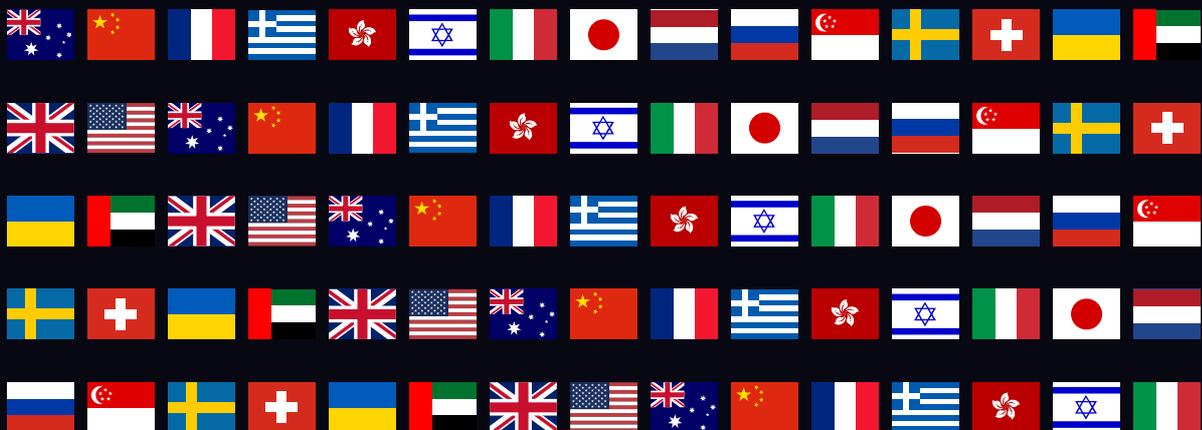


# ANTI-BRIBERY & CORRUPTION

## United Arab Emirates



# Anti-Bribery & Corruption

Consulting editors

**James G Tillen, Leah Moushey**

*Miller & Chevalier Chartered*

---

Quick reference guide enabling side-by-side comparison of local insights, including into relevant domestic and international law, agencies, enforcement and sanctions; recent landmark investigations and decisions; and other recent trends.

---

Generated 17 February 2023

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. © Copyright 2006 - 2023 Law Business Research

## Table of contents

### RELEVANT INTERNATIONAL AND DOMESTIC LAW

International anti-corruption conventions

Foreign and domestic bribery laws

Successor liability

Civil and criminal enforcement

Out-of-court disposal and leniency

### FOREIGN BRIBERY

Legal framework

Definition of a foreign public official

Gifts, travel and entertainment

Facilitating payments

Payments through intermediaries or third parties

Individual and corporate liability

Private commercial bribery

Defences

Agency enforcement

Patterns in enforcement

Prosecution of foreign companies

Sanctions

Recent decisions and investigations

### FINANCIAL RECORD-KEEPING AND REPORTING

Laws and regulations

Disclosure of violations or irregularities

Prosecution under financial record-keeping legislation

Sanctions for accounting violations

Tax-deductibility of domestic or foreign bribes

### DOMESTIC BRIBERY

Legal framework

Scope of prohibitions

Definition of a domestic public official

Gifts, travel and entertainment

**Facilitating payments**

**Public official participation in commercial activities**

**Payments through intermediaries or third parties**

**Individual and corporate liability**

**Private commercial bribery**

**Defences**

**Agency enforcement**

**Patterns in enforcement**

**Prosecution of foreign companies**

**Sanctions**

**Recent decisions and investigations**

**UPDATE AND TRENDS**

**Key developments of the past year**

## Contributors

### United Arab Emirates



**Sara Sheffield**  
sara.sheffield@crsblaw.com  
*Charles Russell Speechlys*



**Karl Masi**  
karl.masi@crsblaw.com  
*Charles Russell Speechlys*



## RELEVANT INTERNATIONAL AND DOMESTIC LAW

### International anti-corruption conventions

To which international anti-corruption conventions is your country a signatory?

The UAE ratified the United Nations Convention against Corruption pursuant to Federal Decree No.8 of 2006 . The UAE is also a signatory to the regional Arab Anti-Corruption Convention, a convention introduced by the Arab League on 21 December 2010.

*Law stated - 06 January 2023*

### Foreign and domestic bribery laws

Identify and describe your national laws and regulations prohibiting bribery of foreign public officials (foreign bribery laws) and domestic public officials (domestic bribery laws).

The UAE is a civil law jurisdiction and within it there are both federal and local emirate laws that deal with bribery. The following are the key legislative provisions to be aware of.

The UAE has criminalised the bribery of domestic public officers since the early 1980s through Federal Law No. 3 of 1987 on Issuance of the Penal Code (the Old Penal Code). Despite significant amendments to the Old Penal Code in 2016 bringing the UAE's bribery and corruption laws further into line with international practice, the Old Penal Code was repealed by Federal Law No. 31 of 2021 on the Issuance of the Crimes and Penalties Law , which came into force on 2 January 2022 and was later amended by Federal Decree No 36 of 2022 (the New Penal Code). The New Penal Code is now the main federal law governing crimes and penalties in the UAE, including bribery and corruption.

The main federal bribery offences are contained in Chapter 1, Part 2 of the New Penal Code. In summary, the New Penal Code continues to criminalise bribery of or by a public official, an individual assigned to public service, a foreign public official or an employee of an international organisation. A bribe in this context is described in the relevant provisions of the Penal Code as an 'undue gift, benefit or grant' provided directly or indirectly or promised in return for the bribe-taker performing, omitting to perform, or violating a duty of his or her office (articles 275 and 280).

The New Penal Code also criminalises the demanding, accepting or receiving of a bribe, or to use any influence, genuine or assumed, to seek to obtain an advantage from a public department (article 281). It is also an offence pursuant to article 282 to act as an intermediary between the briber and the bribe-taker.

These bribery offences involving domestic and foreign public officials are punishable by up to five years' imprisonment, a fine equal to the value of the bribe (if over 5,000 UAE dirhams) and confiscation of any bribe received. The New Penal Code criminalises inchoate bribery offences with the same penalty as the prescribed crime. The New Penal Code also contains a general offence (in article 323) of failing to report a criminal offence, which would also apply in the case of individuals who become aware of, but do not report, an instance of bribery.

No limitation period applies to these bribery offences under the New Penal Code, and an offender who reports a bribery offence prior to it otherwise being discovered will receive immunity from punishment (article 284). The bribery offences apply extraterritorially if the criminal or victim is a UAE national, if the criminal is employed in the public or private sector in the UAE, or if the offence is committed on public funds (article 285).

Still at a federal level, Law No. 11 of 2008 on Human Resources in the Federal Government prohibits public sector employees from accepting any gift unless it is of a symbolic nature, marked with the name of the gift bearer and provided through an assigned government unit.

At a local emirate level, the UAE has implemented legislation in several emirates that governs issues prevalent in

bribery and corruption. For example, Abu Dhabi Law No. 6 of 2016 on Human Resources in the Emirate of Abu Dhabi prohibits conduct relating to the abuse of position and corruption by public officials working for the Abu Dhabi government (article 53). In neighbouring Dubai, Law No. 27 of 2006 on Human Resources Department of Dubai Government operates as a legal Code of Conduct for all civilian employees of the local government and prohibits the acceptance of any material gift except for those of a symbolic or promotional nature that bear the logo and name of the gifting party (article 11).

For completeness, Dubai Law No. 1 of 1970 on The Local Penal Code of 1970 deals with crimes of bribery and abuse of public office (articles 118 to 122) for those falling under the jurisdiction of Dubai. However, where these offences overlap with those in the New Penal Code, the latter will take precedence.

The UAE contains a number of free trade zones with their own rules and regulations, and two financial free zones in the Abu Dhabi Global Market (ADGM) and the Dubai International Financial Centre (DIFC) that are governed by separate common law based ADGM and DIFC law. The ADGM and DIFC also have their own financial regulators who monitor and enforce rules related to the integrity of the financial markets and legal persons under their jurisdiction. However, all jurisdictions within the UAE including the ADGM and DIFC remain subject to the provisions of the New Penal Code.

*Law stated - 06 January 2023*

### **Successor liability**

Can a successor entity be held liable for violations of foreign and domestic bribery laws by the target entity that occurred prior to the merger or acquisition?

Yes. Subject to provisions in Chapter 2 of Federal Law No. 32 of 2021 on Commercial Companies (the Commercial Code) the merging company shall be the legal successor of the merged entity or entities. In principle, the merging of entities does not of itself discharge the obligations of the pre-merged entity, which means it is possible for a successor entity to be held liable for bribery offences committed by the pre-merged entity or entities under the New Penal Code.

*Law stated - 06 January 2023*

### **Civil and criminal enforcement**

Is there civil and criminal enforcement of your country's foreign and domestic bribery laws?

The UAE Public Prosecution is the government body tasked with prosecuting the country's bribery and corruption laws. The Public Prosecution is assisted by the relevant local police force in each emirate, which has the responsibility for taking initial statements from complainants, witnesses and suspects, and executing orders from the Public Prosecution to assist in the investigation process.

Under Federal Law No. 5 of 1985 on the Civil Transactions Law of the United Arab Emirates State (as amended), a company may be civilly liable (ie, in damages) for the harm caused by an employee's unlawful acts, which in theory could be invoked by a complainant wishing to pursue compensation for harm caused by bribery. The New Penal Code makes clear that there are no time limitations for civil actions arising from or connected to bribery offences (article 286).

*Law stated - 06 January 2023*

### **Out-of-court disposal and leniency**

Can enforcement matters involving foreign or domestic bribery be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial? Is there a mechanism for companies to disclose violations of domestic and foreign bribery laws in exchange for lesser penalties?

There is currently no legal mechanism by which bribery offences can be resolved through a plea or settlement agreement under the New Penal Code or the UAE Criminal Procedures Law.

Article 284 of the New Penal Code provides immunity from punishment for the briber or bribe-taker who reports the crime to the judicial or administrative authorities prior to the crime being discovered.

*Law stated - 06 January 2023*

## FOREIGN BRIBERY

### Legal framework

Describe the elements of the law prohibiting bribery of a foreign public official.

The New Penal Code makes it a criminal offence to promise, offer or grant a foreign official an undue gift, benefit or grant in return for that person's performance or omission of an act included within his or her duties, or an act in violation of his or her duties. This is so whether the promise, offer or grant is made directly or indirectly to the foreign official or to another person or entity (article 280).

The New Penal Code also addresses the conduct of the foreign official by likewise criminalising any act by them of demanding, accepting or receiving an undue gift, benefit or grant in return for performing or omitting an act included within his or her duties, or an act in violation of his or her duties. This is so whether the demand, acceptance or receipt is made directly or indirectly to the foreign official, or is done after the performance or omission or violation of duty has taken place. It also applies irrespective of whether the foreign official intended to perform or omit or violated any of his or her duties (article 275).

The New Penal Code also criminalises circumstances in which a foreign official mistakenly assumed or presumed that the act he or she was to undertake in return for the bribe was included within the duties of his or her office (article 276). It is therefore not an element of the law prohibiting bribery of a foreign official that the foreign official must intend to carry out the act or omission for which he or she has been bribed, nor that the conduct of the foreign official should be within his or her official duties as long as he or she mistakenly presumed or assumed it was.

The elements of the law apply equally to an employee of an international organisation.

The UAE does not have a 'failure to prevent' criminal offence for bribery of a foreign official.

*Law stated - 06 January 2023*

### Definition of a foreign public official

How does your law define a foreign public official, and does that definition include employees of state-owned or state-controlled companies?

Article 6(1) of the New Penal Code defines a foreign public official as any person holding a legislative, executive, administrative, or judicial office in a country outside of the UAE, whether permanent or temporary, whether appointed or elected, whether paid or unpaid, and any person assigned to perform a public service.

The foreign bribery provisions in articles 275, 276, 280 and 281 of the New Penal Code also expressly apply to an employee of an international organisation. An employee of an international organisation is defined in article 6(2) of the New Penal Code as any person who performs a function for an international organisation or is assigned to act on its behalf.

*Law stated - 06 January 2023*

### **Gifts, travel and entertainment**

**To what extent do your anti-bribery laws restrict providing foreign officials with gifts, travel expenses, meals or entertainment?**

There is no statutory prohibition on providing foreign officials with gifts, travel and entertainment. However, any such act would be prohibited if in doing so the conduct amounted to one of the bribery offences as defined in articles 275 and 276, 280 or 281 of the New Penal Code.

The UAE has implemented legislation on a federal and local emirate level governing if, how and in what circumstances those working in public office can receive or provide gifts. For example:

- Federal Law No. 11 of 2008 on Human Resources in the Federal Government governs public sector employees and prohibits them from accepting any gift unless they are symbolic, marked with the name of the gift bearer and provided through an assigned government unit.
- Abu Dhabi Law No. 6 of 2016 on Human Resources in the Emirate of Abu Dhabi includes offences relating to the abuse of position and corruption by those public officials working for the Abu Dhabi government (article 53).
- The Dubai Government Human Resources Management Law No. 27 of 2006 operates as a legal Code of Conduct for all civilian employees of the Dubai government and prohibits the acceptance of any material gift except for those of a symbolic or promotional nature that bear the logo and name of the gifting party. Any such gift should be received and distributed through a designated unit (article 11).

*Law stated - 06 January 2023*

### **Facilitating payments**

**Do the laws and regulations permit facilitating or 'grease' payments to foreign officials?**

Facilitation or 'grease' payments to foreign officials are not permitted under UAE law and would be considered as bribery under the relevant provisions of the New Penal Code (articles 275, 276, 280 and 281).

*Law stated - 06 January 2023*

### **Payments through intermediaries or third parties**

**In what circumstances do the laws prohibit payments through intermediaries or third parties to foreign public officials?**

Federal law prohibits payment to a foreign public official, whether by an intermediary, third party or otherwise, in circumstances where that payment falls within the definition of bribery as set out in articles 275, 276 and 280 of the New Penal Code.

In addition, at local emirate level, there is law curtailing when those working in public office can receive or provide gifts. For example, the Dubai Government Human Resources Management Law No. 27 of 2006, which operates as a legal

Code of Conduct for all civilian employees of the Dubai government, states that gifts to an external party can only be provided in the name of the relevant government department and exclusively by a designated unit (article 11).

*Law stated - 06 January 2023*

## Individual and corporate liability

Can both individuals and companies be held liable for bribery of a foreign official?

Yes. Under article 66 of the New Penal Code, companies shall be held criminally liable for the crimes committed by their representatives, directors, or agents acting on their behalf or in their names. This includes bribery of a foreign official. Article 66 also excludes from criminal liability government bodies, official departments and public authorities.

The penalty applicable to companies for bribery of a foreign official is limited to a fine, confiscation and other criminal measures prescribed for the crime by the law. If the law provides for payment of a principal penalty for the crime other than the fine, then the penalty shall be restricted to a fine of not more than 5 million UAE dirhams, unless otherwise provided by law. Individuals on the other hand can be liable to imprisonment for up to five years, a fine commensurate with the level of the bribe and confiscation of the same.

*Law stated - 06 January 2023*

## Private commercial bribery

To what extent do your foreign anti-bribery laws also prohibit private commercial bribery?

Bribery in the private sector is covered by article 278 of the New Penal Code, which makes it an offence for a manager of a private company to demand or accept an undue gift, benefit, or grant (or promise of same) in return for an act or omission connected to the performance of his or her duties of employment. This is so even if the manager has no intention of carrying out the act for which he or she has been bribed, or if the demand, acceptance, or promise is done after the performance of the act or omission. The New Penal Code also introduced a new criminal offence applicable to persons who promise, offer, or grant a bribe to the manager of a company in the private sector (article 279).

The penalty for both offences is imprisonment for up to five years (articles 278 and 279).

*Law stated - 06 January 2023*

## Defences

What defences and exemptions are available to those accused of foreign bribery violations?

There are several statutory defences in the New Penal Code that are available to all persons charged with a criminal offence, including foreign bribery violations. For example, a person shall not be criminally liable in the UAE if at the time of the commission of the offence they lacked mental capacity or volition resulting from an intoxicating or narcotic substance administered without their consent or knowledge. However, if the involuntary administration of an intoxicating or narcotic substance results in only a weakness of capacity or volition at the time of the commission of the offence, it will be considered as mitigation only. No defence of lack of capacity or volition is available if the intoxicating or narcotic substance was administered voluntarily (articles 62 and 63 of the New Penal Code). The UAE also applies the statutory defence of necessity and duress (article 65).

The New Penal Code also provides for a defence of mistake of facts. Denial of the requisite intent is therefore a common defence to criminal acts generally. The burden of proof lies on the accused. However, in respect of foreign bribery violations, it is no defence that the bribe-giver or bribe-taker did not intend to perform or omit the act that

violated his or her employment duties, nor is it a defence that the bribe is demanded or received after the material act or omission has taken place. It is also no defence if the omitted act or omission was not within the duties of the offender if that offender mistakenly assumed or presumed it was so (see articles 275 and 276).

*Law stated - 06 January 2023*

## Agency enforcement

### What government agencies enforce the foreign bribery laws and regulations?

An increasing number of government agencies have been empowered to monitor and investigate bribery and corruption. The key criminal enforcement agency is the UAE Public Prosecution, which is responsible for prosecuting bribery laws under the New Penal Code. It is supported by local police at emirate level who are responsible for the initial investigation and collection of evidence, as well as the enforcement of orders from the UAE Public Prosecution or the criminal courts, or both.

In addition, the Abu Dhabi Accountability Authority (ADAA), pursuant to Abu Dhabi Law No. 19 of 2020 (as amended), is an anti-corruption unit tasked with investigating financial or administrative irregularities in public sector finances. Its remit has been extended to cover institutions such as the courts and police and companies where government entities own at least 25 per cent of the capital. In 2021, Abu Dhabi Administrative Decision No. 34 of 2021 on the Issuance of the Anti-Corruption Procedures Regulation consolidated the ADAA's investigatory powers and remit for the prosecution of financial and administrative corruption violations.

The Dubai Economic Security Centre (DESC) was established by Dubai Law No. 4 of 2016 on Dubai Economic Security Centre. The DESC has jurisdiction over a broad range of Dubai entities, including but not limited to Government of Dubai agencies, agencies subsidised by the local government and establishments licensed to practise an economic activity in Dubai. The DESC's remit includes combatting corruption and bribery and it has wide-ranging powers to request the assistance of the police and UAE Public Prosecution, seize relevant property, and coordinate with international institutions to access relevant information and data related to investigations it is undertaking.

Other federal public sector bodies with a remit to investigate bribery and corruption include the State Audit Institution, which forms part of the Anti-Money Laundering and Suspicious Cases Unit of the UAE Central Bank.

The UAE's two common law-based financial free zones, the Abu Dhabi Global Markets and Dubai International Financial Centre, are regulated by the Financial Services Regulatory Authority (FSRA) and the Dubai Financial Services Authority (DFSA), respectively. While the FSRA and DFSA may look into allegations of foreign bribery as part of any regulatory investigation, they have jurisdiction to bring enforcement action only in so far as it relates to breaches of their respective rules and regulations. In practice, were the FSRA or DFSA to identify any evidence of foreign bribery they would pass this information to the local police or directly to the UAE Public Prosecution for onward investigation.

*Law stated - 06 January 2023*

## Patterns in enforcement

### Describe any recent shifts in the patterns of enforcement of the foreign bribery rules.

The UAE has in recent years enhanced its anti-bribery and corruption legislation in line with internationally recognised standards. This has been introduced in parallel with stronger financial crime protections generally, both at federal and local emirate level. This has foreshadowed an increase in government institutions publicly stating their goals for increased enforcement activity. Although UAE court judgments are generally not publicly available, and in any event do not set out the facts of the matter in detail, more notable prosecutions of bribery, corruption and money laundering are published in media outlets. It is apparent from the number and scale of prosecutions for financial crime offences that

there is an upward trend in enforcement of offences such as bribery in the UAE.

*Law stated - 06 January 2023*

## **Prosecution of foreign companies**

### **In what circumstances can foreign companies be prosecuted for foreign bribery?**

Corporate liability for foreign bribery would need to be engaged. Under article 66 of the New Penal Code, liability would be engaged if a representative, director, or agent of the company, acting on behalf of, or in the company's name, committed the offence of bribing a foreign official under the New Penal Code.

The extraterritorial conditions of article 285 of the Penal Code would also need to be met. These would be engaged if the briber, bribe-taker or victim of the bribery offence is either a UAE national or employed in the public or private sector in the UAE, or if the offence is committed on public funds.

It should be noted that government bodies, official departments and public authorities are expressly excluded from corporate criminal liability under the New Penal Code (article 66).

*Law stated - 06 January 2023*

## **Sanctions**

### **What are the sanctions for individuals and companies violating the foreign bribery rules?**

Under the New Penal Code, individuals convicted of foreign bribery offences shall face a sanction of up to five years' imprisonment, a fine up to the value of the bribe and confiscation of the bribe itself.

When a company is held criminally liable for a foreign bribery offence committed by its representatives, directors, or agents acting on their behalf or in their name, article 66 of the New Penal Code provides that the company may only be sentenced to a fine, confiscation and criminal measures prescribed for the crime by the law. If the law provides for a principal penalty for the crime other than the fine, then the penalty shall be restricted to a fine of not more than 5 million UAE dirhams unless otherwise provided by law.

*Law stated - 06 January 2023*

## **Recent decisions and investigations**

### **Identify and summarise recent landmark decisions or investigations involving foreign bribery.**

There have been no recent landmark UAE court decisions in respect of foreign bribery. However, in June 2022, Dubai police arrested Atul Gupta and Rajesh Gupta in response to an international warrant issued by South Africa for widespread bribery, corruption, and misappropriation of its state assets. The government of South Africa requested the extradition of both men in accordance with a bilateral treaty between the UAE and South Africa as well as the United Nations Conventions against Corruption (UNCAC), the only legally binding universal anti-corruption instrument. The UAE government is seeking to comply with the extradition request and the matter is currently before the relevant courts in the UAE.

*Law stated - 06 January 2023*

## FINANCIAL RECORD-KEEPING AND REPORTING

### Laws and regulations

What legal rules require accurate corporate books and records, effective internal company controls, periodic financial statements or external auditing?

Federal Law No. 32 of 2021 On Commercial Companies (the Commercial Code) requires all companies to keep records that accurately reveal its financial position at any time, and to maintain the original and an electronic version of the records for at least five years. Federal Law No. 28 of 2022 Concerning Tax Procedures requires any business subject to a tax obligation to keep accounting records for a period of five years after the company's financial year end.

The position is slightly more onerous for companies registered in the UAE's common law-based financial freezones, the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM), which are subject to DIFC Law No. 5 of 2018 Companies Law (as amended) (the DIFC Companies Law) and the ADGM Companies Regulations 2020 (as amended).

Article 122 of the DIFC Companies Law provides that a company must keep accounting records for a period of six years. In addition, DIFC Law No. 2 of 2018 on Common Reporting Standards requires all reporting financial institutions to retain all records required under the law for a period of six years (article 12).

In respect of financial regulators, the Dubai Financial Services Authority (DFSA), the DIFC's financial regulator, sets out in the Conduct of Business Module of its Rulebook (COB) various record-keeping requirements for authorised firms. These include demonstrating prompt accessibility of all records, which must be maintained in comprehensible form (COB 6.7.2). All voice and electronic communication recordings must be retained for at least six months (COB 6.7.3) and prompt records of client orders, transactions and executions must also be maintained (COB 6.7.4). All records (bar the voice and electronic communications) must be retained for at least six years (COB 6.7.5).

The ADGM's financial regulator, the Financial Services Regulatory Authority (FSRA), pursuant to article 7 of the ADGM Common Reporting Standard (Amendment) Obligations 2022 requires all financial institutions to keep, obtain or create records and to retain those records for a period of at least six years after the date of reporting to the FSRA.

*Law stated - 06 January 2023*

### Disclosure of violations or irregularities

To what extent must companies disclose violations of anti-bribery laws or associated accounting irregularities?

Failure to report a crime to the competent authorities is a criminal offence under article 323 of the New Penal Code.

*Law stated - 06 January 2023*

### Prosecution under financial record-keeping legislation

Are such laws used to prosecute domestic or foreign bribery?

In practice, no. There are no known examples of the financial record-keeping legislation being used to prosecute domestic or foreign bribery.

*Law stated - 06 January 2023*

## Sanctions for accounting violations

What are the sanctions for violations of the accounting rules associated with the payment of bribes?

Failure to abide by financial accounting laws can result in a variety of financial penalties. Any violation that is associated with the payment or receipt of a bribe is likely in practice to be considered a criminal matter and investigated pursuant to provisions of the New Penal Code prohibiting bribery in any form.

*Law stated - 06 January 2023*

## Tax-deductibility of domestic or foreign bribes

Do your country's tax laws prohibit the deductibility of domestic or foreign bribes?

Corporate tax is set to be introduced in the UAE through Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses, issued on 9 December 2022 and effective for financial years starting on or after 1 June 2023 (the Corporate Tax Law).

The Corporate Tax Law provides the legislative basis for the introduction and implementation of a federal corporate tax in the UAE. Bribes are expressly listed in article 33 as a type of expenditure that will not qualify for a deduction.

*Law stated - 06 January 2023*

## DOMESTIC BRIBERY

### Legal framework

Describe the individual elements of the law prohibiting bribery of a domestic public official.

The New Penal Code makes it a criminal offence to promise, offer or grant a public official an undue gift, benefit or grant in return for his or her performance or omission of an act included within his or her duties, or an act in violation of his or her duties. This is so whether the promise, offer or grant is made directly or indirectly to the public official or to another person or entity (article 280).

The New Penal Code also addresses the conduct of the public official by criminalising any act by the public official of demanding, accepting or receiving an undue gift, benefit or grant in return for performing or omitting an act included within his or her duties, or an act in violation of his or her duties (article 281). This is so whether the demand, acceptance or receipt is made directly or indirectly to the public official, or done after the performance or omission or violation of duty has taken place. It also applies irrespective of whether the public official intended to perform or omit or violated any of his or her duties (article 275).

The New Penal Code also criminalises circumstances in which a public official mistakenly assumed or presumed that the act he or she was to undertake in return for the bribe was included within the duties of his or her office (article 276).

It is therefore not an element of the law prohibiting bribery of a public official that the public official must intend to carry out the act or omission for which he or she has been bribed, nor that the conduct of the public official should be within his or her official duties, as long as he or she mistakenly presumed or assumed it was.

The UAE does not have a 'failure to prevent' criminal offence for bribery of a public official.

*Law stated - 06 January 2023*

## Scope of prohibitions

Does the law prohibit both the paying and receiving of a bribe?

Yes. Articles 275 to 281 of the New Penal Code confer criminal liability on both the briber and bribe-taker.

*Law stated - 06 January 2023*

## Definition of a domestic public official

How does your law define a domestic public official, and does that definition include employees of state-owned or state-controlled companies?

A public official is defined broadly under UAE law and is set out in full in article 5 of the New Penal Code. It includes any person holding a federal or local position whether legislative, executive, administrative, or judicial, whether appointed or elected. It includes employees of public authorities and establishments, in addition to companies fully or partially owned by the federal or local emirate-level governments. The definition also includes any person who is assigned to perform a certain task by a public authority, to the extent of the delegated task.

The definition extends to persons who, although not included in the assigned categories, are engaged in a related public service function based on an agreement with an entity whose funds are considered public funds or based on an assignment issued by a public official in the relevant authority. It is immaterial that the function, work, or service, is permanent or temporary, paid or unpaid, voluntary or compulsory.

*Law stated - 06 January 2023*

## Gifts, travel and entertainment

Describe any restrictions on providing domestic officials with gifts, travel expenses, meals or entertainment. Do the restrictions apply to both the providing and the receiving of such benefits?

There is no statutory prohibition on providing public officials with gifts, travel and entertainment. However, any such act would be prohibited if in doing so the conduct amounted to one of the bribery offences as defined in articles 275 and 276, 280 or 281 of the Penal Code.

The UAE has implemented legislation on a federal and local emirate level governing if, how and in what circumstances those working in public office can receive or provide gifts.

Federal Law No. 11 of 2008 on Human Resources in the Federal Government governs public sector employees and prohibits them from accepting any gift unless they are symbolic, marked with the name of the gift bearer and provided through an assigned government unit (article 70).

Abu Dhabi Law No. 6 of 2016 on Human Resources in the Emirate of Abu Dhabi includes offences relating to the abuse of position and corruption by those public officials working for the Abu Dhabi government (article 53).

The Dubai Government Human Resources Management Law No. 27 of 2006 operates as a legal Code of Conduct for all civilian employees of the Dubai government and prohibits the acceptance of any material gift except for those of a symbolic or promotional nature that bear the logo and name of gifting party. Any such gift should be received and distributed through a designated unit (article 11).

*Law stated - 06 January 2023*

## Facilitating payments

Have the domestic bribery laws been enforced with respect to facilitating or 'grease' payments?

Facilitation or 'grease' payments to public officials are not permitted under UAE law and would be considered bribery under the relevant provisions of the New Penal Code (articles 275, 276, 280 and 281).

The UAE has seen increased enforcement of its anti-bribery and corruption legislation in recent years. One publicly reported case in 2022 involved a man who attempted to bribe an employee at a government centre to avoid providing relevant documentation; and a manager at a government entity who was sentenced to five years' imprisonment for receiving more than 1 million UAE dirhams in bribes to facilitate unauthorised payments and procedures.

*Law stated - 06 January 2023*

## Public official participation in commercial activities

What are the restrictions on a domestic public official participating in commercial activities while in office?

There is no strict prohibition on domestic public officials participating in commercial activities while in office.

*Law stated - 06 January 2023*

## Payments through intermediaries or third parties

In what circumstances do the laws prohibit payments through intermediaries or third parties to domestic public officials?

The federal law prohibits payment to a public official, whether through an intermediary, third party or otherwise, in circumstances where that payment falls within the definition of bribery as set out in the relevant provisions of the New Penal Code (articles 275 to 281).

In addition, at local emirate level there is law curtailing when those working in public office can receive or provide gifts. For example, the Dubai Government Human Resources Management Law No. 27 of 2006, which operates as a legal Code of Conduct for all civilian employees of the Dubai government, states that gifts to an external party can only be provided in the name of the department and exclusively by a designated unit (article 11).

*Law stated - 06 January 2023*

## Individual and corporate liability

Can both individuals and companies be held liable for violating the domestic bribery rules?

Yes. Under article 66 of the New Penal Code, companies shall be held criminally liable for the crimes committed by their representatives, directors, or agents acting on their behalf or in their names. This includes bribery of a public official. Government bodies, official departments and public authorities are expressly excluded from criminal liability.

A company convicted of bribery of a foreign official may only be sentenced to a fine, confiscation and criminal measures prescribed for the crime by the law. If the law provides for a principal penalty for the crime other than the fine, then the penalty shall be restricted to a fine of not more than 5 million UAE dirhams unless otherwise provided by law (article 66).

**Private commercial bribery**

To what extent does your country's domestic anti-bribery law also prohibit private commercial bribery?

Bribery in the private sector is covered by articles 278 and 279 of the New Penal Code, which makes it an offence for a manager of a private company to demand or accept an undue gift, benefit or grant (or promise of same) in return for an act or omission connected to the performance of his or her duties of employment. This is so even if the manager has no intention of carrying out the act for which he or she has been bribed, or if the demand, acceptance or promise is done after the performance of the act or omission. The New Penal Code has also introduced a new criminal offence for the person who promises, offers or grants a bribe to the manager of a company in the private sector.

The penalty for both offences is imprisonment for up to five years.

Law stated - 06 January 2023

**Defences**

What defences and exemptions are available to those accused of domestic bribery violations?

There are several statutory defences in the New Penal Code available to all persons charged with a criminal offence, including domestic bribery violations. For example, a person shall not be criminally liable in the UAE if at the time of the commission of the offence they lacked mental capacity or volition resulting from an intoxicating or narcotic substance administered without their consent or knowledge (article 62). However, if the involuntary administration of an intoxicating or narcotic substance results in only a weakness of capacity or volition at the time of the commission of the offence, it will be considered as mitigation only (article 62). No defence of lack of capacity or volition is available if the intoxicating or narcotic substance was administered voluntarily (article 63). The UAE also applies the statutory defence of necessity and duress (article 65).

The New Penal Code also provides for a defence of mistake of facts. Denial of the requisite intent is therefore a common defence to criminal acts generally. The burden of proof lies on the accused. However, in respect of domestic bribery violations, it is no defence that the bribe-taker did not intend to perform or omit the act that violated his or her employment duties, nor is it a defence that the bribe is demanded or received after the material act or omission has taken place. It is also no defence if the omitted act or omission was not within the duties of the offender if that offender mistakenly assumed or presumed it was so (articles 275 and 276).

Law stated - 06 January 2023

**Agency enforcement**

What government agencies enforce the domestic bribery laws and regulations?

An increasing number of government agencies have been empowered to monitor and investigate bribery and corruption. The key criminal enforcement agency is the UAE Public Prosecution, which is responsible for prosecuting bribery laws under the New Penal Code. It is supported by local police who are responsible for the initial investigation and collection of evidence, as well as enforcing orders from the UAE Public Prosecution.

At a local emirate level, the Abu Dhabi Accountability Authority (ADAA) was established by Abu Dhabi Law No. 14 of 2008 (as amended). The ADAA is an anti-corruption unit tasked with investigating financial or administrative

irregularities in public sector finances. Its remit has been extended to cover the courts and police and companies where the government entitles own at least 25 per cent of the capital. In 2021, Abu Dhabi Administrative Decision No. 34 of 2021 on the Issuance of the Anti-Corruption Procedures Regulation consolidated the ADAA's investigatory powers and remit for the prosecution of financial and administrative corruption violations.

The Dubai Economic Security Centre (DESC) was established by Dubai Law No. 4 of 2016 on Dubai Economic Security Centre. The DESC has jurisdiction over a broad range of Dubai entities, including but not limited to Government of Dubai agencies, agencies subsidised by the local government and establishments licensed to practice an economic activity in Dubai. The DESC's remit includes combatting corruption and bribery and it has wide-ranging powers to request the assistance of the police and UAE Public Prosecution, seize relevant property, and to coordinate with international institutions to access relevant information and data related to investigations it is undertaking.

Other public sector bodies with a remit to investigate bribery and corruption include the State Audit Institution, which is the Anti-Money Laundering and Suspicious Cases Unit of the UAE Central Bank.

The UAE's two financial free zones, the Abu Dhabi Global Market and Dubai International Financial Centre, are regulated by the Financial Services Regulatory Authority (FSRA) and the Dubai Financial Services Authority (DFSA), respectively. The FSRA and DFSA may identify foreign bribery as part of any regulatory investigation and may bring enforcement action in so far as it relates to breaches of their respective rules and regulations. In practice, were the FSRA or DFSA to identify any evidence of foreign bribery they would pass this information to the local police or directly to the UAE Public Prosecution for onward criminal investigation.

*Law stated - 06 January 2023*

## Patterns in enforcement

Describe any recent shifts in the patterns of enforcement of the domestic bribery rules.

The UAE has in recent years enhanced its anti-bribery and corruption legislation in line with internationally recognised standards. This has been introduced in parallel with stronger financial crime protections generally, both at federal and local emirate level. This has foreshadowed an increase in enforcement activity with details of several prosecutions for bribery being published in local media.

*Law stated - 06 January 2023*

## Prosecution of foreign companies

In what circumstances can foreign companies be prosecuted for domestic bribery?

First, corporate liability for bribery would need to be engaged. Under article 66 of the New Penal Code, this would occur if a representative, director, or agent of the company, acting on behalf of, or in the company's name, committed the offence under the Penal Code of bribing a public official.

Second, the extraterritorial conditions in article 285 of the Penal Code would need to be engaged. This could occur if the briber, bribe-taker or victim of the bribery offence is either a UAE national, employed in the public or private sector in the UAE, or if the offence is committed using public funds.

It should be noted that government bodies, official departments and public authorities are expressly excluded from corporate criminal liability under the New Penal Code (article 66).

*Law stated - 06 January 2023*

## Sanctions

What are the sanctions for individuals and companies that violate the domestic bribery rules?

Under the New Penal Code, individuals convicted of bribery offences shall face a sanction of up to five years' imprisonment, a fine to the value of the bribe and confiscation of the bribe itself (articles 275, 276, 280 and 281).

When a company is held criminally liable for a bribery offence committed by its representatives, directors, or agents acting on their behalf or in their name, article 66 of the New Penal Code provides that the company may only be sentenced to a fine, confiscation and criminal measures prescribed for the crime by the law. If the law provides for a principal penalty for the crime other than the fine, then the penalty shall be restricted to a fine of not more than 5 million UAE dirhams unless otherwise provided by law (article 66).

*Law stated - 06 January 2023*

## Recent decisions and investigations

Identify and summarise recent landmark decisions and investigations involving domestic bribery laws, including any investigations or decisions involving foreign companies.

There have been no recent landmark bribery decisions, although the UAE Criminal Courts are increasingly dealing with corruption-related offences such as fraud and money laundering. In terms of bribery, recently reported cases include the conviction of a man in 2022 who was sentenced to one year of imprisonment for attempting to bribe an employee at a UAE government centre to avoid providing relevant documentation. Another case in 2022 involved the conviction of a manager of a UAE government entity who was sentenced to five years' imprisonment for receiving more than 1 million UAE dirhams in bribes to facilitate unauthorised payments and procedures.

*Law stated - 06 January 2023*

## UPDATE AND TRENDS

### Key developments of the past year

Please highlight any recent significant events or trends related to your national anti-corruption laws.

The coming into force of the New Penal Code in January 2022 was a significant moment for anti-corruption efforts in the UAE. The New Penal Code consolidated developments in anti-bribery and corruption made by the UAE over the previous five years and stands up well against international standards. The New Penal Code was introduced as part of a raft of legislature measures aimed at further developing the UAE's publicly stated goals of rooting out and punishing financial crime offenders, as well as strengthening the institutions and frameworks that help prevent such conduct from occurring. This has been met with increased enforcement of financial crime and regulatory offences by the relevant authorities. Given the focus of the UAE government in developing the infrastructure and enforcement of its anti-bribery and corruption measures, there is no reason to believe this trend in increased enforcement will not continue under the relatively new provisions of the New Penal Code. This positive trend is reflected in the UAE's rise in its ranking position in Transparency International's Corruption Perception Index, rising from number 37 in 2002 to number 24 out of 180 countries in 2023.

*Law stated - 06 January 2023*

## Jurisdictions

	<b>Australia</b>	Holding Redlich
	<b>China</b>	Herbert Smith Freehills LLP
	<b>France</b>	Bougartchev Moyne Associés AARPI
	<b>Greece</b>	ANAGNOSTOPOULOS
	<b>Hong Kong</b>	Herbert Smith Freehills LLP
	<b>Israel</b>	Herzog Fox & Neeman
	<b>Italy</b>	Studio Legale Pisano
	<b>Japan</b>	Anderson Mōri & Tomotsune
	<b>Netherlands</b>	Sjöcrona Van Stigt
	<b>Russia</b>	Noerr PartGmbH
	<b>Singapore</b>	Eugene Thuraisingam LLP
	<b>Sweden</b>	NORDIA LAW
	<b>Switzerland</b>	Schellenberg Wittmer
	<b>Ukraine</b>	GOLAW
	<b>United Arab Emirates</b>	Charles Russell Speechlys
	<b>United Kingdom</b>	White & Case
	<b>USA</b>	Miller & Chevalier Chartered