

UAE

New penalties for financial fraud

Law 37 of 2009 on the Procedures for the Recovery of Illegally Obtained Public and Private Funds was issued in late December 2009 by His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice-President and Prime Minister of the United Arab Emirates, in his capacity as the Ruler of Dubai. The Law came into force on December 31 2009.

Dubai has witnessed a number of high-profile fraud cases involving senior executives since the global financial crisis in 2008. The Law is the latest in a series of measures aimed at combating corruption in both the public and private sectors and is part of a broader and continuing clampdown on economic and financial crime.

The Law imposes sentences of up to 20 years for those convicted of illegally obtaining public or private funds in Dubai. The aim of the Law is to impose tougher sentences for financial crimes but simultaneously allow for such convictions to be set aside upon

repayment of the funds. The Law also allows for the immediate release of those convicted of fraud once the illegally obtained funds are returned or settlement agreements concluded. In furtherance of

this aim, the Law allows accused persons access to all necessary external communications to facilitate the timely recovery and settlement of illegally recovered funds.

The Law identifies two punishable acts: the receipt of "illicit monies" and the receipt of "public funds". Illicit monies are defined as monies acquired, whether directly or indirectly, as a result of an action that constitutes a punishable crime. Public funds are defined as funds owned by the Government, government authorities or institutions or companies owned by the Government or government authorities, or in which they hold shares.

If a person is convicted of receiving illicit monies or public funds, and fails to return them, a person can be imprisoned under this Law. If the convicted person is a legal entity, the person that failed to repay the illegally obtained funds can be imprisoned.

Under the Law the period of imprisonment is correlated to the sum received. The Law prescribes the following periods:

- a) Five years, if the improperly obtained amount is between Dh500,000 and Dh1 million;
- b) 10 years, if the improperly obtained amount is between Dh1 million and Dh5 million;
- c) 15 years, if the improperly obtained amount is between Dh5 million and Dh10 million; and
- d) 20 years, if the improperly obtained amount is more than Dh10 million.

Article 4 of the Law stipulates that anyone convicted of financial crimes will be imprisoned separately from detainees or those convicted in penal cases. Prison administrators are directed under the Law to provide those convicted with means of communication in order to return the misappropriated

funds or reach a settlement with the rightful owner. In addition, Article 7 provides that the convicted person will not be sentenced to jail if he submits a bank guarantee or has a guarantor accepted by the execution judge to returned the illegally obtained funds on an agreed schedule, or if the convicted person's properties can be seized and are sufficient to cover the illegally obtained amount. Finally, a convicted person will be released before the end of his prison term if the monies are returned or if an amicable settlement can be reached with the rightful owner.

The serving of the prescribed term of imprisonment does not absolve the convicted person from the requirement to return the illegally obtained funds. Under Article 9 the convicted person remains liable for the outstanding monies notwithstanding that he has served the prescribed term of imprisonment.

In addition, the Law specifically states that it is without prejudice to any other penalty to which the convicted person is sentenced under any other law. Thus, if a the person is convicted under any other law, including the UAE Federal Penal Code, he will be subject to any penalties applicable under the other law, notwithstanding that he may have served the applicable term of imprisonment under the Law or paid back the subject monies.



Amjad Ali Khan



Mohammad Manki,
Afridi & Angell

Contacts:

PO Box 9371
Emirates Towers - Level 35
Sheikh Zayed Road
Dubai, UAE

Tel: +971 4 330 3900
Fax: +971 4 330 3800
E-mail: dubai@afриди-angell.com
Web: www.afриди-angell.com