

The Anti-Corruption Measures in the Countries of the Middle East

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Abstract

This article analyzes the measures and regulations introduced in the countries of the Middle East regarding the fight against corruption at a public and private level, with the consequent analysis of the changes that have occurred over the years since the signing of the Arab Anti-corruption Convention and then arriving at the very latest regulatory changes introduced locally in some States with reference to Anti-Corruption legislation and the protection of employees in cases of Whistleblowing. Specifically, the situation was quickly analyzed in Kuwait, Saudi Arabia (KSA) and the United Arab Emirates (UAE), which to date are the most exemplary models in terms of business and market protection, also in consideration of the sudden growth which they observed in terms of setting up a company at a private level.

Keywords: Corruption, Middle-East, Anti-bribery, Anti-corruption, Whistleblowing, DIFC, Companies, Assessment, Private liability, Public liability.

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1. INTRODUCTION

1.1 The first step towards the fight against corruption in Middle Eastern countries

In 2010, as a primordial act aimed at the fight against corruption, very rampant in the countries of the Middle East, the Arab Anti-Corruption Convention was first elaborated, and then signed, finalized in the City of Cairo on 21 December.

The drafting of this Convention was aimed by the agreed purpose of implementing measures to prevent, fight and discover all forms of corruption and other crimes connected to its commission, as well as the prosecution of its perpetrators.

Promoting integrity, transparency, accountability and the rule of law, and further encouraging individuals and civil society organizations to actively participate in the prevention and fight against corruption appeared to be the soul of this strongly desired agreement.

The States that were part of the same, agreed to undertake to honor their commitments under the signed Convention, in accordance with the principles of equality of state sovereignty, regional peace and without any interference in the internal affairs of other States.

Similarly, however, a correct description was made of the acts of corruption, criminalized by the undersigned Convention, acts including the corruption of public officials, corruption in public companies, corporations, associations and public utility entities. And again corruption in the private sector, corruption of foreign public officials and officials of international public organizations in relation to international trade within a State Party, and so on, providing for a special part dedicated to private activity and even participation or attempt to commit the crimes envisaged by the agreement itself.

The possibility was then introduced for the signatory states to adopt the necessary measures, in accordance with their internal legislation, to establish the criminal, civil or administrative liability of any legal person for the crimes envisaged by the Convention itself, without prejudice to the criminal liability of the physical persons.

1.2 Anti-corruption legislation in Middle Eastern countries and the speed up towards more effective legislation

In the light of the Arab Anti-corruption convention, and following the more and more recent changes that have occurred within the social-economic structure of the Middle East and the exponential growth that these countries have faced in recent decades, the question has arisen as to whether the related anti-

corruption prevention and security measures adequate to limit any possible interference within the increasingly flourishing society of the Middle East.

Initially there was a singular and limited criminalization of corruption only in the public sector, to then extend over the years, the same to the private sector which now sees criminal liability applied in a series of jurisdictions throughout the region, including the United Arab Emirates United States (UAE), Saudi Arabia (KSA), Bahrain and Qatar.

It is good to consider that over the years we have been able to witness a Western "closure", consisting in the application of national compressive legislation against companies with stable and commercial relations with the Middle East, closure which took place through provisions on extraterritorial jurisdiction of the Foreign Corrupt Practices Act 1977 of the United States and the Bribery Act 2010 of the United Kingdom which led foreign regulators, such as the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) in the United States and the Serious Fraud Office (SFO) in the United Kingdom to act in an ever more stringent manner.

This reason, added to the growing need of Middle Eastern countries to equip themselves with adequate control systems, has led countries such as Qatar and the United Arab Emirates to broaden the scope of applicability of national anti-corruption laws, already prepared, to crimes committed outside the borders of the states in question.

1.3 International cooperation in terms of fight against corruption and the emblematic cases of Saudi Arabia and Kuwait

At the heart of this necessary change that has taken place, and is currently being implemented, is the emphasis on international cooperation, and above all on the need for the countries of the Middle East, in a good spirit of international cooperation and cohesion, to equip themselves with adequate tools not only to the control of commercial operations with only a focus on what is economically relevant for the state in question, but deepen the control itself with a view to cooperation with foreign institutions aimed at the fight against corruption. A clear example of this commitment is the case of Saudi Arabia, which in 2020, through its office of the Supervisory and Anti-Corruption Authority (Nazaha) together with the United Nations Office on Drugs and Crime (UNODC) signed a USD 10 million funding agreement to establish a global network of anti-corruption authorities, headquartered in Vienna.

In practical terms, this commitment by Saudi Arabia has been factually reported in a case also known as the "purge of corruption", which in 2017 resulted in the detention of more than 150 people at Riyadh's Ritz-Carlton Hotel for alleged crimes of corruption. The

same Nazaha office very often publicizes the arrests made on charges of criminal corruption which in 2020 numbered around 200 with an increase of about the same number in the last two years.

Similarly, Kuwait's anti-corruption authority worked with the United Nations Development Program and UNODC to develop a "clear, coordinated and effective" strategy, drawing on best practices globally (including those implemented in other countries of the GCC) and tailored specifically to the needs of Kuwait's legal and institutional systems (Khaled S. Al-Rashidi, 2022).

2. MATERIALS AND METHODS

2.1 Repression activities adopted

A survey of many private companies established in Middle East North Africa (MENA) reveals a routine risk-based approach to third-party assessment, including thorough due diligence, questionnaires, screening, and in-person or online interviews.

Such due diligence is typically conducted when individuals operate in a "high risk" jurisdiction (as defined by their organization's anti-corruption programs), or when a number of initial red flags have been identified by a screening database or during other onboarding processes.

For companies operating in Saudi Arabia and the UAE, the high frequency of politically exposed persons (PEPs) and opaque ownership disclosures of companies were also cited as reasons to undertake increased third party due diligence. This finding is in keeping with the region's commercial environment, where political exposure is commonplace and beneficial ownership information is often difficult to find due to the scarcity of public records.

3. RESULTS AND DISCUSSION

3.1 Whistleblowing as a substantial novelty

To expand the perimeter of market protection and the fight against corruption, the interest of the countries of the Middle East on the issue of whistleblowing is increasingly growing.

Whistleblower protection is first mentioned in Dubai Law No. 4 of 2016, the law on financial crimes. It was the first attempt of its kind to introduce whistleblower protections in the UAE. According to this UAE Penal Code, every individual has a positive obligation to report a crime.

In this sense, the aforementioned law provides for specific criteria which, if satisfied, protect the employee from actions against his person and his professionalism. These criteria translate into an accurate disclosure of the corrupt activities found, the fact that the activity carried out could endanger the economic

security of Dubai, and finally that the same disclosure takes place at the Dubai Center of Economic Security.

3.2 An emblematic case of Whistleblowing

One of the most significant cases, which led the UAE Government to formally declare, through the press, the need for uniformity in the legislation on Whistleblowing dates back to 2020, when a former partner of Ernst and Young (EY) denounced the cover-up of a large-scale money laundering case by a client. In that case the whistleblower was asked to resign from the company to cover up the findings of the audit report specifically causing a DIFC violation (Borys Dackiw *et al.*, 2020).

3.3 The latest news

Based on what was proposed and promised by the 2016 Code, in June 2021 the Central Bank of the United Arab Emirates (CBUAE), in order to facilitate the mechanism for reporting corrupt activities, introduced an online reporting portal. CBUAE employees, contractors and representatives can use the portal to report misconduct. Along with this, reports can also be submitted by telephone or in writing, all while also guaranteeing the possibility of anonymity without the need for generalization.

Any crimes of corruption, fraud, undeclared conflicts of interest, violation of ethics, violation of specific laws and regulations, violations by entities regulated by CBUAE can be reported on this portal.

In addition, the DIFC operating law already provided for a series of protections for whistleblowers since its establishment, providing that following the communication, the employee would not be subject to any legal or contractual, civil or other liability or even removed from the work or otherwise subject to victimization by the employer or any related person.

For greater protection, the possibility has also been introduced of a fine of up to USD 30,000 for an employer who in any case has removed from work or caused damage to the informing employee (Stuart Paterson *et al.*, 2018).

4. CONCLUSION

Given the growing need that has seen many companies based in the Middle East grow both in terms

of profit and responsibility, especially in the United Arab Emirates, more and more measures of international cooperation and regulatory compliance have been introduced through the adopting formal reporting policies. However, due to the lack of any federal law, certain and effective control is slow in coming. The introduction of the Financial Crime Law (2016) and the DIFC Operating Law, to a certain extent, imposes obligations on Dubai companies with the exclusion, however, of an adjustment for all the states of the United Arab Emirates, for which a federal law would be needed recognition and adaptation. However, it should be noted that although there is still no federal law, government agencies strictly monitor companies in the UAE to have fair and transparent financial dealings.

All of this denotes real momentum in the Middle East to advance national anti-corruption strategies and encourage greater transparency and integrity.

For example, the OECD Convention on the fight against corruption of foreign public officials, together with many other local laws, has the aim of obliging companies to set up a system to prevent both active and passive corruption at a public level, an obligation also sought in the field where private sector companies, as actors and victims of corruption, are increasingly realizing the negative effects of corruption on their economic health, profitability and long-term stability.

In fact, we can conclude that precisely in the Middle East and North Africa (MENA), some countries have made the fight against corruption a priority, approving laws and adopting strategies to fight corruption which it is believed can be increasingly and increasingly better maintained thanks to these high levels of protection being established.

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