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# 1. General Criminal Law Enforcement

## 1.1 What authorities can prosecute business crimes, and are there different enforcement authorities at the national and regional levels?

Business crimes are prosecuted under UAE law by the Public Prosecution in compliance with articles 5, 7 and 65 of UAE Federal Law No. 35/1992 on the Criminal Procedural Law and its amendments in 2005, 2006 and 2018 (the “UAE Criminal Procedures Law”).

## 1.2 If there is more than one set of enforcement agencies, how are decisions made regarding the body which will investigate and prosecute a matter?

All law enforcement agencies and their members stated in article 33 of the UAE Criminal Procedures Law fall under the authority of the Public Prosecution. The UAE Federal Attorney General Office, the seven UAE Emirates Attorney General offices and the members of the Public Prosecution are the competent authorities to investigate and prosecute business crimes. Within the UAE, competence is divided based on territorial jurisdiction

and the nature of the crime:

Article (33) \* As amended by Federal Law No. (29) of 2005 dated 30/11/2005  
The following shall have the status of judicial police officers:

- 1) Members of the public prosecution.
- 2) Officers and non-commissioned officers and lower ranked members of the gendarmerie.
- 3) Officers and non-commissioned officers and lower ranked members of frontiers and coast guards.
- 4) Passport officers.
- 5) Seaport and airport officers from the police and armed forces.
- 6) Officers and non-commissioned officers of the Civil Defense.
- 7) Municipal inspectors.
- 8) Inspectors of the Labor and Social Affairs ministries.
- 9) Ministry of Health inspectors.
- 10) Civil servants are authorised to act as judicial police officers under the laws, decrees, and regulations.

## 1.3 Is there any civil or administrative enforcement against business crimes? If so, what agencies enforce the laws civilly, and which crimes do they combat?

Civil or administrative enforcement against business crimes can include imposing financial fines, travel bans, revoking or blocking trading licences and informing the regulatory authorities such as the Central Bank. Enforcement falls under the authority of the Public Prosecution.

## 1.4 Have there been any major business crime cases in your jurisdiction in the past year?

Some of the major business crimes we have advised on relate to cryptocurrency fraud, tax evasion, and vicarious liability attributed to managers and directors with corporate criminal liability.

## 2. Organisation of the courts

### **2.1 How are the criminal courts in your jurisdiction structured? Are there specialised criminal courts for particular crimes?**

All criminal cases begin with the Public Prosecution. The vast majority will be tried before the First Instance Criminal Court, the Court of Appeal and the Court of Cassation. There are specialised criminal courts for cases involving state security and extradition.

### **2.2 Is there a right to a jury in business crime trials?**

The concept of the right to a jury does not apply in the UAE. The UAE applies civil and Islamic laws that do not contain such a right.

## 3. Particular Statutes and Crimes

### **3.1 Please describe any statutes that are commonly used in your jurisdiction to prosecute business crimes, including the elements of the crimes and the requisite mental state of the accused.**

#### **• Securities fraud**

Article 451 of UAE Federal Decree-Law No. 31 of 2021, passing the Crimes and Penalties Law (the “Penal Code”), states the following:

[...] whoever succeeds in appropriating, for him or others, movable property, a deed or a signature thereon, cancellation, destruction or amendment thereof through deceitful means or use of a false name or capacity, whenever this leads to deceit of the victim [where he gives information away] [...] [shall be subject to a jail sentence or a fine]. [...] whoever disposes of an immovable or movable property being aware that it is not his property, that he is not entitled to dispose of it or disposes of it knowing that he previously disposed of, or contracted, it whenever such act of disposition causes prejudice to others [shall be sentenced to the same penalty].

Should the object of the crime be the property or a deed belonging to the State or any of the bodies mentioned in Article 5, this shall constitute an aggravating circumstance. A jail sentence shall punish an attempt for a term not exceeding two years or a fine not above twenty thousand Dirhams. When condemning the recidivist to a jail sentence for a period of one year or more, the court may order putting him under control for a maximum period of two years, provided it does not exceed the period of the adjudicated penalty.

#### **• Accounting fraud**

The same applies as for securities fraud, unless it is related to tax evasion (which is explained below).

- **Insider trading**

UAE Federal Law No. 4 of 2000 on the UAE Exchange & Commodity Market and its Commission (the “SCA Law”) regulates and prohibits insider trading. The regulatory authorities governing such acts are the Central Bank, the Securities Commodities Authority (SCA), the Department of Trade and Finance, the police, and the Public Prosecution. The Dubai International Financial Free Zone (the “DIFC”) has a separate central regulatory authority named the Dubai Financial Services Authority (DFSA), which regulates the economic activities of the companies established within the DIFC.

Article 37 of the SCA Law does not wholly define the act of insider trading. However, considering that any exploitation of confidential non-public information that might cause a severe impact on the price of the securities is prohibited, such actions will be null and void. The SCA Law allows higher ranking officials or members of the board of the company whose shares are listed on the stock exchange to carry out transactions in securities if:

(a) they publicly provide information about the acquisition or sale. The report shall include all the details regarding the price or quantities or any other information relevant to the market; and

(b) they sought approval at every stage from the board of directors.

The law subsequently provides for penal provisions on violation of any regulation as mentioned under article 41, which states that an individual subjected to insider trading will be imprisoned for not less than three months and not more than three years and shall be liable for a fine ranging from AED 100,000 to AED 1,000,000. A specific breach of article 38 will attract imprisonment for a period of not more than three years and a fine of no more than AED 1,000,000.

Article 37 states that undisclosed information that may affect security prices may not be utilised to achieve personal benefits. Any act in violation thereof shall be null and void.

- **Embezzlement**

Articles 260 and 455 of the Penal Code state the following:

Article 260: Every public servant or person in charge of a public service, who embezzles funds in his possession on account of his position or his assignment, shall be sentenced to a term of imprisonment. The penalty shall be imprisonment for a minimum period of five years should the crime be connected or related to a crime of forgery, use of a forged document or a copy of an official written instrument, provided that this connection or relation is non-severable.

Article 455: Whoever embezzles or attempts to embezzle a movable property pledged as security for a debt that is payable by such person or another person shall be sentenced to imprisonment for not more than 2 years or fined a monetary penalty of not less than AED 20,000.

- **Bribery of government officials**

Article 275 of the Penal Code states the following:

Any public servant or persons entrusted with public service, a foreign public servant or employee of international organisations who requests, accepts, or takes, directly or indirectly, a gift, benefit or other grants that are not due, or promises of the same, and whether to the benefit of the employee himself or for another person, entity or establishment, for such employee to commit or omit an act included in his duties, or not to comply with the obligations of his office, even if he has intended not to commit or omit such act, or not to comply with the obligations of his office, or if the request, acceptance or obtainment is made after the fulfilment or omission of such act, or the failure to comply with the obligations of his office, shall be sentenced to temporary imprisonment.

- **Criminal anti-competition**

The principal legislation is UAE Federal Law No. 4 of 2012 on the Regulation of Competition.

Article 2 of such law states the following:

This Law aims at protecting and promoting competition and combating monopolistic practices through the following:

1. Provision of an environment that encourages business organisations to promote efficiency, competitiveness, consumer interests, and the realisation of sustainable development in the State.
2. Maintain a competitive market governed by market mechanisms by the principle of economic freedom. Achieved through prohibiting restrictive agreements, actions and acts leading to misuse of dominant position, controlling economic concentrations, and avoiding everything that may prejudice, limit, or prevent competition.

The UAE Competition Regulation Committee, established under competition law and functioning under the supervision of the Ministry of Economy, is the relevant competition regulator in the UAE.

According to the violation principle, the violating party is normally subject to a fine of AED 10,000 to AED 5,000,000 (articles 16–20 of the mentioned law).

- **Cartels and other competition offences**

Article 188 of the Penal Code states the following:

Federal Law No. (18) of 1993 Concerning the Commercial Transaction Law (from Article 64 to Article 70):

**Unlawful Competition**

■ Article 64: A trader may not entice the labour or employees of another trader in competition with him to help him to acquire the customers of that trader, or to leave the employ of that trader and enter employment with him, or to apprise him of his

competitor's secrets. Such matters shall be deemed unlawful competition which call for compensation.

■ Article 65: A trader may not disseminate untruths relating to the origin or description of his goods, or other such matters relevant to their nature or importance, nor may he untruthfully advertise that he is in possession of a grade, certificate or award, or resort to any other methods involving untruthfulness for the purpose of acquiring the customers of another trader in competition with him, and if so, he shall be liable for damages.

■ Article 66: A trader may not resort to deceptive and fraudulent methods in the distribution of his goods, nor disseminate or publish false information damaging to the interests of another trader in competition with him, and if so, he shall be liable for damages.

■ Article 67: A trader may not provide a former employer or worker with a certificate at variance with the truth, and if so he shall be liable to indemnify for the damages sustained by another trader arising from such misleading certificate.

■ Article 68:

1) If a trader uses the trade name of another trader without an agreement allowing him to do so, or if the owner of the trade name uses it in a manner that contravenes the law, the parties concerned may apply to the relevant Court for its use to be prevented and for it to be deleted if entered in the Commercial Register, without such action prejudicing their entitlement to damages when applicable.

2) Anyone contravening the provisions of the foregoing paragraph shall be sentenced to imprisonment or to a fine of not less than 10,000 dirhams, or to one of these two penalties.

■ Article 69: A person whose business is to provide trading houses with information on trading conditions and who purposely or by gross default furnishes untruthful information on the conduct or financial position of a trader, shall be liable to compensate for the damage arising therefrom.

■ Article 70: The foregoing provisions shall not prejudice the penalties provided for in other laws for committing the acts covered by those provisions.

#### • Tax crimes

The UAE Cabinet of Ministers issued UAE Federal Decree-Law No. 28 of 2021 to amend the provisions of UAE Federal Decree-Law No. 7 of 2017 on tax procedures relating to tax disputes and resolution in the UAE.

Article 26, in relation to tax evasion, states the following:

(1) Without prejudice to any more severe penalty applicable under any other law, a prison sentence and monetary penalty not exceeding five times the amount of evaded Tax or either of the two shall be imposed on:

(a) a Taxable Person who deliberately fails to settle any Payable Tax or Administrative Penalties.

(b) a Taxable Person who deliberately understates the actual value of his Business or fails to consolidate his related businesses with the intent of remaining below the required registration threshold.

(c) a Person who charges and collects amounts from his clients, claiming them to be Tax without being registered.

(d) a Person who deliberately provides false information and data and incorrect documents to the Authority.

(e) a Person who deliberately conceals or destroys documents or other material that he is required to keep and provide to the Authority.

(f) a Person who deliberately steals, misuses, or destroys documents or other materials in the Authority's possession.

(g) a Person who prevents or hinders the Authority's employees from performing their duties.

(h) a Person who deliberately decreases the Payable Tax through Tax Evasion or conspiring to evade Tax.

(2) The imposition of a penalty under the provisions of this Law or any other Law shall not exempt any Person from the liability to pay any Payable Tax or Administrative Penalties under the provisions of this Law or any Tax Law.

(3) The competent court shall impose Tax Evasion penalties against any Person who is proven to have been directly involved or instrumental in Tax Evasion under said UAE Federal Law No. (3) of 1987.

(4) Without prejudice to Clause (2) of this Article, any Person who is proven to have been directly involved or instrumental in Tax Evasion under Clause (3) of this Article shall be jointly and severally liable with the Person whom he has assisted to pay the Payable Tax and Administrative Penalties under this Law or any other Tax Law.

• **Government-contracting fraud**

The same applies as for securities fraud, unless it is related to tax evasion (which is explained above).

• **Environmental crimes**

The primary legislation for environmental protection in the UAE is Federal Law No. 24 of 1999 to protect and develop the environment. Article 73 of such law states the following:

Any person who violates the provisions of Articles (21), (27), (31), (62/1) and (62/3) of this Law, shall be punished by imprisonment and fine not less than AED 150,000 and not exceeding AED 1,000,000.

And punishment by death or life imprisonment and fined not less than AED 1,000,000 and not exceeding AED 10,000,000 for any person who violates the provisions of Article (62/2) of this Law.

And any person who violates clauses (1) and (2) of Article (62) shall re-export the hazardous and nuclear wastes, subject of the criminal act, at his own expense.

And punishment by imprisonment for a period no less than two years and not exceeding five years, and fine not less than Two Hundred Thousand Dirhams (AED 200,000) and not exceeding Five Hundred Thousand Dirhams (AED 500,000) or either of the two penalties, for any person who violates the provisions of Articles (18) and (58) of this Law.

And punishment by imprisonment and fine or either of the two penalties, if the acts of crime referred to under Article (21) concern fishing boats not exceeding seventy feet in length.

- **Campaign-finance/election law**

The UAE Constitution (adopted in 1996) regulates the rules of the election of the different political bodies in the country.

The Federal National Council (the “FNC”) is the consultative council and parliamentary body of the UAE formed as per the provisions of the UAE Constitution. The FNC consists of 40 members and, as per a directive from the President, His Highness Sheikh Khalifa bin Zayed Al Nahyan, Emirati women must occupy 50% of the FNC seats.

- **Market manipulation in connection with the sale of derivatives**

Article 238 of the Penal Code states the following:

[...] whoever instigates, using publicity, to withdraw funds deposited with banks or public treasury, sell government bonds or other public bonds, or refrains from purchasing same [shall be sentenced to imprisonment for a term exceeding one year].

- **Money laundering or wire fraud**

Article 2 of UAE Federal Decree-Law No. 20 of 2018 on Anti- Money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organizations states the following:

(1) Any person knowing that the funds are the proceeds of a felony or a misdemeanour and who wilfully commits any of the following acts shall be considered a perpetrator of the crime of Money Laundering:

(a) Transferring or converting proceeds or conducting any transaction to conceal or disguise their illegal source.

(b) Concealing or disguising the true nature, source or location of the proceeds, or the method involving the disposition, movement or ownership of the proceeds or rights related to it.

(c) Acquiring, possessing, or using proceeds upon receipt.

(d) Assisting the perpetrator of the predicate offence to escape punishment.

(2) Money Laundering is considered as an independent crime. The perpetrator's punishment for the predicate offence shall not prevent his punishment for the crime of Money Laundering.

(3) Proving the illicit source of the proceeds should not constitute a prerequisite to sentencing the perpetrator of the predicate offence.

#### • **Cybersecurity and data protection law**

The long-awaited UAE Personal Data Protection Law, UAE Federal Law No. 45 of 2021 on Personal Data Protection, was issued on 27 November 2021. The Emirates Data Office, established by Federal Law No. 44 of 2021, will serve as the new data regulator.

Emiri Decree No. 2 of 2018 amended UAE Federal Decree-Law No. 5 of 2012 on Combating Cybercrimes. Article 2 of the Personal Data Protection Law states the following:

1. [...] Whoever gains access to a website, an electronic information system, computer network or information technology means without authorisation or over authorisation or unlawfully remains therein [shall be punished by either imprisonment or fined no less than AED 100,000 and not above AED 300,000, or both].

2. The punishment shall be imprisonment for at least six months and a fine no less than AED 150,000 and not above AED 750,000 or either of these two penalties if any of the acts specified in paragraph (10) of this Article has resulted in deletion, omission, destruction, disclosure, deterioration, alteration, copying, publication or re-publishing of any data or information.

3. The punishment shall be imprisonment for at least one year and a fine not less than AED 250,000 and not in excess of AED 1,000,000 or either of these two penalties if the data or information objects of the acts mentioned in paragraph (2) of this Article are personal.

#### • **Trade sanctions and export control violations**

In 2007, the UAE introduced UAE Federal Law No. 13 of 2007 (the "Export Control Law"). The Export Control Law establishes a framework of export controls to prevent the unrestricted exportation of goods, information, and technology of strategic value. This includes certain dual-purpose military-civilian goods and technologies. Article 16 of the Export Control Law lists the penalties for violating its provisions.

Federal Law No. (13) of 2007 Concerning Commodities Subject to Control of Import and Export states the following:



1) Any person violating the provision of articles (8) and (10) hereof shall be penalised by imprisonment for not less than one year and/or fined not less than 50,000 dirhams and not exceeding 500,000 dirhams. Such penalty shall be doubled in case of recurrence. The court may, in case of conviction, order the confiscation of the Commodities subject to crime.

2) Any person violating the provision of articles (14) hereof shall be penalised by imprisonment for not more than one year and/or fine not less than 10,000 dirhams and not exceeding 50,000 dirhams. Such penalty shall be doubled in case of recurrence.

3) The following shall be penalised by imprisonment for not less than one year and /or fine not less than 50,000 and not exceeding 500,000 dirhams:

a. Any person who violates any of the provisions of article (15) hereof.

b. Any person who submits false or misleading information or documents containing forged, fake or incorrect information for obtaining an approval of licence in accordance with the provisions hereof.

c. The inflection of penalties specified herein shall be without prejudice to any severer penalty provided in any other law.

**3.2 Is there liability for inchoate crimes in your jurisdiction? Can a person be liable for attempting to commit a crime, whether or not the attempted crime is completed?**

Articles 35–37 of the Penal Code state the following:

■ Article 35: An attempt is the commencement of the execution of an act with the intent of perpetrating a crime whenever its effect is stopped or it fails for reasons beyond the will of the perpetrator.

Commencement of execution shall be considered as the perpetration of an act which is regarded as per se one of the constituent parts of the material element of the crime or one which immediately and directly leads to it.

Unless otherwise provided for in the law, neither the mere intention to commit a crime nor the preparatory acts thereto shall be considered an attempt to perpetrate a crime.

■ Article 36: Unless otherwise provided in the law, an attempt to perpetrate a felony shall be sanctioned by the following penalties:

(1) Life imprisonment should be the penalty prescribed for the crime be a capital sentence.

(2) Temporary imprisonment should the penalty prescribed for the crime be life imprisonment.

(3) Imprisonment for a period not exceeding half the maximum level of the penalty prescribed for the crime or jail sentence if the penalty is temporary imprisonment.

■ Article 37: The law shall determine the misdemeanours in which the attempt is sanctioned by law and the penalty for such attempt.

## 4. Corporate Criminal Liability

**4.1 Is there entity liability for criminal offences? If so, under what circumstances will an employee's conduct be imputed to the entity?**

Previously, article 65 of UAE Federal Law No. 3 of 1987 on the Penal Code and its amendments provided entity liability for criminal offences, excluding government employees. Article 66 of the Penal Code replaced article 65. Under the new article, an entity can be found guilty of any offence committed by one of its representatives, directors, or agents. As per article 66, there are two general circumstances: (1) when the employee is acting in favour of the entity; or (2) on its behalf.

In addition, entity liability can also be found, for example, in UAE Federal Decree-Law No. 20 of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organizations. Article 4 of this law states that the legal person shall be criminally responsible for the crime if it is committed in their name or on its account intentionally, without prejudice to the personal criminal responsibility of the perpetrator and the administrative penalties as prescribed by the law.

**4.2 Is there personal liability for managers, officers, and directors if the entity becomes liable for a crime? Under what circumstances?**

According to article 66 of the new UAE Federal Law No. 31 of 2021, the corporate entity itself shall be fined when found liable, which is the only penalty allowed. However, the entity's managers, officers and directors in such cases may be personally punished.

**4.3 Where there is entity liability and personal liability, do the authorities have a policy or preference as to when to pursue an entity, when to pursue an individual, or both?**

There is no specific policy or preference as to when the authorities pursue an entity, an individual or both. Typically, the authorities can pursue this upon investigation or later before the criminal courts, based on the case's facts and circumstances.

**4.4 In a merger or acquisition context, can successor liability apply to the successor entity? When does successor liability apply?**

Article 291 of UAE Federal Law No. 2 of 2015 on Commercial Companies and its amendments states that the merging company shall be the legal successor of the merged company or companies. This means that the merging company or the new company replace the merged company in all rights and liabilities. A financial fine imposed by the authorities is considered a liability.

## 5. Statutes of Limitations

**5.1 How are enforcement-limitations periods calculated, and when does a limitations period begin running?**

The relevant law is UAE Federal Law No. 35 of 1992 on the UAE Criminal Procedures Law.

Article 315, as amended by UAE Federal Law No. 28 of 2020, states the following:

With the exception of offences against dogma and reprobated behaviour and felonies adjudicated by a final judgment ordering capital punishment or life imprisonment, forfeiture of the penalty in the shall be by the lapse of thirty years in all other felonies, seven years in misdemeanours and two years in minor offences. The period shall commence when the judgment becomes final unless the penalty has been adjudicated in absentia by the criminal court of felonies in a matter of felony and, in this instance, the period shall run as of the day of rendering the judgment.

**5.2 Can crimes occurring outside the limitations period be prosecuted if they are part of a pattern or practice, or ongoing conspiracy?**

Article 34 of the Penal Code states the following:

A crime limited in time is when the punishable act occurs and ends by its very nature as soon as it is perpetrated. A crime shall be considered transient when all the consecutive acts perpetrated in the execution of a single criminal scheme are focused on one right without being separated by a period of time severing their link with each other. If, however, the act is a continuous process that requires a renewed intervention of the perpetrator for a period of time, the crime is then ongoing regardless of whether the crime effects have persisted after the perpetration of the crime as long as the effects remained present without the intervention of the perpetrator.

**5.3 Can the limitations period be tolled? If so, how?**

UAE Federal Law No. 35 of 1992 on the UAE Criminal Procedures Law is the relevant law.

Article 316, as amended by UAE Federal Law No. 29 of 2005 dated 30 November 2005, states that the period of limitation shall be interrupted where the perpetrator is charged with a penalty restricting his freedom and by every act of execution taken in his presence or of which he has knowledge.

Likewise, the period is interrupted should the perpetrator commit a crime of the same type as the one that is the object of the judgment rendered against him or that is similar to it, excluding minor offences.

Article 317 states that the period of limitation is stayed by each impediment preventing the execution, whether it is legal or material.

## 6. Initiation of Investigations

**6.1 Do enforcement agencies have jurisdiction to enforce their authority outside your jurisdiction's territory for certain business crimes? If so, which laws can be enforced extraterritorially and what are the jurisdictional grounds that allow such enforcement? How frequently do enforcement agencies rely on extraterritorial jurisdiction to prosecute business crimes?**

Generally, article 15 of the Penal Code states that this law shall apply to anyone who commits a crime within the territory of the State, including its lands and any place under its sovereignty, including territorial waters and the air space above them.

In recent years, the UAE enforcement agencies have significantly increased their prosecution of business crimes. Crossborder enforcement is governed by the UAE Extradition Law of 2006, the Riyadh Arab Agreement for Judicial Cooperation of 1983, and the bilateral treaties signed with other countries, 33 of which have been signed so far. Additionally, the UAE cooperates with Interpol. These are the legal mechanisms and jurisdictional grounds that allow the UAE to enforce its authority outside its territory.

In addition, the UAE created a new legal mechanism to apply sanctions internally and to accept the application of sanctions on persons and entities coming from abroad, such as those set by the US Office of Foreign Assets Control, by creating a list specifically for this purpose. One of these legal mechanisms is Federal Law No. 20 of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organizations. Additional notable mechanisms are Cabinet Decision No. 10 of 2019 concerning the Implementing Regulation of the law on anti-money laundering, Cabinet Decision No. 74 of 2020 concerning the UAE list of Terrorists, and the recent Federal Decree No. 26 of 2021.

Moreover, according to article 12 of Federal Decree No. 26 of 2021, a Financial Investigation Unit in the UAE Central Bank was established, and one of its competences is to cooperate with international authorities.

**6.2 How are investigations initiated? Are there any rules or guidelines governing the government's initiation of any investigation? If so, please describe them.**

The Public Prosecution initiates investigations in compliance with article 64 of the UAE Criminal Procedures Law. Articles 64–117 of the UAE Criminal Procedures Law govern the work of the Public Prosecution. These rules and guidelines include examination, inspection and seizure of items related to a crime, hearing witnesses, questioning and confrontation, imposing pretrial imprisonment orders and temporary release.

**6.3 Do the criminal authorities in your jurisdiction have formal and/or informal mechanisms for cooperating with foreign enforcement authorities? Do they cooperate with foreign enforcement authorities?**

The UAE has the following formal mechanisms: the UAE Extradition Law of 2006; the Riyadh Arab Agreement for Judicial Cooperation of 1983; the 33 bilateral treaties signed to date; and the UAE's cooperation with Interpol, each of which demonstrates the UAE's cooperation with foreign enforcement authorities.

## 7. Procedures for Gathering Information from a Company

**7.1 What powers does the government have generally to gather information when investigating business crimes?**

Article 71 of the UAE Criminal Procedures Law allows the Public Prosecution to move to any place to document the status of persons, places and items related to the crime and all other matters that need to be documented.

Generally, the government requests the General Attorney, the prosecutors, and other law enforcement people and agencies to gather information related to business crime investigations. The public prosecutor can issue a search warrant allowing them, for example, to enter companies' premises or branches to gather information and documents.

### **Document Gathering:**

**7.2 Under what circumstances can the government demand that a company under investigation produce documents to the government, and under what circumstances can the government raid a company under investigation and seize documents?**

There are no specific circumstances. Generally, when there is an investigation, companies should cooperate and comply. Once a criminal investigation is initiated, the Public Prosecution has the right to issue a search warrant containing all the details allowing the concerned law enforcement to conduct a raid and seize documents. The law requires the documentation of any seizure or items to be recorded in a detailed report signed by the law enforcement agency and the company being investigated.

**7.3 Are there any protections against production or seizure that the company can assert for any types of documents? For example, does your jurisdiction recognise any privileges protecting documents prepared by in-house attorneys or external counsel, or corporate communications with in-house attorneys or external counsel?**

When the Public Prosecution initiates an investigation, there shall be no protection against production or seizure of documents that a company can assert. However, article 77 of the UAE Criminal Procedures Law, for example, prevents the public prosecutor from seizing documents that are with the accused external attorney, given by the accused to his attorney, and those that relate to the exchange of communications between the accused and the attorney. This does not apply to in-house attorneys in a company.

**7.4 Are there any labour or privacy laws in your jurisdiction (such as the General Data Protection Regulation in the European Union) that may impact the collection, processing, or transfer of employees' personal data, even if located in company files? Does your jurisdiction have blocking statutes or other domestic laws that may impede cross-border disclosure?**

Yes, the UAE has labour laws that protect the privacy of information and documents between the employer and the employee. Also, it issued a specific law, the UAE Federal Data Protection Law No. 45 of 2021, which came into effect in January 2022. This law is similar to other international data protection laws, such as the EU General Data Protection Regulation 2016/679, known as the GDPR.

As explained above, the UAE is very active in international judicial cooperation efforts. It has entered many global, regional, and bilateral treaties and conventions to help judicial

cooperation and information exchange, especially in criminal matters. The UAE also applies a sanctions system.

**7.5 Under what circumstances can the government demand that a company employee produce documents to the government, or raid the home or office of an employee and seize documents?**

When the Public Prosecution initiates an investigation, the government can demand, through the concerned Public Prosecution member, a company employee to produce documents or allow homes or offices to be raided and documents seized based on a search warrant issued by the Public Prosecution. These actions are detailed in the UAE Criminal Procedures Law and other relevant laws or regulations.

**7.6 Under what circumstances can the government demand that a third person or entity produce documents to the government, or raid the home or office of a third person or entity and seize documents?**

Article 78 of the UAE Criminal Procedures Law allows the public prosecutor to order a person holding items that need to be seized or viewed to hand over such items; if he refuses to do so, he shall be punished with the same penalty for refusing to give testimony.

### **Questioning of Individuals:**

**7.7 Under what circumstances can the government demand that an employee, officer, or director of a company under investigation submit to questioning? In what forum can the questioning take place?**

Article 99 of the UAE Criminal Procedures Law, "Questioning and Confrontation", governs these circumstances. When the accused, whether an employee, officer or director of a company, is under investigation, the public prosecutor shall document all of his identity information, inform him about the accusations and question him.

**7.8 Under what circumstances can the government demand that a third person submit to questioning? In what forum can the questioning take place?**

Through the Public Prosecution, the government can demand a third person to be questioned under the concept of being a witness. The hearing of witnesses is governed by articles 88–95 of the UAE Criminal Procedures Law. The questioning of a witness shall take place in the form of a witness statement.

**7.9 What protections can a person assert upon being questioned by the government? Is there a right to be represented by an attorney during questioning? Is there a right or privilege against self-incrimination that may be asserted? If a right to assert the privilege against self-incrimination exists, can the assertion of the right result in an inference of guilt at trial?**

Article 100 of the UAE Criminal Procedures Law states the right of the person being questioned to be represented by a lawyer/attorney during the investigation. However, the Public Prosecution member has the right, in the interests of the investigation, not to allow the lawyer's attendance in certain limited situations such as in State security or terrorism investigations, for example.

Under UAE law, an accused person can voluntarily confess or admit guilt or commission of the crime. For example, if the accused person admits a crime during an investigation before police or the Public Prosecution, then he has the right to deny this before the court. In this situation, the court can either rely on the previous admission of guilt or order him to be questioned again.

## 8. Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

### 8.1 How are criminal cases initiated?

Generally, and in applying articles 7 and 9 of the UAE Criminal Procedures Law, criminal cases are initiated by the Public Prosecution. Article 10 of the same law specifies that certain cases cannot be initiated unless there is a written complaint submitted from the complainant, such as those regarding theft, fraud, breach of trust and other crimes as detailed in this article.

### 8.2 What rules or guidelines govern the government's decision to charge an entity or individual with a crime?

Article 118 of the UAE Criminal Procedures Law states that when the Public Prosecution considers in felony and violation that the criminal charges can be raised based on the results collected and the investigation conducted, then the accused shall be asked to attend directly before the competent criminal court by a written order issued and signed by the Public Prosecution member. In addition, articles 120 and 121 govern the cases of felony and crimes, respectively, that are referred to the competent criminal courts.

### 8.3 Can a defendant and the government agree to resolve a criminal investigation through pretrial diversion or an agreement to defer prosecution? If so, please describe any rules or guidelines governing whether pretrial diversion or deferred prosecution agreements are available to dispose of criminal investigations.

Under UAE criminal law, there is no concept of an agreement between the government and a defendant to defer prosecution. Either the criminal prosecution proceeds until a verdict is issued, or the complainant drops the charges or enters into a settlement agreement with the defendant at any time during the prosecution or trial before a verdict is issued.

### 8.4 If deferred prosecution or non-prosecution agreements are available to dispose of criminal investigations in your jurisdiction, must any aspects of these agreements be judicially approved? If so, please describe the factors which courts consider when reviewing deferred prosecution or non-prosecution agreements.

As explained in question 8.3, this concept does not exist in the UAE.

### 8.5 In addition to, or instead of, any criminal disposition to an investigation, can a defendant be subject to any civil penalties or remedies? If so, please describe the circumstances under which civil penalties or remedies may apply.

Article 22 of the UAE Criminal Procedures Law states the rights in civil actions that are related to criminal actions by allowing the individual whose personal rights were affected by a crime to prosecute and pursue such legal rights against the accused or defendant during the investigation or trial stage before court. The court may order compensation as a result of the criminal actions.

**8.6 Can an individual or corporate commence a private prosecution? If so, can they privately prosecute business crime offences?**

In the UAE, an individual or corporate cannot commence a private prosecution until and unless they inform the relevant authorities such as the Public Prosecution and the police.

## 9. Burden of Proof

**9.1 For each element of the business crimes identified above in section 3, which party has the burden of proof? Which party has the burden of proof with respect to any affirmative defences?**

Generally, the burden of proof in criminal cases initiated by the Public Prosecution lies with the Public Prosecution. The burden of proof in criminal cases initiated by complainants lies with the complainants. In addition, and in compliance with Article 179 of the UAE Criminal Procedures Law, in a trial a court may order during the hearing, even of its own volition, the presentation of any evidence it deems necessary to reveal the truth.

**9.2 What is the standard of proof that the party with the burden must satisfy?**

Generally, and in a wider context, article 1 of the UAE Evidence Law No. 10 of 1992 and its recent amendments states that the claimant must prove his right, which the defendant can deny. Specifically, article 30 of the UAE Criminal Procedures Law states that judicial officers examine crimes, search for criminals, and collect the necessary information and evidence for investigation and prosecution. Evidence can constitute the parties' written statements, documents submitted and examined, witness statements, assigned expert reports who the prosecutor or court appoints, inspection of persons and homes reports, seizure of items related to the crime, questioning and confrontation, and evidence collected by the police.

**9.3 In a criminal trial, who is the arbiter of fact? Who determines whether the party has satisfied its burden of proof?**

Generally, in criminal trials in UAE, the arbiter of facts is the court in its three stages: the First Instance Criminal Court; the Court of Appeal; and the Court of Cassation. These courts can determine whether or not the party has satisfied its burden of proof.

## 10. Conspiracy/Aiding and Abetting

**10.1 Can a person who conspires with or assists another to commit a business crime be liable? If so, what is the nature of the liability and what are the elements of the offence?**



Under UAE criminal law, a person who conspires with or assists another to commit a business crime can be liable. This is in application of articles 45–53 of the UAE Penal Code, which state as follows:

■ Article 45: A person shall be considered an accomplice by causation: (1) if he instigates the commission of a crime that was perpetrated as a result of this instigation; (2) if he conspires with others to perpetrate a crime that occurred as a result of this conspiracy; (3) if he gives the doer a weapon, tools, or anything else used in the perpetration of the crime of which he had knowledge; or (4) if he wilfully assists the perpetrator, by any other means, in the preparatory acts or those facilitating or completing the perpetration of the crime. The accomplice shall be equally held liable whether he was in direct contact with the perpetrator or through an intermediary.

■ Article 46: An accomplice by causation who was found at the scene of the crime with the intent to perpetrate it shall be considered as a direct accomplice in case the crime is not committed by someone other than him.

■ Article 47: Whoever participates in a crime as a direct or causative accomplice shall be sanctioned by its penalty, unless otherwise provided by the law.

■ Article 48: Where an accomplice is not subject to the penalty on grounds of one of the causes of legitimacy, or as regards criminal intent, or for other particular reasons concerning him, the other accomplices shall not benefit therefrom.

■ Article 49: Where the material circumstances are inherent to a crime or constituent of one of its acts that will aggravate or extenuate the penalty, the effects thereof shall apply to any one directly or causatively participating in its perpetration regardless of whether or not he had knowledge thereof. However, existing personal aggravating circumstances that may facilitate the perpetration of the crime shall not apply to parties other than its author unless the other person had knowledge of it. As to the other circumstances, whether aggravating or extenuating, the effects thereof shall apply only to the person concerned in these circumstances.

■ Article 50: Where the personal excuses of one of the accomplices allow exemption from or extenuate the penalty, whether his acts are direct or by causation, their effects shall only apply to the person concerned by such excuses. Material excuses providing exemption from or extenuating the penalty shall produce their effects on whoever participated directly or by causation in the perpetration of the crime.

■ Article 51: The accomplice in a crime, whether direct or by causation, shall be sanctioned by the penalty pertaining to the crime perpetrated even if it is not the crime he intended to perpetrate, as long as the committed crime is a probable consequence of the complicity.

■ Article 52: Should the characterisation of a crime or a penalty change according to the intent of the author of the crime or his knowledge of its circumstances, the accomplices in the crime, whether direct or by causation, shall be penalised in accordance with their intent or knowledge.

■ Article 53: There is no crime if the act takes place in good faith in the use of a right provided for in the law and within the limits set for such right. The following shall be considered as a use of right: (1) chastisement by a husband to his wife and chastisement of the parents, or whoever acts in their stead, to the minor children within the limits prescribed by Sharia or by law; (2) medical surgery and acts of medical attendance, in accordance with scientific principles recognised by the licensed medical profession when done with the explicit or implicit consent of the patient, or his legal representative, or in cases where the medical intervention is necessary in emergency cases that require it; (3) acts of violence taking place during the performance of sport games within the limits approved for such game and with observance of the rules of due care and caution; (4) acts of violence against the author of a crime caught in the act, with a view to arresting him, within the limits required for this purpose; and (5) the accusations exchanged by the litigating parties during the verbal or written defence before the investigation authorities and courts, within the limits required by such defence and provided the doer bona fide believes that the matters attributed to his opponent are true and that his belief is based on reasonable grounds.

## 11. Common Defences

**11.1 Is it a defence to a criminal charge that the defendant did not have the requisite intent to commit the crime? If so, who has the burden of proof with respect to intent?**

The UAE Penal Code, in defining the commission of a crime, requires two elements: the materialistic element (*actus reus*); and the requisite intent (*mens rea*). Article 39 of the UAE Penal Code states that if an act is committed under the influence of a mistake in facts, the liability of the perpetrator shall be determined on the basis of the facts he misconceived should these facts deny or extenuate his liability, provided his belief is based on reasonable grounds and on the basis of research and investigation. In case the mistake that made the perpetrator believe that he is not responsible is due to negligence or non-precaution, he shall be answerable for a non-remediated crime should the law penalise the act as being such.

Consequently, denying the requisite intent is a common and valid defence and the burden of proof lies on the accused or can be deduced by the investigation of the police and the Public Prosecution.

**11.2 Is it a defence to a criminal charge that the defendant was ignorant of the law, i.e., that he did not know that his conduct was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the law?**

Article 43 of the UAE Penal Code governs this situation. It states that the perpetrator is answerable for the crime whether it was committed deliberately or by mistake unless the law expressly provides for premeditation. Accordingly, this article does not allow the ignorance of law to be an acceptable defence.

**11.3 Is it a defence to a criminal charge that the defendant was ignorant of the facts, i.e., that he did not know that he had engaged in conduct that was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the facts?**

Please see question 11.2 above.

## 12. Voluntary Disclosure Obligations

**12.1 If a person or entity becomes aware that a crime has been committed, must the person or entity report the crime to the government? Can the person or entity be liable for failing to report the crime to the government? Can the person or entity receive leniency or “credit” for voluntary disclosure?**

Articles 321–323 of the UAE Penal Code provide for the liability for failing to report a crime to the government. Article 37 of the UAE Criminal Procedures Law states that whoever comes to know about the occurrence of a crime for which the Public Prosecution can file a criminal action without a complaint or request must report it to the Public Prosecution or a judicial officer. Article 323 states that whoever became aware of a crime and did not report to the relevant authorities shall be punishable by imprisonment for up to one year or a fine. However, this punishment can be waived if whoever refrained from reporting the crime is the husband or wife of the accused or a family relative to a certain degree.

## 13. Cooperation Provisions/Leniency

**13.1 If a person or entity voluntarily discloses criminal conduct to the government or cooperates in a government criminal investigation of the person or entity, can the person or entity request leniency or “credit” from the government? If so, what rules or guidelines govern the government’s ability to offer leniency or “credit” in exchange for voluntary disclosures or cooperation?**

A voluntary disclosure of a criminal conduct or cooperation by the person or entity may not necessarily allow them to request leniency or “credit” from the government. This is the general rule; however, there are some exceptions that can be found, for example, in UAE Federal Decree-Law No. 20 of 2018 on Anti- Money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organizations. Article 6, paragraph 2 of this law, which was also adopted in the recently amended UAE Federal Law No. 26 of 2021, gives the right for the public prosecutor or his delegate and the competent court, as the case may be, to issue a decision to take the necessary procedures to protect the confidential information and the means and methods used to obtain such information, or may instruct the competent authorities to protect the witness, or the undisclosed sources, the accused or other parties involved in the case if there is a serious threat to their safety.

**13.2 Describe the extent of cooperation, including the steps that an entity would take, that is generally required of entities seeking leniency in your jurisdiction, and describe the favourable treatment generally received.**

A specific example can be found in article 22, paragraph 6 of the amended UAE Federal Decree-Law No. 26 of 2021 on Anti- Money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organizations. This article stipulates that the court, based on a request from the public prosecutor or his representative or based on its discretionary authority, may order the reduction of the punishment or waive it completely for whoever of the accused reported to the competent judicial or administrative authorities information related to any of the punishable crimes under this article, provided that this reporting of information led to the discovery of the crime or

any of the accused, and the crime was proven or the accused arrested, and any relevant items seized.

## 14. Plea Bargaining

**14.1 Can a defendant voluntarily decline to contest criminal charges in exchange for a conviction on reduced charges, or in exchange for an agreed-upon sentence?**

This concept or approach does not exist under the UAE Penal Code or the UAE Criminal Procedures Law.

**14.2 Please describe any rules or guidelines governing the government's ability to plea bargain with a defendant. Must any aspects of the plea bargain be approved by the court?**

Please see question 14.1 above.

## 15. Elements of a Corporate Sentence

**15.1 After the court determines that a defendant is guilty of a crime, are there any rules or guidelines governing the court's imposition of a sentence on the defendant? Please describe the sentencing process.**

Article 216 of the UAE Criminal Procedures Law states that the ruling or sentence shall specify the grounds. Each conviction ruling shall specify the incident that resulted in the punishment, its circumstances, and the law under which the ruling is issued. Article 212 of the same law stipulates that if the incident was proven and punishable by the law, the courts shall order an appropriate punishment. Generally, articles 208–219 organise the process of the court's issuance of a sentence.

**15.2 Before imposing a sentence on a corporation, must the court determine whether the sentence satisfies any elements? If so, please describe those elements.**

Generally, when imposing a sentence on a corporation, the courts apply the standard two elements: the materialistic element; and the requisite intent, in accordance with chapter 2 of the UAE Penal Code on the elements of crime (see question 11.1).

## 16. Appeals

**16.1 Is a guilty or a non-guilty verdict appealable by either the defendant or the government?**

Article 230 of the UAE Criminal Procedures Law allows the appeal of any criminal verdict issued by the First Instance Criminal Court. The appeal can be lodged by the accused, and/or prosecutor and Attorney General. In addition, article 233 of the same law allows the civil claimants to appeal the verdict as a result of the criminal verdict.

**16.2 Is a criminal sentence following a guilty verdict appealable? If so, which party may appeal?**

The criminal sentence following a guilty verdict is appealable. The accused, the prosecutor and the Attorney General can appeal. The appeal shall not stop the enforcement of the first instance verdict unless the court that issued the verdict states otherwise or the accused obtains a stay order from the Court of Appeal.

N.B.: First instance verdicts in capital punishment cases are considered automatically appealed and stayed by the force of the law.

**16.3 What is the appellate court's standard of review?**

Generally, the Court of Appeal in the UAE is a court of facts and law, meaning the Court of Appeal has the right to hear the grounds of the appeal and decide on it. Specifically, article 239 allows the Court of Appeal to hear its own witnesses who should have been heard before the First Instance Criminal Court and fulfil any other shortcomings in the investigative procedures. Hence, the court has the right to order the necessary procedures to complete any investigation, hearing or witness.

**16.4 If the appellate court upholds the appeal, what powers does it have to remedy any injustice by the trial court?**

If the Court of Appeal upholds the appeal, it has the right to cancel or amend it in favour of the appellant.