

The fight against financial crime continues

Eversheds Sutherland highlights the recent changes to the UAE's anti-money laundering landscape, the new law and the forthcoming FATF mutual evaluation.

There can be no question that anti-money laundering ("AML"), counter-terrorist financing ("CTF") and illegal organisation financing regulation is becoming increasingly robust and challenging for businesses to both manage, implement and understand.

CHANGES TO THE AML LANDSCAPE

A clear example of the increasing rigor being applied to this critical risk in the UAE is the introduction of the Federal Law of 2018 on Anti-Money Laundering (the "AML Law"). The AML Law introduces new offences, increases penalties, tightens regulations, provides clarity around definitions, and

largely follows the recommendations of the Financial Action Task Force ("FATF") in order to ensure that the region is complying with international standards. FATF is an inter-governmental international body tasked with the objective of setting best practice standards and promoting effective controls and measures against money laundering, terrorist financing and other threats.

The AML Law has been anticipated for some time now, seen by many as an essential step towards the UAE's preparation for the FATF mutual evaluation visit scheduled for July 2019. The AML Law is also aligned with the UAE's ongoing commitment to develop a legal framework which ensures compliance with international best practice standards. There is no doubt that this commitment to implementing international best practice standards is one of the reasons why the UAE retains its number one position amongst the Arab nation in the Transparency Corruption and Perception Index ("TCPI"). The TCPI results for 2018, published earlier this year, rank 180 countries and territories by their perceived levels of public sector corruption on a scale of 0-100 (100 being considered 'very clean'). More than two-thirds of the countries scored below 50 this year, with the average score being just 43. By contrast, the UAE scored 70 and was ranked 25th in the league table.

Whilst this year's results were marginally less than those achieved last year (when the UAE scored 71 and ranked 23), the results demonstrate how the UAE still leads the way in the MENA region where the average score is significantly less at 39. The UAE's ambition to ensure that it remains a global hub for international commerce is no doubt likely to see further enhancements being made to the legal system over the course of the next few years.



HOW THE FUTURE FIGHT AGAINST FINANCIAL CRIME IS LIKELY TO UNFOLD

In practical terms, the AML Law and forthcoming FATF visit is likely to bring with it increased and heightened scrutiny for financial institutions and Designated Non-Financial Business or Professions (“DNFBPs”) operating within the UAE. Certainly, internal policies and procedures will need to be re-visited and appraised to ensure compliance with the detailed requirements of the AML Law. One such example is the requirement for financial institutions and certain DNFBPs to appoint compliance officers with ‘the appropriate efficiency and vast experience’.¹ The responsibilities of the compliance officer include the requirement to assess their institution’s adherence to internal policies and procedures and ensure that the appropriate training and qualifications are met by employees. Information in respect of compliance with internal policies and procedures will not only need to be submitted to the senior management for comment, but must also be passed to the appropriate regulatory body for their review biannually, along with the senior management’s comments.

The scope of AML activities has been expanded with four new activities now being included within the definition of a money laundering offence – saving, investing, exchanging or managing any proceeds with the intention to conceal or disguise its illicit origin. Clarification has also been given in respect of the definition of ‘fund’, which has been expanded to include electronic or digital form, showing real progression in respect of the regulation of electronic currencies which are an increasingly recognised currency within the global markets.

Clearly, with this increased scrutiny on financial institutions and DNFBPs, the robustness of internal policies and procedures need to be considered, along with the appropriate training for relevant staff and in particular, senior management who are likely to be scrutinised and challenged as part of the implementation of the AML Law.

THE UAE AND THE FUTURE

In today’s increasingly challenging economy, we expect the UAE’s efforts to set international best practice standards to continue, to help attract investors to the

region, safe in the knowledge that the AML and CTF framework is fit for purpose. The regulators will have a key role to play in this overall objective and we anticipate seeing an increase in the level of information made available about enforcement action taken to help demonstrate the importance of effectively managing these risks, on a global scale. Whilst the same level of information about enforcement action is not available in the UAE as, for example, the UK or the US, we anticipate that UAE regulators will want to be seen to be implementing the AML Law and, where appropriate, penalising those who are not complying with the law.

Just how far the regulators will go in their disclosure of information remains an area of significant interest. There is no doubt that those fighting the battle will benefit from any data released that helps them understand the nature of the risk at large. This goes above and beyond any headline articles on specific enforcement action against non-compliant entities, but includes wider studies and thematic reviews undertaken about trends in the market, good practice principles and evolving risks so that more fundamental improvements can be made where necessary. Data relating to Suspicious Transaction Reports and financial crime typologies are regularly identified as areas where less is definitely not considered more. The forthcoming FATF mutual evaluation is expected to lead to greater activity in this regard and there is no doubt that this will be considered a welcome development across the globe by all those committed to the ongoing fight against financial crime. 🇦🇪

“

The AML Law has been anticipated for some time now, seen by many as an essential step towards the UAE’s preparation for the FATF mutual evaluation visit scheduled for July 2019.”

1. Article 21 of Cabinet Resolution No. (10) of 2019



Text by:

1. **REBECCA COPLEY**, partner, Eversheds Sutherland
2. **LAURA SHINGLER**, principal associate, Eversheds Sutherland
3. **GILLIAN FLANNIGHAN**, associate, Eversheds Sutherland