution Office or the nearest police officer.

13. Do the domestic anti-corruption regulations have extra-territorial effect? (Is bribery of foreign public officials prohibited?)

- Bribery of foreign public officials is not specifically regulated under Egyptian law.
- Offences committed on Egyptian territory are punishable under the EPC, irrespective of nationality. Individuals can also be prosecuted for crimes if they commit an action abroad that makes them a perpetrator or an accomplice to a crime that took place in Egypt.
- An Egyptian citizen who commits an offence under the EPC and the law of the country in which the crime was committed will be subject to the sanctions found in the EPC upon his return to Egypt.

REGULATION OF ACTIVITIES

14. What are the main bodies responsible for investigating and combating ABC in Egypt?

- There is no specific agency responsible for investigating and prosecuting bribery and corruption. The Public Prosecution Office has general jurisdiction over all crimes; however, the following authorities play a role in discovering and investigating corruption crimes:
  - The Central Audit Authority;
  - the Illicit Revenue Body;
  - the Administrative Control Agency;
  - the Administrative Prosecution; and
  - the Work group for the Coordination between National and foreign entities for recovering smuggled Egyptian assets abroad (the "**WCON Group**").

15. What does each of these authorities investigate?

- **The Central Audit Authority** supervises public spending and mainly conducts audits and inspections of the affairs of public authorities.
- **The Illicit Revenue Body** is responsible for the inspection and investigation of the financial affairs of public officers.
- **The Administrative Control Agency** detects administrative and financial violations and crimes which are committed by public employees in the course of, or as a result of, the performance of their duties.
- **The Administrative Prosecution** undertakes the required supervision and controls to detect financial and administrative violations of public employees.
- **The WCON Group** has the power to, amongst other things:
  - set and monitor the execution of plans for recovering smuggled assets abroad;
  - identify and try to remove any legal obstacles hindering the requests submitted to foreign governments for retrieving the smuggled assets; and

- eliminate any internal obstacles facing investigation and auditing entities in respect of the smuggled assets.
- The WCON Group has not yet produced any tangible results.

16. Do the authorities described above have the same powers of investigation?

- **The Central Audit Authority**: This authority is an information gathering body, rather than an investigatory authority. It provides comprehensive reports in respect of the entity in which a contravention occurred. As such, it may obtain copies of any documents that would assist in preparing its reports.
- **The Illicit Revenue Body**: This body receives complaints and gathers information. It may request entities to provide the required information for assisting in reviewing the complaints.
- **The Administrative Control Agency**: This agency provides reports to the Public Prosecution Office and it may request the Public Prosecution Office issues an order allowing the authority to perform recordings/surveillance and trace the crime in progress.
- **The Administrative Prosecution**: This body concludes administrative investigations and imposes administrative sanctions.

17. What actions may these bodies take in exercising their functions?

- They may obtain documents from the entities in which the crime was committed;
- they may carry out investigations about the relevant crime; and
- they may request the Public Prosecution Office to allow them to carry out procedures for the purpose of acquiring relevant evidence (for example, recordings, inspection, phone tapping and surveillance).

18. What are the powers of arrest and detention of the relevant authorities?

- Only the Administrative Control Agency and the Illicit Revenue Body has the right to temporarily detain the accused in the manner prescribed under the EPC for the purposes of interrogation.

19. What is the jurisdictional reach of these powers?

- The principles of territoriality and state sovereignty do not allow for the application of any of the above-mentioned powers overseas. However, the EPC sets out specific circumstances in which international jurisdiction could be attributed to the relevant authorities and would be executed upon the return of the accused to Egypt.

20. Do the police and other local authorities assist the relevant regulatory authorities in their investigations?

- Theoretically, the police/local authorities should assist the relevant regulatory entity in their investigation and any attempts to gather relevant information. In practice, however, the police or local authorities do not usually get involved.

21. How do the relevant regulatory authorities interact with overseas regulators?

- Through arrangements provided for under bilateral or multilateral treaties, or through diplomatic measures. An example of such a treaty is the Treaty on Legal and Judicial Cooperation between the State of the United Arab Emirates and the Arab Republic of Egypt – Federal Decree No.83/2000.
- There are certain articles from the United Nations Convention against Corruption ("**UNCAC**") that have been incorporated into Egyptian law. For instance, Article 11 in the UNCAC Code is found in Article 72 of the Egyptian Judicial Authority Law No. 46/1972.

22. Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

- The EPC provides that all investigations should be carried out confidentially for the interest of the investigation process itself until the whole case is referred to the relevant court for the purpose of hearing the matter. Documents referred to the court remain confidential save as to the legal representatives of the relevant parties.

23. Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, for example in proceedings in a court of law?

- Yes.

24. Are there protections available when responding to investigations by the relevant authorities, such as the right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

- There is a right to legal representation at interviews.
- A witness may also refrain from testifying against an accused relative up to his/her second degree of kinship. This includes spouses and ex-spouses.
- There is a general right for the accused to remain silent whilst responding to allegations against them.

SANCTIONS FOR WRONGDOING

25. What disciplinary sanctions/sentences may these authorities impose?

- The Civil Servants Law No.47/1978 and the Public Sector Employees Law No.48/1978 provide for disciplinary sanctions, such as warnings, deduction from salaries and dismissal, to be imposed in the event of a breach of Article 77 of the Civil Servants Law.

26. Do the relevant authorities have powers to freeze properties which may be proceeds of an ABC offence pending conclusion of their investigation?

- Yes, but only insofar as is necessary to protect the investigation.

27. Is it possible to enter into a settlement to resolve any enforcement action/prosecution by the relevant authorities?

- The Civil Servant Law provides for disciplinary sanctions including warnings, deductions from salaries and dismissal in the event of a breach of Articles 57 and 58.

28. Where proper disclosure is made to the employer/public body concerning the details of the gift or event being offered, would that be sufficient to avoid any potential liability under the relevant legislation?

- The circumstances would still have to pass the test provided by law.

29. In practice, is it possible to obtain a written/signed acknowledgement from the relevant supervisory level of the public body/state which shows that the supervisor is aware of the advantage offered to an employee? Is there an official approval process available or channel to go through?

- Nothing bars the above actions or the public entity's ability to provide acknowledgement. However, practically, this would not occur. Any statement of a supervisor's awareness would not waive liability for bribery but may be used to prove the accused's innocence.

30. Are there provisions for defendants to appeal against any enforcement action/prosecution taken against them?

- Under Egyptian law, the right to appeal a lower body's decision is guaranteed.

REFORMS

31. Are there likely to be any significant reforms in the Arab Republic of Egypt in the near future?

- There are likely to be significant reforms in the near future in ABC laws. General suspicion of bribery and corruption by public officials was one of the social and administrative problems which contributed to the January 25 Revolution in Egypt. Major legal reform is expected in many sectors of Egyptian legislation. For example, Law No.106/2013 was introduced to address the issue of avoiding conflicts of interest and bribery.
- Furthermore, significant constitutional reform is also expected.

PUBLIC PROCUREMENT

32. Are there any procurement laws/rules in Egypt that refer to bribery/corruption?

- There is a Procurement Law (No.89/1998) which was inspired by the UNCITRAL Model Law on Procurement of Goods, Construction and Services. This Law forces procurement to go through the process of bids, and as such bidders have the right to challenge procurement decisions in court.

RECENT DEVELOPMENTS

33. Have there been any recent high-profile bribery/corruption scandals, allegations or prosecutions in Egypt?

- In June 2011, there was a bribery case which became known as the "Mercedes case". It involved a chairman of a company and his wife who were accused of accepting and receiving bribes. The company was a subsidiary of the Arab Organization for Industrialization, a state-run company affiliated with the Egyptian Armed Forces. The purpose of the bribes was to facilitate the company's business dealings in Egypt. The defendants were referred to the Supreme Military Court in Egypt, where the chairman was sentenced to two years in prison and his wife was given a suspended prison sentence of one year along with a fine of LE2.72 million.

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Iraq

Iraq does not have specific anti-bribery legislation. The sources of law relating to anti-bribery and corruption are contained in a number of laws, primarily in the Iraqi Penal Code and the Disciplinary Law.

THE LAW

1. What is the source of:

ABC legislation and regulations?

- The Iraqi Penal Code Law No.111/1969 (the "**Penal Code**") governs corruption and bribery in Iraq.
- The Civil Servants Disciplinary Law No.14/1991 (the "**Disciplinary Law**") very broadly defines a civil servant (for the purposes of that legislation) as: "*Every individual assigned/ entrusted with a post/job within the ministry's staff or a body that is not connected to a ministry.*"

Local regulatory guidance in relation to the following types of activities: gifts, meals, entertainment, travel, sponsored training/conferences and other similar hospitality events?

- There is no such guidance in Iraqi law. This is most probably due to the fact that corporate entertaining for business purposes has not yet developed to the same extent as in other parts of the Middle East.
- Neither the Disciplinary Law nor the Penal Code contain a value description (ie an amount for a threshold payment) in relation to hospitality or entertainment. The Penal Code does not specify a value when considering what constitutes a bribe. A bribe could be anything (even of nominal value) that is sought or accepted by a public official. Instead, the Penal Code criminalises the "intent" associated with the transmittance of the item or amount.
- Therefore, it is advisable that any gift to a public official be part of the broad and indiscriminate promotion of a business. For example, pens, stationery sets and bags are all acceptable gifts if given without the intent to bribe and given indiscriminately among potential government clients.
- In terms of travel and sponsored events for government employees, there is also no standard regulation or rule. In practice, the amount of hotel and *per diem* expenses can be agreed with a ministry ahead of a scheduled visit. Private companies should ensure that government employees only attend training outside of Iraq where there is a requirement for them to do so and it is relevant to their role.

2. What constitutes an ABC offence in Iraq?

- There are three principal offences under the Penal Code (Article 307):
  - The seeking or acceptance of a gift, benefit or promise **by** a public official in return for carrying out, refraining from, or breaching an employment duty;
  - the giving, offering or promising of a gift, benefit or promise **to** a public official in return for carrying out, refraining from, or breaching an employment duty; and
  - acting as an intermediary between a public official and a person offering a gift, benefit or promise to that public official in return for carrying out, refraining from, or breaching an employment duty.
- Article 5 of the Disciplinary Law states that:
  - "*The employee is prohibited from doing the following: …Borrowing or accepting a gift or present or benefit from the clients or contractors or entrepreneur related to his/her work or from anyone that may have a relationship with the employee because of his job.*"

3. Are there any statutory defences provided under the relevant legislation, eg *de minimis* exceptions – payments that are legal in the country in which they are offered, etc? What considerations will be taken into account, for example the purpose and frequency of the gift/ event, the cost to the organiser, the value of the benefit offered to the individual?

- There is no *de minimis* exception in Iraq. Instead, the intent to procure the benefit through a bribe is what is criminalised. It is difficult to predict what considerations may be taken into account in the decision to prosecute. There may very well be factors which touch on the political and partisan party issues which affect the decisions to instigate an investigation and/or to prosecute.

4. What kinds of gifts/entertainment/ advantages will be considered acceptable?

- Any indiscriminate and broad promotional give-away will be considered acceptable. Even though there is no relevant value threshold, the transferring of low-value items to a broad range of members of the public and private community (such as stationery sets, bags, calendars, etc) will carry no adverse consequences.

5. What kinds of gifts/entertainment/ advantages will be considered unacceptable?

- Any large direct gift or action taken specific to a public employee who can exercise discretion in conferring a benefit will likely create a suspicion of bribery and corruption.

6. Are there any exemptions, for example "facilitation payments" – defined as payments made to procure "routine governmental action" – that "do not involve an exercise of discretion", payments that "are legal in the country in which they are offered", and "reasonable and *bona fide* expenses directly relating to the promotion of products or services"?

- There are no such exceptions.

7. Does the law cover gifts/entertainment/ advantages which are given to spouses/relatives of public officers/civil servants, and/or companies in which the public officers/civil servants are directors/shareholders?

- There is an indirect application of the Disciplinary Law which outlaws gifts to spouses/relatives.

8. What is the position in respect of charitable contributions to the Government and/or politically exposed persons (PEP)-connected local charities?

- There are no rules discussing PEPs or other charitable giving. Instead, the Penal Code regulates and criminalises the intent of the bribe. Therefore, if the intent of the gift was to procure some type of benefit, it will rise above the threshold of an allowable gift and therefore be considered illegal.

9. Do the ABC laws/regulations apply to the private sector or do they relate to the bribery of public individuals and/or bodies only?

- The anti-corruption laws only apply to the public sector. There is no law regulating bribery of a private employee.

10. What is the definition of a public body? Would it include persons working in state-owned/controlled companies? Who is a public/ civil servant?

- The definition of a "public body" is any entity chartered by the Iraqi Government, any ministry or any subsidiary organisation thereof. Therefore, state-run and state-owned companies can be public bodies.
- The Disciplinary Law very broadly defines a civil servant (for the purposes of that legislation) as: "*Every individual assigned/ entrusted with a post/job within the ministry's staff or a body that is not connected to a ministry.*"

11. Does the Government issue internal regulations or codes of conduct applicable to public officers/civil servants?

- Neither the Government of Iraq, nor any specific ministries, issue internal regulations concerning bribery. Instead, the matter is governed by the Penal Code as set out at paragraph 1 above.

12. Are there any laws or regulations imposing obligations on persons to "whistleblow" or disclose suspected corruption within an organisation?

- There are no "whistleblower" protections or obligations in Iraq. The law is silent on the issue.

13. Do the domestic anti-corruption regulations have extra-territorial effect? (Is bribery of foreign public officials prohibited?)

- The law is silent on this matter. Neither the Penal Code nor the Disciplinary Law contains language which criminalises the attempted or actual bribery of a foreign government official.

REGULATION OF ACTIVITIES

14. What are the main bodies responsible for investigating and combating fraud and corruption in Iraq?

- The Ministry of Justice acts as the prosecutor and investigator of corruption offences. Larger cases and more policy-driven issues are handled by the National Integrity Commission, which is an office of the Prime Minister. The National Integrity Commission can investigate any action it chooses, but any civil or criminal action must be taken by and through the Ministry of Justice prosecutors.

15. What does each of these authorities investigate?

- There is no clear jurisdictional divide between the two entities; they operate with concomitant jurisdiction over the same issue. The Ministry of Justice has a broader scope of jurisdiction, and as such it may have budgetary constraints which may dictate the type and scope of activities the Ministry of Justice may entertain.

16. Do the authorities described above have the same powers of investigation?

- There are no authorities which govern insider dealing and market abuse. For issues specific to dealing with the Iraqi Stock Exchange ("**ISX**"), the ISX maintains its own Code of Conduct. However, this is not a codified law, nor does its violation mandate the Iraqi Ministry of Justice prosecutors or National Integrity Commission to become involved. In theory, the ISX could impose a punishment consistent with its role, such as banishment from the exchange, or restitution. However, we note that at the time of writing this is a remote possibility.

17. What actions may these bodies take in exercising their functions?

- The bodies may take such action which their constitutional mandate allows.

18. What are the powers of arrest and detention of the relevant authorities?

- There are several authorities in Iraq which have the power of arrest and detention. In regards to bribery and corruption allegations, the relevant authorities include:
  - The Metropolitan Police (ie city police of each jurisdiction);
  - the Iraqi National Guard;
  - the Iraqi Army; and
  - the Iraqi Civil Defence Force.
- The powers of arrest and detention have not been codified or distinguished between the relevant authorities, and there exists no one statute or law which codifies the rights of the accused in terms of a definition of detention and arrest.

19. What is the jurisdictional reach of these powers?

- The bribery offences apply to any act of bribery which takes place in Iraq, and includes acts where one or more of the parties was outside Iraq, if the act has consequences which are realised, or intended to be realised, in Iraq. The person committing the bribery offence need not be present in Iraq at the time of the incident to fall within the jurisdiction of Iraqi criminal law. The parties to the offence also need not be Iraqi nationals.
- Iraq is not a member of many international conventions and treaties which allow for the sharing of intelligence through police and military connections. Therefore, the reach of the Iraqi Government outside its borders will more than likely be limited by practical, rather than legal, means.

20. Do the police and other local authorities assist the relevant regulatory authorities in their investigations?

- The police assist the Ministry of Justice prosecutors and/or the National Integrity Commission in their investigations.
- In Iraq there is no distinction between civilian and military law enforcement. Each of these entities may assist the Ministry of Justice and/or the National Integrity Commission.

21. How do the relevant regulatory authorities interact with overseas regulators?

- As Iraq is not a signatory to certain international treaties concerning law enforcement and fugitives, there is little interaction between Iraqi and international regulators.

22. Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

- No. The Iraqi criminal procedure laws and regulations contain no protections on the information gathered in the course of an investigation. In practice, the decision to investigate a particular instance of bribery or corruption will typically be linked to a political motive and/or some form of partisan politics. There is no implicit or explicit confidentiality in respect of the investigation.

23. Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, for example in proceedings in a court of law?

- Yes. Information obtained during the course of the investigation may be freely disseminated and communicated to different government ministries and/or organs of the state. This information may be utilised for any purposes which the Government may deem necessary.

24. Are there protections available when responding to investigations by the relevant authorities, such as the right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

- No. There are no inherent rights which attach to the accused during the investigation phase. If and when the matter is referred to the Ministry of Justice prosecutors, there is a right to a fair and speedy trial as well as the right to counsel. However, during the investigation stage, the accused enjoys no procedural due process rights.

SANCTIONS FOR WRONGDOING

25. What disciplinary sanctions/sentences may these authorities impose?

- The Penal Code authorises the following sanctions:
  - **Sentence**: Maximum of 10 years' prison sentence for a private citizen; and seven years' for a government employee.
  - **Fine**: May be imposed at the discretion of the court, which should not be less than the amount of the bribe.
- If the bribery or corruption is defined as a crime against the state, or carries with it any implication of any act of treason, the sanctions and sentences may be much harsher.

26. Do the relevant authorities have powers to freeze assets which may be the proceeds of an ABC offence pending conclusion of their investigation?

- The Iraqi Ministry of Justice, together with the Tanfeez Office (Enforcement Office) does have the ability to freeze any, and all, assets it may deem appropriate during the course of the investigation and/or as compensation pending any final judgment.

27. Is it possible to enter into a settlement to resolve any enforcement action/prosecution by the relevant authorities?

- It is possible to enter into settlement negotiations with the Ministry of Justice prosecutors. However, settlement actions may only begin after an individual has been formally charged with an action in bribery or corruption. Such plea agreement or settlement will be by, and between, the Ministry of Justice prosecutors and the defendant. The judge assigned to the case would need to approve the settlement before it is final.

28. Where proper disclosure is made to the employer/public body concerning the details of the gift or event being offered, would that be sufficient to avoid any potential liability under the relevant legislation? (If so, what form should the disclosure take and what details should be included?)

- There are no prescribed methods of disclosure or self-reporting in Iraq.

29. In practice, is it possible to obtain written/signed acknowledgement from the relevant supervisory level of the public body/state which shows that the supervisor is aware of the advantage offered to an employee? Is there an official approval process available or channel to go through?

- It is not possible in practice to obtain a written or signed acknowledgment from the relevant authorities that any particular act should not be considered a bribe or an illicit gift.

30. Are there provisions for defendants to appeal against any enforcement action/prosecution taken against them?

- In Iraq, there is an appeal as of right. The Court of First Instance will be the primary court in which an individual will face charges, and where the first trial will be held. However, the defendant has the right to appeal interlocutory orders on issues of fact or law to the next higher court. In terms of appeal of judgments, the defendant has the right to appeal these decisions twice: once to the intermediary court and once to the final Supreme Court. The judgment will not be seen as "final" until all appeals have been exhausted and completed. However, an appeal against a judgment ordering a prison sentence must be conducted while incarcerated; the sentence is not suspended pending the appeal.

REFORMS

31. Are there likely to be any significant reforms in Iraq in the near future?

- We are not aware of any reforms currently being considered by Parliament or the National Integrity Commission.

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Hashemite Kingdom of Jordan

Jordan has a specific anti-corruption law. There are also provisions relating to anti-bribery and corruption in a number of other laws, primarily in the Jordanian Penal Code.

THE LAW

1. What is the source of:

ABC legislation and regulations?

- The primary sources of regulation are:
  - The Civil Service Regulation No.82/2013 (the "**Regulations**");
  - the bribery-related provisions of the Jordanian Penal Code No.16/1960 (the "**Penal Code**");
  - the Economic Crimes Law No.11/1993 (the "**Economic Crimes Law**");
  - the Anti-corruption Commission Law No.62/2006 (the "**Anti-corruption Law**"); and
  - the Higher Procurement Commission Regulation No.50/1994 (the "**Higher Procurement Commission Regulation**").

Local regulatory guidance in relation to the following types of activities: gifts, meals, entertainment, travel, sponsored training/conferences and other similar hospitality events?

- Gift giving to public servants is only dealt with in very general terms within the Regulations. Some guidance in this regard is also provided by the Code of Conduct for Public Office (the "**Code of Conduct**"); however, this provides only a general statement of ethical standards and lacks means for implementation or sanctions (see paragraph 12 below for more detail).

2. What constitutes an ABC offence in Jordan?

Bribery:

- In accordance with Articles 170-173 of the Penal Code, bribery can be defined as requesting or accepting (whether directly or for a third party) any gift, promise or other benefit in return for any legitimate or illegitimate act done by virtue of the employee's position or in return for refraining from any act that the employee should have done by virtue of his/her position. The offeror of a bribe is also deemed to commit an offence and may be subject to the same punishments as the receiver of the bribe (as set out in paragraph 26 below).

Corruption:

- Under Article 5 of the Anti-corruption Law, "corruption" is widely defined to comprise:
  - crimes pertaining to public office under the Penal Code;
  - crimes violating public trust under the Penal Code;
  - economic crimes subject to the Economic Crimes Law;
  - any act or omission that results in causing damage to public property;
  - abuse of authority contrary to the law;
  - accepting nepotism or favouritism that preclude rights, or grant illegitimate interests;
  - all acts subject to anti-corruption international conventions to which Jordan is a party;
  - money laundering;
  - unjust enrichment; and
  - failure to disclose investments, assets or benefits that may lead to a conflict of interest if the laws and regulations require such disclosure and if such investments, assets or benefits may cause the person who has failed to disclose them to realise a personal direct or indirect benefit.
- For the avoidance of doubt, the Anti-corruption Law does not contain a separate definition of 'bribery'.

ABC under the procurement law:

- The Higher Procurement Commission Regulation further prohibits all parties to a procurement-related transaction from directly or indirectly soliciting, requesting, offering, granting or providing any benefit to, for the interest of or in response to an order by any public servant in return for carrying out an act or refraining therefrom.
- The Higher Procurement Commission Regulation defines the parties to a procurement transaction as including: governments; public departments, corporations and agencies; national, regional and international agencies that operate in the field of financing, lending and aid-granting; manufacturing, producing and supplying companies; commercial agents and intermediaries; consultants and other individuals and entities that provide services or funds in relation to any commercial transactions.
- The Regulation requires all such parties to take all necessary measures to ensure that no illegitimate benefit (of any kind or amount) is delivered to any person or public servant (whether in person, through a medium or to any of the relatives or partners of such person). It also prohibits the use of subcontracts or purchase orders as a means for transferring funds or other

benefits to any person (or to any relative or partner of such a person), public servant or authorities which have any decision-taking powers.

3. Are there any statutory defences provided under the relevant legislation, eg *de minimis* exceptions – payments that are legal in the country in which they are offered, etc? What considerations will be taken into account, for example the purpose and frequency of the gift/event, the cost to the organiser, the value of the benefit offered to the individual?

- As set out in more detail in paragraph 28 below, the only party who benefits from available defences in cases of bribery is the provider of the bribe. If the bribe is provided in return for an illegitimate service or for refraining from performance of any act that falls within the duties of a public servant, and the offer or promise of the gift or benefit is not accepted, the person offering the bribe would suffer a lesser penalty if successfully prosecuted than if the gift or benefit was accepted.
- Further, the provider of a bribe and any person who intervenes in this act by acting as an accessory (ie, by providing help or support to the provider of the bribe) is exempted from penalty if they report or admit the bribe to the authorities prior to the matter being referred to the court.

4. What kinds of gifts/entertainment/advantages will be considered acceptable?

- There are no specific provisions in the applicable laws or in the Code of Conduct as to any monetary or other threshold for gifts that are considered 'acceptable'. The only indication provided in this regard is contained in Article 68 of the Regulations, which provides that gifts should comply with what is 'commonly accepted as a token of appreciation and respect'. In practice, in order for a gift to be deemed 'acceptable', it should be symbolic and of a nominal value.

5. What kinds of gifts/entertainment/advantages will be considered unacceptable?

- Since there are no clear indications as to what constitutes 'acceptable' gifts, any benefit provided to a public servant would be subject to the discretion of the court in determining whether it is a legitimate benefit, unless it is clearly in violation of the law for being in exchange for an act or omission related to the office of the public servant.

6. Are there any exemptions, for example "facilitation payments" – defined as payments made to procure "routine governmental action" – that "do not involve an exercise of discretion", payments that "are legal in the country in which they are offered", and "reasonable and *bona fide* expenses directly relating to the promotion of products or services"?

- The Penal Code distinguishes between payments provided in return for (i) an illegitimate service or for refraining from any act that falls within the duties of a public servant and (ii) a legitimate service that falls within the duties of the official. In the latter case, both the public servant and the provider of the bribe would suffer a lesser penalty than in the former case.

7. Does the law cover gifts/entertainment/advantages which are given to spouses/relatives of public officers/civil servants, and/or companies in which the public officers/civil servants are directors/shareholders?

- The provisions pertaining to bribery in the Penal Code consider a gift or benefit to be a bribe if a public servant accepts a benefit in exchange for an act or omission related to the office, whether such gift or benefit is for the public servant him/herself or for a third party. This provision would apply if the gift/benefit is given or promised to spouses, relatives or companies in which the public servant is a director or shareholder.

8. What is the position in respect of charitable contributions to the Government and/or politically exposed persons (PEP)-connected local charities?

- Though there is no clear legal provision regarding donations made to the Government and/or PEP-related charities, such acts would be covered by the bribery-related provisions of the Penal Code, as they would constitute benefits given to third parties in exchange for an act or omission by a public servant.

9. Do the anti-corruption laws/regulations apply to the private sector or do they relate to the bribery of public individuals and/or bodies only?

- Legal rules pertaining to anti-corruption exist in several laws and regulations that mainly address the public sector, but their reach extends to members of the private sector in certain circumstances. For example, Articles 172 and 173 of the Penal Code make no distinction between providers of the bribe in the public and the private sectors. Irrespective of the relevant sector, the provider of a bribe may be subject to imprisonment and a monetary fine.
- In addition, the definition of 'public property' in the Economic Crimes Law includes all property that is owned or subject to the control of banks, public shareholding companies and specialised lending agencies. Accordingly, the chairmen and members of the boards of directors of such entities may be subject to these provisions.
- Further, the definition of 'corruption' in the Anti-corruption Law does not turn on the identity of the actor, but, more generally, includes acts or omissions that result in damage to public property.

10. What is the definition of a public body? Would it include persons working in state-owned/controlled companies? Who is a public/civil servant?

- Jordanian law does not define a "public body" as such, but the Special Bureau for the Interpretation of Laws has issued a decision that considers a "public establishment" as one that is distinguished by:
  - being part of the public administration that uses public authority to achieve its objectives;
  - providing public services;
  - having public funds;
  - employing staff who are considered as public servants and whose decisions are deemed as administrative decisions; and

  - being entitled to conclude contracts and enjoy various financial advantages.
- For the purpose of bribery, the Penal Code provides that its provisions apply to:
  - public servants in the administrative or judicial domain;
  - officers or personnel of the civil or military authorities;
  - employees of the State or any public administrative body;
  - persons entrusted with a public service, whether by election or appointment;
  - persons entrusted with an official assignment such as an arbitrator, expert or receiver;
  - providers of the bribe to any of the above persons; and
  - lawyers accepting or requesting bribes to perform an illegitimate act or to refrain from an act that falls within their duties.
- State-owned companies are not recognised distinctly as such under Jordanian law. According to Article 8 of the Companies Law, companies that are wholly owned by the Government must be registered under the Companies Law either as limited liability, private shareholding or public shareholding companies. Persons working for such companies are not considered public servants.
- According to the Regulations, a public servant is a person appointed in a post listed on the schedule of public posts issued under the General Budget Law or within the budget of a public entity.

11. Would members of the Jordanian royal family be considered public officials by virtue of the fact that they are members of the royal family?

- No.

12. Does the Government issue internal regulations or codes applicable to public officers/civil servants?

- Most of the laws that govern public entities, or the regulations or directives issued thereunder, include a standard provision that prohibits their employees from accepting gifts from any persons who may have an interest in their entities. Such acts are also penalised with various disciplinary measures according to the said laws or regulations, but the main legal instrument that governs acts of bribery in relation to public entities remains the Penal Code.
- In 2006, the Government issued the Code of Conduct, but it was only announced and circulated to public administrative bodies in late 2010.
- Article 8 of the Code of Conduct prevents public employees from accepting or requesting any gifts, hospitality or other benefits of any kind, whether directly or through a third party, where such benefits may have a direct or indirect influence on the performance of their duties or may compel them to make certain commitments in return for accepting the benefits.
- Where the employee, however, is in a position where he cannot refuse gifts, hospitality or other benefits that do not have such an impact, or when he believes that accepting certain kinds of hospitality will be to the benefit of his department, the Code of Conduct directs the employee to report the same in writing to his immediate superior, who must in turn advise the employee in writing of whether the gifts, hospitality or other benefits must be refused, retained by the department, donated to a charity, disposed of or retained by the employee in question.
- The Code of Conduct also provides that public departments shall open a gift registry where a record shall be made of all the gifts given to the department and of the manner in which they were dealt with, ie whether they are retained by the department or employee or disposed of through donation or otherwise.
- It must be noted, however, that the Code of Conduct is essentially a general statement of ethical standards that lacks means for implementation or sanctions for violating its provisions. Furthermore, the Code of Conduct lacks a specific definition of gifts that are considered as acceptable/unacceptable, including their value. Also, as far as we are aware, the gift registry provided for in the Code has so far not been established in any public department.

13. Are there any laws or regulations imposing obligations on persons to "whistleblow" or disclose suspected corruption within an organisation?

- Yes. The Jordanian Criminal Procedure Law No.9/1961 (the "**Criminal Procedure Law**") imposes an obligation on any public servant or any other person who becomes aware of the committal of any offence or felony to immediately report such incident to the relevant public prosecutor.

14. Do the domestic anti-corruption regulations have extra-territorial effect? (Is bribery of foreign public officials prohibited?)

- Yes. The Penal Code applies to any Jordanian citizen who commits an offence or felony that is penalised under Jordanian law, whether inside or outside of Jordan.

REGULATION OF ACTIVITIES

15. What are the main bodies responsible for investigating and combating fraud and corruption, in Jordan?

- According to the Criminal Procedure Law, the main entity entrusted with investigating and combating crime in general, including bribery and corruption, is the "Justice Control" establishment, which is represented by public prosecutors, or, in jurisdictions that do not have a public prosecutor, by judges of small claims courts, assisted by a number of other officials such as administrative governors, policemen, the Director of the Public Security Department and mayors. Justice Control also includes members of the police force, officials assigned with criminal investigations, and captains of ships and aircrafts.
- In addition to the above, the Anti-corruption Law gives criminal investigation powers to the Anti-corruption Commission.
- The Securities No.76/2002 (the "**Securities Law**") gives similar powers to the Securities Commission.
- Some overlap exists between the investigative powers of the various authorities. For example, both the Anti-corruption Commission and the Securities Commission may carry out their own investigations or refer the matter to the public prosecutor from the outset.

16. What does each of these authorities investigate?

- Justice Control officers are generally responsible for investigating all acts that constitute crimes under the Penal Code.
- The Anti-corruption Commission has powers to investigate financial and administrative corruption.
- The Securities Commission is entrusted with investigating all violations of the Securities Law.

17. Do the authorities described above have the same powers of investigation?

- No. Each authority has different powers of investigation.

18. What actions may these bodies take in exercising their functions?

- Justice Control officers have the power to investigate, collect evidence, arrest suspects and refer them to competent courts. For this purpose, public prosecutors are entitled to detect crimes, track suspects, request the assistance of armed forces and experts, seize any materials pertaining to the crime under investigation, monitor telephone calls, summon and interrogate suspects and witnesses and detain suspects.
- The Anti-corruption Commission has powers to prosecute persons who violate the provisions of the Anti-corruption Law, seize their movable and immovable property, prevent them from travel, suspend them from their posts and suspend their salaries and other financial entitlements if necessary.
- The Anti-corruption Commission is further entitled to demand any information or documents that it deems necessary from any entity whatsoever. It also has the authority to conduct financial, technical and administrative audit of the records of any entity that falls within its jurisdiction.
- In order to undertake investigations, the Securities Commission may: (i) inspect any of the entities that fall within the jurisdiction of the Commission, audit its records and registers, and acquire any information or documents relevant to the investigation; (ii) obtain primary statements, as well as relevant information, documents or records, from any person; (iii) request any documents or papers relevant to the investigation; and (iv) summon witnesses and hear their testimony under oath.
- Under the Economic Crimes Law, the Attorney General is entitled to impose provisional attachment on the assets of the persons implicated in the crime, in addition to the assets of their spouses, ascendants and descendants, pending the conclusion of the investigation.
- For the purposes of the Economic Crimes Law, assets owned or administered by any of the entities listed below are considered public property:
  - Ministries and public official departments and institutions;
  - the Senate and House of Deputies;
  - municipalities, local councils and joint services councils;
  - syndicates, unions, associations and clubs;
  - banks, public companies and specialised credit institutions;
  - political parties;
  - any authority with a budget mainly supported through the state's budget; and
  - any authority stated by the law administering public funds.

19. What are the powers of arrest and detention of the relevant authorities?

- If a person is detained for more than 24 hours without being questioned by the public prosecutor, such detention is considered to be arbitrary and the official(s) that detained such person is (are) potentially liable under the Penal Code for the crime of restriction of personal freedom.
- The Prime Minister has the discretion, under the Economic Crimes Law, to refer crimes that fall under the law to the State Security Court. In such a case, the State Security Law No.17/1959 allows for an individual to be kept in detention for up to one week prior to referring him to the public prosecutor.
- After a defendant is questioned, the public prosecutor has the right to detain him for up to two months if the crime falls under the Economic Crimes Law and the Prime Minister decides to refer it to the State Security Court.
- In all other instances, the general rules contained in the Criminal Procedure Law shall apply, namely:
  - the public prosecutor may detain an individual for a period not exceeding seven days if the alleged criminal offence is punishable with imprisonment for a period of more than two years; and
  - the public prosecutor may detain an individual for a period not exceeding 15 days if the alleged criminal offence is punishable by the death penalty, imprisonment with hard labour, imprisonment for life or for a period ranging between 3 to 15 years.
- The period of detention may be extended in certain circumstances:
  - up to a maximum of one month in the case of offences punishable with imprisonment for a period of one week to three years or with a monetary fine;
  - up to a maximum of three months in the case of felonies punishable with hard labour or imprisonment for a period ranging between 3 to 15 years; or
  - up to a maximum of six months in cases of other felonies.
- Where the period of detention is not extended, the defendant must be released.
- If, prior to the end of the above-mentioned extensions, the public prosecutor finds that the investigation requires the need to keep an individual in detention, the public prosecutor must refer the matter to the competent court which can, at each time that it is requested to do so, extend the detention. The total time of detention is subject to a maximum, the length of which depends on whether the alleged crime is an offence or a felony. The court may also decide to release the defendant with or without bail in any of the said cases.
- Furthermore, the public prosecutor may, in the case of felonies and offences punishable with temporary penalties, decide to withdraw the warrant for detention if the defendant has a fixed place of residence in Jordan.

20. What is the jurisdictional reach of these powers?

- Although the Penal Code applies to all Jordanians and residents of Jordan who commit crimes punishable under Jordanian law outside of Jordan, the powers of investigation of Jordanian authorities do not extend overseas.

21. Do the police and other local authorities assist the relevant regulatory authorities in their investigations?

- Yes. The Criminal Procedure Law expressly provides that Justice Control officers (as defined in paragraph 16 above) may request the assistance of the armed forces for the discharge of their duties. The Law also provides that the assistance of such forces must be requested in cases where a person summoned for questioning does not respond to such order or in cases where a warrant for detention is issued by the competent authorities.

22. How do the relevant regulatory authorities interact with overseas regulators?

- Under the Anti-corruption Law, the Anti-corruption Commission has the authority to investigate all acts subject to international anti-corruption conventions to which Jordan is a party.
- Jordan has acceded to both UNCAC and the Arab Anti-corruption Convention ("AACC"). In accordance with the Jordanian Constitution, UNCAC and AACC became effective as national legislation upon ratification. Both conventions provide for cooperation between state parties in various aspects of the combat against corruption, including prevention and investigation of corruption, prosecution of offenders, collection and transfer of evidence, and extradition of offenders. We are not aware of any instances in which the Court of Cassation has referred to the implementation of UNCAC or AACC in any of its decisions.

23. Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

- The Penal Code prohibits the publication of any documents or information relating to a criminal investigation prior to announcing such information in a public hearing. The Code of Criminal Procedure also expressly provides that documents that are inspected can only be viewed by the public prosecutor or judicial control officer prior to being seized.
- All information or documents to which the Anti-corruption Commission has access are deemed to be confidential and may only be disclosed subject to the provisions of the law.
- Any information to which the Securities Commission has access is deemed confidential, and may only be disclosed by the Board of Commissioners if such disclosure is deemed to be necessary for the protection of investors.

24. Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, for example in proceedings in a court of law?

- Justice Control officers, as well as the Anti-corruption Commission and the Securities Commission, which are considered part of the Justice Control establishment, are responsible for referring the cases that they investigate to the competent courts. The information that is collected by these entities in the course of their investigation is used by the public prosecutor to justify its decisions to prosecute.

25. Are there protections available when responding to investigations by the relevant authorities, such as the right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

- According to the Criminal Procedures Law, when an individual attends before the prosecutor, the prosecutor must inform the individual of the criminal offence with which he is accused and warn him that he has the right not to respond to any questions except in the presence of a lawyer. The individual is also entitled to contact his lawyer at any time and without any monitoring. Furthermore, by virtue of the Lawyers' Association Law No.11/1972 lawyers are prohibited from disclosing any confidential information pertaining to their clients and from testifying against their clients in cases in which they represent them.

SANCTIONS FOR WRONGDOING

26. What disciplinary sanctions/sentences may these authorities impose?

The Penal Code:

- The Penal Code distinguishes between payments provided in return for (i) an illegitimate service or for refraining from any act that falls within the duties of a public servant and (ii) a legitimate service that falls within the duties of the official:
  - If the payment for an illegitimate service is accepted, the punishment may be imprisonment with hard labour for a period of 3 to 20 years.
  - In the event that the bribe for an illegitimate service is not accepted, the person offering the bribe may be penalised with a lesser sentence of imprisonment ranging from three months to three years, in addition to a fine equivalent to approximately USD15 to USD280.
  - If the payment for a legitimate service is accepted, both the public servant and the provider of the bribe may be subject to imprisonment for a period of two to three years in addition to a fine equal to the benefit accepted or requested.

The Civil Service Regulation:

- In addition, under the Civil Service Regulation No.82/2013, a person dismissed from public service for bribery or any other offence or felony that involves honour or public morals shall be deprived of his/her financial dues.

The Securities Law:

- The Law of Securities No.76/2002 (the "**Securities Law**") further provides that the Board of Commissioners of the Securities Commission may publicise any violation of the provisions of the Securities Law and its related regulations, instructions and decisions in order to forewarn investors to avoid any resulting consequences of such violation. The Securities Law also grants the Board the power to impose monetary fines of up to the equivalent to approximately USD70,621 on any person who:

- Violates the provisions of the Securities Law and its related regulations, instructions and decisions;
- wilfully aids, abets, counsels or commands any other person to commit the violation; or
- states, or causes to be stated, in any application or report filed with the Securities Commission any information which is false or misleading with respect to any material fact, or fails to state in any such application or report any material fact that should have been stated.

- The Board will, however, take the following into consideration when ordering the fine and deciding its amount:
  - Whether the violation involved fraud, deceit, manipulation or deliberate disregard or gross negligence of the requirements stipulated in the Securities Law;
  - whether the violation resulted, directly or indirectly, in harm to any person; and
  - whether the violation has resulted in unjust enrichment, taking into account any restitution made to persons injured by such a violation.
- To the extent that the violations can be classed as such under both the Securities Law and the Penal Code, penalties under the Securities Law may be imposed in addition to the sanctions under the Penal Code.

27. Do the relevant authorities have powers to freeze properties which may be proceeds of an ABC offence pending conclusion of their investigation?

- Bribery is considered to be an "Economic Crime" under the Economic Crimes Law where it "prejudices the economic position of the state or the public trust in national economy, national currency, stocks, bonds or securities or if the subject of such crime is the public monies" (Article 3(C)(A) of the Economic Crimes Law). In such a case, the Attorney General is entitled to impose provisional attachment on the assets of the persons implicated in the crime, in addition to the assets of their spouses, ascendants and descendants, pending the conclusion of the investigation.

28. Is it possible to enter into a settlement to resolve any enforcement action/prosecution by the relevant authorities?

- According to the Penal Code, the provider of a bribe and any person who intervenes in this act by providing any form of help or support to the briber (an accessory) is exempted from penalty if they report or admit the bribe to the authorities prior to referring the matter to the court.
- Under the Economic Crimes Law, if an economic crime is reported to the authorities by one of the perpetrators (other than an instigator) before the crime is detected, such person should be exempted from penalty provided that the subject of the crime is considered as public property and the reported information leads to the recovery of such property.
- Under the same law, the Attorney General is entitled to cease the prosecution of a person who has committed an economic crime and to conclude a settlement with such person if he returns all the funds that he has acquired as a result of the crime. Such a decision by the Attorney General would only become enforceable, however, after it is approved by a judicial committee that consists of the Chief Attorney General (as Chairman), in addition to a judge nominated by the President of the Judicial Council and the State Attorney. Such settlements may not be concluded with public servants including staff of the administrative, judicial or municipal establishments and officers and personnel of security or military establishments.
- In accordance with the Anti-corruption Law, a perpetrator of a corruption crime, or an accomplice, accessory or instigator, will be exempted from prosecution if the subject of the crime is reported prior to detection of the crime by the authorities and the reported information leads to recovery of the property.

29. Where proper disclosure is made to the employer/public body concerning the details of the gift or event being offered, would that be sufficient to avoid any potential liability under the relevant legislation?

- In cases of gifts that do not constitute bribes under the Penal Code, the Code of Conduct directs the public servant to report the same in writing to his immediate superior, who must in turn advise the employee in writing of whether the gifts, hospitality or other benefits must be refused, retained by the department, donated to a charity, disposed of or retained by the employee in question.
- Though the Code of Conduct does not address the status of the provider of the gift, we believe that such disclosure, whether made by the public servant himself as provided for under the Code of Conduct or by the provider of the gift, should serve to avoid creating an appearance of impropriety.
- As mentioned at paragraph 12 above, to the best of our knowledge, the gift registry, as provided for in the Code of Conduct, has not yet been established.

30. In practice, is it possible to obtain written/ signed acknowledgement from the relevant supervisory level of the public body/state which shows that the supervisor is aware of the advantage offered to an employee? Is there an official approval process available or channel to go through?

- Neither the law nor the Code of Conduct contains any guidance in this regard.

31. Are there provisions for defendants to appeal against any enforcement action/prosecution taken against them?

- In the case of an offence (defined in the Penal Code as a misdemeanour punishable with imprisonment of one week to three years and/or a monetary fine equivalent to approximately USD15 to USD280), an application for release from detention with bail may be made to the public prosecutor. In the case of a felony (defined in the Penal Code as a crime punishable with the death penalty), imprisonment (with or without hard labour) for life or for a period ranging between three and fifteen years, an application for release should be made to the court before which the individual will be tried, provided that the court finds that such release will not affect the investigation or disturb public security. The individual may appeal the decision regarding release within three days of the date on which he is served with the decision. Decisions of the public prosecutor or Small Claims Court in this regard are appealed to the Court of First Instance, while decisions issued by the Court of First Instance are appealed before the Court of Appeal.

- If a decision is issued for releasing a defendant with bail, the said bail must be provided by the defendant in the amount determined by the competent entity, which may also instruct the defendant to provide a cash deposit instead of the bail.
- Where assets are attached under the Economic Crimes Law, persons – other than the defendant – whose assets are subject to attachment have the right to file an objection in this regard before the State Property Maintenance Court.

32. Recent high-profile allegations and prosecutions

- Most bribery and corruption cases are heard in private. However, there have been some recent media reports regarding corruption. Most notably, the trial of Walid Al Kurdi, CEO of the Jordan Phosphate Mines Company, who was accused of exploiting his office and violating the Economic Crimes Law. The Criminal Court sentenced Al Kurdi in 2013 to 15 years of hard labour in addition to a fine amounting to approximately USD400 million.

REFORMS

33. Are there likely to be any significant reforms in Jordan in the near future?

- There are no imminent reforms that we are aware of.

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Kuwait

Kuwait has specific laws dealing with bribery in the public sector.

THE LAW

1. What is the source of:

ABC legislation and regulations?

- The law that regulates the conduct of persons connected to government or public services is the Kuwait Penal Law No.31/1970 (the "**Penal Law**"), as amended by Law No.31/1970, "Prohibitions against the Payment and Receipt of Bribes" ("**Law No.31/1970**").
- Law No.25/1996, "Concerning the Disclosure of Commissions Paid on Contracts with the State of Kuwait" (the "**Commissions Disclosure Law**") requires disclosure of commissions or similar payments in connection with any supply, purchase or public works contracts executed with government bodies.
- On 16 February 2000, Kuwait ratified the "United Nations Convention against Corruption". Following this and in answer to calls to tighten up laws on corruption, Decree No.24/2012 "Regarding the Establishment of the General Organization for Combating Corruption and Rules on Disclosure of Financial Liability" ("**Decree No.24/2012**") was passed in 2012. Among its objectives was to establish a body to combat corruption (the "Anti-corruption Board") and to establish rules on disclosure of assets and liabilities of persons in public service and rules regarding informers.
- Under Decree No.24/2012, the following crimes were considered to be within the jurisdiction of the Anti-corruption Board: crimes of abuse of public funds stipulated in Law No.1/1993, including crimes related to public tenders, auctions and practices; bribery and use of influence, as stipulated in the Penal Law; money laundering; forgery or fraud; crimes relating to the conduct of justice; crimes relating to illicit gains; crimes relating to evasion of customs laws in Law No.10/2003; tax evasion; obstructing the work of the Board or exercising pressure to hinder the execution of its duties or to interfere in its competencies or to abstain from providing it with the requested information; crimes relating to the protection of competition; and any other crimes which relate to corruption of public officers.
- When the Anti-corruption Board has knowledge of or suspects that corruption has occurred, it shall collect information and evidence regarding the same. The Board has the right to address and call any person who may have knowledge or information regarding the corruption. The Board has the right to view all records, documents and deeds relating to the alleged corruption; it also has the right to require any information or data or documents relating to it, and shall have the right to refer the same to the competent judicial authorities.
- Law No.116/2013, "Promoting Direct Foreign Investment in the State of Kuwait" (the "**Foreign Investment Law**"), replaced an earlier foreign investment law passed in 2001. Under Article 7 of this new Foreign Investment Law, it is prohibited for any of the members of the Board of Directors and the staff of the General Authority for Foreign Investments ("**Authority**") to have a personal interest, whether directly or indirectly, in any project or the services provided by the Authority. They are required to disclose their interests and refrain from participating in the discussion or take any decision regarding a project in which any of them has an interest or his spouse or his next of kin of the first degree. If the director or staff violates this provision, any resolution passed by the Authority in connection with any project shall be void.
- In 2016, Law No.2/2016, "On the Establishment of the General Anti-corruption Commission and the Provisions Pertaining to Financial Disclosures", a new anti-corruption law was passed ("**Anti-corruption Commission Law**"). Its purpose was to replace Decree No.24/2012, which had originally established the Anti-corruption Board but which was subsequently declared unconstitutional by Kuwait's Constitutional Court. The new Law strengthens and clarifies the powers of the Anti-corruption Board previously created in 2012. The new Law sets forth similar rules on disclosure of assets and liabilities of persons in public service as well as more detailed procedures to be followed in receiving reports and evidence of bribery, corruption and protecting informers. Under the new Law, an informer enjoys the protection of government authorities from the time he or she submits information notifying the authorities of the crime. Such protection extends to his or her spouse and family. The new Law also encourages community participation, directing citizens to report bribery and corruption crimes to the Anti-corruption Board within the scope of its investigative powers.

Local regulatory guidance in relation to the following types of activities: gifts, meals, entertainment, travel, sponsored training/conferences and other similar hospitality events?

- Under Article 38 of the Penal Law, any benefit, gift, hospitality or entertainment given to a public official or employee (or to a third person on their behalf) would be considered a bribe under the Penal Law if given and accepted in consideration of the public official or employee performing or abstaining from a particular act related to their duty.

2. What constitutes an ABC offence in Kuwait?

- Article 35 of Law No.31/1970 provides that a public official may commit an offence if he/she solicits a bribe for him/herself or another party in exchange for performing or not performing a public duty. The bribe may be any benefit, gift, hospitality or entertainment.
- In addition, Article 37 provides that a public official may not request for himself or others a benefit, gift, hospitality or entertainment as a bribe with the intent of retaining the same or part thereof for himself, or for exerting actual or apparent influence to attempt to acquire from any public authority any work, order, ruling, resolution, medal, commitment, licence, supply agreement, contracting post, service or any other advantage whatsoever.
- Article 41 of the Penal Law sets out the penalties for bribing public officials or seeking to do so.
- Article 2 of the Commissions Disclosure Law states that in contracts entered into by public authorities having a value of not less than KD100,000, there should be included an express statement whether the contracting party paid or shall pay, cash, commission or benefit to an intermediary.
- Article 3 of the Commissions Disclosure Law provides an obligation on any person who pays or receives a gift or commission in return for any type of service, and any party who promises or receives a promise of such on the occasion of concluding a contract to provide the other contracting party with a detailed declaration of the gift or commission. The contracting party should forward a copy of the declaration to the State Audit Bureau.
- Failure to comply with Articles 2 and 3 of the Commissions Disclosure Law regarding the disclosure of commissions in a relevant agreement and ongoing requirement to file declarations in this regard can result in significant criminal sanctions including monetary penalties and imprisonment.

3. Are there any statutory defences provided under the relevant legislation, eg *de minimis* exceptions – payments that are legal in the country in which they are offered, etc? What considerations will be taken into account, for example the purpose and frequency of the gift/event, the cost to the organiser, the value of the benefit offered to the individual?

- The Penal Code provisions on bribery do not state an amount that would be considered a bribe; therefore, the provisions can be interpreted as covering even relatively small amounts.
- By way of example, in a case filed against a government employee in Kuwait's Public Institution for Civil Information, it was shown that said employee received approximately USD100 to process the renewal of 35 ID cards which were about to expire. To process 35 separate applications, the same employee also received approximately USD100 to process each application. This case was reviewed by the Court of Cassation (the highest court in Kuwait) and ruled that such payments constituted bribery under the provisions of the Penal Law.
- In another case, the Court of Cassation ruled that the payment of approximately USD200 for the renewal of a foreign worker's residency was a bribe within the scope of the Penal Law.
- Although these decisions did not state whether the larger amount involved in the first case (ie payment of USD100 for each of the 35 applications) was crucial in determining the existence of bribery, these cases demonstrate that even small payments may be considered bribery for the purposes of the Penal Law.
- Articles 2 and 3 of the Commissions Disclosure Law only apply where contracts with entities of the State of Kuwait exceed KD 100,000 in value. Such entities include governmental authorities, ministries, public departments, the Kuwait Municipality, public authorities and institutions as well as companies which are fully owned by the state or in which the state or a public juristic person owns 50% or more of the company's share capital.

4. What kinds of gifts/entertainment/ advantages will be considered acceptable?

- Gifts or entertainment of a nominal value customarily given on religious or special occasions (eg Eid celebration) or in commemoration of an event, which are not in consideration of performing or abstaining from doing an official act would arguably fall outside the scope of what would be considered as bribery. Examples of such gifts include: reasonably priced pens, coffee table books, key chains, desk sets, appointment books and simple or inexpensive office décor.

5. What kinds of gifts/entertainment/ advantages will be considered unacceptable?

- The law does not define this but applies broadly. Examples of unacceptable gifts include expensive jewellery and free vacations.

6. Are there any exemptions, for example "facilitation payments" – defined as payments made to procure "routine governmental action" – that "do not involve an exercise of discretion", payments that "are legal in the country in which they are offered", and "reasonable and *bona fide* expenses directly relating to the promotion of products or services"?

- There are no such exemptions provided under Kuwaiti law.

7. Does the law cover gifts/entertainment/ advantages which are given to spouses/relatives of public officers/civil servants, and/or companies in which the public officers/civil servants are directors/shareholders?

- The provisions on bribery in the Criminal Law do not specify gifts, entertainment or advantages which are given to spouses or relatives of public officers/civil servants, and/or companies in which the public officers/civil servants are directors/shareholders.
- However, Article 38 of the Criminal Law does cover persons accepting a bribe as well as the person appointed for this purpose. Accordingly, a grant or gift received by such persons and entities would be considered a bribe where the party for whom the bribe was intended appoints such person/entity to receive the bribe in his/her stead.

8. What is the position in respect of charitable contributions to the Government and/or politically exposed persons (PEP)-connected local charities?

- There is no specific provision in the Penal Law, but the above-mentioned provisions may nonetheless apply.

9. Do the ABC laws/regulations apply to the private sector or do they relate to the bribery of public individuals and/or bodies only?

- Articles 37 to 41 of the Penal Law apply to bribes in relation to public officials. There are no equivalent anti-bribery rules that apply to private sector employees.

10. What is the definition of a public body? Would it include persons working in state-owned/controlled companies? Who is a public/civil servant?

- Article 43 of the Penal Law provides a definition of public officer as follows:
- The term "public officer" shall apply to the following:

  A. Officers, servants and workers at government authorities or those subject to the government's supervision or control;

  B. members of public parliaments or local councils, either elected or appointed;

  C. arbitrators, experts, deputy prosecutors, liquidators and receivers;

  D. each person that is assigned to a public service;

  E. Board members, managers and officers of institutions, companies, organisations, associations and foundations if the state or any of its public authorities owns shares in the capital of such entities in any capacity whatsoever.

11. Would members of the Kuwaiti royal family be considered public officials by virtue of the fact that they are members of the royal family?

- No, but they may be considered as intermediaries.

12. Does the Government issue internal regulations or codes of conduct applicable to public officers/civil servants?

- Generally, the heads of each ministry or department have the authority to formulate rules of conduct of its employees.
- Article 10 of Council of Ministers Resolution No.106/2009 ("**Executive Regulations of Law No.10/2007 Regarding Protecting Competition**") does address conflict of interest situations. It states that no Competition Board member may participate in deliberations about an issue raised to the Board, or vote on such issue if he/she has an interest therein or if such member is a relative of any of the concerned parties or in case he/she has represented or is representing one of the concerned parties.
- Also, as noted above, under Article 7 of this new Foreign Investment Law, it is prohibited for any of the members of the Board of Directors and the staff of the Authority to have a personal interest, whether directly or indirectly, in any project or the services provided by the Authority. They are required to disclose their interests and refrain from participating in the discussion or take any decision regarding a project in which any of them (or an immediate relative) has an interest. If a director or staff member violates this provision, any resolution passed by the Authority in connection with any project shall be void.

13. Are there any laws or regulations imposing obligations on persons to "whistleblow" or disclose suspected corruption within an organisation?

- Article 14 of Law No.17/1960, (the "**Penal Proceedings and Trials Law**"), requires any person who has witnessed a crime or any person who has knowledge of the same to immediately report it. Refraining from doing so would subject the party to a penalty. This rule does not apply in respect of spouses of any person involved in the crime or to his or her ascendants or descendants.
- Article 20 of the Anti-corruption Commission Law requires individuals aware of corruption to report it to the Commission or another competent body, subject to privacy and dignity.

14. Do the domestic anti-corruption regulations have extra-territorial effect? (Is bribery of foreign public officials prohibited?)

- There are no specific provisions under Kuwaiti law which relate to the bribing of a foreign public official.

REGULATION OF ACTIVITIES

15. What are the main bodies responsible for investigating and combating bribery and corruption in Kuwait?

a) Office of the Public Prosecutor ("**OPP**");

b) Kuwait Police Department;

c) State Audit Bureau ("**SAB**"); and

d) the Anti-corruption Board ("**ACB**").

16. What does each of these authorities investigate?

- The OPP investigates all potential violations of public laws including any violations of the Penal Law. The OPP undertakes the investigation, handling and prosecuting of criminal cases. It may also refer the investigation of any criminal case to the Police Department for investigation. The Chiefs of the Police Department and Public Security Department may also commission the OPP to investigate and handle misdemeanour cases when necessary. Bribery is not considered a misdemeanour. Accordingly, the OPP will lead in the investigation.
- The Police Department investigates and prosecutes misdemeanour cases which are assigned to police investigators appointed for this. The Police Department also investigates the commission of crimes as may be referred by the OPP.
- The SAB has the authority to inspect, audit, monitor and investigate the collection and disbursement of all public funds.
- The ACB has the power to receive reports and information regarding corruption. It must then conduct an investigation, and may thereafter refer the same to the competent investigation body, (Article 24, Anti-corruption Commission Law).

17. Do the authorities described above have the same powers of investigation?

- The OPP, Police Department and SAB all have investigative powers although the extent and scope of such powers vary for each agency.
- The OPP has the power to investigate all potential violations of the Penal Law and other special laws and may appoint officers to conduct investigations and undertake inquiries to determine whether there has been a violation of such laws. The OPP works closely with the Police Department and its police investigators in said investigations. The OPP may also refer any criminal cases to officers in the Police Department for investigation.
- The Police Department has the authority to investigate, handle and prosecute all misdemeanour cases.
- The SAB has financial supervision of the following departments of government:
  a) All the ministries, departments and public organisations which constitute the bureaucracy of the state;
  b) the Kuwait municipalities and all other bodies which have a public legal entity;
  c) public commissions, bodies, establishments and attachments of the state;
  d) other local bodies, which are a public legal entity; and
  e) companies or establishments in which the state or any other public legal entity holds a share of not less than 50% of their capital or guarantees them a minimum profit.
- The SAB has the power to monitor, examine and audit all financial dealings of such bodies and to review the use and disbursement of public funds.
- The SAB may investigate on its own or refer the matter to the Police Department or OPP. It will refer its findings to the OPP if there are grounds to prosecute.
- The ACB must conduct an investigation if it receives a report or information which gives rise to a suspicion of a corruption crime. However, the OPP will investigate and prosecute any such crimes, (Article 27, Anti-corruption Commission Law).

18. What actions may these bodies take in exercising their functions?

- The OPP has the authority to receive reports and complaints against violators of public laws; it may undertake hearings in aid of its investigations and bring penal action against all violators of public laws.
- A police investigator may also subpoena any person to appear before them if deemed necessary in the course of the investigation. The subpoena is issued in two original copies signed by the head of the court or the investigator, and is served by a court officer, a police officer or any other public servant duly authorised by the chief judge for this purpose.
- The OPP also has the authority to order the arrest of suspects, the surrender of potential evidence and to seize the same.
- The Police Department has the authority to conduct investigations, inspections, inquiries and collect relevant and necessary evidence as the administrative body commissioned to keep order and prevent crimes. The Police Department is responsible for receiving reports on all kinds of crimes, examining these reports, collecting all relevant information and recording them in the investigation report. The police investigator, while conducting his investigation, should hear the statements of the reporting persons. He may call witnesses, hear their testimonies and record it in his investigation report.
- Investigation reports written by police investigators are submitted to the OPP. The police investigator, under certain circumstances, also has the authority to order the arrest of suspects, order the surrender of potential evidence and to seize the same.
- The SAB has the authority to examine and review all financial documents relating to the collection, use and disbursement of public funds. The SAB has the authority to investigate incidents of embezzlement, negligence and financial contravention in order to suggest corrective measures. The SAB may institute disciplinary proceedings against persons who commit any financial deviation before a SAB disciplinary tribunal.
- The ACB has the power to review records, papers and documents related to any matter referred to it where it suspects a corruption offence to have taken place. The ACB also has the power to summon individuals for questioning.

19. What are the powers of arrest and detention of the relevant authorities?

- The OPP and the investigators of the Police Department have the power to order the arrest and detention of a party suspected of a crime. The SAB does not have the power of arrest and detention.

20. What is the jurisdictional reach of these powers?

- The laws granting the OPP, Police Department and SAB their powers do not appear to grant powers with extra-territorial reach; their jurisdictions appear to be limited to activities committed in Kuwait or whose consequences are manifest in Kuwait. In the case of the SAB, its jurisdiction includes Kuwait government bodies outside of Kuwait; it may refer such matters to the OPP for prosecution or further investigation.
- For residents who commit crimes in jurisdictions other than Kuwait, their acts are generally governed by criminal and penal laws in the foreign jurisdiction and not under Kuwaiti law.

21. Do the police and other local authorities assist the relevant regulatory authorities in their investigations?

- The SAB may call on the OPP and the Police Department where they suspect that there has been a violation of any law relating to the use or disposition of public funds.
- Similarly, the ACB may refer its investigations to the OPP.

22. How do the relevant regulatory authorities interact with overseas regulators?

- Government regulatory agencies in Kuwait are generally encouraged to coordinate with their overseas counterparts for purposes of coordination, cooperation and sharing of information for the apprehension of suspects especially among regulators in the GCC region.

23. Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

- There are no specific provisions requiring investigation or information disclosed to be confidential. However, it is standard procedure to keep matters surrounding an ongoing investigation to be kept confidential until the investigation is completed and the findings are final; after this, the results can then be made public.
- Under the Anti-corruption Commission Law, the ACB may request information relating to an investigation confidentially, but it is not obliged to do so.

24. Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, for example in proceedings in a court of law?

- Yes. This information is usually submitted to the OPP to determine whether a complaint may be filed against the would-be violators before the relevant courts.

25. Are there protections available when responding to investigations by the relevant authorities, such as the right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

- In any investigation before the OPP or the Police Department, every person detained by the police or held in custody has the right to be informed in writing of the reasons for his detention. An individual accused before any judicial or quasi-judicial tribunal has the right to counsel.
- Kuwait authorities recognise the concept of lawyer-client privilege.
- Article 35 of the Law 42 of 1964 on the Organization of the Legal Profession before the Courts expressly recognises that lawyers must protect clients' secrets.

SANCTIONS FOR WRONGDOING

26. What disciplinary sanctions/sentences may these authorities impose?

- The SAB may constitute a Disciplinary Tribunal to receive and assess evidence of financial deviation, render a decision in respect of the guilt of the accused and impose penalties.
- The OPP and Police Department may arrest and hold suspects in custody during the investigation but they do not have the authority to punish or impose penalties; this power rests with Kuwaiti courts.
- Under Article 35 of the Penal Law, a term of imprisonment not exceeding 10 years and a fine equal to twice the value given or pledged, but not less than USD200, shall be imposed on any public employee who may request or accept for himself or others a pledge or grant to perform or to abstain from performing his work.
- The provisions of this Article are applicable even if the act referred to is not included within the duties of the public employee's post should he challenge or purport the same erroneously. Likewise, the provisions of this Article shall be applicable even if the public employee intends not to perform such an act or abstain from such non-performance.
- Under Article 37, a penalty as stipulated under Article 35 is applicable to any person who may request for himself or others a pledge or a grant allegedly as a bribe for an employee being intent on retaining the same or part thereof for himself, or for exerting actual or apparent influence to attempt to acquire any advantage.
- Under Article 36, any public official accepting a gift in exchange for performing, or abstaining from performing, any of his duties shall be imprisoned for a period not exceeding five years and/or fined a maximum of KD500 if the public official carries out such performance or non-performance.
- Under Article 39, the briber and the intermediary are punished with the same penalty determined for the person accepting the bribe.
- If the performance or renunciation of the act is rightful, the briber or the intermediary are punished with imprisonment for a period not exceeding five years and/or a fine not exceeding KD1,000.
- Under Article 41, any person who offers a public officer a gift for performance or renunciation of a certain act in default of his duties is punished with imprisonment for a period not exceeding five years and/or a fine not exceeding KD1,000. If the performance or renunciation of the act is 'rightful', the penalty is imprisonment for a period not exceeding three years and/or a fine not exceeding KD225.
- What would be considered "rightful" would be determined by the Kuwait courts.
- Under Article 42, in all cases, the amounts paid by the briber or the intermediary as a bribe are confiscated. If the briber is released from the penalty, any amounts confiscated from him are refunded to him.

27. Do the relevant authorities have powers to freeze properties which may be proceeds of an ABC offence pending conclusion of their investigation?

- Yes. The OPP has the authority to order the freezing of cash or assets which they consider to be evidence or proceeds of a crime. Interested parties would have to file a case in the Kuwait courts to lift or set said order.

28. Is it possible to enter into a settlement to resolve any enforcement action/prosecution by the relevant authorities?

- No.

29. Where proper disclosure is made to the employer/public body concerning the details of the gift or event being offered, would that be sufficient to avoid any potential liability under the relevant legislation? (If so, what form should the disclosure take and what details should be included?)

- No. The disclosure to the employer/public body concerning the details of the gift or event or entertainment offered would not negate potential liability under the relevant legislation. The parties who accept the gift or event or entertainment offered in consideration of doing or refraining from an act related to the employee's public duties would still be liable under the relevant provisions of the Penal Law.

- According to the authorities, in general, the person offering the bribe would not be penalised in cases where he/she disclosed the bribe to the authorities voluntarily even after the bribe was already paid. However, the governmental employee (person receiving the bribe) would be penalised.

30. In practice, is it possible to obtain written/ signed acknowledgement from the relevant supervisory level of the public body/state which shows that the supervisor is aware of the advantage offered to an employee? Is there an official approval process available or channel to go through? (How long would that take? Can it be done retrospectively?)

- No. There is no such procedure or practice to obtain written/ signed acknowledgement from the relevant supervisory level of the public body/state that shows that they are aware of the advantage offered to an employee or any such official approval.

31. Are there provisions for defendants to appeal against any enforcement action/prosecution taken against them?

- Yes. If a judgment or arrest order is issued in absentia, an objection may be filed by the defendant before the same court which issued the judgment/order. If the objection is rejected, the defendant may file an appeal before the higher court. If the judgment or order was issued under ordinary circumstances (ie not in absentia), the defendant has the right to file an appeal directly with the higher court, which may review the facts and application of the law for the purpose of overturning the judgment/order of the lower court.

REFORMS

32. Are there likely to be any significant reforms in Kuwait in the near future?

- We are not aware of any significant reforms planned for the near future.

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Lebanon

Lebanon has specific laws dealing with bribery in the public sector, as well as general anti-corruption provisions in the Lebanese Criminal Code.

THE LAW

1. What is the source of:

ABC legislation and regulations?

The main sources of anti-corruption legislation and regulations are:

Decree Law No.112 dated 12 June 1956 governing the Organization of Public Servants (the "**Decree Law**");

- the Lebanese Criminal Code (the "**Criminal Code**"). Articles 351 *et seq.* apply to public servants who commit fraud or corruption;
- Law No.154 dated 27/12/1999 relating to unlawful enrichment; and
- the United Nations Convention against Corruption ("**UNCAC**"), in force since 14 December 2005 and ratified by Lebanon on 22 April 2009.

Local regulatory guidance in relation to the following types of activities: gifts, meals, entertainment, travel, sponsored training/conferences and other similar hospitality events?

- Article 15.7 of the Decree Law prohibits public servants "*from requesting or receiving, directly or through the intermediary of another person, by reason of the function they hold, gifts, gratifications or incentives of whatever nature.*"
- Public administrations may issue internal regulations or circulars in this regard.

2. What constitutes an ABC offence in Lebanon?

- The acts constituting bribery or corruption are those whereby a public servant requests or accepts for his personal benefit or for the benefit of third parties, a gift, a promise or any other advantage in order to perform a lawful or unlawful act.

3. Are there any statutory defences provided under the relevant legislation, eg *de minimis* exceptions – payments that are legal in the country in which they are offered? What considerations will be taken into account, for example the purpose and frequency of the gift/event, the cost to the organiser, the value of the benefit offered to the individual?

- There are no such statutory defences in the legislation.

4. What kinds of gifts/entertainment/advantages will be considered acceptable?

- None, by virtue of Article 15.7 of the Decree Law.

5. What kinds of gifts/entertainment/advantages will be considered unacceptable?

- Any gifts, benefits or incentives of whatever nature.

6. Are there any exemptions, for example "facilitation payments" – defined as payments made to procure "routine governmental action" – that "do not involve an exercise of discretion", payments that "are legal in the country in which they are offered", and "reasonable and *bona fide* expenses directly relating to the promotion of products or services"?

- There are no exemptions in the legislation.

7. Does the law cover gifts/entertainment/advantages which are given to spouses/relatives of public officers/civil servants, and/or companies in which the public officers/civil servants are directors/shareholders?

- The prohibition provided for in Article 15 of the Decree Law is broadly worded and applies to any person through which the public servant is acting. As such, it includes spouses and relatives of public servants and may include companies in which the public servant is a director and/or shareholder.

8. What is the position in respect of charitable contributions to the Government and/or politically exposed persons (PEP)-connected local charities?

- Gifts made to the government are governed by terms specified in the relevant laws and their acceptance is subject to decrees issued by the government.
- As regards politicians, a distinction should be drawn between:

i. those holding a public office (such as members of Parliament) to which Article 15 of the Decree Law applies; and

ii. those who do not hold a public office to which Article 15 does not apply.

- Associations of any nature may receive gifts and donations but they remain subject to the control of the Ministry of Interior.

9. Do the ABC laws/regulations apply to the private sector or do they relate to the bribery of public individuals and/or bodies only?

- In addition to the Decree Law, which prohibits corruption by public servants, Article 354 of the Criminal Code imposes sanctions for employees in the private sector. Under Article 354 of the Criminal Code, both the offeror and the offeree may be subject to a fine ranging between LL100,000 to LL200,000 (approximately USD67 to USD144) and/or imprisonment of between two months and two years.

10. What is the definition of a public body? Would it include persons working in state-owned/controlled companies? Who is a public/civil servant?

- There is no definition *per se* of public bodies. A public body is either a public person (such as the Lebanese Republic or the municipalities) or a public administration, as opposed to private persons.
- The legal regime of state-owned/controlled companies is determined on a case-by-case basis having regard, among other things, to specific regulations applying to them.
- Article 350 of the Criminal Code defines public servants as follows: "*any servant in public administrations and institutions, in municipalities, in the army, in the judicial authorities and any worker or employee of the Republic of Lebanon and any person appointed or elected to perform a public service with or without compensation.*"

11. Does the Government issue internal regulations or codes of conduct applicable to public officers/civil servants?

- The laws and regulations in force define the obligations to be complied with by public servants, including in the field of corruption. Public administrations may issue internal regulations or circulars in this regard; however, these regulations and circulars are not made public.

12. Are there any laws or regulations imposing obligations on persons to "whistleblow" or disclose suspected corruption within an organisation?

- A public servant has a duty to inform the relevant authorities if he becomes aware of any suspected corruption. Article 399 of the Criminal Code provides that: "*Every public servant who has failed to inform, or postponed informing, the competent authorities about a felony or a misdemeanour he becomes aware of during the performance of his duties shall be sanctioned by a fine*".

13. Do the domestic ABC regulations have extra-territorial effect? (Is bribery of foreign public officials prohibited?)

- Lebanon is party to UNCAC, having ratified the Convention on 22 April 2009. UNCAC provides that the signatories must adopt such legislative and other measures as to prevent bribery of foreign public officials. To our knowledge, the Lebanese authorities do not expressly refer to UNCAC when dealing with bribery and corruption.

REGULATION OF ACTIVITIES

14. What are the main bodies responsible for investigating and combating bribery and corruption in Lebanon?

- There are many bodies in Lebanon responsible for investigating and combating bribery and corruption committed by public servants.
- The main bodies responsible for investigating and combating bribery and corruption are the Public Accounts Overseeing Court ("**PAOC**"), the Central Inspection Body, the Judicial Inspection Body and the Public Prosecution Office.
- The Decree Law also provides for a Disciplinary Council, with authority to impose disciplinary sanctions on public servants who have intentionally or by negligence breached their obligations, in particular the obligations provided in Articles 14 and 15 of the Decree Law. Disciplinary actions do not prevent the commencement of legal proceedings against public servants before civil or criminal courts.
- In addition to the above-mentioned bodies, there are other bodies relating to the army commandment, the General Directorate for the Public Security and the General Directorate for the Internal Security Forces, which are responsible for investigating bribery and corruption committed by persons under their authority.

15. What does each of these authorities investigate?

- The PAOC is responsible for investigating cases involving public assets and assets deposited in the state's treasury.
- The Central Inspection Body is responsible for investigating acts committed by servants of the public sector where such acts would be punished by administrative and disciplinary sanctions.
- The Judicial Inspection Body is responsible for controlling acts of judges, court clerks and any person serving within the Ministry of Justice.
- The Public Prosecution Office (including the public prosecutor responsible for financial matters) handles all cases transferred to him by the above-mentioned bodies and is vested with the power to prosecute any case involving corruption or fraud.
- A Special Investigation Commission ("**SIC**") to conduct money laundering was established by Law No.308 dated 20 April 2001.

16. Do the authorities described above have the same powers of investigation?

- The bodies described above enjoy similar powers of investigation by Article 16 of the Central Inspection Law dated 12/6/1959 (the "**Central Inspection Law**"), Article 68 of the law governing the Organization of the Public Accounts Overseeing Court and Article 111 of the Judicial Courts Law.
- They are entitled to review all documents, files and information in the departments subject to their investigation, to examine public servants and require any person to testify.
- The Special Investigation Committee, which is an independent body with judicial status established at the Central Bank of Lebanon in charge of investigating money laundering (without being under the authority of the Central Bank) was, by Law No. 32 dated 16/10/2008, specifically granted the right to lift

banking secrecy and freeze bank accounts for the purpose of applying the laws and treaties relating to the fight against corruption, in particular UNCAC.

17. What actions may these bodies take in exercising their functions?

- These bodies may impose administrative and disciplinary sanctions on the public servant, as well as transfer the case to the public prosecutor for prosecution of the public servant in the criminal courts.

18. What are the powers of arrest and detention of the relevant authorities?

- The public prosecutor may arrest the public servant depending on the type of punishment sanctioning the crime. The other bodies do not have powers of arrest and detention.

19. What is the jurisdictional reach of these powers?

- Lebanese authorities do not have the power to conduct investigations overseas. If an act sanctioned by the Criminal Code is committed overseas, Lebanese courts may have jurisdiction if certain conditions are met.
- The Lebanese Criminal Court may have jurisdiction over, and apply Lebanese law in respect of, a misdemeanour or felony that is committed by Lebanese nationals outside the Lebanese territory provided that: (i) any such crimes are punishable under Lebanese law; (ii) the crime is punishable by more than three years under Lebanese law; and (iii) the law of the country where the criminal act is committed does not punish the act.
- Further, the Lebanese Criminal Court may have jurisdiction over, and apply Lebanese law in respect of crimes committed by Lebanese public servants outside the Lebanese territory if the crime was committed while exercising their functions or in the framework of the exercise of their functions.

20. Do the police and other local authorities assist the relevant regulatory authorities in their investigations?

- The above-mentioned bodies may be assisted by the police in the course of their investigations in order to gather information.

21. How do the relevant regulatory authorities interact with overseas regulators?

- The procedure for interacting with an overseas regulator is set out in applicable international treaties entered into between Lebanon and the country to which the overseas regulator belongs; for instance, UNCAC.

22. Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

- Article 17 of the Central Inspection Law provides that, *"all inspectors are obliged to keep confidential the investigation process. They are not allowed to disclose information in connection with the progress and results of the investigation, except to the competent ministers, the president of the central inspection administration, the president of the civil service council, the president of the Public Accounts Overseeing Court and the public prosecutor attached to the Public Accounts Overseeing Court if the case involves financial matter."*
- In addition, Article 59 of the Decree Law provides that the meetings of the Disciplinary Council shall remain confidential.
- Articles 87 and 113 of the Judicial Courts Law require each of the members of the Disciplinary Council and the members of the Judicial Inspection Body to keep the investigation process confidential.

23. Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, for example in proceedings in a court of law?

- Nothing prevents the use of the information obtained by these regulatory bodies in the course of their investigations.

24. Are there protections available when responding to investigations by the relevant authorities, such as the right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

- During the investigation, a public servant may be assisted by his lawyer or by a public servant having the same grade (Article 62 of the law governing the Organization of the Public Accounts Overseeing Court, Article 59 of the law governing the Organization of Public Servants and Article 87 of the Judicial Courts Law). Communications between the public servant and his lawyer are covered by professional secrecy.

SANCTIONS FOR WRONGDOING

25. What disciplinary sanctions/sentences may these authorities impose?

- The above-mentioned authorities may impose fines, admonitions, a reduction in salary, delay promotion, suspend without compensation, demote, dismiss and revoke.
- Criminal courts may also sentence the public servant to imprisonment and/or impose fines. Depending on the type of offence committed, the minimum fine may be twice the amount received or accepted or twice the amount offered or promised to commit the offence. The length of imprisonment may be between two months and two years.

26. Do the relevant authorities have powers to freeze properties which may be proceeds of an ABC offence pending conclusion of their investigation?

- The relevant regulatory authorities have the power to freeze and attach properties which may be proceeds of a bribery/corruption offence pending conclusion of their investigations.
- Subject to enforcement of a decision rendered in Lebanon by the local courts of the relevant jurisdiction, the relevant regulatory authorities may freeze assets outside of Lebanon.

27. Is it possible to enter into a settlement to resolve any enforcement action/prosecution by the relevant authorities?

- It is not possible to enter into a settlement. It is, however, possible to exempt the public servant from a sanction if the public servant attempted, but failed in, the act constituting the offence or if it appears that the public servant could not possibly be aware of said offence at the time he committed it or if the public servant committed the offence for the benefit of public interests or for the purpose of preventing harm to be caused to him (provided such harm is certain). However, once the investigation process has ended, no settlement can be made.

28. Where proper disclosure is made to the employer/public body concerning the details of the gift or event being offered, would that be sufficient to avoid any potential liability under the relevant legislation?

- No.

29. In practice, is it possible to obtain written/signed acknowledgement from the relevant supervisory level of the public body/state which shows that the supervisor is aware of the advantage offered to an employee? Is there an official approval process available or channel to go through?

- It would not be possible to obtain such a written/signed acknowledgement.

30. Are there provisions for defendants to appeal against any enforcement action/prosecution taken against them?

- Yes. The decisions issued against a public servant may be appealed in accordance with the procedures set forth in the relevant laws and regulations.
- Decisions of the criminal courts can be appealed before the competent Court of Appeal and decisions of the Court of Appeal may be challenged before the Cour de Cassation (the Supreme Court). Appeals of administrative decisions follow specific rules which vary depending on the case. However, in general, the last resort is challenge before the State Council.

REFORMS

31. Are there likely to be any significant reforms in Lebanon in the near future?

- No significant reform is anticipated in the near future.
- It is hoped that the new Anti-corruption Commission Law will encourage more whistleblowers to step forward and report acts of bribery and corruption.

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Oman

Oman has a number of specific laws dealing with bribery in the public sector.

THE LAW

1. What is the source of:

ABC legislation and regulations?

- The Omani Penal Code - Law RD 7/2018 as amended (the "**Penal Code**")
- The Basic Law (Constitution) promulgated by RD 101/1996, as amended (the "**Basic Law**")
- The Protection of Public Property and Avoidance of Conflict of Interest Law - Law RD 112/2011 (the "**Anti-corruption Law**")
- The State Financial and Administrative Monitoring Institution Law – Law RD 27/11 and RD 111/2011 (the "**State Institutions Law**")
- The Civil Service Law – Law RD 120/2004
- The Tender Law – Law RD 36/2008, as amended
- The Public Prosecution Law – Law RD 92/99
- The Civil and Commercial Procedure Code – Law RD 29/02, as amended
- The Law of Combating Money Laundering and Terrorism Financing – Law RD 30/2016 ("**CMLTF**")
- The Commercial Companies Law – Law RD 4/74, as amended
- The Banking Law – Law RD 114/2000, as amended
- The Capital Market Authority ("**CMA**") Code of Corporate Governance issued by the CMA that came into effect in July 2016 (the "**CCG**")
- The United Nations Convention against Corruption ("**UNCAC**"), ratified by RD 64/2013, although not yet implemented into law
- The Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, ratified by RD 41/2016, although not yet implemented into law

Local regulatory guidance in relation to the following types of activities: gifts, meals, entertainment, travel, sponsored training/conferences and other similar hospitality events?

- The Penal Code
- The Civil Service Law
- The CMLTF
- The State Institutions Law
- The Anti-corruption Law

2. What constitutes an ABC offence in Oman?

- Bribery is defined in the Penal Code as the acceptance of money, gifts, or any other benefit by any government official, to perform a lawful function of his post; to omit to perform it; or to violate one of their functions (which also includes the giver/offeror of the bribe, gift or other benefit).

3. Are there any statutory defences provided under the relevant legislation, eg *de minimis* exceptions – payments that are legal in the country in which they are offered, etc? What considerations will be taken into account, for example the purpose and frequency of the gift/event, the cost to the organiser, the value of the benefit offered to the individual?

- There are no statutory defences under the relevant legislation.

4. What kinds of gifts/entertainment/advantages will be considered acceptable?

- In the absence of specific statutory guidance on point, it is our view that gifts which are of a reasonable value, which could be construed as customary in the relevant context, and which are commensurate with the rank (position) of the government official concerned (so as not to raise any suspicion of undue influence or other impropriety), would not be in breach of ABC legislation (which is the generally accepted benchmark). Examples would be complimentary items such as lighters, pens, calendars, mugs, clocks, diaries, consumable items such as chocolates etc with a company logo imprinted on it, which could be of a value ranging between OMR5 and OMR25 (c. USD13 to USD65) for example. Giving cash gifts and valuable items such as precious metals (platinum, gold, silver, etc) and precious stones (diamonds etc), jewellery, luxury watches, designer bags etc. to government officials is prohibited.
- Furthermore, if any company wished to sponsor a government official at some form of training programme, or invite such official to a special event, as a matter of best practice, that company should first send such invitation to the head of the relevant department, so that the head could nominate the

relevant officials who would participate. Offering meals at hotels etc to government officials should be in accordance with the business entertainment policy of the relevant company.

5. What kinds of gifts/entertainment/advantages will be considered unacceptable?

- Any gift or benefit that is offered to any individual/official in an effort to affect their decision-making in relation to the performance of their duties. This may take the form of an 'extravagant' gift/entertainment/advantage in relation to the position/designation of the government employee and one which is also not made through official channels (ie one which the supervisor/reporting officer may not be aware of). Also, please refer to our response to question 4 above for further guidance.

6. Are there any exemptions, for example "facilitation payments" – defined as payments made to procure "routine governmental action" – that "do not involve an exercise of discretion", payments that "are legal in the country in which they are offered", and "reasonable and *bona fide* expenses directly relating to the promotion of products or services"?

- There are no specific provisions to this effect under Omani law.

7. Does the law cover gifts/entertainment/advantages which are given to spouses/relatives of public officers/civil servants, and/or companies in which the public officers/civil servants are directors/shareholders?

- There are no specific legislative provisions covering gifts/entertainment/advantages which are given to spouses/relatives of public officers/civil servants, save for the legislative provisions given below.
- Article 209 of the Omani Penal Code states that "any public official, who accepts from a person money or benefit for the purpose of a reward and without previous agreement, after he performs to that person one of the functions of his post or omits performance of one of its functions or violates one of its duties, shall be punished with imprisonment extending from three months to three years and with a fine of not less than what was given".
- A government official is defined in the Anti-corruption Law as "any person who occupies a government position or assumes a permanent or temporary job in a unit of the State administrative apparatus whether with or without financial consideration. The members of the Oman Council, representatives of the Government in companies and the workers in companies wholly owned by the Government or in which the Government contributes a share exceeding 40% of its capital".
- The Anti-corruption Law further states that any government official is prohibited from exploiting their position or work to achieve an advantage for themselves or for others or the use of their influence to facilitate another, obtaining an advantage or preferential treatment. An advantage includes an advantage procured in any form, whether direct or indirect. An advantage has been defined very broadly. A direct advantage would include any benefit which the government official concerned would enjoy such as receiving a bribe, accepting an expensive gift which would leave the recipient in a position where they would need to view the grantor of such bribes or gifts with a favourable eye vis-à-vis others. Examples of an indirect advantage would be where a government official would be in a position to direct a contract to one of their first-degree relatives (ie spouse, parents, and children) etc, whereby he could gain an indirect benefit.
- A government official cannot act as a broker, agent or sponsor for any entity which is connected with the government unit where that government official works. Assisting an individual or a company with the intention of obtaining government approval in favour of that individual or company is considered prohibited brokerage activity. Government departments are restrained from entering into contracts or otherwise dealing with any commercial enterprise in which a government official has an interest without prior authorisation. A government official is barred from combining their official position with any work or employment in the private sector, which may be of either a permanent or temporary nature, unless the government official has obtained prior authorisation. A government official and their children cannot have any share in a profit earning entity which is directly connected with the official unit where that government official is employed.
- Every real or movable property which is owned by a government company constitutes public property. Public property is inviolable and must be protected. It should only be disposed of in a manner which is in accordance with the law. Government officials are required to prevent the abuse of public property. Government officials are prohibited from utilising public property for personal purposes or for any other purpose for which they are not allocated.

8. What is the position in respect of charitable contributions to the Government and/or politically exposed persons (PEP)-connected local charities?

- There are no specific provisions governing charitable contributions to the Government and/or politically exposed persons.

9. Do the ABC laws/regulations apply to the private sector or do they relate to the bribery of public individuals and/or bodies only?

- Companies in which the government owns more than 40% of the share capital (a "**Government Company**") are governed by the Anti-corruption Law. The Penal Code, the Basic Law of the Sultanate of Oman (the "**Basic Law**") and the Anti-corruption Law prohibit the giving of a bribe, gift or benefit to any government official.
- The ABC laws would also apply to the grantor of the relevant bribe, gift or benefit to the government official regardless of whether such entity/person is from the private/public sector, and would be ordered to pay a fine and/or serve a prison sentence upon being convicted of such offence.

10. What is the definition of a public body? Would it include persons working in state-owned/controlled companies? Who is a public/civil servant?

- A public body is a ministry or a unit of the government that enjoys an independent legal personality. This would include state-owned/state-controlled companies. Please also refer to the definition of a government company from the Anti-corruption Law in our response to question 9 above.
- A civil servant is a person who is employed by any of the units of the administrative apparatus of the government.
- The Penal Code defines government officials as:
  i. any person who is appointed by the Sultanate or the Omani government
  ii. members of Oman Council (the State Counsel & Majli Al Shura) and members of the Municipality Councils
  iii. any person delegated or elected to carry out a public service with or without remuneration
  iv. representatives of the government in companies and employees of companies fully owned by the government, or the companies in which the government holds more than (40%) forty percent of its share capital; or
  v. members of the boards of directors of public utility private associations.
- The Basic Law covers government ministers and undersecretaries (those terms are not defined). Article 53 of the Basic Law provides that "members of the Council of Ministers shall not combine their ministerial position with the chairmanship or membership of the Board of any joint stock company. Nor may the government departments of which they are in charge have dealings with any company or organisation in which they have an interest, whether direct or indirect. They should be guided in all their actions by considerations of national interest and public welfare and should not exploit their official positions in any way for their own benefit or for the benefit of those with whom they have special relations". Nonetheless, several government ministers are appointed as board members/chairmen of various government companies.
- The Anti-corruption Law covers government officials and defines them as any person holding a government position or working for the government, whether on a permanent or temporary basis, whether paid or unpaid. Please refer to the definition of a government official given in the Anti-corruption Law in our response to question 7 above.

11. Would members of the Omani royal family be considered public officials by virtue of the fact that they are members of the royal family?

- It is our view that members of the Omani royal family would only be considered government officials to the extent that they hold public office (please refer to the definition of a government official in the Penal Code and Anti-corruption Law given above).

12. Does the Government issue internal regulations or codes of conduct applicable to public officers/civil servants?

- While the Civil Service Law does not mention bribery per se, it states that "*accepting any kind of gift or remuneration or commission*" that affects an employee's performance of his duties is prohibited.
- It is our view that various ministries and/or government departments are likely to issue internal regulations applicable to public officers/civil servants to regulate their conduct with a view to complying with prevailing ABC legislation (although such regulations are not available in the public domain).

13. Are there any laws or regulations imposing obligations on persons to "whistleblow" or disclose suspected corruption within an organisation?

- Any person or entity that has a duty to disclose under the CMLTF may be found guilty of a criminal offence if they obtain information pertaining to money laundering or financing of terrorism but fail to inform the competent authorities.

14. Do the domestic ABC regulations have extra-territorial effect? (Is bribery of foreign public officials prohibited?)

- There are no specific provisions under Omani law which relate to the bribing of a foreign public official. For extra-territorial effects of domestic legislation, please refer to question 20.

REGULATION OF ACTIVITIES

15. What are the main bodies responsible for investigating and combating bribery and corruption, in Oman?

- The State Financial and Administrative Monitoring Institution ("**SFAMI**")
- The Ministry of Legal Affairs ("**MOLA**")
- The Capital Market Authority ("**CMA**")
- The National Committee for Combating Money Laundering and Financing of Terrorism ("**NCCMLFT**") under the aegis of the Central Bank of Oman ("**CBO**") (which is a committee appointed by the CBO pursuant to the provisions of the CMLTF)
- The National Center for Financial Information ("**NCFI**")
- The Public Prosecution Office

16. What does each of these authorities investigate?

- **SFAMI**: The SFAMI is a government institution that has administrative and financial autonomy. The SFAMI has assumed the duty of financial and administrative monitoring of assets owned by the state or subject to its management or supervision, as well as the performance of those bodies specified in the SFAMI's establishing law and its implementing regulations
- **MOLA**: The MOLA reviews all laws (royal decrees and ministerial decrees), international agreements and government contracts in coordination with the relevant ministry and other concerned government units. It also scrutinises any contract

committing the government to expenditure of over OMR 500,000 (USD 1.3 million) and takes any other steps necessary to safeguard the interests of the government in implementing contracts which the government is a party. The MOLA may also be requested to render legal opinions and issue officially approved interpretation of royal decrees, ministerial decisions and regulations.

- **CMA**: The CMA is the capital markets and insurance regulator in Oman established under the Capital Market Law.
- **NCFI**: The NCFI is under the supervision of the Inspector General of Police & Customs. It is authorised to receive, request and analyse reports and information on suspicious transactions related to terrorism financing or money laundering.
- **NCCMLFT**: The NCCMLFT develops national strategy, policy recommendations, and training programmes; assesses risk and effectiveness of protections; collects statistics from other agencies; and issues guidance in relation to the prohibition and combating of money laundering and the financing of terrorism in co-ordination with the NCFI, the CMA, the Central Bank of Oman and the Ministries of Justice, Housing, Social Development and Commerce and Industry.
- **Public Prosecution Office**: If any of the five institutions above suspect a violation within their respective institutions, they may file a report with the Public Prosecution Office, which may conduct its own independent investigation, evaluate the merits of the case and refer the matter for trial to the court if there is sufficient evidence.

17. Do the authorities described above have the same powers of investigation?

- **SFAMI**: The SFAMI's investigative powers include the power to:
  i. enter all offices, buildings, storage spaces, factories and all other entities subject to the SFAMI's supervision;
  ii. order verbal or written answers to questions regarding violations from senior employees; and
  iii. review any documents and minutes from meetings and take copies for the purposes of the investigation.
- However, the SFAMI's investigative powers may not supersede that of the court or the Public Prosecution Office, ie if a violation is suspected to be criminal, the SFAMI ought to report its findings to the Public Prosecution Office. Further, if the SFAMI needs to search a given person or a private residence, it ought to obtain prior permission to do so from the Public Prosecution Office.
- **NCFI**: The NCFI is authorised to conduct an investigation if it receives information of a suspicious transaction. The NCFI has the power to obtain information from reporting authorities including any information or documents relevant to the reports it receives and any other information it deems necessary to carry out its duties. The NCFI must refer the information it receives and results of its analysis to the Public Prosecution Office or other competent authority if it determines there is sufficient reason to suspect criminal proceeds or a connection with money laundering or terrorism financing.
- **The Public Prosecution Office**: The Public Prosecution Office has the power to apply for a court order to seize or freeze the assets of those suspected of money laundering or terrorist-financing activities (this could even be at the request of any relevant authority in a foreign country with whom Oman has an approved treaty or on the basis of reciprocal treatment), conduct investigations and interrogations. The Public Prosecution Office may arrest someone if that person is requested to attend an investigation and does not; or if there is suspicion that such person may escape; or if such person was caught in the act of committing an offence. The Public Prosecution Office may also review records and documents and obtain information from financial institutions, non-financial businesses and professions, non-profit associations and bodies and any other person to investigate facts related to money-laundering or terrorism financing crimes and may likewise seize such records, documents and any other papers it deems necessary for its investigation.
- **CMA**: The CMA has the power to carry out an investigation into any infringement of any provision of the CMA laws and regulations and compel any person to submit a written statement with regards to the infringement. The Executive President of the CMA may order the interrogation of a suspect involved in the violation of the CMA laws.
- **Civil Service Investigations**: The responsible minister or head of unit/department has the authority to launch an investigation into a civil servant's conduct. Employees found to be guilty of committing violations can be disciplined by an internal disciplinary board. The penalties imposed by the disciplinary board could range from a warning to the dismissal of the employee, depending upon the gravity of the violation.

18. What actions may these bodies take in exercising their functions?

- **SFAMI**: Upon the disclosure of a financial or administrative violation, Article 23 of the State Institutions Law authorises the SFAMI to demand that the relevant body at which the alleged violation occurred conducts the necessary investigation. If the violation is criminal in nature, the Public Prosecution Office must be notified. The SFAMI or the accused person/body have the right to appeal the Public Prosecution Office.
- In all cases, the chairman shall notify the Public Prosecution Office of any violation that constitutes a crime or a suspected crime.
- **NCFI**: As per Article 23 of the CMLTF, the NCFI must notify the Public Prosecution Office or the competent authority of the results of the investigation upon the existence of evidence of commission of an offence. It may also freeze transactions it suspects are connected to a violation of the CMLTF for a period of 72 hours while it completes its investigation of the transaction (Article 25). The NCFI may request the Public Prosecution Office to order an extension of this period if more time is needed to investigate (Article 26).

19. What are the powers of arrest and detention of the relevant authorities?

- The above-mentioned authorities have not been granted powers of arrest and detention (except for the Public Prosecution Office, as described above). Only the competent courts are vested with the powers to issue orders for arrest and detention.

20. What is the jurisdictional reach of these powers?

- Any Omani that commits a felony or misdemeanour whilst outside of Oman would be punishable under the Omani Penal Code, provided that he has not already been tried and sentenced under the laws of the state in which the act was committed.
- While the Omani Penal Code generally applies to offences committed within Oman's territorial borders, the Penal Code also applies to anyone who commits an offence abroad (1) affecting the security of the state, its financial bonds or forging its official documents and (2) forging, counterfeiting or imitating the Omani currency or metallic coins with the intention of its circulation, or bringing it in or taking it out of the state. The Omani Penal Code applies as well to Omani citizens who have committed an act abroad considered to be a felony or misdemeanour under the Penal Code, if he/she returns to the state.
- Under the Civil and Commercial Procedure Code, the Omani courts have jurisdiction over non-resident Omani citizens and non-Omani nationals who reside or are domiciled in Oman, excluding any actions pertaining to real estate located outside of Oman.

21. Do the police and other local authorities assist the relevant regulatory authorities in their investigations?

- As per Article 20 of the CMLTF, other governmental authorities may cooperate with the NCFI in its performance of its functions by providing the NCFI with reports and information from local and international sources.
- Generally, any legal dispute initiated by the relevant regulatory authorities (specified above) is spearheaded by the Public Prosecution Office.

22. How do the relevant regulatory authorities interact with overseas regulators?

- The CMLTF authorises the NCFI to share information with foreign counterpart centres and authorities (provided confidentiality rules are observed) and to enter into related memoranda of understanding agreements. Likewise, it authorises the NCFI, CMA, the Central Bank of Oman and the Ministries of Justice, Housing, Social Development and Commerce and Industry and any other judicial and security authorities to cooperate with foreign counterparts including providing legal and judicial assistance and extradition of criminals (subject to the requirements of any international agreements/treaties to which Oman is a party and reciprocity).
- The CMLTF also empowers the NCFI to freeze transactions it suspects are connected to a violation of the CMLTF for a period of 72 hours while it completes its investigation of the transaction. The NCFI may request the Public Prosecution Office to order an extension of this period if more time is needed to investigate.
- Oman has also recently ratified the UNCAC, the Arab Convention against Corruption (RD 28/2014) and the Arab Convention for Combating Money Laundering and Terrorism Financing (RD 27/2014), pursuant to which we expect greater cooperation and coordination between relevant parties.

23. Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

- Yes, the confidentiality of banking transactions and professional confidentiality. Article 70 of the Banking Law prohibits any government agency or person from making a direct request to a licensed bank to disclose any information relating to a customer. Any disclosures relating to customer information must be made with the customer's prior consent (or a general consent obtained from a bank customer to deal with that customer's banking business).
- The CMLTF prohibits NCFI employees from disclosing confidential information to which they have access in connection with the performance of their duties or using such information for other purposes. This prohibition applies both during and post-employment.

24. Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, for example in proceedings in a court of law?

- **SFAMI**: If the SFAMI suspects a violation that is criminal in nature, it should submit a report and any relevant information relating to that violation to the Public Prosecution Office. If the Public Prosecution Office finds this evidence to be convincing, it can present that evidence in court.
- **NCFI**: The NCFI may submit its findings and investigative reports in respect of a violation to the Public Prosecution Office, who may proceed to present this evidence in court. However, the CMLTF prohibits the use of information obtained from or provided to local authorities, international centres, or international authorities for any purpose other than combating money laundering and the related crimes or combating terrorism financing.
- We are of the view that the investigative reports of the CMA and the Civil Service Investigations may also be submitted to the Public Prosecution Office and submitted as evidence in court, although the relevant laws are silent on this point.

25. Are there protections available when responding to investigations by the relevant authorities, such as the right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

- The CMLTF provides that any perpetrator who informs the competent authority about the crime and the identity of other perpetrators prior to the crime occurring or the authority learning of the same will be exempted from penalties. The CMLTF further provides that in the event the perpetrator reports the crime after the competent authority has learned of the same, and the report leads to the arrest of any other perpetrator or confiscation of the proceeds or instrumentalities of the crime, the court may order suspension of the reporting perpetrator’s prison sentence.

- The Basic Law accords the accused the right to a lawyer to defend in a court of law. The accused is innocent until proven guilty in a legal trial which is key to exercising their right of defence. The accused may exercise their right to remain silent as a defence. The Basic Law also guarantees those without the financial capacity the means to resort to justice and to defend their rights. The right to bring litigation in Oman is guaranteed to all people.
- A lawyer cannot be present during an interrogation with an investigating authority, such as the Public Prosecution Office (although the lawyer will be permitted to speak to his client outside of those interrogations). Legal professional privilege is recognised in the Advocacy Law.

SANCTIONS FOR WRONGDOING

26. What disciplinary sanctions/sentences may these authorities impose?

- **SFAMI**: The penalty for hindering this institution's members from their auditing duties, concealing information or data, providing misleading data or not responding/delaying a response to reports in connection to the SFAMI's monitoring without due cause is:
  - i. a prison sentence for a period of not less than six months and not exceeding one year; and/or
  - ii. a sanction ranging from a minimum of the equivalent of c. USD2,600 and a maximum of c. USD5,200.
- **CMA**: A disciplinary committee appointed by the Board of Directors of the CMA is empowered to conduct internal investigations and discipline entities regulated by the CMA, (including their agents or subsidiaries) for violating the CMA Law by:
  - i. issuing reminders/cautions/warnings;
  - ii. issuing financial penalties ranging up to a maximum of the equivalent of c. USD13,000;
  - iii. suspension from dealings in the securities market for a period not exceeding three months; and
  - iv. final de-listing in the case of listed companies.
- **CMLFT**: Committing or attempting to commit money laundering is punishable by:
  - i. a prison sentence ranging from a minimum of five years to a maximum of 10 years and a financial penalty ranging from a minimum of the equivalent of c. USD130,000 and not exceeding the amount of money laundered; and
  - ii. a prison sentence ranging from a minimum of six months to a maximum of three years and a financial penalty ranging from a minimum of the equivalent of c. USD26,000 and not exceeding the amount of money laundered.
- The crime of terrorism financing is punishable by:
  - i. a minimum prison sentence of 10 years to a maximum of 15 years; and
  - ii. a financial penalty ranging from a minimum of the equivalent of c. USD130,000 and not exceeding the amount of money laundered.
- An entity found liable for money laundering or terrorism financing shall be punished as follows:
  - i. a financial penalty ranging from a minimum of c. USD260,000 and not exceeding the amount subject of the crime;
  - ii. a temporary or permanent ban from engaging in commercial activity in Oman;
  - iii. closure of the location used in commission of the crime; and/or
  - iv. liquidation or appointment of a receiver to manage the entity's funds.
- Any person who initiates, participates, instigates or assists in committing money laundering or terrorism financing will receive the same punishment as the perpetrator of the crime.
- The penalties under the CMLTF will be doubled if:
  - i. the crime is committed through an organised group;
  - ii. the perpetrator abused his or her power or influence to commit the crime; and/or
  - iii. the crime is a repeat offence.
- Without prejudice to the rights of *bona fide* third parties, in the case of conviction for violation of the CMLTF, the court may also order confiscation of the related funds, proceeds, revenues and interests, instrumentalities, or the equivalent value of any of the preceding if it is not possible to locate the actual funds.
- **NCFI**: As per the CMLTF, in the event of suspecting any offence provided for in that law, the NCFI may order the processing of a transaction to be stopped for a period not exceeding 72 hours. The Public Prosecution Office may, upon the request of the NCFI, order the extension of such period for a period not exceeding 10 days, where the revealed evidence supports the likelihood of suspecting the transaction to be in breach of the provisions of this CMLTF.
- The CMLTF also authorises the CMA, the Central Bank of Oman and the Ministries of Justice, Housing, Social Development and Commerce and Industry to impose the following on financial institutions, non-financial businesses and professions, and non-profit associations and bodies subject to their respective regulation:
  - i. an administrative penalty from an equivalent of c. USD26,000 to an equivalent of c. USD260,000;
  - ii. replace or restrict the compliance officers, managers, board of directors, or controlling officers and/or recruit a special administrator supervisor;
  - iii. temporarily or permanently suspend the entity/person from operating in the commercial sector, profession or activity;
  - iv. require guardianship; and/or
  - v. suspend, restrict or cancel the entity or person's professional licence or activity licence.
- **Civil Service**: Penalties applicable to civil service employees are imposed by the disciplinary committee of the relevant department to which the employee belongs. The penalties are:
  - i. suspension during investigation;
  - ii. a warning;
  - iii. deduction from salary for a period not exceeding three months;
  - iv. deprivation of annual salary increment;

v. reduction of salary;

vi. demotion; and

vii. dismissal (with or without pension).

27. Do the relevant authorities have powers to freeze properties which may be proceeds of an ABC offence pending conclusion of their investigation?

- As per the CMLTF, in the event of suspecting any offence provided for in that law, the NCFI may order the processing of a transaction to be stopped for a period not exceeding 72 hours. The Public Prosecution Office may, upon the request of the NCFI, order the extension of such period for a period not exceeding 10 days, where the revealed evidence supports the likelihood of suspecting the transaction to be in breach of the provisions of this CMLTF.
- The competent court may issue an order to freeze the money until a judgment is passed in the case.
- Under Article 59 of the Omani Penal Code, the judge may, in the case of conviction, order confiscation of the seized items which were used in or prepared for the commission of the offence, and the items extorted through the commission of such offence or resulting therefrom.
- Under Article 7 of the State Institutions Law, the members of the SFAMI shall have the judicial powers of search and seizure set out in the provisions of the regulation.

28. Is it possible to enter into a settlement to resolve any enforcement action/prosecution by the relevant authorities?

- **CMA**: The CMA's Board of Directors may, prior to commencing an internal disciplinary enquiry, arrive at a financial settlement with a person found to have infringed the CMA laws.
- Under Article 71 of the Penal Code, a court may order the stay of an enforcement order of a fine or imprisonment for a period less than (3) three years, if:

  a) The manner of the sentenced person, his background or age or the circumstances in which the crime was committed leads to the belief that he will not return to the commission of a crime; and

  b) The sentenced person maintains an actual place of residence in the Sultanate.

- The judge may make the stay of enforcement conditional on the obligation of providing provisional bail or the obligation of compensating the victim, totally or partially.
- A person accused of bribery has only one option in this regard under the Penal Code. He must voluntarily report the bribe to the authorities at any time before the bribery case against the government officer is decided, and he may be exempted from any sanctions (which is at the discretion of the court depending on an evaluation of the facts).
- As per Article 66 of the Civil Service Law, a special pardon may be granted by Royal Decree.

29. Where proper disclosure is made to the employer/public body concerning the details of the gift or event being offered, would that be sufficient to avoid any potential liability under the relevant legislation?

- Whilst there are no specific provisions to this effect under Omani Law, the value of the gift would need to be commensurate with the rank of the employee in question, in order to avoid liability. Disclosure to the reporting officer would also be necessary.

30. In practice, is it possible to obtain written/signed acknowledgement from the relevant supervisory level of the public body/state which shows that the supervisor is aware of the advantage offered to an employee? Is there an official approval process available or channel to go through?

- This may be possible, although there are no statutory/official approval processes for this. For example, if a public official is being invited to an event or seminar, the invitation could be sent through the supervisor of the relevant public official.

31. Are there provisions for defendants to appeal against any enforcement action/prosecution taken against them?

- **SFAMI**: If the SFAMI suspects that a body has committed a violation that may be deemed criminal, it is required to report its findings to the Public Prosecution Office. The defendant will have the right to defend himself in front of the Public Prosecution Office which will then decides whether enough evidence exists to refer the matter to the courts. The accused body may then submit their defence in front of the Court and challenge the Public Prosecution Office decision.
- **CMA**: The CMA's Appeals Committee, selected by the Board of Directors of the CMA, and comprising two senior judges from the Primary Court, will issue a decision within 30 days of the complaint being filed. Resolutions such as launching an investigation against a suspected violator or a disciplinary ruling handed out by the Disciplinary Committee may be appealed at the CMA's Appeals Committee. The decision made by the Appeals Committee will be final.
- **NCFI**: After the NCFI investigates a suspected individual/entity's involvement with money laundering or terrorism financing, it must notify the Public Prosecution Office if it finds serious violations. The Public Prosecution Office, as a precautionary measure, may then decide to seize or freeze the funds of the parties suspected of money laundering or terrorism financing. The parties accused may appeal this decision by the Public Prosecution Office in a competent criminal court.
- **Civil Service**: A civil service employee who is penalised by any administrative disciplinary board may appeal that penalty to the Central Disciplinary Board within 30 days of having received the penalty. The Central Disciplinary Board ruling is normally final. However, exceptions have been made and employees who are dissatisfied with the Central Disciplinary Board's ruling have been allowed, on occasion, to appeal to the President of the Civil Service, if that appeal is made within 30 days of the Central Disciplinary Board's decision.

REFORMS

32. Are there likely to be any significant reforms in Oman in the near future?

- We are not aware of any immediate reforms to the Omani ABC laws in the near future, although we expect that some changes will be implemented consequent to the recent ratification of the UNCAC by Oman.

PUBLIC PROCUREMENT

33. Are there any specific parts of the Tender Law, or other procurement laws, that refer to bribery/corruption?

- The Tender Law and the central Tender Board have been established with a view to promoting the principles of transparency, equal opportunities and fair competition. There are no express provisions in the Tender Law (which is the primary procurement law in Oman) which refer directly to bribery or corruption. However, some provisions in the Tender Law (below) aim to eliminate conflicts of interest so that the principles of transparency and fair competition can be upheld in public tenders and reduce the likelihood of corruption.
- Employees of entities subject to the provisions of the Tender Law, their spouses and relatives up to the second degree, are prohibited from directly or indirectly submitting tenders or offers separately to such entities (the "Prohibited Persons").
- Furthermore, without prejudice to the Anti-corruption Law, a contract pursuant to a public tender cannot be concluded with a Prohibited Person other than for the purchase of writing and works of art created by such a Prohibited Person or for the performance of the same by that person, provided that it is approved by the head of the relevant entity and the value of the contract is capped at a maximum of the equivalent of USD 13,000. Should the value of the contract exceed this, the approval of the Tender Board will be required.
- The Tender Law also prohibits contractors and consultants who have a direct or indirect common interest in any project from participating in the works related to such project.
- The Tender Board may decide to ban a supplier, contractor or consultancy office from dealing with the relevant government units which are subject to the provisions of the Tender Law, during a specified period, as the circumstances of each case may require, in the following circumstances:

  a) if incorrect information has been provided;

  b) if fraudulent means have been used to obtain the contract; and/or

  c) if there has been a failure to satisfactorily perform any substantial requirement or obligation under a previous contract with any government unit which is subject to the provisions of the Tender Law.
- If a member of the Tender Board has a direct or an indirect interest in a tender under evaluation, he must disclose such interest to the chairman of the Board and withdraw from participating in that evaluation process. In all cases, a member of the Board must withdraw from the evaluation of the tender, if such member, his spouse or one of his relatives up to the second degree is the owner of the submitted tender or owns a share in such tender, or is a member of the board of directors of the bidding company or an employee, agent or sponsor of such bidding company.

RECENT DEVELOPMENTS

34. Have there been any recent high-profile bribery/corruption scandals, allegations or prosecutions in Oman?

- Yes, there have been other high-profile investigations and convictions into allegations of bribery and corruption in corporate entities in Oman in recent years. A number of employees in private companies and state-owned companies were convicted and sentenced in bribery/corruption prosecutions.

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The State of Qatar

This is an overview of the anti-bribery and corruption legislative framework in the State of Qatar, including the Qatar Financial Centre (the **QFC**).

Qatar does not have specific legislation dealing with bribery and corruption. Instead, there are relevant provisions across a broad range of legislation, particularly the Penal Code (Law No.11/2004), which defines and criminalises bribery and includes some anti-corruption provisions.

Qatar also has a virtual economic free zone, the QFC, which operates as a financial and business hub and which has been granted partial authority to self-legislate in civil and commercial areas (but not criminal law).

THE LAW

1. What is the source of:

ABC legislation and regulations?

- The State of Qatar does not have specific ABC legislation. The primary sources of relevant legislation in Qatar are contained in:
  - Law No.11/2004 Issuing the Penal Code (the "**Penal Code**");
  - Decree No.17/2007 Ratifying the UN Convention against Combating Terrorism;
  - Law No.8/2009 on Human Resources Management (the "**HR Law**");
  - Law No.14/2004, as amended, on the promulgation of the Labour Law (the "**Labour Law**"); and
  - Law No.4/1995, as amended, concerning the State Audit Bureau (the "**SAB Law**").
- As stated above, the criminal laws and sanctions of the State continue to apply within the QFC. Accordingly, the relevant provisions of the Penal Code concerning anti-bribery and corruption will be applicable within the QFC. In addition, there are some relevant rules and regulations within the QFC's legislative framework, such as the Conduct of Business Rulebook and Employment Regulations in connection with the assessment of gifts, referrals and inducements.

Local regulatory guidance in relation to the following types of activities: gifts, meals, entertainment, travel, sponsored training/conferences and other similar hospitality events?

- Article 123 of the HR Law contains specific provisions relating to the acceptance by employees of gifts, donations, grants or money in connection with their employment. This Law applies to all employees who are classified as civil servants of ministries, governmental organisations, public authorities and institutions.
- Article 42 of the Labour Law prohibits any worker from accepting gifts, remuneration, commission or sums from a third party other than their employer. Article 119 contains a blanket prohibition on workers organisations (as defined in the Law) accepting any gifts or donations without the approval of the relevant ministry.
- Article 19(1)(K) of the QFC Employments Regulations (Regulation No.10/2006) prohibits employees of QFC authorities or entities or institutions subject to the jurisdiction of the QFC from accepting gifts, remuneration, commission or sums in respect of their performance of their duties, unless consistent with the terms of their employment.

2. What constitutes an ABC offence in Qatar?

The Qatar Constitution

- The Qatar Constitution (Article 55) states that public funds are sacrosanct and that the protection of them is a duty imposed upon everyone in accordance with the law.
- The Constitution also contains provisions prohibiting ministers from misusing their official positions to benefit their own interests (Article 128).

The Penal Code

- Articles 140-147 of the Penal Code contain provisions relating to the bribery of public officers as well as private sector employees. The provisions also apply to any intermediaries who are involved in the transfer of a bribe between the briber and the recipient.
- A public officer who requests or accepts a bribe, directly or indirectly to benefit himself or for the benefit of another party, in consideration for an act or for abstaining from carrying out an act which is within the remit of his office, or which he believes or pretends is within the remit of his office, is considered a receiver

of a bribe, which is a criminal offence subject to the sanctions provided in the law. The bribe may take the form of money, another benefit or a promise. The law also expressly states that a prohibited benefit includes the proceeds gained from the sale of movable assets or real estate which are sold higher than their true value or are purchased for a value lower than their true purchase price, and any benefit from any contract that is concluded between the briber and the recipient of the bribe.

- Anyone who attempts to offer a bribe to a public officer in the manner described above is also guilty of an offence under the law, irrespective of whether the public officer accepts the bribe. Any intermediary between the briber and the recipient of the bribe will also be guilty of an offence.
- In relation to private sector employees, any employee who requests a bribe (being money, a benefit or a promise) for his benefit or that of another person, without the knowledge and consent of his employer, in return for undertaking or not undertaking any of his duties will be guilty of an offence.

The HR Law

- As stated above, the HR Law applies to employees of ministries and other governmental bodies, public authorities and institutions (with the exception of the employees of certain entities set out at the beginning of the Law). Article 123(10) of the HR Law prohibits such employees from accepting gifts, donations, gratuities, grants, cash or other gains, whether directly or via another person, from any person in relation to any activity related to their work in order to benefit a third party.
- The HR Law also contains more general provisions directed at ensuring that employees avoid any work which might present a conflict of interest or might influence, directly or indirectly, their own interests or the interests of any of their relatives up to the fourth degree (eg Article 124).

The Labour Law

- The Labour Law prohibits any employee from accepting any gift or payment, other than from their employer, in connection with their work (Article 42).

The Public Tender Law

- The Qatar Tender Law (Law No.26/2005) provides that a public sector contract must be revoked, *inter alia*, in circumstances where the contractor has attempted directly or indirectly to bribe a public official.

The State Audit Bureau ("SAB")

- The SAB is an independent governmental audit authority which supervises and ensures the protection and correct allocation of public funds and conformity with the declared financial, accounting and administrative regulations. It has direct reporting lines to the Head of State, his Highness the Emir.
- The SAB also investigates cases of financial misconduct. It is a crime for any staff member of the SAB or any entity which falls under the ambit of the SAB to commit any financial irregularities, as set out in Article 27 of the SAB Law. Such financial irregularities include any violation of the State's finances, any commission leading to an unjustifiable reimbursement of funds, and any prejudice to the financial interests of the State or any of the entities subject to the SAB's control.
- Any employee who commits a financial irregularity, or contributes to or facilitates it, aids or abets the perpetrator or fails to report the financial irregularity, is liable to disciplinary action, as well as criminal proceedings (Article 28).

The QFC

- As stated above, the criminal laws and sanctions of the State continue to apply within the QFC. The QFC does not have any additional legislation specifically criminalising bribery or corruption.

3. Are there any statutory defences provided under the relevant legislation, eg *de minimis* exceptions – payments that are legal in the country in which they are offered, etc? What considerations will be taken into account, for example the purpose and frequency of the gift/event, the cost to the organiser, the value of the benefit offered to the individual?

- There are no *de minimis* or other similar statutory defences under the relevant legislation.
- However, the Penal Code provides that a briber or their intermediary (as the case may be) will be exempted from the penalties for committing a bribery offence if they notify the relevant authorities of the offence before the crime is discovered, even if it has already been committed (Article 141).
- A public official will not have committed a crime if (i) they were following the orders of a superior that must be obeyed (or that the official believed in good faith should be obeyed), or (ii) they were enforcing the law (or believed in good faith that they were so doing).

4. What kinds of gifts/entertainment/advantages will be considered acceptable?

- The legislation in Qatar does not distinguish between gifts, entertainment or other advantages which are acceptable and those which are not. However, we believe that many entities in Qatar have internal policies or guidelines as to what gifts/entertainment may be acceptable or unacceptable.

5. What kinds of gifts/entertainment/advantages will be considered unacceptable?

- See above.

6. Are there any exemptions, for example "grease payments" – defined as payments made to procure "routine governmental action" – that "do not involve an exercise of discretion" (such as under the FCPA), payments that "are legal in the country in which they are offered", and "reasonable and *bona fide* expenses directly relating to the promotion of products or services"?

- There are no known exemptions for such payments.

7. Does the law cover gifts/entertainment/advantages which are given to spouses/relatives of public officers/civil servants, and/or companies in which the public officers/civil servants are directors/shareholders?

- Although it does not expressly refer to spouses or relatives or to companies in which a public officer or civil servant is a director or shareholder, the offences in the Penal Code extend to bribes offered to, requested by or received by a public officer on behalf of any other person.

8. What is the position in respect of charitable contributions to the Government and/or politically exposed persons (PEP)-connected local charities?

- There are no specific provisions addressing charitable contributions to the Government and/or PEP-connected local charities.

9. Do the ABC laws/regulations apply to the private sector or do they relate to the bribery of public individuals and/or bodies only?

- The Penal Code applies to bribery in both the public sector and private sector, although the provisions concerning the former are more detailed.

10. What is the definition of a public body? Would it include persons working in state-owned/controlled companies? Who is a public/civil servant?

- There is no common definition of public body across the relevant legislation.
- The concept of a public body is not found in the Penal Code. However, Article 3 defines a "public officer" as a person entrusted with carrying out the functions of a public authority, including employees of ministries, government departments, public institutions and organisations. It also provides that a public officer specifically includes:
  - receivers in bankruptcy, liquidators and sequestrators;
  - chairmen and members of the board of directors, managers and all other employees of private institutions and associations, companies and cooperative associations, if one of the ministries, government departments, public organisations or corporations is a shareholder therein;
  - anyone who carries out any work connected with a public service under an appointment by a public officer; and
  - heads and members of legislative, parliamentary and municipal councils and other employees who have public representative capacity.
- The HR Law applies to "government entities", which are defined as ministries, government bodies, public authorities and public corporations (Article 1), and the employees of such entities. However, there is a specific exclusion of members of the judiciary, Emiri Diwan employees, diplomats and consular corps, employees of Qatar Petroleum and employees of the SAB.

11. Does the Government issue internal regulations or codes of conduct applicable to public officers/civil servants?

- We are not aware of any specific internal regulations or codes of conduct applicable to public officers or civil servants. However, it is possible that individual government entities have issued their own internal regulations or codes of conduct.

12. Are there any laws or regulations imposing obligations on persons to "whistleblow" or disclose suspected corruption within an organisation?

- Under the Penal Code there is a general obligation to report a crime, which would include a bribery offence.
- Although it does not involve a positive obligation to "whistleblow" or disclose corruption, the QFC Employment Regulations, which apply to all employees of organisations within the jurisdiction of the QFC, provide protection for whistleblowers. Pursuant to Article 16, a person who raises a concern about or reports a crime in good faith is protected from dismissal by, or any other penalty from, their employer.
- The SAB operates a system by which employees and citizens generally can anonymously report on fraud, corruption and other financial contraventions. Reports may be made anonymously through the SAB's website, by email or by post and personal details are not required. Any subsequent investigation will be overseen by the SAB.

13. Do the local anti-corruption regulations have extra-territorial effect? (Is bribery of foreign public officials prohibited?)

- The local bribery and anti-corruption legislation does not expressly have extra-territorial effect.
- At present, there is also no specific legislation in place relating to bribery of a foreign official.

REGULATION OF ACTIVITIES

14. What are the main bodies responsible for investigating and combating ABC in Qatar?

- In addition to the police and the Qatari Public Prosecution Office, both of which have general responsibilities in connection with the criminal law, the main bodies responsible for investigating and combating bribery and corruption in Qatar are the SAB and Qatar's Administrative Control and Transparency Authority (the "**QACTA**").
- In addition, all Qatari ministries, and government departments have a responsibility to investigate cases of bribery connected with their organisations and must refer suspected cases of bribery to the SAB.

15. What does each of these authorities investigate?

- The police force may investigate any allegations of bribery or corruption.
- The SAB is an independent governmental audit authority. Among other things, it investigates cases of financial misconduct relating to state funds, and may therefore investigate bribery and corruption allegations.
- Under the HR Law, ministries and other governmental organisations, public authorities and institutions have authority to investigate suspected or reported incidents of bribery or corruption involving their officers or employees. Where an investigation or interrogation confirms that there is strong evidence that an employee has demanded, accepted, received or paid a bribe, or has otherwise been suspected of committing a criminal offence, the matter will be referred to the Permanent Disciplinary Committee established under the

Law (see Article 140), which may investigate the matter itself but which also has authority to refer the matter to the police or Public Prosecution Office.

- The QACTA is an independent government body specifically established under Emiri Decree No. 75/2011 (as amended by Emiri Decree No. 6/2015) to investigate and combat corruption within government organisations. Its authority includes investigating bribery and corruption offences. It may also investigate allegations concerning the activities of private companies which provide public services.
- Within the QFC, any evidence of bribery and corruption gathered during the course of an investigation will be referred by the QFC Authority to the police or the Public Prosecution Office as such activities are likely to constitute a criminal offence under the Penal Code.

16. Do the authorities described above have the same powers of investigation?

- The police and Public Prosecution Office have extensive investigative powers.
- The SAB also has broad investigatory powers in respect of entities over whom it has jurisdiction. It may call for and review financial records and any other documents which it requires in order to carry out its duties properly.
- The QATCA's investigatory powers appear to be relatively limited.

17. What actions may these bodies take in exercising their functions?

- The police and the Public Prosecution Office may prosecute offences as they see fit.
- The SAB may refer suspected offences to the police or the Public Prosecution Office. It may also prosecute employees of government organisations under its jurisdiction who are suspected of bribery or corruption before a disciplinary board.

18. What are the powers of arrest and detention of the relevant authorities?

- Individuals may only be arrested by a written order issued by a competent authority under Articles 40 and 32 of the Criminal Procedure Law (Law No.23/2004). The judicial official must hear any statements of the accused immediately upon his arrest and, if there is sufficient evidence, must then refer the accused to the Public Prosecution Office within 24 hours of his arrest. The Public Prosecution Office must then decide within a further 24 hours whether the arrested individual should be released or detained.

19. What is the jurisdictional reach of these powers?

- None of these authorities have expressly been given extra-territorial jurisdiction to investigate or prosecute crimes.

20. Do the police and other local authorities assist the relevant regulatory authorities in their investigations?

- As appropriate, the relevant regulatory authorities, the police and the Public Prosecution Office will work together and assist with any investigations, obtaining information and gathering evidence.

21. How do the relevant regulatory authorities interact with overseas regulators?

- Qatar is a party to the United Nations Convention against Corruption.
- In addition, Qatar has entered into bilateral mutual judicial assistance agreements which relate to extradition, providing assistance in criminal matters and the transfer of prisoners with numerous countries.
- We are not aware of any more specific arrangements by which any of the Qatari regulatory authorities interact with their counterparts overseas.

22. Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

- Article 73 of the Criminal Procedure Law provides that the procedures related to criminal investigations and the results of such investigations must be kept confidential.

23. Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, for example in proceedings in a court of law?

- Yes. Pursuant to the HR Law, the relevant government ministry or department is required to not only investigate and refer any matter constituting an offence to the police or Public Prosecution Office, but it is also under an obligation to take any internal disciplinary action(s) necessary. However, the HR Law provides that, where an alleged offence is referred to the judicial authorities for a criminal hearing, any disciplinary proceedings must be put on hold until a decision on criminal liability has been issued.

24. Are there protections available when responding to investigations by the relevant authorities, such as the right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

- Article 20 of the Criminal Procedure Law provides that the criminal courts must assign a legal representative for any defendant who does not have legal representation, where requested by the defendant or the Public Prosecution Office.
- There are no known rights that relate to privilege against self-incrimination or legal professional privilege.

SANCTIONS FOR WRONGDOING

25. What disciplinary sanctions/sentences may these authorities impose?

- Under the HR Law, where a matter is referred to the court due to an employee or public officer committing a criminal offence in connection with his employment, a government department or ministry may take disciplinary action, including:
  - suspending the employee without salary while awaiting the issuance of a decision from the courts;
  - terminating employment if convicted of a felony or misdemeanour involving dishonesty, immoral crime or moral turpitude;

  - terminating employment if convicted of a felony or misdemeanour and sentenced to imprisonment of more than three months.
- The sanctions imposed under the Penal Code include imprisonment for a period not exceeding 10 years. In addition, in relation to any of the bribery offences under the Code, the offender may be subject to a fine equivalent to what he has solicited or accepted as a bribe, provided that it is not less than QAR5,000. In addition, any bribe received will be confiscated from the offender.

26. Do the relevant regulatory authorities have powers to freeze properties which may be proceeds of an ABC offence pending conclusion of their investigation?

- Under Article 126 of the Criminal Procedure Law, the Attorney General may take action to prevent an accused person from disposing of their assets. The Attorney General may also take similar action against the spouse or minor children of the accused if it is proved that the accused transferred assets to them.
- Under Article 28 of the SAB Law, the relevant authorities are obliged to take any necessary action to recover amounts unjustly paid, which could include bribes.

27. Is it possible to enter into a settlement to resolve any enforcement action/prosecution by the relevant authorities?

- There is currently no legislation in relation to bribery of a public official which specifically addresses or permits an enforcement action or prosecution to be resolved through a settlement agreement or some other similar means.
- As bribery constitutes a criminal offence under the Penal Code, none of the regulatory authorities mentioned above have jurisdiction to prosecute offences of bribery and corruption. Such matters will be referred directly to the police or Public Prosecution Office. The Public Prosecution Office has the discretion (based on the evidence provided) to determine whether or not to initiate proceedings under the Penal Code.

28. Where proper disclosure is made to the employer/public body concerning the details of the gift or event being offered, would that be sufficient to avoid any potential liability under the relevant legislation?

- Under the Penal Code, a public officer or employee who is offered a bribe but refuses and reports such action would not be guilty of committing an offence. However, there is no prescribed form or procedure set out in the code in respect of the form or time frame within which such disclosure should be made.
- Further, the Penal Code specifically provides that a public officer shall not be subject to a penalty if he informs the relevant authority about the offence or declares it before it is discovered, even if it has been committed by then (see question 3 above).
- Under the HR Law, an employee may be exempted from a penalty if they can establish that the offence was committed as a result of executing a written order given to them by their superior and they alerted their superior in writing to the violation (see Article 125).

29. Are there any provisions to appeal against any enforcement action/prosecution taken against them?

- The Penal Code does not address the issue of appeals against enforcement actions or prosecutions specific to bribery offences. However, the general principles concerning appeals would apply. Under the Qatari court system, any decision of the Criminal Court can be the subject of an appeal to the Court of Appeal.
- While the HR Law provides for an appeal mechanism in relation to a decision of the Permanent Disciplinary Committee, this would likely not be applicable to matters of bribery and corruption as they are criminal offences that must be referred to the police/public prosecutor.

REFORMS

30. Are there likely to be any significant reforms in the near future?

- We are not aware of any significant reforms planned as at the date of this publication.

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Kingdom of Saudi Arabia

Saudi Arabia has specific laws dealing with bribery in the public sector, as well as various regulations. There is no codified criminal penal code in Saudi Arabia.

THE LAW

1. What is the source of:

ABC legislation and regulations?

Mainly the following:

i. *Shari'ah*;

ii. The National Strategy for Protecting Integrity and Combating Corruption;

iii. The Regulation of Discipline of Officers promulgated pursuant to Royal Decree No.M/7 dated 01/02/1391 H corresponding to 28 March 1971 (the "**Discipline Regulations**");

iv. The Anti-bribery Law promulgated pursuant to Royal Decree No.M/36 dated 29/12/1412 H corresponding to 1 July 1992 (the "**Anti-bribery Law**"); and

v. The Regulation of Positions for Undertaking Public Funds promulgated pursuant to Royal Decree No.M/18 dated 23/02/1436H corresponding to 15 December 2014G (the "**Public Funds Regulations**").

Local regulatory guidance in relation to the following types of activities: gifts, meals, entertainment, travel, sponsored training/conferences and other similar hospitality events?

- Mainly, the Anti-bribery Law.

2. What constitutes an ABC offence in KSA?

- Any act, omission, breach of duty, use of influence, whether actual or alleged, or assistance with government applications by a public official, due to his position, in return for a promise or grant, including material and non-material advantages, to the public official or a third party or based on a recommendation or mediation would be considered a bribe under the Anti-bribery Law.

3. Are there any statutory defences provided under the relevant legislation, eg *de minimis* exceptions? What considerations will be taken into account, for example the purpose and frequency of the gift/event, the cost to the organiser, the value of the benefit offered to the individual?

- Generally, there are no exceptions under the Anti-bribery Law. As mentioned earlier, there is no codified criminal penal code in Saudi Arabia, although some regulations may indicate certain mitigating and aggravating factors; such factors would generally be subject to the review and consideration of the judge or the competent committee. However, such discretion would likely be limited in terms of the prescribed disciplines and penalties under the relevant regulations.

4. What kinds of gifts/entertainment/ advantages will be considered acceptable?

- The Anti-bribery Law does not specify what gifts may or may not be considered acceptable. Accordingly, any gift may be considered acceptable if it is not given with the intention to have the receiving public officer carry out any act, omission or breach of duty, use his influence, or provide assistance with respect to a government application due to his position in return.

5. What kinds of gifts/entertainment/ advantages will be considered unacceptable?

- Any gift would be considered unacceptable if it is given with the intention to have the receiving public officer carry out any act, omission or breach of duty, use his influence, or provide assistance with respect to a government application due to his position in return.

6. Are there any exemptions, for example "facilitation payments" – defined as payments made to procure "routine governmental action" – that "do not involve an exercise of discretion", payments that "are legal in the country in which they are offered", and "reasonable and *bona fide* expenses directly relating to the promotion of products or services"?

- No such payments would be considered legal under Saudi law.

7. Does the law cover gifts/entertainment/ advantages which are given to spouses/relatives of public officers/civil servants, and/or companies in which the public officers/civil servants are directors/shareholders?

- The Anti-bribery Law covers gifts and advantages given to any third person for the purpose of having the public officer carry out any act, omission or breach of duty, use his influence, or provide assistance with respect to a government application due to his position in return.

8. What is the position in respect of charitable contributions to the Government and/or politically exposed persons (PEP)-connected local charities?

- The Anti-bribery Law does not address charitable contributions to the Government and/or PEP-connected local charities.

9. Do the ABC laws/regulations apply to the private sector or do they relate to the bribery of public individuals and/or bodies only?

- The Anti-bribery Law does not cover bribery in relation to the private sector, it mainly covers public officials. The same applies to the remaining ABC laws/regulations.

10. What is the definition of a public body? Would it include persons working in state-owned/controlled companies? Who is a public/civil servant?

- A public official under the Anti-bribery Law includes:
  - any temporary or permanent employee of the state or any of its bodies with public independent legal personalities;
  - an expert or arbitrator appointed by the government or any committee with judicial authority;
  - any person assigned by any government body or administrative authority to carry out a certain task;
  - any person working for a company or a sole proprietorship carrying out the management, operation or maintenance of a public facility or providing a public service, or working for joint stock companies or companies in which the government has shares or working for companies or sole proprietorships engaged in banking activities and sole proprietorships engaged in banking activities; and
  - the chairmen and directors of the boards of such companies (mentioned above).
- A public/civil servant would be any public official subject to the Civil Service Regulations.

11. Would members of the Saudi royal family be considered public officials by virtue of the fact that they are members of the royal family?

- No, the members of the royal family would not be considered public officials by virtue of that fact. Any members of the royal family would be considered public officials if they held positions that fit the descriptions set out in paragraph 10 above.

12. Does the Government issue internal regulations or codes of conduct applicable to public officers/civil servants?

- There are several regulations that address public employees/officers and their work such as the following:
  - The Regulation of Civil Service promulgated pursuant to Royal Decree No.M/49 dated 10/07/1397 H corresponding to 27 June 1977: this is the general Regulation that addresses the services of public employees and sets out a general code for their conduct as follows:
  - A public employee should:
    - protect the integrity and dignity of their job;
    - comply with manners in interacting with the public and his superiors, colleagues and employees working under his direction; and
    - dedicate his working hours to carry out the duties of his job and accurately carry out the orders given to him.
  - A public employee should not:
    - misuse any power due to his position;
    - accept a bribe, as per the Anti-bribery Law;
    - accept any gifts, gratuities, etc, whether directly or through a mediator from those who would be interested in soliciting the assistance of the public officer; and
    - disclose any secrets he obtains due to his work.
- The Regulation of Discipline of Public Employees promulgated pursuant to Royal Decree No.M/7 dated 01/02/1391 H corresponding to 28 March 1971: this is the general Regulation that sets out the procedures and standards for investigating with public employees before the competent committees and issuing the decisions for implementing disciplinary measures against them.
- The Regulation of the Prosecution of Ministers promulgated pursuant to Royal Decree No.88 dated 22/09/1380 H corresponding to 10 March 1961: this Regulation addresses acts that constitute crimes that require the prosecution of ministers, the entailed punishments for each category of crimes under this regulation, without prejudice to any other regulations, and the procedures for investigation, prosecution before the specialised committee, objection to its decisions, mitigation of punishments and pardons. According to the Regulation of Ministers, Deputy Ministers and the Excellent Grade Officials promulgated pursuant to Royal Decree No.M/10 dated 18/03/1391 H corresponding to 14 May 1391, the Regulation of Prosecution of Ministers applies to ministers, deputy ministers and the excellent grade officials.
- The Public Funds Regulation: in addition to addressing the qualifications of officials occupying positions for undertaking public funds, their compensation and rewards, and the auditing of public funds, this Regulation addresses the crimes of embezzlement from wasting and unjustified disposition of public funds and their punishments.
- The Regulation of the Service of Officers promulgated pursuant to Royal Decree No.M/43 dated 28/08/1393 H corresponding to 26 September 1973 and amended pursuant to Royal Decree No.M/9 dated 24/03/1397 H corresponding to 15 March 1977: this Regulation is applicable to all the officers working for the internal security forces, the National Guard and the General Intelligence Service. It sets out the general obligations and restrictions on the said officers; it requires them to be completely loyal to the King, protect the interests of the country and the armed forces, complete their assignments with no negligence and they should not disclose any confidential information, retain confidential documents in their possession and should not accept any gifts or gratuities, whether directly or through a mediator from those who would be interested in affecting the officer's duties.
- The Regulation of the Service of Citizens promulgated pursuant to Royal Decree No.M/9 dated 24/03/1397 H corresponding to 15 March 1977: this Regulation applies to all Saudi military employees working for the Ministry of Defense and Aviation, the

Ministry of Interior, the National Guard and the General Intelligence Service. It sets out general obligations and restrictions on the concerned employees under this Regulation, which are similar to those set out under the Regulation of the Service of Officers.

- However, more specific internal codes of conduct and directives may be issued internally within each ministry or government body and those may not be available for the public.

13. Are there any laws or regulations imposing obligations on persons to "whistleblow" or disclose suspected corruption within an organisation?

- There is a general obligation under *Shari'ah* to report crimes according to the saying by Prophet Mohammed: "*whoever sees evil must change it.*"
- In addition, the national strategy for protecting integrity and combating corruption encourages all members of society to combat any form of corruption in the broadest sense, whether under the law or under *Shari'ah*. In this regard, the National Anti-corruption Commission (the "**Commission**") was established to oversee the furtherance of combating corruption. The Commission supervises the compliance of government bodies with the national strategy, UNCAC and other relevant regulations and circulars, and all government bodies should cooperate with the Commission. The Commission also receives reports of corruption offences and information and complaints regarding allegations of government corruption from private citizens.
- Article 17 of the Anti-bribery Law encourages whistleblowing, by stating that anyone who provides information which leads to proving bribery (which could be by way of investigation or upon conviction in a criminal court) shall be awarded at least SAR5,000 and not more than half of the money confiscated. Subject to the discretion of the King of Saudi Arabia, the amount of the reward could be higher.
- Also, the briber or intermediary can be exonerated if he reports the offence prior to detection.

14. Do the local anti-corruption regulations have extra-territorial effect? (Is bribery of foreign public officials prohibited?)

- This is not addressed by the Anti-bribery Law.

REGULATION OF ACTIVITIES

15. What are the main bodies responsible for investigating and combating fraud and corruption, in KSA?

- Generally, all government authorities in Saudi Arabia are required to take measures against bribery and corruption pursuant to Saudi Arabia's national strategy for protecting integrity and combating corruption. However, the following bodies are mainly responsible for investigating and combating bribery and corruption:
  - The National Anti-corruption Commission;
  - The Control and Investigation Board;
  - The General Directorate of Investigation;
  - The Bureau of Investigation and Public Prosecution;
  - The Saudi Arabian Monetary Agency; and
  - The Capital Market Authority.

16. What does each of these authorities investigate?

- **The National Anti-corruption Commission:** Generally, it may investigate financial and administrative corruption in public works contracts and other contracts which are related to matters of public interest and the affairs of citizens. However, the Commission's authorities may extend to further matters serving the country's general strategy for protecting integrity and combating corruption in its broadest forms including corruption under *Shari'ah*, which is defined as any act that is considered to be contradictory to rightness and, thereafter, refer the investigation of such act of corruption to the competent body for investigating such acts.
- **The Control and Investigation Board:** Generally, the Control and Investigation Board (the "**Investigation Board**") has the authority to investigate violations by government, military or public institutions' employees including (i) administrative, financial or behavioural violations that entail discipline, (ii) violations referred to the Investigation Board by one of the ministries or other government bodies, (iii) crimes involving forgery, counterfeiting or bribery, and (iv) crimes of misuse of power/position under Royal Decree No.43 dated 29/11/1377 H corresponding to 17 June 1958.
- **The General Directorate of Investigation:** This directorate falls under the Ministry of Interior and has a general authority to investigate crimes and violations.
- **The Bureau of Investigation and Public Prosecution** (the "**Prosecutor**"). This body has the general authority to investigate all criminal acts except those that are subject to the authority of the Investigation Board.
- **The Saudi Arabian Monetary Agency:** The Saudi Arabian Monetary Agency ("**SAMA**") generally has the authority to monitor bank accounts and may have the authority to investigate suspicious transactions through bank accounts if such transactions are suspected to violate Saudi law.
- **The Capital Market Authority:** The Capital Market Authority (the "**CMA**"), being the main regulator of securities business in Saudi Arabia, has very wide powers to investigate acts that may violate the securities regulations issued by the CMA and any suspicious acts by 'Authorised Persons', (persons authorised to carry out the business of securities pursuant to a licence from the CMA).

17. Do the authorities described above have the same powers of investigation?

- Except for the Investigation Board and the Prosecutor, all the above bodies' investigation powers are limited to the acts of ascertaining facts and gathering information and evidence as may be necessary to be able to direct formal accusation against the person being investigated and instigate questioning by the competent authority, which would likely be either the Investigation Board or the Prosecutor.
- The CMA has broad powers to investigate violations to the CMA regulations concerning the business of securities and questioning Authorised Persons (ie persons licensed by the CMA and subject to the CMA regulations).

18. What actions may these bodies take in exercising their functions?

- All these bodies may take any necessary steps to investigate facts and to gather information and evidence. However, the Law of Criminal Procedure promulgated pursuant to the Royal Decree No.M/2 dated 22/01/1435H corresponding to 25 November 2013G (the "**LCP**") provides that only authorised government bodies may question someone who is being accused of a crime, search them and detain them for investigation.

19. What are the powers of arrest and detention of the relevant authorities?

- The Investigation Board and the Prosecutor are the only bodies authorised to carry out questioning and order the arrest and detention of a suspect.

- However, if a person is caught in the act of committing a crime and it is felt necessary to question that person or detain him, the other competent bodies would have limited authority to question the person and request his detention for up to 24 hours. In all other cases, a court order may be obtained for the detention of persons and to restrict them from travelling out of Saudi Arabia.

20. What is the jurisdictional reach of these powers?

- This depends on the ties between the violating act committed and the jurisdiction of Saudi Arabia. The Prosecutor would be the competent authority to investigate crimes committed overseas if Saudi courts have jurisdiction over such crimes pursuant to the regulations of Saudi Arabia or any treaties signed between Saudi Arabia and other countries where the crimes have been committed.
- There are several cooperation treaties between the Kingdom of Saudi Arabia and other countries with respect to judicial cooperation, protection of security and combating crimes, including the following:
  - The Judicial Cooperation Treaty between Saudi Arabia and Kazakhstan
  - The Security Cooperation Treaty between Saudi Arabia and Sudan
  - The Memorandum of Understanding regarding Combating Crime between Saudi Arabia and India
  - The Security Cooperation Treaty between Saudi Arabia and the People's Republic of China
  - The Judicial Cooperation Treaty between Saudi Arabia and Yemen
  - The Cooperation in Combating Crime Treaty between Saudi Arabia and Poland
  - The Cooperation in Combating Crime Treaty between Saudi Arabia and Italy

- Additionally, Saudi Arabia is a member of the Gulf Cooperation Council and the League of Arab States, whose members have adopted agreements for judicial cooperation, reciprocal enforcement of judgments and combating crime.

21. Do the police and other local authorities assist the relevant regulatory authorities in their investigations?

- Subject to the powers reserved by the Investigation Board and the Prosecutor, as mentioned above, the police may assist the authorities with investigations (within the limitations mentioned in our answer to question 19 above).

22. How do the relevant regulatory authorities interact with overseas regulators?

- The relevant regulatory authorities usually communicate with overseas regulators through the competent offices of the Ministry of Foreign Affairs and the Saudi Embassies and Consulates in the other countries.
- Saudi Arabia has signed and ratified the United Nations Convention against Corruption (UNCAC). In a publication on the Committee's website, the President of the Commission referred to Royal Decree No.M/5 dated 11/03/1434 H corresponding to 23 January 2013, for the adoption of UNCAC, that was approved by the Council of Ministers' decision No.62 dated 02/03/1434 H corresponding to 14 January 2013, which completes the necessary legal requirements for adopting the UNCAC. In this publication, the President of the Commission mentioned that Saudi Arabia has already complied with a significant part of the obligations set out under UNCAC, such as issuing a strategy for the protection of integrity and combating corruption, establishing an independent committee for combating corruption and issuing several regulations in this regard. There will be further obligations imposed on the relevant government bodies (in addition to the Commission) and the Commission shall be responsible for overseeing the implementation of and compliance with those obligations.

23. Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

- Yes, Article 68 of the LCP expressly prohibits the disclosure of the investigation procedure and/or its results.

24. Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, for example in proceedings in a court of law?

- Yes, information obtained in an investigation may be used in proceedings in a court of law. For any other case, this would likely be subject to the discretion of the competent government bodies – Article 186 of the LCP only prohibits the use of information relating to statements and acts, based on which a judgment has been issued by the competent court in criminal proceedings, in any other criminal proceedings.

25. Are there protections available when responding to investigations by the relevant authorities, such as the right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

- Yes, protections are generally available under the LCP when responding to investigations by the relevant authorities. Article

64 of the LCP gives the person being investigated the right to seek legal assistance during investigations.

- Article 102 of the LCP requires that the competent authority carry out the investigation in a manner that does not place any influence on the statements of the person being investigated, and provides that the competent authority may not administer oath or use coercion against the person being investigated.

SANCTIONS FOR WRONGDOING

26. What disciplinary sanctions/sentences may these authorities impose?

- Usually, these authorities would be required to refer the charges to the competent court or committee for review, to determine whether the accused person is guilty of the violations in question and assess the suitable sanction/sentence. The sanctions/sentences would depend on the seriousness of the offence and could include imprisonment, a fine or both.
- The Anti-bribery Law provides maximum limits for punishment to the giver and the recipient of a bribe and any intermediary. If a person who has been convicted of a bribery offence commits bribery again within five years of the date of completing his sentence for the first bribery crime, the maximum limits for punishment may be increased up to twice the punishment set out under the Anti-bribery Law.
- Article 19 of the Anti-bribery Law provides that a national or foreign company or sole proprietorship, for the benefit of which bribery has been committed, may be fined up to 10 times the amount of the bribe if its manager or one of its employees was convicted of bribery. All considerations that may be taken into account for determining the punishment for committing bribery are subject to the discretion of the Saudi court judge.

27. Do the relevant authorities have powers to freeze properties which may be proceeds of an ABC offence pending conclusion of their investigation?

- Yes, the competent regulatory authorities would have the powers to freeze properties and take precautionary measures with respect to bribery/corruption offences. However, it is unlikely that they would have such powers outside of Saudi Arabia.

28. Is it possible to enter into a settlement to resolve any enforcement action/prosecution by the relevant authorities?

- This would likely be subject to the discretion of the relevant authority and the discretion of the competent court reviewing the criminal offence. However, the King has authority to grant his royal pardon from judgments issued with respect to criminal offences.

29. Where proper disclosure is made to the employer/public body concerning the details of the gift or event being offered, would that be sufficient to avoid any potential liability under the relevant legislation?

- This is not addressed by the Anti-bribery Law.

30. In practice, is it possible to obtain written/signed acknowledgement from the relevant supervisory level of the public body/state which shows that the supervisor is aware of the advantage offered to an employee? Is there an official approval process available or channel to go through?

- This is not addressed by the Anti-bribery Law and, based on our experience, there is no official approval process or channel to go through with respect to an advantage given to a public official.

31. Are there provisions for defendants to appeal against any enforcement action/prosecution taken against them?

- Yes, the LCP sets out at Chapter 7 the procedure for appeal against judgments issued with respect to criminal offences. Additionally, there are other regulations concerning the procedure of prosecution and discipline of public employees/military employees and officers before the specialised committees. Each regulation sets out the provisions for filing for an objection against the disciplinary measures, an appeal against the decision of the relevant committee or a request of mitigation or pardon from the disciplinary measures.

REFORMS

32. Are there likely to be any significant reforms in the near future?

- The increased attention to combating corruption was noted with the formation of the National Anti-corruption Commission in March 2011 for the purpose of combating corruption and protecting integrity, overseeing the implementation of anti-corruption regulations, instructions and directives, and assisting in the monitoring of corruption.
- Accordingly, no significant reforms to the Saudi ABC laws are currently planned.

PUBLIC PROCUREMENT

33. Are there any procurement laws/rules in Saudi Arabia that refer to bribery/corruption?

- The Government Tender and Procurement Law promulgated pursuant to Royal Decree No.M/58 dated 4 Ramadan 1427H corresponding to 27 September 2006 and its Implementing Regulation address government contracts in general. This Law refers to bribery under Article 53 as follows: "*The government authority may withdraw the work from a contractor and rescind the contract or carry out the contract at his expense without prejudice to the government authority's right to claim compensation for damage sustained as a result thereof, in any of the following events: (a) if it has been established that a contractor attempted by himself or through others, directly or indirectly, to bribe an employee of an authority subject to the provisions of this Law or has been awarded the contract by way of bribery; (b)...*".
- Moreover, Article 77 states that: "*the contractors and government authorities should carry out their contracts according to their conditions, in good faith and in accordance to what is required for the well administration of the domain and public interest; and ministries, government departments and agencies with an independent legal personality shall inform the Ministry of Finance of cases of deceit, fraud and manipulation immediately upon discovery and provide it*

with the decisions made in this respect, including decisions of withdrawal of work."

SHARI'AH LAW

34. Are there any general or specific references to bribery or corruption under *Shari'ah*?

- *Shari'ah* and Islamic authorities and principles all aim towards the establishment of ethics and morals on both the individual level and the level of society as a whole and the renunciation of immorality and dishonesty. There are several general and specific references such as:
  - "*Help one another in virtue and righteousness and do not help one another in sin and transgression.*" Verse 2, *Surat Al Ma'eda*, the holy *Quran*.
  - "*Do not defraud people by depreciating their things and do not carry corruption and mischief in the land.*" Verse 183, *Surat Al Shu'araa,* the holy *Quran*.
  - "*Prophet Mohammed, peace be upon him, has cursed the briber, the bribe-taker and the mediator between them.*"

RECENT DEVELOPMENTS

35. Have there been any recent high-profile bribery/corruption scandals, allegations or prosecutions in Saudi Arabia?

- According to an article published by the Saudi Gazette in January 2014, the Commission revealed that in 2013 it had detected 306 cases of corruption by investigating 400 public projects, of which 30 were referred to the Bureau of Investigation and Public Prosecution for investigation while the remaining were referred to the attention of the relevant ministries and government bodies.
- The most recent high-profile scandal remains the case of the floods that struck the city of Jeddah in 2009, resulting in damage to lives and property in Jeddah and nearby areas. In response, King Abdullah Bin Abdulaziz issued Royal Order No.A/191 dated 13/12/1430 H corresponding to 30 November 2009 for the formation of a special committee, headed by the Prince of Makkah Region and including (i) the President of the Control and Investigation Board; (ii) representatives from the Ministry of Interior: the Director of the Civil Defence, the Deputy of the Principality of Makkah Region, the General Director of Administrative Investigations and the Director of Makkah Region Investigations; (iii) a high-ranking representative from the General Administration of Intelligence; (iv) the Deputy of the Ministry of Justice; and (v) the assisting Vice President of the General Auditing Bureau as members, to mainly carry out the following:
  - conduct investigations into the reasons for the floods and the responsibilities of each concerned government body;
  - assess the overall damage to lives and properties; and
  - report to the King all the findings based on the investigations and offer advice for the future.
- Additionally, this Order required the Ministry of Finance to compensate for all property damage and to pay SR1 million (equivalent to c. USD266,000) to the families of victims of the floods. Jeddah was struck by flooding again in 2011. Corruption in the contracts entered by the Municipality of Jeddah for the city's infrastructure was considered to be a major contributing factor to the city's inability to face the heavy rains, which again caused damage to lives and property. Several investigations were subsequently conducted into high-ranking government officials, businessmen and contracting companies that were involved in the city's infrastructure projects, which led to prosecutions before the Administrative Court of Jeddah. By early 2013, 21 people had been found guilty of criminal charges relating to the floods and sentenced to jail for a total of 85 years and to pay fines totalling SR 6.5 million (equivalent to c. USD1,700,000). These judgments were rendered final by the Court of Appeal in August 2014.

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United Arab Emirates (including the DIFC)

The United Arab Emirates ("UAE") does not have specific ABC legislation. The law relating to anti-bribery and corruption in the UAE includes a broad range of legislation, supporting regulations and cabinet resolutions, at both a federal level and an individual Emirate level.

The UAE also contains a number of economic free zones, such as the Dubai International Financial Centre ("DIFC"). The DIFC has been granted authority to self-legislate in civil and commercial areas. The DIFC does not have specific ABC legislation, and is subject to federal criminal laws. As such, entities operating within the DIFC will be subject to the ABC provisions contained in the UAE Federal Penal Code. However, separate civil laws potentially relevant to ABC apply in the DIFC.

This chapter focuses on the federal and local laws as they apply in the Emirates of Dubai and Abu Dhabi.

THE LAW

1. What is the source of:

ABC legislation and regulations?

- The UAE does not have specific ABC legislation. The primary sources of relevant legislation in the UAE are contained in:
  - Articles 234-239 of Federal Law No.3/1987, (the **'UAE Federal Penal Code'**);
  - the penal codes of each of the individual Emirates (where applicable), including:
    - Abu Dhabi Law No.1/1970, (the '**Abu Dhabi Penal Code**'); and
    - Dubai Penal Law of 1970 (the '**Dubai Penal Code**');
  - Federal Law Decree No.11/2008 regarding Human Resources in Federal Government (as amended by Cabinet Resolution No.1/2018) (the '**Federal HR Law**');
  - Dubai Human Resources Management Law No.27/2006 (the '**Dubai HR Law**');
  - Federal Law No.6/2004 (the '**Federal Armed Forces Law**)'; and
  - the Dubai Law relating to the Procedures for the Recovery of Illegally Obtained Public and Private Funds (the "**Dubai Financial Fraud Law**").
- While federal civil and commercial laws do not apply in the DIFC, pursuant to Article 3 of the Financial Free Zone Law, federal criminal law and law relating to anti-money laundering is applicable. Accordingly, while the Federal Human Resources Law and the Dubai Human Resources Law do not apply in the DIFC, the Federal Penal Code will apply, and in relation to bribery and corruption Articles 234-239 will be applicable.
- In the UAE, laws can be passed at two levels: federal or local (Emirate). The two levels should not, theoretically, conflict, but where conflict does arise, the provisions of the federal law will take precedence.

Local regulatory guidance in relation to the following types of activities: gifts, meals, entertainment, travel, sponsored training/conferences and other similar hospitality events?

- With the exception of the restrictions contained in the above legislation, there is no other published regulatory guidance, regulations or codes of conduct in relation to providing gifts, meals, entertainment, travel, sponsored training/conferences or similar hospitality events.
- The Federal HR Law and the Dubai HR Law (governing federal government and Dubai government employees and public servants respectively) contain specific provisions relating to gifts, bribes and conflicts of interest.
- There is no equivalent to the Federal HR Law applicable in the DIFC.

2. What constitutes an ABC offence in the UAE?

- Under the UAE Federal Penal Code[1], **it is a criminal offence to offer or provide any gifts or benefits to a public official**, subject to any *de minimis* exceptions found in the applicable HR Law(s) (see question 4 below), **if the offer or giving is coupled with an intention on behalf of the giver** to procure an act, or omission of an act, in violation of the duties of the public official's function.
- Under the Abu Dhabi Penal Code, **it is a criminal offence to offer or give a bribe to a public official, if the public official abuses his official position in return for the bribe[2]**. This means that there must be a corrupt intent behind the offer or giving.
- In all of the Emirates except Dubai (see next point), if there is no corrupt intention on the part of the offeror, they commit no offence, whether or not the public official (i) proceeds to take or refrains from taking any action in return or (ii) does nothing in return (although of course, there is a risk that a UAE court would

find that there was such an intention on the part of the offeror depending on the facts).

- The Dubai Penal Code is different to the UAE Federal Penal Code in one material respect, in that the requirement of intent is absent[3], meaning **it is a criminal offence to offer or provide any gifts or benefits to a Dubai public official, even if the offeror or giver has no intention** to procure an act, or omission of an act, in violation of the duties of the public official's function[4].
- The Dubai Financial Fraud Law applies to any person who is convicted of a crime in Dubai in relation to improperly obtaining public funds and/or illicit monies. It allows the accused person to have access to all the necessary communications they require to facilitate return of illicit monies or to reach a settlement with creditors.

3. Are there any statutory defences provided under the relevant legislation, eg *de minimis* exceptions – payments that are legal in the country in which they are offered, etc? What considerations will be taken into account, for example the purpose and frequency of the gift/event, the cost to the organiser, the value of the benefit offered to the individual?

- Subject to the exceptions described in answer to question 4 below, there are no other statutory defences available under the relevant legislation.

4. What kinds of gifts/entertainment/advantages will be considered acceptable?

- The Federal HR Law and the Dubai HR Law contain *de minimis* provisions for gifts.
- The Federal HR Law forbids federal employees from accepting any gifts unless they are 'sample' promotional gifts bearing the name and logo of the offeror[5].
- The Dubai HR Law forbids government employees from accepting any material gifts unless they are symbolic or promotional in nature and bear the name and logo of the offeror[6]. There is no local Abu Dhabi equivalent human resources law[7].
- In relation to a Dubai public official, the gift or benefit must be of value to the recipient, and there is an important exclusion: if there is sufficient 'return' given to the offeror for the gift or benefit, then no offence will have been committed by the offeror (or the receiving party). A balance will therefore need to be struck, based on the circumstances in each case, between the value of the gift or benefit to the Dubai public official and the return given by that public official for the gift or benefit. For example, the value of a lunch to a Dubai public official in return for his time to get to know the host company's business should be acceptable, whereas the value to him of attending a prestigious sporting event with no apparent business purpose would not be acceptable.
- It would therefore be prudent when dealing with a Dubai public official to comply with the Dubai Penal Code, as in practice it is very difficult to draw a distinction between federal and local laws, unless the provisions are clearly drawn.
- If the act of accepting the gift/benefit by the public official is found by a court to have been a breach of any relevant criminal provisions of the applicable laws and codes, a potential consequence is that the offeror may be in breach of UAE and local Penal Code provisions relating to conspiracy to commit criminal acts. However, it is unlikely that a business lunch, business dinner or the sponsorship of an event followed by a reception, for example, would create a criminal liability for the host, either under the relevant bribery provisions or as part of a criminal conspiracy, and these types of activities frequently occur.
- Having said that, it is important to note that the UAE is a civil law jurisdiction, the application of the ABC laws by the courts is not capable of definitive interpretation or certainty and there is no general system of precedent or case reporting. As such, the approach to corruption allegations will vary and depend on the detailed facts and the attitude of the courts (although the UAE courts are likely to take a strict approach to the statutory duties imposed on public officials).
- On a practical level, most UAE ministry and government department employees are likely to have received ABC training. Some departments may maintain gift registers (although there is no uniform rule or policy), and public officials may be obliged to register any gift/benefits they receive. Such registers may be the subject of internal audits. It is also a criminal offence in the UAE not to report a crime or attempted crime. If a public official considers that any offer or giving of a gift/benefit constitutes a breach of anti-bribery or conspiracy provisions, they may consider themselves obliged to report the same to the authorities.

5. What kinds of gifts/entertainment/advantages will be considered unacceptable?

- Apart from the gifts, entertainment and advantages detailed as acceptable above, every other kind of gift, entertainment or advantage is likely to be unacceptable.

6. Are there any exemptions, for example "grease payments" – defined as payments made to procure "routine governmental action" – that "do not involve an exercise of discretion" (such as under the FCPA), payments that "are legal in the country in which they are offered", and "reasonable and *bona fide* expenses directly relating to the promotion of products or services"?

- There are no exemptions for such payments.

7. Does the law cover gifts/entertainment/advantages which are given to spouses/relatives of public officers/civil servants, and/or companies in which the public officers/civil servants are directors/shareholders?

- Yes. The Federal Penal Code, the Dubai Penal Code and the Abu Dhabi Penal Code prohibit a person from soliciting or accepting a bribe for himself or on behalf of another person. This would include gifts, entertainment and advantages given to spouses, relatives, civil servants and/or companies in which the bribe recipient is a director or shareholder.

8. What is the position in respect of charitable contributions to the Government and/or politically exposed persons (PEP)-connected local charities?

- There are no specific provisions addressing charitable contributions to the Government and/or PEP-connected local charities.

9. Do the ABC laws/regulations apply to the private sector or do they relate to the bribery of public individuals and/or bodies only?

- Both. The Federal Penal Code applies to bribery in both the public sector and private sector, although it is important to note that there is no offence of offering a bribe in a private context, ie between private parties not involving a public official.

10. What is the definition of a public body? Would it include persons working in state-owned/controlled companies? Who is a public/civil servant?

- The **UAE Federal Penal Code** does not define "public authority" or "public body". However, the definition of "public officer" contained in Article 5 specifically includes individuals entrusted with public authority and employees working in ministries and government departments, members of the armed forces, heads and members of legislative, advisory and municipal councils, chairmen of the boards, members, directors and all the staff of public bodies and institutions and chairmen of the boards, members, directors and all the staff of public societies and public welfare institutions.
- In addition, any individual who does not belong to any of the above categories, and performs a job relating to a public service as a result of a mandate given to him by a public officer in accordance with his authority is also considered to be a public officer or official.
- The **Dubai Penal Code** does not define "public body" but rather refers to "an employee in the public service or a public employee". A public employee is defined broadly to include any person holding a job in which the power of appointment or dismissal is vested in the Ruler, a governmental department, or a specific committee or council, any job to which a person is appointed or nominated by law, every civil service job in which the power of appointment or dismissal is vested in any person holding an office of any kind, every job of whatever kind in which the power of appointing or dismissing any person lies with board of the reconciled Emirates rulers (also known as the Trucial States Council) or with any department or authority related to the mentioned board, the office of any arbitrator, or pursuant to any law.
- The **Abu Dhabi Penal Code** does not define "public body", but refers to "a public officer", which it defines as "any officer at the service of the governor, or at any governmental or semi-governmental body instituted by law, regardless of being appointed with or without salary, temporary or permanent."
- The above definitions in the UAE Federal Penal Code and the Emirate-level Penal Codes would apply to employees of both state-owned and state-controlled companies.

11. Does the Government issue internal regulations or codes of conduct applicable to public officers/civil servants?

- In 2010, the Federal Government issued Federal Cabinet Resolution No.15 approving the *Code of Professional Conduct and Ethics*. The Code applies to persons holding a position in a federal ministry, public entity or institute and seeks to create and encourage a culture aimed at enhancing professional values, responsibility and a desire to abide by high ethical values, while simultaneously developing the confidence and credibility in the government sector.
- The State Audit Institution[8] ("**SAI**") has also issued the Fraud Control Frameworks Best Practice Guide, which is stated to be based upon international best practice in fraud control. The Guide seeks to provide a strong and effective fraud control framework for public sector organisations and to assist in improving the security of public funds by effectively controlling fraud.
- We are not aware of any codes of conduct, guidance or internal regulations being issued or promulgated by ministries and/or governmental departments at an individual Emirate level.

12. Are there any laws or regulations imposing obligations on persons to "whistleblow" or disclose suspected corruption within an organisation?

- There are no specific laws at a federal or Emirate level imposing obligations on persons to "whistleblow" or disclose suspected corruption within an organisation, although there is a general obligation under the UAE Penal Code to report a crime.
- However, the Dubai Land Department has issued a draft code of Corporate Governance for Developers, which contains a framework which seeks to provide protection from discharge or discrimination against a whistleblower, who may otherwise be subject to retaliation by the employers or fellow employees within the organisations to which they belong.
- At a federal level, the SAI runs a reporting portal through which employees and citizens can anonymously report on fraud and corruption. Complaints are made anonymously through the SAI's website, email or by post and personal details are not required. The reporting procedure involves the head of the SAI receiving the complaint, which is then referred on to the relevant ministry or agency for investigation. The investigation itself is overseen by the SAI.

13. Do the local anti-corruption regulations have extra-territorial effect? (Is bribery of foreign public officials prohibited?)

- At present there is no specific legislation in place relating to prohibiting bribery of a foreign official.

REGULATION OF ACTIVITIES

14. What are the main bodies responsible for investigating and combating ABC in the UAE?

- In addition to the police and public prosecution offices, the main bodies responsible for investigating and combating ABC in the UAE at a federal level are the SAI, and at an Emirate level in Abu Dhabi and Dubai, the Abu Dhabi Accountability Authority[9] ("**ADAA**") and the Dubai Financial Audit Department[10] ("**DFAD**") respectively.
- In addition, to the SAI[11], ADAA and DFAD, all federal and Dubai ministries and government departments have responsibility for investigating suspected and reported cases of bribery pursuant to the Federal HR Law and the Dubai HR Law[12]. There is no equivalent law in Abu Dhabi. The Federal HR Law and the Dubai HR Law are not applicable in the DIFC.
- The seven Emirates each have their own police force operating under the Federal Ministry of the Interior. The two major police forces are the Abu Dhabi Police and Dubai Police. Both police forces have specialised units which deal with financial investigations and allegations of bribery and corruption.

- Similarly, the Dubai Public Prosecution Office in Dubai has a specialised unit referred to as Public Funds Prosecution, while the Abu Dhabi Public Prosecution Office also has a specialised unit which deals with financial violations and investigations.
- Bribery that occurs in the private sector is governed by the Federal Penal Code and any investigations will in general be undertaken by the police and/or public prosecution.
- In the DIFC, neither the DIFC Authority nor the DFSA have specific authority to investigate in relation to allegations of bribery and corruption. The DFSA may, as part of its ongoing supervision of DFSA authorised persons (such as DFSA authorised firms, authorised market institutions and authorised individuals), or during the course of undertaking investigations, (for example, in response to information received from other parties or as a result of ongoing failures to comply with regulatory obligations) obtain evidence of bribery and corruption. In these circumstances, information gathered is obtained in reliance on the DFSA's supervisory powers and investigatory powers as contained in the DIFC Regulatory Law. Any evidence of a criminal offence under the Federal Penal Code will be referred by the DFSA to either the police or Public Prosecution Office.

15. What does each of these authorities investigate?

- The SAI is the federal audit authority charged with responsibility for ensuring that federal public funds are allocated correctly and in accordance with the appropriate rules and procedures. As part of its mandate, the SAI investigates cases of financial misconduct relating to state funds.
- The ADAA and DFAD are the audit authorities responsible for ensuring that state funds are allocated correctly and that not only controls but that all legal requirements relating to government spending have been complied with.
- Unlike the SAI, neither the ADAA nor DFAD have the ability to prosecute.
- Pursuant to the Federal HR Law and the Dubai HR Law, ministries and government departments must undertake an official investigation where it is suspected that an employee has paid, received or asked for a bribe. Federal ministries and government departments are required to establish a Violations Committee to undertake the investigation and proceedings. The Violations Committee is responsible for investigating violations committed by employees (excluding violations relating to working hours) and imposing administrative penalties in accordance with Article 83 of the Federal HR Law.
- The UAE Federal Penal Code, Dubai Penal Code and Abu Dhabi Penal Code do not set out specific provisions in relation to the precise jurisdiction of the police and public prosecutor to undertake investigations and prosecutions for bribery and corruption.

16. Do the authorities described above have the same powers of investigation?

- In addition to its powers of investigation and referral to the judicial authorities, the SAI also has the authority to prosecute matters relating to financial violations of state funds before a special disciplinary committee, or to refer the matter to the relevant ministry or government department. In addition, whilst its jurisdiction in general relates to federal government departments and ministries or government-owned entities, it may, at the written request of a specific Emirate, undertake an audit of a specific entity.
- The powers of the AADA and DFAD are restricted to investigations of financial misconduct and, in circumstances where evidence of a criminal offence has occurred (such as bribery), referral of such alleged criminal conduct to the police and public prosecutor. Amongst the ADAA's responsibilities, it is required to conduct investigations of complaints referred to it and other violations it may discover.
- Similarly, under the Federal HR Law and the Dubai HR Law, a government department or ministry's powers of investigation relate to suspected or reported incidents of bribery. Where an investigation confirms that there is strong evidence that an employee has demanded, accepted, received or paid a bribe to another employee, the matter must be referred to the competent judicial entities (ie the police and Public Prosecution Office).
- In the DIFC, any evidence of bribery and corruption gathered during the course of an investigation will be referred by the DIFC Authority or DFSA to the police and/or the public prosecutor, as such activities are likely to constitute a federal criminal offence under the Federal Penal Code.

17. What actions may these bodies take in exercising their functions?

- The SAI rules provide that in the course of an investigation into a financial violation, the SAI may make direct contact with all officials and employees that work for the bodies subject to audit, and review any document, record or papers it deems necessary for investigation. In addition, the SAI is entitled to take action to scrutinise all financial contraventions and to interview officials and employees, question them and may, if necessary, suspend staff from service, seize properties, and use all necessary means to protect funds under audit and to refund the lost funds or those which have been used illegally.

18. What are the powers of arrest and detention of the relevant authorities?

- Save for the police authorities, none of the above-mentioned authorities have powers of arrest.

19. What is the jurisdictional reach of these powers?

- The SAI's jurisdiction to investigate bribery and corruption applies only in respect of certain public bodies, including federal ministries and departments, the Federal National Council, organisations and public corporations reporting to the federal government, companies and corporations in which the federal government or any federal corporate entity/body retains at least 25% ownership, and any Emirate government organisation, entity or public corporation in respect of which the Ruler of that Emirate has requested (in writing) that the SAI undertakes an audit.
- The ADAA's jurisdiction to investigate bribery and corruption applies only in respect of "Subject Entities", which includes all local Abu Dhabi ministries, departments, councils, authorities and additionally companies and projects in which the Abu Dhabi Government's interest is equal to or greater than 50% inclusive of their subsidiaries, companies and projects.
- Like the ADAA, the DFAD's jurisdiction to investigate financial violations (which may include bribery and corruption) applies in respect of Dubai Government departments, public organisations, corporations and authorities (including the free

zone authorities), companies 100% owned by the Dubai Government or where the Government holds at least 25% or more of their share capital, companies from which the Dubai Government secures a minimum rate of profit and that receive financial aid from the Government, and any projects or other entities in respect of which the Ruler or the Head of the Executive Council entrusts to the DFAD to audit its accounts.

20. Do the police and other local authorities assist the relevant regulatory authorities in their investigations?

- The relevant regulatory authority or ministry and the police will work with the Public Prosecution Office and assist with any investigations, obtaining information and gathering evidence.

21. How do the relevant regulatory authorities interact with overseas regulators?

- The UAE is a party to the United Nations Convention against Corruption ("**UNCAC**"), which was ratified by the UAE under Federal Decree No.8/2006. Under Chapter IIII of the Convention, Member States to the Convention assist each other in combating corruption. This cooperation takes the form of extradition, mutual legal assistance, transfer of judgements and criminal proceedings and cooperation in the area of law enforcement.
- In addition, the UAE has entered into bilateral mutual judicial assistance agreements which relate to extradition, providing assistance in criminal matters and the transfer of prisoners with numerous countries including Singapore, India, Australia and the United Kingdom.
- The SAI has also established "twinning programmes" with audit institutions in other jurisdictions including:
  - the Audit Commission, United Kingdom;
  - the Audit Office of New South Wales, Australia;
  - the Malaysia National Audit Department;
  - the Netherlands Court of Audit; and
  - the Office of the Auditor, New Zealand.

22. Are there any provisions requiring investigations or information disclosed during the course of investigations to be kept confidential?

- The Executive Regulations to the Federal HR Law provides that the proceedings and findings in relation to an investigation into a violation shall be kept confidential.
- There are no such provisions in the Federal or Abu Dhabi/Dubai Penal Codes.

23. Can information obtained by these regulatory bodies in the course of their investigations be used for any other purpose, for example in proceedings in a court of law?

- Yes. Pursuant to the Federal HR Law and the Dubai HR Law, the relevant government ministry or department is required to not only investigate and refer any matter constituting an offence to the police or public prosecutor, but it is also under an obligation to take any internal disciplinary action necessary. The Dubai HR Law provides that where an alleged offence is referred to the judicial authorities for a criminal hearing, any disciplinary proceedings must be put on hold until a decision on criminal liability has been issued.
- The DFAD has powers to retain documentation, paper, records and other things used to commit a financial contravention. In addition, the Director General of the DFAD and certain employees (as nominated by him) have the capacity of judicial officers to provide information in relation to financial contraventions committed by "controllable entities" which constitute a criminal offence. Minutes prepared by a judicial officer will be effective as evidence unless proved otherwise.
- To date, the DFSA has not been asked to undertake an investigation in relation to bribery or corruption under the UAE Federal Penal Code. In the event that the DFSA was requested to assist in such an investigation, it would not be relying on its powers of investigation under the DIFC Regulatory Law, and therefore, it is unclear if the DFSA could then use such information for its own purposes, for example to take disciplinary action under DFSA law or rulebooks.

24. Are there protections available when responding to investigations by the relevant authorities, such as the right to legal representation at interviews, privilege against self-incrimination and legal professional privilege?

- No such rights exist under the federal or Emirate-level penal codes.

SANCTIONS FOR WRONGDOING

25. What disciplinary sanctions/sentences may these authorities impose?

- Under the Federal HR Law and the Dubai HR Law, where a matter is referred to the court due to an employee or public officer committing a criminal offence in connection with his employment, a government department or ministry may take disciplinary action, including:
  - suspending the employee without salary while awaiting the issuance of a decision from the courts;
  - terminating employment if convicted of a felony or misdemeanour involving dishonesty, immoral crime or moral turpitude;
  - terminating employment if convicted of a felony or misdemeanour and sentenced to imprisonment of more than three months.
- The sanctions imposed under the UAE Federal Penal Code include imprisonment for a period not exceeding 10 years. In addition, in relation to any of these offences, the offender will be subject to a fine equivalent to what he has solicited or accepted as a bribe, provided that it is not less than AED1000. Finally, any such bribe received will be confiscated from the individual.
- The sanctions imposed by the Dubai Penal Code include imprisonment for a maximum of three years or a fine not exceeding AED5,000 (or both).
- The sanctions imposed by the Abu Dhabi Penal Code include imprisonment for a maximum of three years, a fine, or both.
- The Dubai Financial Fraud Law provides that if it is evident from a final and conclusive court decision that the judgment debtor

received illegal monies, the judge must issue an order upon request of the judgment creditor for imprisonment, as follows:

AMOUNT OF ILLEGAL MONIES TO BE SETTLED	PRISON TERM
A minimum of AED500,000 and a maximum of AED1 million	5 years
A minimum of AED1 million and a maximum of AED5 million	10 years
A minimum of AED5 million and a maximum of AED10 million	15 years
More than AED10 million	20 years

26. Do the relevant regulatory authorities have powers to freeze properties which may be proceeds of an ABC offence pending conclusion of their investigation?

- There are no specific provisions in the UAE Federal Penal Code, the Dubai Penal Code, the Abu Dhabi Penal Code, the Federal HR Law or the Dubai HR Law which permit a government ministry or department (whether federal or Dubai/Abu Dhabi) to freeze properties which may be the proceeds of a bribery or corruption offence pending conclusion of their investigation.
- The SAI may seize properties and use all means necessary to protect funds under audit and to refund lost funds or those used illegally.
- However, attachments of assets can be obtained in the UAE in the civil courts in civil matters, so the public prosecutor is likely to be able to have this power.

27. Is it possible to enter into a settlement to resolve any enforcement action/prosecution by the relevant authorities?

- There is currently no legislation provision for this and it is not understood to be accepted practice.

28. Where proper disclosure is made to the employer/public body concerning the details of the gift or event being offered, would that be sufficient to avoid any potential liability under the relevant legislation?

- Under the UAE Federal Penal Code, the Dubai Penal Code and the Abu Dhabi Penal Code, it is only an offence to solicit or accept a bribe. Accordingly, a public official or employee who is offered a bribe but refuses and reports such action would not be guilty of committing an offence. None of the Codes however, provide a procedure for the manner, form or time frame within which such a disclosure should be made.
- Under the UAE Federal Penal Code, if the briber informs the judicial or administrative authorities of the crime immediately or if the briber confesses before the case is communicated to the court, they will be exempted from punishment. Where the confession is made after the case has been communicated to the Court, it will be considered as a mitigating factor.
- SAI rules provide that an official may be exempted from a penalty where he proves that the contravention committed was done in execution of a written order issued to him by his superior, despite providing a written notification to the superior of the contravention. In these circumstances, Article 22 provides that the responsibility will be on the employees' superior who gave the order.

29. Is it possible to obtain written/signed acknowledgement from the relevant supervisory level of the public body/state which shows that the supervisor is aware of the advantage offered to an employee? Is there an official approval process available or channel to go through?

- There is no formal process for this; however, the Federal HR Law and the Dubai HR Law both provide that a ministry may specify organisational units which are allowed to accept gifts and government employees who are allowed to accept such gifts made in the name of the concerned ministry. As above, the gifts are restricted to those constituting symbolic advertising or promotional gifts which bear the name or the emblem of the entity which is providing the gift.

30. Are there any provisions to appeal against any enforcement action/prosecution taken against them?

- The ordinary criminal court appeals system will apply.
- While the Executive Regulations to the Federal HR Law provide for an appeal mechanism in relation to a decision of the Violations Committee, this would likely not be applicable to matters of bribery and corruption as they are criminal offences that must be referred to the police/public prosecutor.

REFORMS

31. Are there likely to be any significant reforms in the near future?

- In 2012, H.H. Sheikh Khalifa Bin Zayed Al Nahyan issued instructions to the SAI to draft an anti-corruption draft law. The proposed law will seek to enforce the United National Convention against Corruption signed by the UAE in 2003 and ratified pursuant to Federal Decree No.8/2006. The draft law has yet to be published.
- In May 2015, the Abu Dhabi Executive Council announced that it would establish a new anti-corruption unit within the ADAA. The primary objectives of the new unit include to ensure that public entities' resources and funds are managed, collected, and spent efficiently, effectively, economically and ethically and to promote transparency and accountability across all public entities. The new unit will also target and investigate financial irregularities and corruption, identify gaps in legislation and audit the government's consolidated financial statements and any subject entities' financial statements.
- In 2016, Dubai Law No.4/2016 (the "**New Law**") introduced a new regulator called the Dubai Economic Security Centre (the "**DESC**"). The New Law applies to onshore Dubai as well as the free zones located in the Emirate of Dubai, in particular the DIFC. It will apply to a number of entities including local government and charities, and free zone regulators including the DFSA and DIFC Authority. The New Law is now in force, however, the DESC is not yet operational and a commencement date for their operation has not yet been set. The DESC is being set up to fight corruption, fraud, bribery, embezzlement, forgery, money laundering, crimes against public funds and the financing of terrorism or illegal organisations. Their role will also encompass the monitoring of:

- Trading of currencies, commodities, precious metals and listed and unlisted securities;
- charitable donations;
- funds, cash or financial instruments received or sent through Emirate's ports; and
- economic risks.

- The DESC will be able to take preventative actions and measures, request the assistance of the Dubai police, require that certain information be provided, temporarily suspend trades on exchanges in exceptional circumstances, provide protection to whistleblowers and impose penalties. It will also have some rulemaking powers.

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FOOTNOTES:

1. UAE Penal Code, Article 237
2. Abu Dhabi Penal Code, Article 42
3. Dubai Penal Code, Article 120
4. Dubai Penal Code, Article 122
5. The Federal HR Law, Article 70
6. Dubai HR Law, Article 11(4)
7. Although Article 56 of Abu Dhabi Law No.1/2006 (the 'Civil Service Law') provides that civil servants shall perform their duties honestly, there is no explicit reference to bribery, and no criminal penalties are laid out in the Civil Service Law for non-compliance with Article 56.
8. The SAI is established pursuant to Federal Law No.7/1976, establishing the State Audit Institution (the "**SAI Law**").
9. The ADAA is established pursuant to Abu Dhabi Law No.14/2008.
10. The DFAD is established pursuant to Dubai Law No.3/2007 and Law No.8/2010.
11. Article 20 of the SAI Law specifically provides that the SAI "shall investigate into financial contraventions, whether discovered by the SAI or by the concerned administration".
12. Article 11(3), Dubai Law No.27/2006, Human Resources Management Law

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