

Navigating Anti-Money Laundering Regulations in the UAE

In 2018, the United Arab Emirates (UAE) took a significant step towards reinforcing its commitment to combat money laundering, terrorist financing, and the funding of illegal organizations with the issuance of Federal Decree Law no. 20 of 2018 ("Federal Decree"). Aligned with international standards, the Federal Decree imposed substantial compliance obligations on Financial Institutions and Designated Non-Financial Businesses and Professions (DNFBP). This landmark legislation aimed to fortify the UAE's financial ecosystem and ensure adherence to global best practices.

The Federal Decree mandated Financial Institutions and DNFBPs to undertake several key measures to enhance their anti-money laundering (AML) and counter-financing of terrorism (CFT) frameworks. These include the identification of crime risks within their operational scope, the implementation of customer due diligence measures, the determination of real beneficiaries, and the development of internal policies and controls approved by senior management. Additionally, entities were required to promptly apply directives issued by competent UAE authorities and maintain comprehensive records for all transactions.

In 2019, further refining the legislative framework, the UAE introduced Cabinet Decision No. (10) of 2019 (the "Decision"). This Decision outlined specific activities and transactions of Financial Institutions and DNFBPs, clarified their obligations, and emphasized on the importance of reporting suspicious transactions. It also highlighted the role of non-financial businesses and professions in combatting criminal activities and provided guidelines on policies, procedures, and internal measures.

The Decision has imposed on Financial Institutions and DNFBPs the following (non-exhaustive list):

- Identifying, assessing and understanding their crime risks in concert with their business nature and size taking into consideration their customers' countries or geographic areas, products, services etc.,
- Taking the necessary steps to mitigate the identified risks by developing internal policies, controls and procedures, and applying enhanced Customer Due Diligence (CDD) where required,
- Identifying the identity of the customer and the Beneficial Owner of legal persons and legal arrangements by undertaking CDD measures (measures detailed in the Decision),
- Taking sufficient measures and put in place suitable risk management systems for foreign PEPs and Domestic PEPs,
- Putting in place indicators that can be used to identify the suspicion on the occurrence of the crime in order to report Suspicious Transaction Reports (STRs),
- Appointing a compliance officer to detect transactions relating to any crime, review, scrutinize and study records and data concerning STRs, review internal rules and procedures for AML and CTF, prepare, execute and document training and development programs for the institutions' employee on money laundering and financing of terrorism, and collaborate with the supervisory authority and Financial Intelligence Unit

- Maintaining records, documents, data and statistics for all financial transactions and local or international commercial and cash transactions for a period of no less than five years from the date of completion of the transaction or termination of the business relationship with the customer.

To ensure the effective implementation of the Federal Decree and Cabinet Decision, the Ministry of Economy, as the supervisory body for AML and CFT, launched a comprehensive mission. In late 2020 and early 2021, Ministry inspectors commenced a supervisory tour targeting Financial Institutions and DNFBPs. This initiative resulted in warnings and penalties for companies found non-compliant with AML and CFT regulations.

The most common penalties were relative to the following violations:

- Default of registration on the go AML website and the Executive Office for Control and Non-Proliferation,
- Failure to execute CDD and identifying the beneficial owner,
- Absence of internal policies for combating crime,
- Absence of procedures and measures to identify the risks associated with the institution's activity,
- Failure to apply enhanced CDD for high risk and obtaining the senior management's approval, and
- Failure to verify and investigate customers with regards to terrorist lists.

However, sanctioned Financial Institutions and DNFBPs always have the right to contest the Ministry of Economy's decision. First recourse is to file a grievance before the Ministry itself within 15 days as of the notification of the Ministry's decision. The grievance will be reviewed and a decision shall be issued within 30 days. The Ministry has adopted a tolerant approach provided that the sanctioned institution demonstrates that it has undertaken the required measures or it has immediately acted on rectifying the violations. The Minister may, upon reviewing the grievance:

- a) Uphold the decision to impose the prescribed administrative fine if the reasons and justifications for issuing the decision against which the grievance was filed are valid.
- b) Replace the prescribed administrative fine with one of the penalties stated in Article (14) of the Federal Decree, taking into consideration the type of violation committed for which the grieved decision was issued to ensure that it matches the prescribed administrative fine while also making sure the aggrieved party is not harmed by its own grievance.
- c) Cancel the prescribed administrative fine if the reasons for the violation are removed or proven invalid.

The decision regarding the grievance shall be final, and failure to respond to the grievance within thirty (30) days from the date of submitting it, shall mean that the grievance is dismissed.

The grievance' decision can also be appealed within 60 days (from the date of the decision or expiry of the 30 days period without obtaining any decision) before the federal court. It shall be noted that, filing a case before the federal court is conditional upon filing a grievance as per clause 5 of Cabinet Resolution No. (16) of 2021 regarding the Unified List of the Violations and Administrative Fines Imposed on Violators of Measures of Anti-Money Laundering and Combating the Financing of Terrorism that are Subject to the Supervision of the Ministry of Justice and the Ministry of Economy.

The Federal Court in Abu Dhabi has recently dealt with similar cases and has ordered the cancellation of unjust fines imposed on the sanctioned institution based on expertise report drafted by specialized and experienced experts. Moreover, some grievances and appeals have prompted the amendment of the decisions, allowing for the replacement of fines with warnings.

In conclusion, in an era of heightened regulatory scrutiny, compliance with AML and CFT regulations is paramount for businesses operating in the UAE. Grievance or appeal are worthless without proper documentation and measures in place. Financial Institutions and DNFBPs have to treat put in place a compliance department like any other department vital to the business activity.