



Financial Action Task Force  
Groupe d'Action Financière



Middle East and North African  
Financial Action Task Force

## Mutual Evaluation Report

Anti-Money Laundering and Combating the  
Financing of Terrorism

9 April 2008

UNITED ARAB EMIRATES

The United Arab Emirates is a member of the Middle East and North Africa Financial Action Task Force (MENAFATF). It is also a member of the Gulf Co-operation Council, which is a member of the Financial Action Task Force (FATF). This evaluation was conducted by the International Monetary Fund and was then discussed and adopted in Plenary as a mutual evaluation as follows:

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## ACRONYMS

<b>ADSM</b>	-	Abu Dhabi Securities Market
<b>AML/CFT</b>	-	Anti-Money Laundering and Combating the Financing of Terrorism
<b>AMLSCU</b>	-	Anti-Money Laundering and Suspicious Cases Unit
<b>ASP</b>	-	Ancillary Service Provider
<b>ATM</b>	-	Automated teller Machine
<b>BSED</b>	-	Banking Supervision and Examination Department
<b>CDD</b>	-	Customer Due Diligence
<b>DIACA</b>	-	Department of Islamic Affairs and Charitable Activities
<b>DIFC</b>	-	Dubai International Financial Center
<b>DIFCA</b>	-	Dubai International Financial Center Authority
<b>DFM</b>	-	Dubai Financial Market
<b>DFSA</b>	-	Dubai Financial Services Authority
<b>DGCX</b>	-	Dubai Gold and Commodities Exchange
<b>DMCC</b>	-	Dubai Multi Commodities Center
<b>DNFBP</b>	-	Designated Non-Financial Businesses and Professions
<b>ESCA</b>	-	Emirates Securities and Commodities Authority
<b>FATF</b>	-	Financial Action Task Force
<b>FCA</b>	-	Federal Customs Authority
<b>FIU</b>	-	Financial Intelligence Unit
<b>FSRB</b>	-	FATF-Style Regional Body
<b>FT</b>	-	Financing of terrorism
<b>GCC</b>	-	Gulf Cooperation Council
<b>ICSFT</b>	-	International Convention for the Suppression of the Financing of Terrorism
<b>IOSCO</b>	-	International Organization of Securities Commissioners
<b>JAFZA</b>	-	Jebel Ali Free Zone Authority
<b>LLC</b>	-	Limited Liability Company
<b>MENAFATF</b>	-	Middle East and North Africa Financial Action Task Force
<b>ML</b>	-	Money laundering
<b>MLA</b>	-	Mutual legal assistance
<b>MLAT</b>	-	Mutual Legal Assistance Treaty
<b>MLRO</b>	-	Money Laundering Reporting Officer
<b>MOU</b>	-	Memorandum of Understanding
<b>NAMLC</b>	-	National Anti-Money Laundering Committee
<b>NCFT</b>	-	National Committee for Combating Terrorism
<b>NPO</b>	-	Nonprofit organization
<b>OFAC</b>	-	Office of Foreign Assets Control
<b>PEP</b>	-	Politically-exposed person
<b>SRO</b>	-	Self-regulatory organization
<b>STR</b>	-	Suspicious Transaction Report
<b>TF</b>	-	Terrorist Financing
<b>TSP</b>	-	Trust Service Provider
<b>UNSCR</b>	-	United Nations Security Council Resolution
<b>VAT</b>	-	Value-Added Tax

## 1. PREFACE

1. This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the United Arab Emirates (UAE) is based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT assessment Methodology 2004, as updated in February 2007. The assessment team considered all the materials supplied by the authorities, the information obtained on site during their mission from February 28 to March 15, 2007, and other verifiable information subsequently provided by the authorities. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex 1 to the detailed assessment report.

2. The assessment was conducted by a team of assessors composed of staff of the International Monetary Fund and two experts acting under the supervision of the IMF. The evaluation team consisted of Joy K. Smallwood (LEG, team leader); Matthew Byrne, Marlene Manuel (LEG); Richard Chalmers (expert under LEG supervision, Financial Services Authority, United Kingdom); and Antoine Mandour (expert under LEG supervision, Special Investigation Commission, Lebanon). The assessors reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter and punish money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP). The assessors also examined the capacity, implementation, and effectiveness of all these systems.

3. This report provides a summary of the AML/CFT measures in place in the UAE at the time of the mission or shortly thereafter.<sup>1</sup> It describes and analyzes those measures, sets out the UAEs' levels of compliance with the FATF 40+9 Recommendations (see Table 1) and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). The report was produced by the IMF as part of the Financial Sector Assessment Program (FSAP) of the UAE and the assessment processes of the Middle East and North Africa Financial Action Task Force (MENAFATF) and the FATF. It was also presented to the MENAFATF and FATF and adopted by these organizations at their respective Plenary meetings of April 2008 and June 2008.

4. The assessors would like to express their gratitude to the UAE authorities for their assistance and hospitality throughout the assessment mission, noting in particular the assistance provided by the governor of the Central Bank, H.E. Sultan Bin Nasser Al Suwaidi, the head of the financial intelligence unit (FIU), Abdulrahim Mohamed Al Awadi, and the members of their staff.

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<sup>1</sup> Due to circumstances beyond the assessors' control, the finalization of this report was subject to significant delay, with the result that it was not considered for adoption at the MENAFATF plenary meeting in November 2007. During subsequent meetings with the UAE authorities held in Abu Dhabi in January 2008, additional information was provided to indicate that certain measures had been implemented between the dates of the on-site visit in March 2007 and the year-end. Under the assessment procedures established by the FATF and adopted by the MENAFATF, these subsequent measures cannot be taken into account in the compliance ratings where they occurred more than approximately 60 days after the visit. However, where appropriate, the assessors have added footnotes to indicate the nature of any such measures, but have not attempted to analyze the substance or effectiveness of the measures.

## EXECUTIVE SUMMARY

### Key Findings

5. A basic legal framework for combating money laundering and terrorist financing is in place in the UAE, but that framework needs further strengthening in a number of areas. The AML law needs to be amended to expand the range of predicate offences and to provide greater powers for the financial intelligence unit. The FIU should also increase its own staffing so that it may operate as an autonomous unit, rather than relying on the resources of the Central Bank's Supervision Department and other regulatory agencies.

6. The legal framework for the financial sector preventive measures in the domestic sector provides a basic grounding, but it mostly predates the revision of the FATF Recommendations in 2003, which have now imposed much more detailed requirements. While the central bank has taken various administrative measures to strengthen the regime within the domestic sector, these require a more solid basis in the legal and regulatory framework, especially with respect to the customer due diligence (CDD) and related obligations. The regime applied to financial institutions operating within the Dubai International Financial Centre<sup>2</sup> tends overall to be relatively close to the FATF standards.

7. The suspicious transactions reporting system delivers a lower number of reports than might be expected within a financial market of the size and nature of that within the UAE, and greater clarity is required about the basis on which institutions are expected to report transactions suspected of being linked to either money laundering or terrorist financing.

8. The authorities have taken positive initiatives to address the issue of Hawala dealers, and have introduced a voluntary system of registration and reporting. The central bank intends progressively to formalize its oversight regime for this sector, which is to be welcomed.

9. The basic AML legislation captures some of the DNFBP sectors, but no specific customer due diligence or related obligations have been extended to these entities, and there is no AML/CFT regulatory framework within the domestic sector. At the time of the onsite visit, Dubai International Financial Center Authority (DIFCA) had drafted regulations for DNFBPs.<sup>3</sup> Measures taken within the various free zones vary substantially.

### Legal Systems and Related Institutional Measures

10. The UAE has criminalized money laundering in Federal Law 4/2002 and the financing of terrorism in Decree by Federal Law 1/2004. Money laundering is criminalized but not fully in accordance with the FATF Recommendations. The predicate offenses in the money laundering law should be extended to cover all serious offenses and, at a minimum, the 14 out of the 20 designated categories of offenses in the FATF 40+9 Recommendations not currently covered. The terrorist financing offense is in line with the international requirements of the International Convention on the

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<sup>2</sup> The Dubai International Financial Center (DIFC) is the only financial free zone created so far within the UAE, although there are approximately 30 commercial free zones in which some of the designated non-financial businesses and professions may operate. Because the Federal AML Law has universal application within the UAE, this assessment contains a single set of compliance ratings, combining both the domestic sector, the DIFC and, where relevant, the commercial free zones. However, where appropriate, separate recommendations have been addressed to the authorities responsible for the individual sectors.

<sup>3</sup> Subsequent to the mission, DIFCA issued its AML/CFT Regulations applicable to DNFBPs which became effective on July 18, 2007. They are not taken into account for the purposes of this report because their implementation falls outside the timeframe of the assessment.

Suppression of the Financing of Terrorism (ICSFT) but does not include the financing of an individual terrorist unless there is a contemplation of a terrorist act, which is a requirement under the FATF standard.

11. The Anti-Money Laundering and Suspicious Cases Unit (AMLSCU) is also established under the anti-money laundering law to carry out the financial intelligence unit functions. While the AMLSCU has undertaken a great deal of outreach, particularly in the banking sector, it needs to continue that outreach into other sectors, particularly the securities and commodities sector. It should also allocate more resources to fully analyze the STRs it receives. Furthermore, legislative action is needed in order to clarify the FIU powers and responsibilities.

12. Recently enacted laws relating to confiscation of proceeds of crime appear comprehensive and workable, but legislative amendment and awareness-raising is required in other areas. Overall resourcing and staffing in law enforcement does not appear to present a significant concern, but the extent of AML/CFT awareness across all legal and law enforcement sectors needs to be addressed. The enhanced development of specific financial intelligence tools and AML/CFT expertise in law enforcement, customs and the judiciary is also required.

### **Preventive Measures – Financial Institutions**

13. The financial sector within the UAE is divided between institutions operating within the domestic market and those licensed to conduct business in the Dubai International Financial Center, the only financial free zone so far created in the UAE. While the federal laws on AML/CFT apply equally to the domestic sector and within the DIFC, the responsibility for issuing implementing regulations, and overseeing compliance, falls to the respective regulatory authorities. In the case of the domestic sector this involves the central bank (for banks, money changers, and finance companies), the Emirates Securities and Commodities Authority (securities brokers) and the ministry of economy (insurance companies); whereas there is a single regulator, the Dubai Financial Services Authority (DFSA), for all financial services providers in the DIFC.

14. The primary AML legislation imposes very little by way of CDD obligations on financial institutions. Specific requirements are contained only in the instruments issued by the regulatory authorities, and these vary markedly in depth and quality, resulting (within the domestic sector) in a significant number of areas in which the requirements do not comply with the FATF standards. These include the identification of beneficial ownership, the conduct of ongoing due diligence, and the application of enhanced measures for high-risk customers. In addition, no requirements have been implemented with respect to politically-exposed persons and correspondent banking. By contrast, the DFSA has included extensive provisions within its rulebook that relate closely to the FATF Recommendations, although the mission considers that the rules do not match the FATF definition of "law and regulation," and that, therefore, they do not meet the statutory status required under the FATF standard. Given the current divergence of the detailed obligations imposed on different parts of the financial sector in the UAE, there would be considerable benefit in the authorities taking a more coordinated approach to the development of future regulations.

15. Record-keeping requirements are broadly addressed through a range of laws and regulations, although there are some gaps in the customer identification documents required to be retained by the domestic securities and insurance sectors. The current requirements under the central bank regulations relating to wire transfers are very general and fall well short of the FATF requirements in terms of the procedures for verification of identity and the transmission of originator information. The DFSA has issued rules that generally match the FATF standards.

16. The suspicious transactions reporting regime in relation to money laundering has been in place in the domestic sector for several years, but lacks clarity as to the exact basis on which reports should be filed. The central bank regulations refer variously to unusual and suspicious transactions, and there is no indication of whether institutions are expected to apply a subjective or objective test to suspicion.

In addition, there is an apparent variation in the definition of the money laundering offense between the primary law and the regulations, such that it is unclear what the scope of the reporting should be in relation to the predicate offenses. The regulations issued for the domestic securities and insurance sectors refer only to the reporting of unusual transactions, and the general procedures in these sectors are far less developed than for the banking sector. The DFSA rules have much more expansive provisions than for the domestic sectors, requiring institutions to report transactions where there is knowledge, suspicion, or reasonable grounds to suspect that a person is engaged in money laundering. These issues appear to be a factor in creating distinct variations in the nature and quality of reporting by individual institutions, and overall the level of reporting appears to be low relative to the size and nature of the financial markets.

17. In the domestic sector, the reporting of suspicions of terrorist financing has only been extended to institutions subject to the supervision of the central bank, but it is not incorporated in law and regulation. Within the DIFC, the DFSA originally sought to deal with the issue by revising the definition of money laundering to include terrorist financing, but has decided to amend its legislation to provide explicitly for rule-making powers with respect to terrorist financing.

18. The basic systems and controls requirements for the domestic banking sector go some way towards meeting the FATF standards, but those for the securities and insurance sectors fall well short. Generally, the central bank considers that the overall quality of the banks' AML systems and controls has improved significantly in recent years, but that there still remains room for improvement in many institutions. The same assessment is not possible with respect to securities and insurance, where the inspections programs are far less developed. The provisions covering institutions within the DIFC are extensive and, based upon the examination work carried out by the DFSA, are being implemented effectively, although the volume of business currently being undertaken within the DIFC is relatively small.

19. While some of the regulatory powers of the central bank are specified very generally within the law, they provide a reasonable basis for fulfilling the Bank's responsibilities in a flexible manner, although there would be distinct benefit in formally documenting the central bank's regulatory expectations where they exceed those encompassed within the regulations. The procedures relating to the supervision and regulation of the domestic securities and insurance markets are far less developed, with the insurance sector not yet being subject to any effective AML/CFT compliance monitoring. There are a limited range of formal sanctions available to the domestic regulators, but the central bank, in particular, has sought to draw on various general powers to bring institutions into compliance, although there remains a lack of evidence as to how these are used specifically for AML/CFT issues. The structure, powers and procedures of the DFSA are generally in line with international standards, although it is early days within a market that remains relatively very small in terms of business volumes.

20. The central bank has taken a strong lead internationally in addressing the informal remittance sector (hawaladars). The approach domestically has been to institute a voluntary registration process, on the basis that this will encourage the hawaladars to move closer to the formal sector. Registrants are required to submit data to the central bank on all their remittances and, where appropriate, to file Suspicious Transaction Reports (STRs). However, in view of the voluntary nature of this structure, the central bank has no legal authority to conduct inspections or to sanction hawaladars for non-compliance with its requirements. While the voluntary registration process provides a positive start, the system needs to be formalized, based on proper legal powers for the central bank.

21. While there is evidence of the willingness of the domestic regulatory authorities to cooperate with domestic and foreign counterparts, their governing laws are silent on the mechanisms and safeguards necessary to ensure the effective and proper exchange of confidential information. The provision of such legal gateways would be an important development. These exist with respect to the DFSA, which has entered into a number of bilateral Memorandum of Understanding (MOUs), and is also a signatory to the International Organization of Securities Commissioners (IOSCO) Multilateral MOU.

### **Preventive Measures — Designated Non-Financial Businesses and Professions**

22. While the authorities believe that most DNFBPs are captured by the requirements of the AML law, there are almost no specific requirements in place in relation to any categories of DNFBPs in either the domestic sector or the commercial free zones, of which about 30 have been created throughout the UAE. Indeed, many DNFBPs are not aware that they are subject to the provisions of the AML law. Lawyers and accountants are not captured by the definition of affected entities in the law, and only auditors are required to file STRs in accordance with a circular issued by the ministry of economy. Casinos are illegal in the UAE.

23. Provisions are in place, however, for DNFBPs in the financial free zone, as the DFSA has issued rulebooks for lawyers and accountants who are offering ancillary services to financial institutions operating in the DIFC. At the time of the on-site visit, the Dubai International Financial Center Authority had drafted rules for all DNFBPs operating in the financial free zone.<sup>4</sup>

### **Legal Persons and Arrangements & Non-Profit Organizations**

24. The UAE appears, in principle, to have a culture of strong control over the activities of the corporate sector in the domestic economy. Ownership details have to be submitted (and verified against identity documents) at the time of registration, and the law requires any changes to be notified and approved by the authorities. All such information is accessible to the investigatory authorities, and the relevant registration departments have broad powers to enter premises, to review documents, and to require the submission of information. However, given the tight controls over foreign ownership of domestic enterprises and the very sizeable expatriate community, the mission could not be satisfied that the measures would prevent "fronting" by UAE nationals on behalf of foreign interests. The increasing number of free zones designed to be open to foreign investors, also present particular challenges. While the vetting procedures over ownership are similar to those for domestic businesses, and the operations must generally have a physical presence in the free zone, provisions in some zones now permit the creation of pure offshore companies that are not subject to the same requirements. However, such structures are not permitted within the DIFC financial free zone.

25. There is no provision for the creation of trusts or similar arrangements under UAE federal law, and foreign trusts are not recognized. However, uniquely trust law has been created in the DIFC, which provides for the creation of express trusts. Such arrangements must be administered by trust service providers authorized by the DFSA, which are subject to CDD and record-keeping requirements.

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<sup>4</sup> Subsequent to the mission, DIFCA issued its AML/CFT Regulations applicable to DNFBPs which became effective on July 18, 2007. These rules address CDD arrangements and enhanced due diligence for higher risk categories of customer, business relationship or transaction, including politically-exposed persons (PEPs). They are not taken into account for the purposes of this report because their implementation falls outside the timeframe of the assessment.

26. The UAE has reviewed the adequacy of the existing laws and regulations that relate to non-profit organizations. All nonprofit organizations (NPOs) are licensed either by the ministry of social affairs or by the Department of Islamic Affairs and Charitable Activities (for charities operating in Dubai). Both conduct on-site visits of the NPOs. It is possible to create a charitable trust in the DIFC, but no supervisory system is in place to monitor such vehicles. No such charitable trusts have been authorized or created in the DIFC.

### **National and International Cooperation**

27. **A national, coordinated, and strategic approach to AML/CFT is urgently required.** Recently enacted laws concerning national and international cooperation, including mutual legal assistance, appear comprehensive and workable, presenting little if any barriers to effective implementation. While the recent enactment of the law and a lack of statistics do not permit an analysis of effectiveness, current approaches to this area and recent law enforcement success in multi-national task forces augur well for further positive developments in this area of the AML/CFT regime.

28. While the two national committees responsible for AML/CFT provide high-level direction, there is an urgent need for a national strategic plan for AML/CFT to be developed with operational sub-committees ensuring an ongoing and coordinated delivery of strategic goals and objectives. **Divergent approaches to AML/CFT enforcement across sectors and emirates are a cause for concern.**

### **Other Issues**

29. **The absence of meaningful statistics was a significant hindrance to the progress of the assessment.** With only minor exceptions, the level of effectiveness of AML/CFT measures across all sectors was difficult or impossible to gauge. The development of a national strategy for AML/CFT must urgently address this issue if recent progress is to be built upon.

## DETAILED ASSESSMENT REPORT

### 1. GENERAL

#### 1.1. General Information on the United Arab Emirates

30. The United Arab Emirates (UAE) is an independent sovereign state bordered by Saudi Arabia and Oman and sharing maritime borders with Qatar, Iraq, and Iran. It is located in the Arabian Gulf with access to the strategic Straits of Hormuz. Its population is 4.5 million, of which roughly 20% are Emirati nationals, with the remainder made up largely of nationals of other Arab states, as well as nationals from South and South-East Asia. The total area of the country is 83 600 square kilometers. The federation, which was established on December 2, 1971 (with its capital in the city of Abu Dhabi), is composed of seven emirates: Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al-Qiwain, Ras Al-Khaimah, and Fujairah. His Highness Sheikh Zayed Bin Sultan Al-Nahyan was elected president of the state for tenure of five years, which was renewed five consecutive times until his death in 2004, whereupon His Highness Sheikh Khalifa Bin Zayed Bin Sultan Al-Nahyan was elected as president.

31. A national constitution is in place, unifying the country under one president and, at the same time, maintaining the sovereign power of the head of each emirate, who exercises considerable control over oil and mineral rights and the generation of revenue within his emirate. The president is the head of state and is supported by a Vice President, a Council of Ministers, and a Supreme Council of Rulers. A national assembly performs a solely consultative function. The ruler of Abu Dhabi, the major oil producer, holds the position of President of the UAE, while the ruler of Dubai, the commercial center, is vice president and prime minister.

32. The stability and location of the UAE, roughly half way between Asia and Europe, together with expansionist economic policies, has made it an attractive area in which to do business. The economy's rapid growth is now entering its fifth consecutive year, underpinned by high oil revenue, a market-friendly development strategy, large inflows of foreign direct investment, and high rates of public and private sector investment.

33. The GDP, at current prices, has grown from almost USD 10 billion in 1975 to USD 164 billion in 2006, at an average annual rate of growth of 9.2%. The non-oil GDP achieved a rate of growth of 11.45% per annum during the same period, from USD 3.3 billion to almost USD 103 billion, while the oil GDP grew at an average of 7.1% per annum.

34. The drive for diversification led to a focus on specific sectors that might eventually sustain the continued growth of the economy. In the 10 years to 2005, the manufacturing sector grew at an annual average annual rate of 14.1%, the tourism sector at 15%, and the financial services sector at 15.4%. The more traditional sectors – wholesale and retail trade (12.9%) and construction (9.9%) – also continue to exhibit strong rates of growth. As a consequence, the private sector has been assuming a much larger role in the economic development of the UAE, and various world rating agencies have been giving relatively high ratings to an increasing number of UAE companies.

35. Individual emirates have taken statutory measures to create a number of free zones in which foreign nationals may trade outside the constraints of domestic commercial law. These zones are physical enclaves and, for the most part, are highly specialized, catering for single types of product or service (*e.g.* automobiles, information technology). Approximately 30 such zones have so far been created. In addition, provisions have been made for the creation of "financial free zones", which are intended to offer a base for international financial services. To date, only one such zone has been created – the Dubai International Financial Center. In all cases, while specific commercial laws have been enacted to cater for the specific needs of the free zones, the federal

criminal law (including the AML/CFT legislation) continues to apply to them all. Because of the very different regimes that apply in the DIFC, compared with the other free zones, throughout this report, the trading zones are termed "commercial free zones," while the DIFC is recorded as the "financial free zone".

36. The UAE ranks in the world top third according to the World Bank Worldwide Governance Indicators, covering 212 countries and territories. These indicators measure six dimensions of governance: voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law, and control of corruption. The UAE only lags behind in voice and accountability.

## **1.2. General Situation of Money Laundering and Financing of Terrorism**

37. The UAE is, by international standards, a law-abiding country whose citizens and residents enjoy low crime rates and civil and domestic harmony. While there is some level of domestic crime, the majority of serious criminal activity in the UAE relates to either trans-shipment of prohibited goods through the high-volume port system, or the commission of financial crimes and fraud-related offenses in the global financial sector. According to local law enforcement, the international narcotics trade, organized crime and earnings from institutional corruption in other countries provide a large part of the proceeds of crime laundered in or through the UAE. The majority of illegal proceeds entering the UAE are derived from offenses committed overseas.

38. While the UAE has recognized, and is responding to, the continuing challenges posed by increasingly well-resourced and well-organized transnational crime networks, the extent to which its systems, processes, and legislation can keep pace with criminal exploitation of a financial sector experiencing exponential growth remains a challenge at both strategic and implementation levels. As the UAE moves to ensure less reliance on the oil sector, it faces the challenge of diversifying income streams while at the same time ensuring there is a rigorous compliance framework for those new income streams.

39. The UAE is a society where the carrying of large amounts of cash and purchasing goods and property with cash is quite common. As a global observation, it is generally accepted that money launderers move funds by use of alternative remittance dealers, other international funds transfers, and cash couriers. In the UAE, large scale cash activity can provide an effective cloak to such activity. Recent law enforcement activity has identified a growing trend in the use of professional launderers and other third parties to launder criminal proceeds.

40. Terrorist activity, where it has been suspected, has been dealt with expeditiously and with the full force of severe penalties under the law. Cooperation by the UAE with other countries after the terrorist attacks on September 11, 2001 was swift and extensive.

## **1.3. Overview of the Financial Sector**

41. The structure of the domestic financial sector in the UAE as at end-2006 is summarized in the following table.

**Statistical Table 1. Structure of the UAE domestic financial sector**

Type of institution	Number of institutions	Number of branches
Commercial banks (national)	21	516
Commercial banks (foreign)	25	121
Investment banks	2	
Finance companies	11	18
Investment companies	13	
Financial intermediaries	15	1
Money changers	102	274
Securities brokers	100	
Life insurance companies	*	
Insurance brokers	*	

\* Data not available from the authorities.

42. The structure of the banking sector has been stable for many years, due primarily to a restrictive policy on the entry of new foreign-owned institutions. Approximately two-thirds of the national banks have some level of UAE or emirate government ownership, although none is wholly owned. The size of the banks' balance sheets has increased markedly in recent years on the back of strong lending to the real estate and equity markets. At end-2007 total assets were AED 866 billion (USD 250 billion), with deposits of AED 588 billion (USD 168 billion).

43. The securities market, which started in 2000, has seen rapid growth in recent years, although a sharp adjustment downwards took place in late 2005. There are two domestic markets, the Abu Dhabi Securities Market and the Dubai Financial Market, which together had 106 companies listed at end-2006. Market capitalization rose from USD 413 million in 2001 to USD 113 billion at end-2006. The Dubai Gold and Commodities Exchange (DGCX) started trading in November 2005 and operates within the Dubai Multi-Commodities Center (DMCC) free zone. A total of 612,000 contracts valued at USD 15.35 billion were traded on the DGCX in 2006.

44. There are approximately 50 insurance companies operating in the domestic market, of which about half are foreign-owned. The domestic companies are involved almost exclusively in non-life business (for cultural reasons), and the life sector is largely dominated by two foreign insurers providing cover to the sizeable expatriate community.

45. The Dubai International Financial Center opened in September 2004 with a remit "to create a regional capital market, offering investors and issuers of capital world-class regulations and standards". It is currently the only formal financial free zone within the UAE, although some financial services activity is undertaken within the DMCC. At end-2006, there were approximately 100 financial services firms authorized by the Dubai Financial Services Authority to operate within the DIFC, although only about two-thirds had commenced any significant level of activity. The total assets of the banking, investment, and insurance intermediation firms reported at end-2006 were just under USD 1 billion, with deposits of only USD 550 million.

#### **1.4. Overview of the DNFBP Sector**

46. The designated non-financial businesses and professions operate in the domestic sector, in the financial free zone, and in the commercial free zones; but the authorities were unable to provide the total number of DNFBPs operating in the UAE.

47. The ML and terrorist financing (TF) vulnerabilities exist throughout the DNFBP sector as a result of the heavy use of cash in the economy for business transactions, the expansion into offshore business, the use of international business companies, and the increasing amount of direct foreign investment from many countries. Other DNFBPs, such as dealers in high-value goods, for example luxury car dealerships and auction houses, are also highly vulnerable to ML and FT.

48. The DNFBPs active in the domestic sector and commercial free zones include dealers in real estate, dealers in precious metals and precious stones, company service providers, auditors who also provide accounting services, and lawyers. Notaries exist within the UAE, but they fall outside the intended scope of the FATF standard since they do not prepare for or engage in any financial transactions for clients. Casinos are prohibited under UAE laws. The mission was informed that there is a very small market for strict accounting services, and so such services are provided by the auditors, which, although generally prohibited from providing other services, do also, in practice, engage in some company formation and related activities.

49. The authorities were unable to provide the mission with the number of commercial free zones existing in the UAE or the number of DNFBPs operating within them or within the domestic market. Press reports indicate that approximately 30 such zones have been established, although many appear to be highly specialized, focusing on single products or activities.

50. The Dubai Multi Commodities Center is a free zone that houses the Dubai Gold and Commodities Exchange. Many of the dealers in precious metals and stones in the DMCC are wholesale dealers who are also members of DCGX.

51. The same types of DNFBPs operate within the DIFC as elsewhere in the UAE, except that trust service providers (TSPs) are also licensed to conduct business in the DIFC, which, uniquely within the UAE, has a legal framework that recognizes trusts.

#### **1.5. Overview of Commercial Laws and Mechanisms Governing Legal Persons and Arrangements**

52. Federal Company Law 8/1984 (the Commercial Companies Law) regulates the establishment of companies, both local and foreign, outside the free zones. All companies must have one or more national partners who account for at least 51% of the capital. Despite the ownership controls, the Commercial Companies Law stipulates that management of the company may be undertaken by the foreign partner. According to the authorities, since 2005, the ownership restriction no longer applies to Gulf Cooperation Council (GCC) nationals, who can therefore own 100% of a company's capital. The mission was advised that bearer shares are not permitted, but no citation was provided.

53. The basic characteristics of the types of legal person are as follows:

- General partnership company: an entity formed by two or more partners who will be liable to the extent of all their assets for the company liabilities.
- Simple limited partnership company: an entity formed by one or more general partners liable for the company's liabilities to the extent of all their assets, and one or more limited

partners liable for the company liabilities to the extent of their respective shares in the capital only.

- Joint participation company: a company formed between two or more partners to share the profits or losses of one or more commercial businesses being performed by one of the partners in his own name.
- Public joint stock companies: a company whose capital is divided into equal value shares available for public subscription, where the shareholders are only liable to the extent of their share in the capital.
- Private joint-stock company: a company incorporated by no fewer than three founders, whose shares are not offered for public subscription, and where the founder members will fully subscribe the capital.
- Limited liability company (LLC): a company where the number of shareholders may not be fewer than two or more than 50, and where the shareholders are only liable to the extent of their share in the capital.

54. In addition, a sole proprietorship is a simple business method whereby an individual trades on his own account pursuant to a trade license issued in his own name. This form of business entity is referred to as an "establishment" rather than a company, and is confined only to UAE nationals. Those businesses involving foreign nationals resident in the UAE would typically be formed as LLCs.

55. There are now a substantial and rapidly growing number of free zones within the various emirates, and each is operated in an independent fashion according to its governing legislation. The authorities were unable to cite an exact number, but press reports suggest that there are close to 30 such zones in existence, although many are highly specialized, often concentrating in a single type of product or service. In at least one of the free zones (Jebel Ali in Dubai), companies are able to be established with simply an accommodation address, and with no substantive presence or structure within the zone. These were classified as "offshore companies" and appear to match the structure of a classic international business company or IBC.

56. There is no provision for the creation of trusts or similar arrangements under UAE federal law, and foreign trusts are not recognized. However, trust law has been created in the DIFC, which is understood to be a unique case so far. This provides for the creation of express trusts, which, under the Regulatory Law, may only be administered by a trust service provider licensed and supervised by the DFSA.

## **1.6. Overview of strategy to prevent money laundering and terrorist financing**

### **AML/CFT Strategies and Priorities**

57. The assessors were not provided with any documents that articulated the UAE's overall policies and objectives for combating ML and FT. It appeared, therefore that there is no overall published government policy on AML/CFT matters. While the national committees tasked with the responsibility of overseeing the AML/CFT efforts might be expected to have formulated certain objectives to underpin a formal strategy, the mission was not made privy to any of the committees' discussions or output.

## **The institutional framework for combating money laundering and terrorist financing**

58. **The National Committees:** Article 9 of Federal Law 4/2002 (the AML law) provides for the establishment of the National Anti-Money Laundering Committee (the NAMLC). Its functions include the facilitation of the exchange of information and coordination between the foreign ministry, the ministries of interior, justice, finance and industry, economy and commerce, agencies concerned with issuing trade and industrial licenses, the central bank and the federal customs authority. The governor of the central bank is the chairman of the NAMLC. The committee meets on at least six occasions per year, as required when a new UN list in relation to terrorist financing is published, and for the consideration of other urgent matters. The committee can and often does conduct meetings by telephone especially on urgent matters.

59. Article 36 of Federal Law 1/2004 (the CFT law) provides for the establishment of the National Committee for Combating Terrorism (the NCFCT). Its functions include the exchange of information relating to combating terrorism with similar entities in other states and with international and regional organizations. Membership of the NCFCT includes the foreign ministry, the ministries of interior, justice and defense, the State Security Authority, the central bank, the Federal Customs Authority and any other entity joined by a decision of the Council of Ministers. The Under-Secretary of the ministry of foreign affairs is the chairman of the NCFCT. It meets at a minimum four times per year and adopts similar practices to that employed by the NAMLC in relation to urgent matters.

60. The NAMLC and the NCFCT are the principal organs for AML/CFT coordination and decision making in the UAE. The membership is comprised of very senior officers, which has advantages in terms of applying rigor and authority to the process of considering action to be taken, ensuring adherence in the implementation of such action. However, at the same time, the logistics in ensuring an efficient and effective functioning of such a high-level committee can be challenging. A formal sub-committee of operational officers does not exist.

61. **Law Enforcement:** As a united federation of emirates, the responsibility for law enforcement arises in the UAE on both a local and federal level.

62. **Customs:** Each emirate has a customs authority. The central government has also established a Federal Customs Authority whose primary task is to set the national policy framework and provide national and international coordination in the customs arena. Cross border interdiction of cash, while a responsibility of the customs authorities, is a matter that is sent to the relevant emirate or federal prosecution authority for a decision as to further action. There are no specialist AML/CFT units in any of the customs authorities.

63. **Police:** Similarly, in policing, each emirate has a police service attending to law enforcement and investigation on a local basis. Each emirate police force operates under the federal umbrella of the ministry of interior which, in addition to overall control and direction, also maintains exclusive jurisdiction over the investigation of the most serious crimes including terrorist matters. There is no designated federal investigative unit for the investigation of money laundering and terrorist financing matters, but specialist units do exist inside the larger police forces.

64. **Prosecutions:** The principal authority in the investigation of AML/CFT matters is the public prosecutor's office under the ultimate control of the Federal Attorney-General. While the police can conduct investigations, it is the public prosecutor's office which controls the primary conduct of AML/CFT investigations and confiscation action. All CFT matters are dealt with at a federal level. AML matters are dealt with at the national level for five emirates by the public prosecutors office in Abu Dhabi, but in Dubai and Ras Al Khaimah, the responsibility for AML matters rests with the local public prosecution offices. A specialist team of money laundering prosecutors has been established in Dubai.

65. **Courts:** The Federal Supreme Court in Abu Dhabi has exclusive jurisdiction over terrorist financing prosecutions. Money laundering offenses are dealt with by the courts in individual emirates applying federal laws in the determination of money laundering cases.

66. **Ministry of Justice:** The ministry of justice in Abu Dhabi is responsible for legislative drafting in AML/CFT together with mutual legal assistance and extradition. The ministry of justice also trains lawyers and members of the judiciary in AML/CFT.

67. **Financial Services Regulatory Authorities:** The Central Bank of the UAE is the lead agency in developing policies and overseeing the implementation of AML/CFT measures in the financial sector. The governor chairs the NAMLC, and the central bank also houses the FIU. Under Article 11 of the AML law, the agencies responsible for the licensing and supervision of financial institutions are required "to establish appropriate mechanisms to ensure compliance of those institutions with AML rules and regulations". This involves the central bank (with responsibility for banks, finance companies, investment companies, money changers, and hawaladars), the Emirates Securities and Commodities Authority (broker dealers and the exchanges), the ministry of economy and commerce (insurance companies), and the Dubai Financial Services Authority (all financial services firms operating within the DIFC financial free zone). With the exception of the DFSA, these agencies generally issue their instructions and guidelines in relation to AML in the form of circulars or board resolutions. The DFSA has a structured AML/CFT module within its regulatory rulebook.

68. **DNFBP Regulatory Authorities:** Within the domestic sector and the commercial free zones, the various DNFBPs are overseen by a variety of ministries and agencies in respect of their business or professional licenses, but none of these authorities has assumed responsibility for monitoring AML/CFT compliance. Within the financial free zone, the DFSA is responsible for overall supervision (including AML/CFT) of the so-called ancillary service providers (encompassing lawyers and accountants) and TSPs that operate in the financial services structure; while the Dubai International Financial Centre Authority regulates those businesses and professions in the broader structure of the DIFC, including company service providers, lawyers, accountants, jewelers, and real estate agents.

69. **International AML/CFT Liaison:** The UAE is an active member of the Middle East and North African Financial Action Task Force; and by virtue of its membership in the Gulf Cooperation Council, the UAE also attends meetings of the Financial Action Task Force. The FIU is the designated agency for international AML/CFT liaison and it is a member of the Egmont Group of FIUs. There are no specialized investigation groups established for liaison and cooperation with overseas law enforcement authorities, although multi-agency task forces have been created on an as need basis. Investigative agencies avail themselves of the services of Interpol and maintain bilateral intelligence links with overseas entities.

### **Approach Concerning Risk**

70. The UAE authorities have not undertaken any structured risk assessment of the country's AML/CFT threats within the financial sector and the general approach to implementing preventive measures is not risk-based.

### **Progress since the Last IMF/WB Assessment or Mutual Evaluation**

71. The AML/CFT regime in the UAE was assessed under the FATF 2002 methodology during the course of a joint World Bank/IMF mission in 2004. While one of the key findings of that assessment noted that the UAE had taken significant steps towards the implementation of an AML/CFT regime, the assessment team was not able to reach a conclusion on the exact nature or extent of the money laundering problem in the UAE. Accordingly, it recommended that the National Anti-Money Laundering Committee carry out a comprehensive assessment of the nature

and scope of money laundering in the UAE as the basis for developing its strategy for dealing with the problem.

72. Particular areas of concern to the 2004 assessment team were vulnerabilities in the areas of both inward cash movements and inward wire transfers, a lack of recognition by the authorities as to the extent to which overseas criminal groups use the UAE financial system to launder money, a need for new legislation on international cooperation to set out a clear framework for the provision of mutual legal assistance, and the need for regulation of a large number of unregistered hawaladars. The 2004 assessment also noted a need for legislative action in relation to the creation of additional predicate offenses and the extension of formalized AML/CFT controls to a number of emerging or partially regulated sectors, in particular the gold and jewelry sector. Clarity was also called for as to the extent and operation of the powers of the FIU particularly relating to both the obtaining and dissemination of information together with concerns as to whether STRs were being reported directly to the FIU as opposed to other regulatory bodies.

73. The FATF standards have undergone significant change since the UAE was last assessed and there are many new detailed requirements. Moreover, the FATF standard now requires that key measures be contained in laws, regulations or other enforceable instruments, and that the effective implementation of the measures in place must also be assessed. Accordingly, the progress made by the authorities in recent years has been over-shadowed in many areas by new international standards. The assessors acknowledge that the authorities are aware of the new requirements and note, in particular, that the core agencies of the central bank and the financial intelligence unit have diligently been taking steps to disseminate information regarding the new standard, particularly by hosting a number of training seminars for both public and private sector persons.

74. Implementation of the new standards in the UAE is largely dependent on having a robust legal framework in place which contains the key elements in law, regulation or other enforceable means. Unfortunately, the good intentions of the authorities to implement measures consistent with the latest recommendations are hampered by inadequate and antiquated laws.

## 2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

### 2.1. Criminalization of Money Laundering (R.1 & 2)

#### 2.1.1. Description and Analysis

75. **Legal Framework:** The UAE has criminalized money laundering under Federal Law No.4 of 2002 Regarding Criminalization of Money Laundering (the AML Law). The AML law also applies to the financial free zones by virtue of Article 3(1) of Federal Law 8/2004 regarding financial free zones which specifically states that the AML law applies to all operations in such zones. Operations in the financial free zones are defined to include “financial activities: financial and banking activities and services, insurance and re-insurance, financial markets and supporting activities licensed to be carried out in the free zones, supporting activities: financial and cash brokerage services and advice, provision of goods and services to companies and establishments and individuals in the financial free zones, and Financial Banking Activity: financial banking business and the business of banks”. In practice, each financial free zone then establishes its own rules and procedures to implement the AML law. The authorities have advised the mission that there is currently only one financial free zone in the UAE being the DIFC.

76. There are also a number of free zones which exist in the UAE. The commodities market (The Dubai Gold and Commodities Exchange) operates in one such free zone of the Dubai Multi-Commodities Center. After the onsite visit, the mission was advised by the ministry of justice that the AML law applies to the free zones as they are part of the UAE and are only distinguished from the “domestic” part of the UAE by specialized tax and duty exemptions.

77. **Criminalization of Money Laundering:** Money laundering is criminalized under Article 2 of the AML law which states that “Where a person intentionally commits or assists in commission of any of the following acts in respect of property derived from any of the offenses stated in clause (2) of this article, such person shall be considered a perpetrator of the money laundering offense: (a) the conversion, transfer or deposit of proceeds, with intent to conceal or disguise the illicit origin of such proceeds; (b) the concealment or disguise of the true nature, source, location, disposition, movement rights with respect to or ownership of proceeds; (c) the acquisition, possession or use of such proceeds”.

78. **The Laundered Property:** Property is defined as assets of any kind, whether corporeal or incorporeal, moveable or immovable, and legal documents or instruments evidencing title to those assets or any rights related thereto. Proceeds are defined by the AML law as “any property resulting directly or indirectly from the commission of any of the offenses stated in clause (2) of Article 2 herein”. Proceeds would include money from the financing of terrorism as the UAE has signed and ratified the International Convention for the Suppression of the Financing of Terrorism by Decree No. 91 of 2005. The FT is also criminalized under Articles 4, 12, and 13 of the Federal Law 1/2004 (the CFT law). Thus, FT becomes a predicate offense for money laundering pursuant to Article 2(2)(g) being “any other related offenses referred to in international conventions to which the State is a party,” and having been criminalized in domestic legislation. In practice, however, a number of authorities are not aware that the financing of terrorism is a predicate offense for money laundering under Article 2(2) of the AML law. Some cited Section 16.5 of the Central Bank Regulation 24/2000 as a possible requirement but they also acknowledged that this regulation only applied to financial institutions that are regulated by the central bank.

79. **Proving Property is the Proceeds of Crime:** During the investigative stage of the proceedings, including at the stage a decision is made to initiate proceedings, a conviction for the predicate offense is not required. At the trial stage, however, the public prosecutor’s office must be able to prove all elements of the specific predicate offense to a criminal standard. In practice, the Dubai public prosecutor’s office usually offers evidence of a conviction for the predicate offense from a foreign country or a confession obtained from the defendant in the UAE. From

discussions with the public prosecutor's office, it seems that convictions or confessions for the predicate offense are, in practice, required. At the face-to-face meeting in January 2008, the ministry of justice indicated that they had located one case from 2004 where a confession was withdrawn (but this fact was led in evidence) and there was a conviction for money laundering. It remains unclear whether or not this case will be followed in subsequent cases.

80. **The Scope of the Predicate Offenses:** The scope of predicate offenses for money laundering is limited to the list set out in Article 2, clause 2 as well as Articles 4, 12 and 13 of the CFT law regarding the financing of terrorism. Article 2(2) of AML Law includes the following predicate offenses: "(a) narcotics and psychotropic substances; (b) kidnapping, piracy and terrorism; (c) offenses committed in violation of the environmental laws; (d) illicit dealing in firearms and ammunition; (e) bribery, embezzlement, and damage to public property; (f) fraud, breach of trust, and related offenses; and (g) any other related offenses referred to in international conventions to which the State is a party". For purposes of anti-money laundering and combating the financing of terrorism, the UAE has signed and ratified the following international conventions: the Vienna Convention, the Palermo Convention (ratified May 7, 2007), the Merida Convention (ratified February 22, 2006), and the International Convention for the Suppression of the Financing of Terrorism (ratified by Federal Decree No. 91 of 2005). The offenses of drug trafficking, financing of terrorism and corruption listed in those conventions respectively would also be predicate offenses for money laundering as they are also related to listed offenses of narcotics, bribery, embezzlement, and terrorism respectively, and therefore fall squarely under Paragraph 2(2)(g). In practice, no additional offenses would be included by virtue of the closed nature of the list approach.

81. The mission was advised that the following predicates listed in Article 2(2) of the AML law are criminalized in the Penal Code, but the authorities were unable to provide all the relevant citations to the Penal Code to the mission:

(a) Illicit dealing in narcotics and psychotropic substances (Law 14/1995 on Combating Narcotics and Psychotropic Substances, Article 6).

(b) Kidnapping (Article 320 of the Penal Code regarding kidnapping of children by family members), piracy and terrorism (Articles 177, 178, and 191 of the Penal Code).

(c) Offenses committed in violation of the environmental laws.

(d) Illicit dealing in firearms and ammunition.

(e) Bribery (Articles 234–237 of the Penal Code), embezzlement (Articles 224–230 of the Penal code regarding public officials), and damage to public property.

(f) Fraud (Articles 399–403 and Article 423 of the Penal Code), a, breach of trust and related offenses.

(g) Any other related offenses referred to in international convention to which the State is a party (the financing of terrorism (Article 12 of the CFT law) and trafficking in Human Beings (Federal Law 51/2006 on Combating Trafficking of Human Beings)).

82. The authorities were unable to provide specific cites other than the above regarding whether a range of offenses is available in most categories of offenses.

83. The following predicate offenses listed in the glossary of the FATF 40 as the minimum requirement are not covered by the AML law. All of these may be criminal offenses in the UAE (although not predicates for money laundering), but the authorities were unable to provide all of the relevant legal citations for these offenses during the mission. After the mission, the authorities provided the assessors with the following references. The assessors were not given copies of penal laws other than the Penal Code. The assessors were, however, able to independently verify the relevant below provisions of the Penal Code:

- Participation in an organized criminal group and racketeering: Articles 172, 186, 187, 188, 191, 192, and 196 of the Penal Code.
- Human trafficking and migrant smuggling: Federal Law 51/2006 on Combating Trafficking in Human Beings.
- Sexual exploitation, including of children: Articles 354–357 and 363–370 of the Penal Code.
- Illicit trafficking in stolen and other goods: Article 407.
- Currency counterfeiting: Article 204–210 of the Penal Code.
- Counterfeiting and piracy of products: Federal Law 4/1979 on Combating Counterfeiting in Commercial Matters.
- Murder: Articles 331–336 of the Penal Code.
- Grievous bodily injury: Articles 337–341 of the Penal Code.
- Kidnapping, illegal restraint, and hostage taking: Article 344 of the Penal Code.
- Robbery or theft: Articles 381–393 of the Penal Code.
- Smuggling: no citations provided.
- Extortion: Articles 351, 397–398 of the Penal Code.
- Forgery: Articles 205–223 of the Penal Code.
- Insider dealing and market manipulation: Federal Law 17/2004 on Insider Commercial Dealing.

84. **Threshold Approach for Predicate Offenses:** As the UAE has chosen a list approach, the threshold approach therefore does not apply. The authorities were unable to provide the range of sanctions for offenses listed in Article 2, clause 2.

85. **Extraterritorially Committed Predicate Offenses:** Article 22 of the Federal Penal Code of 1987 provides that “any citizen who performs out of the State an act that is considered a crime according to the provisions of this law...shall be punished in accordance with the said provisions if he returns to the State and provided that such act is punishable under the law of the country where it is committed.” Furthermore, Article 21 of the Penal Code states that “the provisions of this law shall apply to any person found in the State after committing abroad, as a principal or an accomplice, one of the following crimes: sabotage or impairment of the international communication means or after having committed any crime of drug racket [sic.], white slavery, child trafficking, slave trade or acts of piracy or international terrorism.” Only the listed offenses

are included and therefore the full range of predicates is not covered by this provision. Furthermore, this provision only applies if the person who committed the predicate offense is found in the UAE.

86. The Public Prosecutor's Office of Dubai confirmed that they can enter foreign conviction orders for predicate offenses as evidence in the UAE courts and that this, in practice, has occurred although the authorities could not provide the mission with any statistics on the matter. The public prosecutor's office can prosecute money laundering cases in the UAE where the predicate offense has been committed abroad. Evidence of predicate crimes from abroad may also be entered into evidence in the UAE courts. All elements of the offense must be proved to the criminal standard.

87. **Laundering One's Own Illicit Funds:** The Dubai Public Prosecutor's Office confirmed that persons may be charged and convicted of "own proceeds" or self-laundering under the UAE penal system. In practice, the Dubai Prosecutor's Office has charged people with self laundering. The Dubai Prosecutor's Office was not able to provide the mission with any details in this regard. The Abu Dhabi Prosecutor's Office has not laid a self-laundering charge.

88. **Ancillary Offenses:** Ancillary offenses are penalized by the general principles of the Penal Code which, by general principles of law, can be applied to the money laundering offense in the AML law. Conspiracy to commit an offense and other forms of participation are penalized by Articles 44–47 of the Penal Code. Attempt is penalized by Articles 34–37 of the Penal Code. Aiding and abetting, facilitating, and counseling the commission, are also listed in Article 44 of the Penal Code.

89. Offenses listed in Article 21 of the Penal Code may be prosecuted in the UAE when they have occurred abroad without the need for the act to be an offense in the foreign jurisdiction. Article 21 states "the provisions of this law shall apply to any person found in the State after committing abroad, as a principal or an accomplice, one of the following crimes: "sabotage or impairment of the international communication means or after having committed any crime of drug racket [sic.], white slavery, child trafficking, slave trade or acts of piracy or international terrorism."

90. **Liability of Natural Persons:** Article 2 of the AML Law applies to any person who "intentionally commits or assists in any of the following acts in respect of property derived from any of the offenses stated in clause 2 of this Article..."

91. **The Mental Element of the ML Offense:** Intentionality is not specifically defined in the UAE Penal Code. In practice, however, the prosecution must prove that the accused knew that he was committing a crime. While each case is different, the intentional element of the money laundering offense can be inferred from objective factual circumstances by the judge hearing the case. After the onsite visit, the authorities provided the mission with two cases from the appellate court in which this matter was considered. The cases clearly state that the weighting of evidence is decided by the competent court (see Appeal Case 257/2002 and Appeal Case 355/2002.)

92. **Liability of Legal Persons:** Article 3 of the AML law specifies that financial institutions and other financial, commercial, and economic establishments operating in the UAE shall be criminally liable for the offense of money laundering if intentionally committed in their respective names or for their account. While, more generally, Article 65 of the Penal Code establishes the criminal liability of legal persons for the crimes committed by their representatives, directors, agents or committed in their respective names thereby creating corporate liability, this provision may not be used as there is a more specific provision in the AML law as listed above. The fine under the Penal Code is limited to AED 50 000, but this would be overridden by the fine of up to AED 1 million (approximately USD 270 000) as set out in the AML law.

93. **Possible Parallel Criminal, Civil, or Administrative Proceedings:** Article 3 of Federal Law 4/2002 specifically allows for both criminal and administrative sanctions to be taken against financial institutions, as well as other financial, commercial, and economic establishments as defined by the law. According to the authorities, civil proceedings may be launched in the UAE under the Civil Code in cases where someone has suffered loss as a direct result of an action by a person, natural or legal. The authorities were not able to provide citations to the Civil Code in this regard.

94. **Sanctions for ML:** Article 13 of the AML law provides that an individual who commits money laundering shall be punished by up to seven years imprisonment or a fine of at least AED 30 000 (approximately USD 8 000) and not more than AED 300 000 (approximately USD 80 000). Fines under the Penal Code for serious offences range between AED 100 and AED 100 000 (approximately USD 27 000). In addition, the proceeds or an equivalent amount are confiscated. Article 14 of the same law provides that where the money laundering offense has been committed by a legal person (as defined by this law in Article 3), the fine should be not less than AED 300 000 (approximately USD 80 000) and not more than AED 1 million (approximately USD 270 000). In addition, the proceeds or an equivalent amount to the proceeds are confiscated. The incarceration period is consistent with the incarceration periods for other serious crimes, particularly those that are proceeds-generating crimes. The levels of fines imposed on legal persons, while not necessarily high in and of themselves given the dynamic nature of the economy in the UAE, are higher for AML than for other criminal offences. The Penal Code provides for a fine of AED 50 000 (approximately USD 13 000) as a penalty.

95. **Implementation:** The Attorney-General of Abu Dhabi heads up the prosecution office in Abu Dhabi which has jurisdiction for money laundering across five of the emirates. Dubai and Ras Al Khaimah conduct their own money laundering prosecutions at the emirate level. To date, the Abu Dhabi prosecution office has only commenced two prosecutions, both in Sharjah. The first failed for lack of evidence and the second is still before the courts. The FIU has sent no STR cases to the attorney-general in Abu Dhabi in the last two years. There have been no prosecutions or investigation for money laundering in Ras Al Khaimah but this is a small emirate. In Dubai, the public prosecutor's office has commenced a number of cases for money laundering. In 2003, the public prosecutor commenced five cases; in 2004, seven cases; in 2005, eleven cases; in 2006, four cases and in 2007, two cases.

### 2.1.2. Recommendations and Comments

96. The mission recommends that the authorities amend the AML Law in the following ways:

- Widen the list of predicate offenses to cover the minimum list of offenses as defined in the glossary of the FATF 40+9, which may require the criminalization of acts that are currently not criminal offenses in the UAE.
- Ensure that prosecution of the money laundering offense is more fully implemented in the emirates beyond Dubai.

### 2.1.3. Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating
R.1	PC	<ul style="list-style-type: none"> <li>• Limited predicate offenses which cover less than half of the minimum categories of offenses.</li> <li>• Authorities unable to confirm that, when proving property is the proceeds of crime, it should not be necessary to obtain a conviction for the predicate offense.</li> <li>• Authorities unable to confirm that predicate offenses include a range of</li> </ul>

	Rating	Summary of factors underlying rating
		<p>offenses in each of the designated categories of offenses.</p> <ul style="list-style-type: none"> <li>Limited implementation, only two prosecutions taken outside Dubai and that is no evidence provided regarding the number of Dubai prosecutions.</li> </ul>
R.2	LC	Limited implementation, only two prosecutions taken outside Dubai and that is no evidence provided regarding the number of Dubai prosecutions.

## 2.2. Criminalization of Terrorist Financing (SR.II)

### 2.2.1. Description and Analysis

97. **Legal Framework:** The financing of terrorism is criminalized by Federal Law 1/2004 (the “CFT law”). Article 3 of Law 8/2004 applies all federal law, except for civil and commercial laws, to the financial free zones. The CFT law, being a criminal law, therefore applies to the financial free zone and the activities conducted in it. As with the AML Law, it remains unclear as to the basis on which the CFT law applies to the non-financial free zones.

98. **Criminalization of Financing of Terrorism:** Article 12 of the CFT law criminalizes the financing of terrorism. It states: “whoever gains, provides, collects, carries, or transfers property, directly or indirectly, with intention to be used or knows they are going to be used, in whole or in part, to finance any of the terrorist acts provided in this Decree by Law within the State or abroad, whether the said act occurred or not occurred, shall be punished with life or provisional imprisonment. And shall forfeit the property or possession subject of the offense and proceeds thereof or property equivalent to their value, if transferred or substituted in whole or in part or mixed with other property, gained from legal sources”.

99. Article 13 of the CFT law states that “Whoever carries, transfers, deposits property on the account of another person, or conceals or disguises its nature, essence of its source or its place as well as whomever possesses property or deal with [sic.], directly or indirectly, with intention to be used or know they are going to be used in whole or in part, to financing any terrorist acts provided in this law, within the state or abroad, whether the said act occurred or no occurred, shall be punished with life or provisional imprisonment”.

100. Terrorism is defined by Article 2 of the same law to mean every act or omission, the offender commits himself to execute a criminal design, individually or collectively, with intention to cause terror between people or terrifying them, if the same causes breach of public order or endangering the safety and security of the society or injuring persons or exposing their lives, liberties, security to danger, including Kings, Heads of States and Governments, ministers and members of their families or any representative or official of the state or an international organization of an intergovernmental character and members of their family forming part of their household entitled, pursuant to international law, to protection; or causes damage to the environment, any of the public, private utilities or domain, occupying, seizing the same or exposing any of the natural resources to danger”.

101. For CFT purposes, terrorist acts must be criminalized within the CFT law as Article 13 of the CFT law states “to financing any terrorist act provided in this law”. Acts of the seizure of aircraft; acts against the safety of civil aviation; crimes against internationally protected persons and hostage-taking have also been criminalized in the CFT law. The UAE is a party to all of the terrorism conventions.

102. Combined, these above provisions cover the provision and collection of funds as well as funding, directly or indirectly, a terrorist act, an organization or a terrorist individual. The act in question does not have to take place. However, financiers must believe that they are contributing

to an act, whether or not it takes place. While this is consistent with the ICSFT, it is not consistent with SR II which requires that the financing of any one of a terrorist act, a terrorist or a terrorist organization be criminalized. Property is defined by the CFT law as “assets whatsoever their nature is, material or immaterial, moveable or immoveable including national currency, foreign currencies, negotiable and commercial instruments, securities, documents, instruments proving acquisition of assets or any right related thereof. The definition is broader than that of proceeds in that it includes the provision and collection of funds and would cover both legitimate funds and proceeds.

103. Attempted offenses of terrorist financing would be covered by Articles 34–37 of the Penal Code which states that an attempt to commit the offense would be considered an offense. Neither mere intention nor participation and planning can be considered an attempt. Attempt requires an overt act which is a constituent part of the basic material element of the offense.

104. Articles 20–23 of the CFT law criminalize abetting, participation, conspiracy, and knowledge of the crime before the fact in line with Article 2(5) of the ICSFT. Furthermore, the general principles of “accomplice” set out in Articles 44–52 of the Penal Code are applicable.

105. **Predicate Offense for Money Laundering:** Articles 4, 12, and 13 of the CFT law specifically state that the laundering of funds with the intention that they be used or with knowledge that they are to be used to finance any terrorist acts as provided by this law, shall be punished by life or provisional imprisonment. Furthermore, as the UAE has ratified the ICSFT, and has criminalized FT in its domestic legislation, the financing of terrorism becomes a predicate offense for money laundering under Article 2(2)(g) of the AML Law, which states that “any other related offenses referred to in international conventions to which the State is a party”.

106. **Jurisdiction for Terrorist Financing Offense:** Article 12 of the CFT law includes funds to be used to finance terrorist acts “within the State or abroad”. Furthermore, the mission was advised that by Article 28 of the CFT law, this law is subject to certain provisions of the Penal Code. Article 28 states: “Without prejudice to provisions of Chapter Two of Section Two of the First Book of the Penal Code, provisions of this Decree by law shall apply to any offense provided in thereof, committed abroad: (a) against a citizen of the State; (b) against the public domain abroad including embassies, diplomatic or consulate premises affiliated thereto; (c) intending to compel the State to do or refrain from doing any act; and (d) on board conveyance for transport registered in the State or carries its flag. Provisions of this decree by Law shall apply to whomever being found within the territory of the State after the commission abroad of any of the offenses provided and laid down in any of the international conventions in force, the State is a member thereof, in case he is not extradited”. The Penal Code citations refer to the extraterritoriality provisions of the Penal Code in Articles 16–25, which are actually wider than the references listed in Article 28, so making them applicable also in this instance. Jurisdiction may be taken where one of the actions constituting the offense has been committed in the UAE or if its results have been or were intended to be produced in the UAE. Therefore, financing a terrorist organization or terrorist act abroad from the UAE could be prosecuted in the UAE.

107. **The Mental Element of the TF Offense:** The mental element of the offense is “with intention that they be used or know they are going to be used.” The mental element may be inferred from objective factual circumstances during the judicial assessment process or in convictions carried out by the courts. The authorities were unable to provide any case law on this matter.

108. **Liability of Legal Persons:** Article 25 of the CFT law provides sanctions for legal persons whose representatives, managers or agents commit or contribute to the commission of any offenses in this law. Parallel sanctions against individuals are possible under Article 26 of the same law. Legal persons must also be dissolved and the premises closed. Its property and articles that are the subject of the offense will also be forfeited. Where seizure is not possible, a fine equivalent to the value of the property will be levied against the company.

109. **Sanctions for FT:** Criminal sanctions include life imprisonment or provisional imprisonment for individuals under Article 12 of the CFT law. Provisional imprisonment is defined in Article 68 of the Penal Code as “the period of temporary imprisonment may neither be less than three years nor more than fifteen years unless the law stipulates otherwise.” Separately, a fine of between AED 100 000 and AED 500 000 (approximately USD 30 000 to USD 150 000) can be levied against legal persons who are convicted of financing terrorism.

110. **Implementation:** Unlike the money laundering framework, the Abu Dhabi prosecutor’s office, headed by the attorney-general, conducts all cases regarding terrorism and terrorist financing throughout all seven emirates. Under Article 31 of the AML Law, the attorney-general has the personal power to freeze any property or proceeds before trial. Once the court is seized of the matter, it has the same powers under Article 34 of the same law. To date, there have been five cases prosecuted for terrorism, with three prosecutions and two convictions where sentences ranged from six months to one year. These cases which have been prosecuted are on the less serious end of the spectrum. There have also been two cases of terrorist financing for provision of funds and weapons to overseas terrorist groups, both of which were successfully prosecuted in 2005. In the first case, sentences ranged from three to seven years for the three convicted UAE nationals. The fourth person was not convicted but was deported to Russia. In the second case, one person was found not guilty and the other was sentenced to one year in jail and then deported to Syria. Neither the governor of the Central Bank nor the attorney-general froze any funds, property or assets in these cases. The maximum sanction for terrorist financing is life in prison.

### 2.2.2. Recommendations and Comments

111. While the mission accepts that these are currently criminalized, clarification of the separate offenses of financing a terrorist organization, a terrorist or a terrorist act would be helpful.

### 2.2.3. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	LC	<ul style="list-style-type: none"> <li>Unclear that FT applies to financing a terrorist (without an act or the contemplation of one)</li> </ul>

## 2.3. Confiscation, freezing and seizing of proceeds of crime (R.3)

### 2.3.1. Description and Analysis

112. The freezing, seizing and confiscation of proceeds of crime in the UAE are governed by five key pieces of legislation: the AML Law, Regulations Concerning Procedures for Money Laundering issued by the central bank on November 14, 2000 as amended (the AML Regulations), the CFT law, Federal Law No. 3 of 1987 on The Penal Code (the Penal Code) and Federal Law No. 35 of 1992 on The Issuance of Penal Procedures Law (the Penal Procedures Law).

113. **Confiscation of property related to ML, FT, or other predicate offenses including property of corresponding value:** The penalty provisions in Articles 13 and 14 of the AML law provide for the confiscation of proceeds from the commission of money laundering offenses. Property is broadly defined as assets of every kind whether corporeal or incorporeal, moveable or immovable and includes the legal documents or instruments evidencing title to those assets or any rights related thereto (Article 1). Article 1 further provides that instrumentalities include any item in any way used or intended for use in commission of any of the predicate offenses for money laundering. The money laundering offense is limited by the restricted number of predicate offenses listed in Article 2 of the AML Law.

114. **Forfeiture of property, including property of corresponding value, is applicable to the following offenses in the CFT law:** furnishing terrorists with property, advice, and equipment (Article 4), financing terrorist acts (Article 12), carrying, transferring, depositing, concealing, or disguising terrorist financing (Article 13). Forfeiture action is also available where legal persons commit or contribute to the commission of terrorist offenses (Article 25).

115. The AML Regulations in Article 16(5) impose a no-threshold suspicion-based requirement on financial institutions regulated by the central bank to freeze transactions and accounts where the transaction might be meant for terrorist organizations or for terrorist purposes. The institution must then inform the central bank in writing immediately. The central bank or the attorney general can then take freezing action as outlined above.

116. According to Article 82 of the Penal Code, which deals with all property used or intended to be used in crimes or in misdemeanors, and Article 182, which deals with organizations affecting the state's internal security, any cash, property, and other things used or associated with the offenses may be seized and confiscated.

117. **Confiscation of Property Derived from Proceeds of Crime:** Article 82 of the Penal Code permits the confiscation of "all things seized as a result of the crime". The authorities pointed to this provision in addition to the specific confiscation provisions under the AML and CFT laws. The authorities' reliance on Article 182 was notably in the absence of any other specific provisions permitting the confiscation of all proceeds of crime.

118. Confiscation pursuant to Article 82 of the Penal Code maintains the rights of bona fide third parties to a claim over the confiscated property upon the issuance of a conviction of a crime or misdemeanor. However, in circumstances where the manufacture, use, possession, or sale of the confiscated property is in itself a crime, the rights of the third party are extinguished.

119. Provisional measures to prevent dealing with property that has been the subject of freezing action are available under both the AML and CT Law.

120. Pursuant to Article 4 of the AML Law, there are three provisional measures available: the central bank can ex parte freeze property held with financial institutions for seven days; the public prosecutors office can ex parte seize property in accordance with its established procedures; and a court can order attachment of property for undetermined periods if the property was related to a money laundering offense.

121. While generally broad in scope, there are limiting qualities in each provisional measure. The central bank's power does not extend to entities other than financial institutions regulated by the central bank, which means that entities not licensed by the bank are not caught by this provision. On the face of the statute, the exact powers of the prosecutors are not clear and accordingly uncertainty and potential for legal challenge may flow in this regard. In discussions with the public prosecutor's office, however, it was emphasized that this is a very broad power which has rarely been challenged. Finally, the broad power of the court is limited to action in relation to money laundering offenses, the definition of which does not extend to all predicate

offenses as recommended by the FATF. It is not clear as to whether the court order is made ex parte in all circumstances or whether, as per the procedures in the Penal Procedures Law, the matter has progressed to a stage where the suspect is before the court and either he or any party subject of any possible order can make submissions to the court as to any provisional action.

122. While, as noted above, there is protection for third parties where confiscation is undertaken pursuant to the Penal Code, there is, however, no explicit mention in the AML law as to the protection of the rights of bona fide third party. Pursuant to Article 79 of the Penal Procedures Law, a person who claims title to the seized exhibits in a criminal matter can request their return from the public prosecutor. A person's rights to take civil action in relation to the return of seized goods is available irrespective of whether the seized goods are the subject of a return order by the public prosecutor's office as set out in Article 83 of the Penal Procedures Law.

123. In relation to the anti-terrorist laws, Article 31 of the CFT law permits the federal Attorney- General to order the freezing or seizure of any property, balances, accounts, or proceeds suspected to be used in financing or committing offenses under the CFT law. The order remains extant until the completion of the investigations conducted into the offenses. Pursuant to Article 32, the governor of the Central Bank or his deputy can order freezing or seizure of balances or accounts suspected of being used in the commission of offenses under the CFT law. The order can extend to the proceeds of such crimes. An Article 32 order only lasts seven days, but the order can be extended by the attorney-general from the seventh day until the court takes jurisdiction of the matter. At that stage, Article 34 of the CFT law provides for a court to order the seizure of property and proceeds until the end of the trial. In practice, the attorney-general's order will remain in effect until the matter goes before the courts, and if no date is set, there is no legal impediment to the attorney-general's order remaining in effect for a substantial period of time.

124. Article 33 permits a person against whom a decision was made to contest it in court. The law is silent as to whether the aggrieved party in this instance could constitute a third party as opposed to the principal suspect in circumstances where the third party may be the title holder of the subject property. If, as it would appear, such a construction were possible, in these circumstances, third party rights are protected in CFT seizure cases, at least to the extent that the order can be contested in a court of law. The provisions of Article 82 of the Penal Code also operate to protect third party rights where a conviction has been issued for a crime or misdemeanor.

125. **Identification and Tracing of Property subject to Confiscation:** While there are extensive provisions in the Penal Procedures Law that clearly permit law enforcement officers to identify property that may be subject to confiscation proceedings, the ability of FIU officers to do so is problematic. This is important because of the role that the governor of the Central Bank plays in issuing confiscation orders based on recommendations made to him by the FIU. The FIU officers do not fall within the category of law enforcement officers as defined in Article 33 of the Penal Procedures Law: rather, they are officers of the central bank. Pursuant to Article 100 of Federal Law No.10 of 1980 (the Banking Law), officers of the central bank can exercise central bank powers to enquire into accounts held by financial institutions licensed by the bank.

126. **Power to Void Actions:** The authorities advised the mission that under general principles of law, the courts may set aside any contract which includes provisions against the general order or in which the subject is criminal in nature. Article 6 of Federal Law No. 22 of 1991 concerning the Notary Public and Article 210 of Federal Law No. 5 of 1985 on Civil Procedures set out the conditions in detail. While not specifically relating to AML/CFT, the general coverage of the voiding power as described by the authorities appears to be adequate.

127. Statistics as to the instances of the setting aside of a contract on the basis of these provisions when the matter related to money laundering and terrorist financing were not available. The absence of comprehensive statistics in relation to confiscation actions under the AML and

CFT laws in addition to confiscations under the Penal Code did not allow the assessors to make conclusions as to the effectiveness of these laws.

128. **Additional Elements – Confiscation of assets from organizations principally criminal in nature:** There are no specific provisions in the UAE that provide for the confiscation of assets from organizations principally criminal in nature. The provisions in Chapter II Part One Volume 2 of the Penal Code in relation to armed gangs and the confiscation of their assets relate to crimes affecting the internal security of the UAE and do not appear to be applicable to this criteria.

129. Vibrant financial centers with emerging entities such as free zones and other financial services existing in an environment of variable regulation are by nature extremely attractive to organized criminal groups. Concerns expressed to the mission by law enforcement agencies in the UAE as to emerging risks of organized crime groups from South Asia and the former Soviet Union operating on an occasional basis in the UAE highlight the need for legislation to specifically outlaw organized crime.

130. **Civil forfeiture:** The property of a person cannot be confiscated unless there is a conviction. However, in circumstances where no person has been charged with the commission of the crime and perpetrators are unknown, any property that was used in the commission of the crime can be confiscated without the conviction of any person. The authorities were not in a position to provide legislative provisions to support this information which was provided in the detailed assessment questionnaire.

131. **Confiscation of Property which Reverses Burden of Proof:** The authorities were not in a position to provide information in relation to whether UAE laws require an offender to demonstrate that property that is the subject of confiscation action is in fact of lawful origin. Similarly, the authorities were not in a position to indicate whether a public prosecutor needs to prove the unlawful origin of property prior to a confiscation order being made.

### 2.3.2. Recommendations and Comments

132. The mission recommends that consideration be given to clarifying the rights of third parties in confiscation actions under the AML law and the CFT law.

### 2.3.3. Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	LC	<ul style="list-style-type: none"> <li>In the absence of comprehensive statistics the assessors could not make conclusions as to the effectiveness of the confiscation laws.</li> </ul>

## 2.4. Freezing of funds used for terrorist financing (SR.III)

### 2.4.1. Description and Analysis

133. Legal Framework: Article 12 of the CFT law criminalizes the financing of terrorism. Article 36 of the same law creates the National Committee for Combating Terrorism. The NCFCT is made up of senior representatives from the foreign ministry, the ministry of interior, the ministry of justice, the State Security Authority, the ministry of defense, the central bank, the Federal Customs Authority, and any other entity joined by decisions of the Council of Ministers. To date, the Council of Ministers has not added any parties to the NCFCT.

134. In practice, the NCFCT meets quarterly to review the submissions to be made to the UN Security Council. The NCFCT also meets as necessary when it receives information either from its security services or from foreign countries regarding terrorism or terrorist financing. In urgent cases, the NCFCT can meet by telephone.

135. **Freezing Assets under S/Res/1267:** Under Article 37 of the CFT law, the NCFCT has the authority to follow up and enforce UNSCRs on combating terrorism and other related resolutions. The NCFCT receives the UN lists from the UAE permanent mission to the UN in New York. The NCFCT then sends the lists to the central bank for distribution to all financial institutions. The central bank distributes the lists via e-mail to its licensees with a covering note regarding freezing any funds of persons on the list. It also forwards the lists to both the ministry of economy for life insurance license holders and to the Emirates Securities and Commodities Authority (ESCA) for capital markets registrants. ESCA and the Ministry of Economy do not forward these lists to their supervised entities. The central bank indicates that it also sends the lists to the DFSA for distribution to the DIFC financial institutions, but the DFSA does not seem to receive them. At the time of the mission, the DFSA was not circulating the UN lists itself even though they are available on the UN website. After the mission, the DFSA indicated that it has now requested the central bank to distribute the UN lists directly to DFSA-regulated firms. Also, the DFSA indicated that it contacted its member firms on April 27, 2007, requested that they themselves monitor these lists by regularly downloading them from the UN website, and that they confirm compliance to the DFSA.

136. The NCFCT separately sends the UN lists to ESCA and the ministry of economy. ESCA and the ministry of economy are not circulating the 1267 lists to their respective members. It is unclear whether the NCFCT sends the lists to the emirate level or to the ministries of economy and planning for distribution to auditors and other DNFBPs. It is also unclear whether the NCFCT distributes the lists to other government ministries which are responsible for asset registries such as land and vehicle registries. DNFBP sectors are not receiving copies of the UNSCR 1267 lists.<sup>5</sup>

137. Article 32 of the CFT law authorizes the governor of the Central Bank to freeze assets up to seven days when they are “suspected to be used in financing or committing any of the offenses provided for by this decree.” This can be extended by the attorney-general himself under Article 31 for the duration of the investigation, however long that may last, and then by the order of the court once the court is seized of a case that will go to trial. In practice, the governor will alert the attorney-general that he has frozen funds. If the freeze needs to be extended beyond seven days, the attorney-general can sustain the freeze order of the governor. The central bank has issued 24 Search and Freeze Notices (one Freeze Notice, 15 Search and Freeze Notices, and eight Search Only Notices) for 407 natural persons and 149 legal persons resulting in the freeze of 21 accounts with a total balance of USD 2.1 million. Subsequently the freeze was cancelled on four accounts for USD 745 000 as per instructions from the UN. The total amount currently frozen is USD 1.3 million representing 17 accounts located in six banks. The attorney-general also has the right to quash the order issued by the governor. In practice, this has not occurred.

138. In practice, using Article 105 (1) of Federal Law No. 10 of 1980 (the Banking Law) which requires the commercial banks to produce information, the central bank issues freeze notices to financial institutions requiring them to search their records to see if named individuals and organizations on UN lists have accounts with them. If the financial institutions find such accounts, they are to freeze the funds and to report to the central bank. The freezing of funds takes

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<sup>5</sup> It is worth noting that in a related action, in April 2007, the DIFCA and the DIFC Authority Registrar of Companies circulated UNSCR 1737 (2006) and UNSCR 1747 (2007) (regarding the UN sanctions program against the I.R. of Iran in relation to non-compliance with the Treaty of Non-Proliferation of Nuclear Weapons and nuclear development program) to DIFC non-regulated entities and real property developers and asked that these entities produce certifications of compliance.

place without delay and no prior notice is given to the persons involved. The Ministry of Economy and Commerce (for insurance licensees and auditors) and ESCA (for securities licensees) alert their own licensees and would report any funds to the governor of the Central Bank who would then freeze the funds under Article 32 of the CFT law.

139. The central bank uses Article 105(1) of the banking law to circulate the 1267 UN lists, but it admits that Article 105(1) is a provision that only covers banks. It is unclear why the governor of the Central Bank is not using the broad authority granted to him under Articles 32 of the CFT law to issue search and freeze orders to all entities covered by that provision (banks and other financial institutions). Article 32 gives the governor the power to seize or freeze property, balances, or accounts for all entities regulated by the central bank.

140. Under Article 76 of the Regulatory Law the DFSA can impose a restriction on an authorized firm or an authorized market institution on the dealing with property. This would include the authority to freeze an account, as dealing includes the maintaining, holding disposing and transferring of property. The DFSA may exercise this power in relation to the objectives of the DFSA which includes combating financial crime.

141. **Freezing Assets under S/Res/1373:** Under Article 37 of the CFT law, the NCFCT has the authority to follow up and enforce UNSCRs on combating terrorism and other related resolutions. In practice, The NAMLC, the NCFCT, and the central bank have not circulated lists issued by any country under UNSCR 1373. After the mission, the authorities indicated that the foreign ministry reviews the 1373 lists but this, in and of itself, is not adequate evidence of compliance with UNSCR 1373. The DFSA also does not circulate the 1373 lists as a matter of policy (such as the OFAC and EU lists which are readily available).<sup>6</sup> Further, the DFSA does not have access to the lists of individuals or entities that are the subject of a number of the bilateral requests made under UNSCR 1373 to the NCFCT or the central bank. In practice, it is up to individual institutions to decide if they add the names on those lists to their internal compliance lists. If a listed name were found, the central bank would not be in a position to freeze the account as a matter of law. In the DIFC, the DFSA would only be in a position to freeze an account of someone on a 1373 list if significant additional evidence were provided.

142. In both cases, more evidence would be required beyond the mere appearance of a name on a 1373 list. If that evidence were provided, the governor of the Central Bank could freeze the account in a domestic institution. In practice, the central bank has issued 19 freezing orders and funds have been frozen in eight banks totaling USD 2.1 million based on specific bilateral requests from other countries. The authorities have advised the mission that the total amount now frozen is USD 1.3 million in six banks. In the DIFC, the DFSA would take the matter to court in the DIFC, but again, more evidence would need to be provided than the fact that the name appeared on a 1373 list. Should such evidence be provided, Article 76 of the regulatory law would be used to freeze funds or other assets. There has never been a need to employ this facility.

143. In this regard, it should be noted that Article 16.5 of the AML Regulations, issued by the central bank in 2000, imposes a no-threshold, suspicion-based requirement on financial institutions regulated by the central bank to freeze transactions and accounts where the transaction might be meant for terrorist organizations or for terrorist purposes. The institution must then inform the central bank in writing immediately. If there was evidence of a suspicion beyond simply the name appearing on a 1373 list, the governor of the Central Bank or the attorney-general could then take a freezing action as outlined above.

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<sup>6</sup> As of January 2008, the DFSA is considering providing access to member firms via the DFSA website to OFAC, UK HM Treasury, and the EU sanctions lists.

144. **Freezing Actions Taken by Other Countries:** In practice, the NCFCT has received requests for assistance from other countries on a case-by-case basis (separate from the issuance of lists by certain countries under UNSCR 1373). It can meet rapidly and make prompt determinations about whether it can assist in the case or not. If the NCFCT decides to seek information on behalf of another jurisdiction, the central bank issues a search notice to its licensees under Article 105 of the banking law as described above. It also circulates the request to the ministry of economy and ESCA for circulation to their own licensees, as described above. No further circulation of the request is made.

145. **Extension of c. III.1-III.3 to funds or assets controlled by designated persons:** The CFT law defines property as “assets whatsoever their nature is, material or immaterial, moveable or immovable including national currency, foreign currencies, negotiable and commercial instruments, securities, documents, instruments proving acquisition of assets or any right thereof”. This definition is not, however, as wide as that required under SR III. The Interpretative Note to SR III defines funds or other assets as “financial assets, property of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets including but not limited to, bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets.” It is uncertain that the definition in the CFT law of “any right thereof” would be interpreted broadly enough to encompass “any interest, dividends or other income on or value accruing from or generated by such funds or other assets” as set out in the FATF definition. Article 12 of the CFT law provides that, upon conviction, the property will be confiscated. Where it is mixed with other property gained from legal sources, property of equivalent value will be confiscated.

146. In practice, the main recipients of search and freeze orders are those institutions regulated by the central bank. Other financial sectors such as securities and insurance licensees also receive requests. Licensees in the financial free zone and free zones do not receive such requests.

147. **Communication to the Financial Sector:** The central bank has a secure on-line e-mail communication system with its financial institutions and it uses this to immediately notify the institutions about any search and freeze order. The financial institutions regulated by the central bank take immediate action and inform the central bank accordingly. The financial institutions regulated by the ministry of economy and ESCA are contacted by their respective regulators. This is a slower process than that employed by the central bank and does not meet the standard of “without delay”. The DFSA was not contacting financial institutions within the DFSA regarding 1267 lists or other freezing actions at the time of the mission but, as of April 2007, requested that their members monitor these lists by regularly downloading them from the UN website, and that they confirm compliance to the DFSA. Further, there is no evidence that 1373 lists are given any consideration on a case by case basis.

148. **Guidance to Financial Institutions:** The Central Bank Search and Freeze Notice has been designed to provide ample guidance to the financial institutions concerning their obligations. The authorities were unable to provide the mission with a copy of these forms.

149. **De-Listing Requests and Unfreezing Funds of De-Listed Persons:** The central bank can un-freeze funds within the stipulated time period of seven days as set out in Article 32 of the CFT law. After seven days, the attorney-general may confirm the governor’s order or quash it. Article 33 of the CFT law provides that “a person against whom a decision of the attorney-general was issued pursuant to provisions of Articles 31 and 32 of this Decree by Law may aggrieve against, before the competent court and if his grievance is denied he is entitled to aggrieve again whenever expiry of three months from the date of the denial of his grievance. The grievance shall be in a form of a report deposited with the competent court and the trial judge shall fix a day for disposal after summoning the aggrieved and the concerned, and the Public Prosecution shall

submit a memorandum commenting on the grievance. The court shall determine in the grievance within a period not exceeding fourteen days from the date of the report and shall deliver its decision, either quashing the decision issued by the Attorney-general, amending or denying thereof". To date, the mission was advised that this provision has not been used by any aggrieved person.

150. **Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism:** The same procedures apply as in the previous paragraph. Furthermore, before the funds are unfrozen, the central bank would send the details of the case through the foreign affairs ministry to the UAE UN Delegation in New York. They would refer the matter to the UN 1267 Committee to confirm that this was a case of mistaken identity. Once the UN 1267 Committee ruled on the matter and agreed with the authorities, the funds would be released.

151. **Access to frozen funds for expenses and other purposes:** The authorities were unable to confirm if they are able to release funds to the person whose account has been frozen in order to pay for medical expenses, food, shelter, and legal fees pursuant to UNSCR 1452.

152. **Review of Freezing Decisions:** Article 33 of the CFT law provides the legal basis for a person being able to challenge a freeze order issued or sustained by the attorney-general.

153. **Freezing, Seizing and Confiscation in Other Circumstances:** Article 42 of the CFT law provides that the provisions of the Penal Code and Penal Procedure Code are applicable in carrying out the terms of this law. See discussion at Recommendation 3.

154. **Protection of Rights of Third Parties:** Article 33 of the CFT law can be used by bona fide third parties to assert their rights to the frozen property. Article 82 of the Penal Code also protects the rights of bona fide third parties as it states that confiscation orders are without prejudice to the rights of any bona fide third parties.

155. **Enforcing the Obligations under SR III:** The central bank conducts outreach to its members as well as more widely but was unable to provide the mission with statistics in this regard. It also monitors its licensees on a regular basis. Other financial service providers are monitored by the ministry of economy and ESCA but both have confirmed that they are not circulating the 1267 UN lists. There is, therefore, no monitoring or enforcement of compliance with the circulation of such lists by the regulators in these sectors. Furthermore, in practice, on-site inspections do not have an AML/CFT component. The DFSA supervises financial institutions as well as lawyers and accountants that act as Ancillary Service Providers (ASPs) and registered auditors who qualify as other financial service providers, and who offer their services to regulated persons. The DFSA has done a number of on-site examinations of authorized institutions and has visited a third of the ASPs for AML/CFT purposes. The DFSA was not circulating the UN lists to its supervised institutions at the time of the mission, but in April 2007, the DFSA requested that the supervised institutions themselves monitor these lists by regularly downloading them from the UN website, and that they confirm compliance to the DFSA.

156. Administrative penalties are prescribed in Article 112 of the Banking Law for the financial institutions regulated by the central bank. These include warnings, reduction or suspension of credit facilities, prohibition of carrying on certain activities and, ultimately, removal from the register of banks. See further discussion on this matter under Recommendation 17.

157. Article 25 of the CFT law provides for fines for legal persons whose representatives, managers, or agents contribute to the commission of offenses under the CFT law, including the financing of terrorism. Article 12 of the CFT law provides for life imprisonment or incarceration from three to 15 years. Ancillary offenses carry prison terms of 3–15 years.

158. **Additional Element Implementation of Measures in Best Practices Paper for SR III:** The authorities were unable to provide the mission with information pertaining to this matter.

159. **Additional Element Implementation of Procedures to Access Frozen Funds:** The authorities were unable to the mission with information pertaining to this matter.

**2.4.2. Recommendations and Comments**

- The authorities should consider and give effect to, if appropriate, lists issued under UNSCR 1373, in compliance with their UN obligations;
- The NCFCT should distribute the lists issued under UNSCR 1267 to all domestic authorities whose licensees may be holding terrorist funds or other assets;
- An appropriate authority, possibly the NCFCT, should maintain the statistics which meet international standards on freezing accounts under SR III; lists that are circulated should be more quickly circulated across all sectors of the UAE.

**2.4.3. Compliance with Special Recommendation III**

	Rating	Summary of factors underlying rating
SR.III	PC	<ul style="list-style-type: none"> <li>• No consideration of any 1373 lists by the appropriate authorities.</li> <li>• No circulation of the 1267 lists to the DGCX, the DIFC or the DNFBP sector.</li> <li>• Slow circulation of lists to some sectors.</li> </ul>

**2.5. The Financial Intelligence Unit and its Functions (R.26)**

**2.5.1. Description and Analysis**

160. **Establishment of FIU as National Center:** The Central Bank of the UAE established a special unit for investigating fraud and suspicious transactions in July 1998. In November 2000, following the passage of the AML Law, the Anti-Money Laundering & Suspicious Cases Unit, AMLSCU (the FIU) was formed pursuant to Article 7 which provides that: "There shall be established, within the central bank, a 'Financial Information Unit' to deal with Money Laundering and suspicious cases and to which reports of suspicious transactions shall be sent from all Financial Institutions and Other Financial, Commercial and Economic Establishments. The [National Anti Money Laundering] Committee shall determine the format for reporting suspicious transactions and the methods of communicating reports to the said Unit. The said Unit shall make the information available to law enforcement agencies to facilitate their investigations. The said Unit may exchange information on suspicious transactions with their counterparts in other countries in accordance with international conventions to which the State is a party, or on the basis of reciprocity."

161. The FIU is physically located within the Central Bank of the UAE in the capital Abu Dhabi. Officers of the FIU are, by virtue of their employment, officers of the central bank. The Head of the FIU, who is also an Assistant Executive Director of the Central Bank, reports to the governor of the Central Bank.

162. The actual FIU office premises are located in a separate section of the central bank building and the unit, at least in a physical sense, is not collocated within other units of the central bank. There are plans underway for the establishment of two branch offices: one each in Dubai and Sharjah, comprising three officers each.

163. The current framework gives rise to doubts about whether the FIU is, in fact, the sole national center for the receipt of STRs. While the AML law indicates that reports should be filed with the FIU, circulars issued by the securities and insurance regulators (ESCA and the Ministry of Economy and Commerce) state that institutions subject to their supervision should file reports directly with the regulator, which would then forward them to the FIU. In the case of the ESCA circular, it states that the agency would "analyze and check these reports prior to sending them to the AMLSCU," thereby risking delay in receipt by the FIU.

164. In response to concerns raised by the mission in relation to this issue of indirect reporting, the FIU stated that ESCA would be modifying its circular in order to reflect that a financial institution must report directly to the FIU, with a copy going to the regulator. There was no indication of the position with respect to the Ministry of Economy and Commerce, although it is not believed that any STRs have yet been filed by the insurance sector.

165. In relation to the receipt of reports, Article 16.1 of the AML Regulations issued by the central bank personally obliges "all banks money changers, finance companies, and other financial institutions as well as their board members, managers and employees to report any unusual transaction aimed at money laundering" to the FIU. Article 16.2 prescribes a form which reporting entities are required to complete with a view "to facilitate the verification process of suspected transactions aimed at money laundering".

166. In practice, the FIU serves as the national centre for analyzing STRs. Article 7 of the AML law provides that the FIU shall "deal" with money laundering and suspicious cases. There is no direct explicit grant of power in the AML law to permit the FIU to undertake analysis.

167. The analysis of STRs by the FIU is referred to in an undated unsigned document entitled "AMLSCU Procedures". This document was made available to the mission during the face to face meetings in January 2008. Under the heading "I. Obligations of Government Entities and other Authorities Regarding Money Laundering crimes per Federal Law No. 4 of 2002 concerning Criminalization of Money Laundering" there appears a sub-heading entitled "1. The Central Bank (AMLSCU)". At the second point thereunder it refers to "Reviewing suspicious cases by AMLSCU and providing information to law enforcement..." The document then goes on to list other obligations of the FIU and other government agencies.

168. Another document supplied during the 2008 meetings was an inter-office memorandum dated 15 January, 2003 from the head of the FIU to 11 named individuals being the then staff of the FIU. The memorandum is entitled: "Subject: Procedures of Reviewing and Analyzing Cases received by the Unit." The memorandum then goes to state: "You are kindly requested to review & analyze...cases received by the Unit as follows:" Six steps are then set out in the memo, the second of which states: "2 – Analyze the search request or case and specify the required action."

169. The AML Regulations at Article 16.7 which is entitled "Penal Punishment" states: "Where it becomes aware of any money laundering activities, the central bank after conducting thorough verification, shall submit a report to the competent law enforcement authorities". The reference to the central bank and the conduct of "thorough verification" has the potential to be construed as a reference to the FIU conducting analysis of relevant information concerning suspected ML activities.

170. **Guidelines to Financial Institutions on Reporting STR:** The FIU and other competent authorities provide guidance to reporting parties. The FIU is established pursuant to Article 7 of the AML Law which makes no reference to the role of the FIU in issuing guidelines to reporting entities. The power to propose AML Executive Regulations in the UAE lies with the Council of Ministers having heard proposals and presentations from the NAMLC. The FIU does, however, play a significant role in the deliberations of the NAMLC. Separately, agencies concerned with the licensing and supervision of financial institutions, or other financial, commercial economic

establishments are required to establish “appropriate mechanisms” to ensure compliance with the AML law and Executive Regulations under Article 11 of the AML law. To date, the central bank has issued regulations under the banking law providing guidance and specifying the manner of reporting transactions to the FIU by institutions. Further, the Ministry of Economy and the DFSA have issued a circular and regulations, respectively, to the institutions that they supervise.

171. The guidance provided by the central bank in the AML Regulation issued in November 2000 to all banks, money changers, finance companies and other financial institutions in the country was amended in June 2006 to include a no threshold requirement to report suspected terrorist financing activity (but see further discussion under Recommendation 13 below). Other guidance includes the Regulation regarding: Declaration when Importing Cash Money into the UAE issued in January 2002 and the Hawala Registration and Reporting System based on the Abu Dhabi Declaration on Hawala issued by the central bank. Guidelines to insurance companies, investment portfolio managers, credit consultants, and audit companies have been issued by the ministry of economy. Guidelines for the securities markets and brokers have been issued by the ESCA.

172. **Access to Information on Timely Basis by FIU:** The basis upon which the FIU currently accesses information is pursuant to its powers under the AML law and regulations as well as under the banking law. The NAMLC has the capacity to facilitate and, where necessary, accelerate the exchange and flow of information between member entities by way of proposing AML rules and procedures. As at the date of the mission, the authorities were not in a position to indicate whether the NAMLC had issued any guidelines, protocols, or procedures in this regard.

173. In practice, access by the FIU either directly or indirectly to relevant information from reporting entities and particularly from administrative and law enforcement agencies, is both timely and efficient. Article 20 of the AML regulations for entities supervised by the central bank notes that timing is a crucial factor in retrieval of information by reporting entities. It does not, however, contain any requirement to report matters to the FIU within a certain timeframe. In practice, the authorities informed the mission that, with the exception of suspected terrorist financing where the obligation to report is immediate, the FIU asks reporting entities to respond to requests or to file reports within seven days of a request or a suspicion arising or, in urgent cases, within 24 hours. It was noted by both central bank supervisors and FIU officers that submission of a report or response is fast and efficient where there is an existing relationship with the reporting entity particularly when the analyst is a supervisor from the Banking Supervision and Examination Department (BSED) who has a working relationship with the reporting entity. It was conceded that there may be a delay when there is no prior existing relationship between regulated entity and supervisor.

174. Access by the FIU to information held by other government agencies is by way of direct contact between senior FIU officers and the agencies concerned, either by way of telephone, mail, personal visits, or on an “as required” basis, including contact with agencies out of business hours. Whilst this form of contact has the potential to lead to delays in obtaining the information necessary to assist the FIU, in practice the access by the FIU to all relevant information is both fast and efficient. The liaison between the FIU and law enforcement is highly developed, however liaison with reporting entities and other government agencies is in need of further development. Some reporting entities advised the mission that on the occasions that they had attempted out-of-office contact with the FIU, such contact was not successful. The mission discussed with the FIU the concept of embedding law enforcement officers at the FIU to improve law enforcement liaison and to expedite access to STR data in addition to the development of online access to extrinsic databases to permit enhanced STR analysis. The FIU indicated that it was open to consideration of all proposals to improve efficiency.

175. Current searching is by way of rudimentary search practices. FIU officers are in a position to search the FIU's database of STRs by using basic search criteria including both full name and near-name matching. The FIU does not employ a relational database for cross-entity matching and does not utilize sophisticated software searching mechanisms. Data mining software is not employed. The skills and competencies of the FIU staff would need to be enhanced if such a capability were to be introduced. As the number of reports and reporting entities increases, the need for the introduction of such search mechanisms will become more urgent.<sup>7</sup>

176. **Additional Information from Reporting Parties:** Article 105 of the banking law gives full powers to the central bank to obtain any information from banks. It is pursuant to this provision that the FIU seeks further information from the financial sector even though the requirement only technically applies to banks licensed by the central bank. There is no express provision in the AML law or regulations that permits the FIU to obtain additional information from reporting parties. Article 7 of the AML law allows the FIU to "deal" with money laundering and suspicious cases. A broad construction of the word "deal" is required to permit the FIU to obtain additional information under the AML law. If Article 7 of the AML law as opposed to Article 105 of the banking law is relied upon to justify the obtaining of additional information then there is a risk that additional information obtained by an FIU officer under Article 7 could be challenged in court proceedings. While the Public Prosecutor's Office would no doubt use its powers under the Penal Procedures Law to obtain any additional information it required, it is important that the FIU also has powers to obtain additional information at the earlier stage of information gathering from all reporting entities and not just those entities licensed by the central bank. Notwithstanding the possible legal limitations to direct access, the FIU is able to indirectly access additional information that it requires to properly undertake its functions by way of contacting the central bank and ESCA who then in turn obtain the required information from their supervised entities pursuant to regulatory powers. In other instances recourse is made to the informal but well established liaison links and lines of communication that have been developed with law enforcement.

177. There is a project currently underway to connect the central bank to all the money changers in the UAE through a wide-area network. This will enable the central bank to have access to all relevant information relating to wire transfers on a real-time basis and compile statistics accordingly. The central bank would then be able to pass this information to the FIU.

178. **Dissemination of Information:** The FIU, pursuant to Article 7 of the AML law, is empowered to disseminate STRs to law enforcement agencies to facilitate investigations. Law enforcement agencies are defined in the Penal Procedures Law to include the Public Prosecutor's Office, police officers, border guard officials, airport officers, sea port and airport officers, civil defense officers, municipality inspectors, ministry of social affairs inspectors, health ministry inspectors, and officials authorized to act as law enforcement officials according to laws, decrees and resolutions in force. Comprehensive statistics as to the rate, flow, and breadth of dissemination were not available. Law enforcement agencies noted limited receipt of disseminated STRs. Most law enforcement agencies stated that they would seek access to FIU data to assist them in their investigations and that such assistance would be provided on a timely basis. No investigations had been commenced as a result of disseminated STRs. Law enforcement agencies were unable to state how many STRs had been disseminated to them in recent years.

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<sup>7</sup> During the course of face-to-face meetings between the authorities and the assessors in January 2008, the FIU noted that it was actively exploring the expansion of its analytical capacity both in terms of personnel and software.

179. Under Article 7 of the AML law, the FIU is authorized to disseminate information only to “law enforcement agencies to facilitate their investigations”. Therefore, the current practice of disseminating information to the BSED for further follow-up with the central bank’s licensees, and the FIU’s plan to disseminate to all other supervisory bodies for further follow up with their respective licensees (see below), is not in compliance with the law, as these agencies would not be classified as “law enforcement agencies” but rather supervisory agencies.

180. **Operational Independence:** The FIU is a unit of the central bank reporting directly to the governor who is also the Chairman of the NAMLC and a member of the NCFCT. On an operational level, all decision making, with the exception of freezing orders, is made in the FIU by the head of the FIU, but most official external communications to individual banks and other agencies require the approval of the governor. A hard copy memorandum is forwarded for the governor’s signature with a recommendation for action. As at the date of the mission, there was no contemplation by the authorities to devolve more of the ultimate decision making power to the head of the FIU.

181. Of greater concern is that while in practice the FIU operates as an autonomous unit within the central bank, it is apparent that the vast majority of STRs are being analyzed by banking supervision staff who are not members of the FIU but are in fact supervisors and on most occasions the nominated supervisor for the reporting entity. Furthermore, the FIU has indicated that if it becomes aware of suspicious transactions in the sectors regulated by agencies other than the central bank, it will ask those supervisors to make further enquiries, although to date this has not occurred. The level of effectiveness of this third party investigation of STRs was not able to be assessed particularly in relation to the extent it may impact upon the independence of the FIU itself. With an increasing number of entities being obligated under the AML law, more supervisors will become involved in the STR process, which must call into question the operational independence of the FIU and its role as the national center for the analysis of suspicious transaction reports.<sup>8</sup>

182. **Protection of Information held by FIU:** The FIU is located within the central bank buildings and accordingly enjoys high level perimeter security with electronic, physical and swipe card access controls. The actual office space allocated to the FIU does not have discrete security entry and exit points; however, plans are underway to implement a swipe card access system by the end of 2007.

183. STR data in electronic format and other electronic holdings of the FIU are stored on a separate server within the central bank computer system and secured by way of password. The server is located in a locked room within the FIU. Only FIU and relevant IT department staff are permitted access. The authorities advised that plans are underway to enhance security utilizing technological advances in document and data management. As at the date of the mission, hard copy STRs are contained in standard filing cabinets with no special security measures applied to them. Each hard copy of an STR or other report is manually entered onto the FIU database. There is a nascent system of online reporting but its coverage is limited to a small number of institutions.

184. As officers of the central bank, the FIU staff are bound by the confidentiality provisions of Article 106 of the banking law in addition to the confidentiality clauses in their individual contracts or letters of appointment.

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<sup>8</sup> During the course of face-to-face meetings between the authorities and the assessors in January 2008, the FIU advised the assessors that the practice of utilizing BSED staff had ceased. Recruitment had taken place at the FIU with the addition of six more staff including a coordinator for the new Dubai branch office and a further recruitment of six to eight staff during the course of 2008. Accordingly the practice referred to in this paragraph no longer exists.

185. Article 12 of the AML Law provides that all concerned agencies must treat the information they have obtained in respect of criminal offenses referred to in the AML law as confidential and must refrain from breaching confidentiality except to the extent required for use in investigation or legal actions. The reach of this confidentiality provision particularly in relation to its application to the FIU was the subject of discussion between the authorities and the mission team.

186. On one reading of the law, the confidentiality requirement relates only to concerned agencies and not the FIU and then only in circumstances where they have obtained information in respect of criminal offenses referred to in the AML law. The term “concerned agencies” is not defined. It is open to interpretation that this term refers only to those entities obliged to report suspicious transactions to the FIU pursuant to Article 16.2 of the AML regulations, those are banks, money changers, finance companies, and other financial institutions operating in the country, or only to the concerned regulatory agencies listed in Article 11. Another interpretation is that this provision applies to all persons or entities that come into contact with that information including the FIU. Also, there is an issue of when the confidentiality provision attaches. For instance, would it attach to material passed to the FIU where no specific criminal offense had yet been determined?

187. Furthermore, Article 12 does not extend to imposing confidentiality requirements on persons, including law enforcement officers, who receive information concerning suspected transactions, or indeed other financial entities engaged in financial activity, but who are not obliged to report under the law and regulations. It does not cover situations where information is received on matters that do not fall within the class of relatively limited criminal offenses referred to in the AML law.

188. The interpretation placed by the authorities on both the AML law and regulations is that the confidentiality provision applies broadly. Nevertheless, the potentially narrow scope of the confidentiality requirements of Article 12 and the risk arising from same is a matter of some concern to the mission. The authorities have undertaken to examine the provisions in detail and to consider the need for amendments to the law.

189. **Publication of Annual Reports:** As at the date of the mission, the FIU had not published an annual report since its inception in 2002 and there was no contemplation of doing so in the future. Annual reports are prepared and given to the Deputy Chairman of the Central Bank Board of Directors for information and review. The FIU does from time to time provide statistical and other information related to its activities to various concerned authorities in the UAE and overseas. In addition, during the course of numerous seminars, workshops, and conferences conducted by the FIU and the central bank, a large number of case studies and typological exercises have been undertaken to create awareness among the reporting entities about current trends in AML/CFT. Although the FIU has conducted a large number of workshops and training courses for external parties, the mission noted the absence of a structured public awareness campaign and outreach sessions for law enforcement, and those entities who are covered by the AML/CFT laws and regulations, but who are not in the mainstream financial services sector.

190. **Membership of Egmont Group and the Egmont Principles of Exchange of Information among FIUs:** In June 2002, the FIU applied for membership in the Egmont Group and was accepted. As a full member of the Egmont Group, the FIU is bound by the Egmont principles for exchange of information and advised the mission that it had duly adhered to same during the course of its membership.

191. **Adequacy of Resources to FIU:** The FIU has sufficient budgetary and capital resources to fully and effectively perform its functions. Its premises within the central bank are modern, spacious, and relatively secure. The computer desktop hardware is modern and effective.

192. As at the date of the mission, there were 13 full time staff in the FIU: the Head, three officers in STR analysis, two in data entry of hard copy reports, three in the follow up of matters not arising from STR reports (*e.g.* by way of court order), two in the administration section, and one each in the area of international cooperation and legal advice. The Head of the FIU is appointed by the governor of the Central Bank.<sup>9</sup>

193. While the FIU has access to approximately 85 central bank examiners as and when required, the actual number of trained staff particularly for the analysis of STRs is very low. This is especially so when one considers that on the statistics made available to the mission team (which lacked detail as to source and type of report), there were just over 4,000 STRs on hand as at December 31, 2006 with the likelihood of exponential growth in STRs as the AML/CFT laws and regulations gain greater exposure and compliance among all reporting entities improves. In the 2006 calendar year alone, 965 STRs were received,<sup>10</sup> an average of almost 20 per week, for the attention of three FIU analysts.

194. In addition, the use of technological aids in the analysis of STRs is extremely limited. As the various and numerous reporting entities in the UAE become more cognizant of their obligations as a result of the proposed increased outreach by the FIU, the need for additional human and technological resources will become critical. The necessary budget and commitment to support a significant expansion in the size, role, and structure of the FIU does not appear to be an obstacle in the UAE.

195. **Integrity of FIU Authorities:** The FIU advised the mission that experience, skills, attitude, integrity, and professionalism are some of the qualities that are looked into when hiring new staff. High integrity and appropriate skills are given importance while hiring any new staff. There is no specific secrecy agreement that FIU officers sign upon entry on duty although as officers of the central bank they are bound by the confidentiality provisions under the banking laws and by virtue of their individual contracts or letters of appointment.

196. **Training for FIU Staff:** As at the date of the mission, more than 360 seminars, symposiums, workshops and conferences had been held on various aspects of AML/CFT. The hosts of such meetings have been the central bank and FIU often in collaboration with local, regional and international authorities including the FIUs of Canada, the USA, and the UK. The authorities indicated that FIU staff have attended 56 specialized training courses of which 35 were related to STR analysis.

197. **Statistics (applying R.32 to FIU):** The FIU advised the mission that STRs are received, reviewed and analyzed, entered into the FIU database, and recommendations are made by way of proforma letter to the governor as to a decision for further action. Upon receipt of the governor's decision, which is within two days and less for urgent matters, external dissemination is undertaken and recorded.

198. Some statistics were made available to the mission prior to the commencement of the visit. While helpful, they did not represent comprehensive statistics and a request was made to the FIU to complete a table of statistics prepared for the FIU and others by the mission. As at the date of finalization of the report, no such statistics had been received.

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<sup>9</sup> See footnote above regarding increased staffing levels.

<sup>10</sup> As is discussed under Recommendation 13, the data received by the mission showed that just over 500 STRs were received from the financial sector in 2006. The balance was reported as being reports filed by various law enforcement and other agencies, but the mission was unable to establish the exact nature of these reports.

199. **Implementation Issues.** In an operational environment where there is an absence of access to extrinsic databases, a lack of specialized IT search functions, a limited amount of online reporting, limited numbers of trained analysts and limited staff dedicated to data entry, the quality of STR analysis must be an issue for serious concern.

200. Even when the additional numbers of BSED staff are taken into account, the operational environment in which the FIU currently exists would suggest that the value-added component of disseminated STRs is very low.

### **2.5.2. Recommendations and Comments**

201. The current model of relying on staff from BSED to assist with the follow up for STR analysis is not a model that can be expanded efficiently to other supervisory bodies in the financial, non-financial, and professional areas both domestically and in the Financial Free Zone and Free Zones. Such a model would also compromise both the independence of the FIU and the concept of “ring fencing” the information that enters the FIU and is processed there. In addition, it would be a breach of Article 7 of the AML law which only allows the FIU to pass information to law enforcement.<sup>11</sup> Law enforcement is defined in Article 33 of the Penal Procedures Code and does not include regulatory bodies.

202. The following recommendations are made by the mission in relation to the FIU:

- In order to carry out its expanding role as an FIU for a multiplicity of financial and non-financial institutions who should be reporting STRs, the FIU should hire more staff to perform the analysis of the STRs within the FIU.
- Consideration should be given to amending the AML law to permit the FIU to request additional information from all reporting entities not just those licensed by the central bank.
- Consideration should be given to amending the AML law to ensure that the FIU is the national centre for the receipt of STRs and relevant information concerning suspected ML or FT activities.
- In order to remove doubt, the mission recommends that consideration be given to an amendment of the confidentiality provisions of the AML law to include a comprehensive confidentiality clause for all persons either seized of information held by the FIU or those who report transactions to the FIU.
- The FIU should conduct a strategic analysis of its future IT needs with a view to the staged introduction of appropriate software and hardware to enhance the capability of the FIU, and a consideration as to the introduction of a relational database to assist in the analysis of STRs. The mission further recommends that the FIU consider conducting a number of meetings and fact-finding exercises via the Egmont Group’s Information Technology Working Group in order to achieve this end.
- Consideration should be given to the attachment of FIU officers (for training purposes) to regional or international FIUs that have a similar profile of rapid growth and an active domestic and offshore financial sector.

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<sup>11</sup> See footnote above regarding the post assessment discontinuation of this model and the recruitment of more FIU staff.

- Consideration should be given to embedding law enforcement officers at the FIU to improve law enforcement liaison and to expedite access to STR data.
- Consideration should be given to the development of an online access to extrinsic databases to permit enhanced STR analysis.
- Consideration should be given to the conduct of a public awareness campaign and outreach sessions to law enforcement and to those entities who are covered by the AML/CFT laws and regulations but are not in the mainstream of the financial services sector.

### 2.5.3. Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	PC	<ul style="list-style-type: none"> <li>• Assessors could not conclude that in practice the FIU was the sole national center for receipt, analysis, and dissemination of STRs.</li> <li>• Lack of operational independence of the FIU in light of BSED involvement.</li> <li>• Inadequate dissemination of STRs to law enforcement.</li> <li>• No publication of annual reports with statistics, trends, typologies and information on FIU activities.</li> <li>• In light of legal and resource shortcomings in addition to a lack of comprehensive statistics, assessors were not able to conclude that the FIU was effective in its core functions of receiving, analyzing and disseminating STRs.</li> </ul>

## 2.6. Law enforcement, prosecution and other competent authorities - the framework for the investigation and prosecution of offenses, and for confiscation and freezing (R.27, & 28)

### 2.6.1. Description and Analysis

203. **Legal Framework:** As a federation of emirates, the responsibility for law enforcement arises in the UAE on both a local and federal level.

204. In the customs arena, each emirate has a customs authority responsible for the usual range of customs activity including interdiction of prohibited items. Separately, the emirates set up a Federal Customs Authority (FCA) when they signed the Gulf Cooperation Council (GCC) Customs Union Agreement. The FCA is a relatively new agency. It does not have investigative powers. Its primary task is to set the national policy framework and provide national and international coordination in the customs arena.

205. Similarly, in policing, each emirate has a police service attending to law enforcement and investigation on a local basis under the federal umbrella of the ministry of interior which, in addition to overall control and direction, also maintains exclusive jurisdiction over the investigation of the most serious crimes including terrorist matters.

206. The principal authority in the investigation of AML/CFT matters is the public prosecutor's office under the ultimate control of the federal attorney-general. While the police can conduct investigations up to a point, it is the public prosecutor's office which controls the primary conduct of AML/CFT investigations and confiscation action. Similarly, cross-border interdiction of cash and negotiable instruments, while a responsibility of the customs authorities, is a matter that is sent to the relevant emirate or federal prosecution authority for a decision as to further action.

207. It is noted that while all CFT matters are dealt with at a federal level, the responsibility for AML matters is different. In Dubai and Ras Al Khaimah, the local public prosecution offices maintain responsibility for the investigative aspects of the case including the confiscation of proceeds in all matters other than terrorist financing matters. For the remaining five emirates, the investigation is handled by the public prosecutor's office in Abu Dhabi. Coordination between the different prosecution authorities will be essential if this split of jurisdiction is to be a workable arrangement going forward.

208. **Designation of Authorities for ML/FT Investigations, Specialized Investigation Groups and the Conduct of Multi-National Cooperative Investigations:** There is no designated federal or local emirate-based investigative unit for the investigation of money laundering and terrorist financing matters. Specialist units do exist inside the larger police forces for the investigation of drugs, organized crime, and economic crime which can include bank robbery in addition to traditional fraud offenses.

209. In late 2007, the Abu Dhabi Police plan to establish a specialist economic crime unit which will include amongst its staff trained financial investigators. Members of the Abu Dhabi Police have received training from the GCC, the US and British Commonwealth countries in relation to the investigation of serious crime including financial crimes. There are no specialist AML/CFT units in any of the local customs authorities.

210. In relation to the public prosecution offices in the UAE, a special team of seven prosecutors operate in Dubai who are assigned responsibility for the conduct of money laundering cases in that emirate. These officers have received specialized training from within the UAE and from overseas agencies and are selected by the Advocate General of Dubai (the head of the prosecution service in Dubai). As is the practice in the UAE, prosecution of the cases also involves providing direction and advice to the law enforcement authorities and liaising with other relevant agencies.

211. Initial action in relation to terrorist financing investigations can be commenced at the local law enforcement and prosecution level. As a matter of practice, however, the case is transferred at an early stage to the office of the federal attorney-general who conducts all matters in this area. The Federal Supreme Court in Abu Dhabi has exclusive jurisdiction over terrorist financing prosecutions. As at the date of the mission there had been two prosecutions of six individuals for terrorist financing resulting in prison sentences ranging from one to seven years, with two persons being acquitted. As at the date of the mission, statistics as to amount of funds confiscated were not available.

212. There are no specialized investigation groups established for liaison and cooperation with overseas law enforcement authorities although multi-agency task forces have been created on an as needs basis. Significant seizures of cash and property both in the UAE and overseas in 2007 were a result of this type of cooperation between overseas agencies and authorities in Dubai, Sharjah, and the ministry of interior in Abu Dhabi. The authorities provided to the mission a number of letters of appreciation that have been provided to the UAE from overseas law enforcement agencies.

213. Law enforcement agencies avail themselves of assistance via INTERPOL and, with the cooperation of the ministry of foreign affairs, by way of assistance from the security attaché in foreign embassies situated in the UAE. The authorities were not in a position to provide statistics as to the extent of international cooperation in this area. Following the events of September 11, 2001, the UAE was involved in extensive international efforts in relation to investigating terrorist acts and in particular terrorist financing.

214. **Ability to Postpone or Waive Arrest of Suspects or Seizure of Property:** Postponement or waiver of arrest of a suspect or similar action in relation to seizure of property is not expressly provided for in the written laws of the UAE. However, there is a discretionary power resting with the law enforcement authorities to undertake such activity. Specifically, Articles 45-47, 61, and 101 of the Penal Procedures Code make reference to the discretionary power in a prosecutor to take action to arrest a suspect, interview him or to seize property. The authorities recognize the usefulness of this technique in the investigation of offenses and indicated on a post mission basis that there were numerous instances where such postponement has occurred however the assessors were not in a position to assess the effectiveness of these measures.

215. Article 21 of the CFT law permits the pardoning of a person who communicates to the authorities the existence of a conspiracy to commit an offense proscribed in the CFT law including terrorist financing and its inchoate offenses. Similarly, communicating to the authorities' knowledge of a pending or planned offense under the CFT law, including a terrorist financing offense, may also result in a pardon. If the offense has already been committed, either a full pardon or a mitigation of penalty may be available. The authorities were not in a position to provide statistics in this area. Similar provisions relating to the grant of a pardon or exemption from penalty in recognition of assistance provided to the authorities are also contained in the Penal Code at articles 173 and 201.

216. **Ability to Use Special Investigative Techniques:** The law enforcement authorities in Abu Dhabi, Dubai, and Sharjah indicated that they have direct access to the full range of special investigative techniques including telecommunications interception, listening devices, controlled deliveries, physical and electronic surveillance, and the use of undercover officers. Sharing of specialist technical equipment with smaller emirates or via the ministry of interior is available. While urgent applications for use of special techniques can be made orally, it is the standard practice that, prior to the deployment of some special investigative techniques (such as telecommunications interception), there is a requirement for written permission to be obtained from the attorney-general. Due to the relatively low number of investigations in these areas, the authorities were not in a position to provide concrete examples of the deployment of such techniques in money laundering and terrorist financing matters.

217. In this regard, public prosecution staff are made available on a 24-hour basis to facilitate such requests. The use of trained financial investigators is not widespread. Some of the larger police forces are, however, in the process of training a number of officers in this area in conjunction with overseas financial crime experts. The use of multi-jurisdictional and multi-departmental task forces has historically been low and, where such measures have been employed, they have usually been applied to drug trafficking investigations.

218. An investment in excess of USD 2 million is being made in the UAE to develop a DNA database for use in the investigation of criminal activity. The customs agencies in some emirates have also made significant investments in state of the art scanning equipment for both baggage and containers. Eye scan technology to screen some incoming passengers has also been introduced at some airports.

219. **Review of ML and FT Trends by Law Enforcement Authorities:** With the exception of the regular and ad hoc meetings of the NAMLC and NCFCT, there is no formal review process for AML/CFT matters in any of the law enforcement agencies in the UAE. Some of the authorities indicated that they do assess each matter after the finalization of the case. Other than in Dubai, trend analysis and strategic approaches to law enforcement were not practices that have been followed to date although other emirates indicated that they often look to the larger emirates and the ministry of interior for guidance in this regard.

220. The mission noted that the Abu Dhabi police have commenced a force-wide strategic review of systems, structure and functions with the assistance of expatriate British and Canadian police officers.

221. **Ability to Compel Production of and Searches for Documents and Information:** Police powers of search and seizure are governed by the Federal Law of Criminal Procedures and extend to the ability to compel production of documents and conduct searches of a person and their property.

222. The FIU, by virtue of the fact that its officers are also officers of the central bank, can exercise the power of the central bank to obtain data pursuant to Article 105 of the banking law. In practice, this is used for all financial institutions that the central bank regulates.

223. Law enforcement authorities, including the public prosecution offices, have full powers to compel production of bank account records, financial transaction records, customer identification data, and other records maintained by financial institutions and other entities or persons. The extensive powers of the law enforcement officers to search, seize, and retain are contained in Volume 2, Parts I and II of the Criminal Procedure Law.

224. **Power to Take Witnesses' Statement:** The taking of a statement from a witness is governed by the Criminal Procedure Code and pursuant to Articles 88-93, the prosecution authorities, during the course of the investigation, can direct witnesses to testify and record their evidence for possible future use in proceedings.

225. **Adequacy of Resources to Law Enforcement and other AML/CFT Investigative or Prosecutorial Agencies:** All agencies visited by the mission appeared to be well staffed, accommodated in modern offices with access to the full range of modern equipment and facilities. The larger prosecution offices and police forces in Abu Dhabi, Dubai, and Sharjah have established specialist sections for dealing with major crime and the Dubai prosecution's office has established a dedicated team of seven trained officers to deal with ML cases. These officers have received training in AML from the central bank and internationally.

226. The Dubai Police has a well-resourced anti-money laundering unit with highly-qualified specialty staff recruited from the private banking sector and trained in anti-money laundering and financial crime. The Ras Al Khaimah Police are in the process of establishing a specialist anti-money laundering unit.

227. Dubai airport handles over 50,000 passengers per day. The customs authority, which is well resourced with 1,500 staff and state of the art equipment, has adopted a risk management approach to international baggage handling and screening. All checked and hand baggage is screened and, upon suspicion, it is searched. Officers have received training in body language analysis and suspect passenger identification from the Dubai Police and internationally. A high emphasis is placed on training by the Dubai Customs and all new officers receive instruction in relation to the forms required under the cross-border cash declaration regulations. Cash sniffer dogs are not used in the UAE although a cash detection machine is being considered for purchase by the Ras Al Khaimah customs.

228. **Integrity of Competent Authorities:** A nationwide code of conduct for officers of law enforcement agencies or other agencies does not exist in the UAE. Officers of the FIU are bound by the confidentiality provisions of the central bank law. Many agencies cited the fact that the UAE is a small country and that the background of many applicants to positions within law enforcement is well known to the authorities. In a similar vein and in response to the integrity issues raised by the mission, all agencies cited the belief that the UAE is, as a matter of culture and practice, a law-abiding society where the recourse to criminal behavior by its citizens is very low by international standards.

229. It was noted that officer rank in the law enforcement agencies and financial intelligence unit is limited to nationals of the UAE. Other staff are drawn from other nationalities and by virtue of their residence status are subject to deportation and/or cancellation of their residency visa if convicted of criminal offenses.

230. Applicants for entry into the police are the subject of personal interview and, where appropriate, the security agencies are in a position to supply profiles of individuals. There is no formal process of a declaration of financial assets, and a formal system of ongoing integrity checks is not a current practice within UAE government agencies or law enforcement. Lawyers employed by the public prosecution offices are subject to the legal profession disciplinary rules, breach of which is adjudicated by a committee of eminent peers.

231. **Training for Competent Authorities:** The Institute of Judicial Studies, a division of the department of justice, organizes and conducts training for public prosecution officers involved, or likely to be involved, in AML/CFT cases. The central bank, and in particular the FIU, have conducted a large number of training workshops, seminars, and conferences on AML/CFT for the benefit of all responsible law enforcement agencies in the UAE, in addition to regional counterparts.

232. A number of overseas law enforcement agencies and international bodies have conducted AML/CFT training in the UAE, or have invited UAE officials to attend training overseas. In a number of emirates, particularly Dubai, police and customs officers have been sent overseas for studies or placement with foreign law enforcement agencies in order to gain knowledge and experience on AML/CFT practices and procedures. The FIU has developed strong and effective links with the FIUs of the UK and USA.

233. **Special Training for Judges:** There is no special court in the UAE for the conduct of cases in money laundering. Accordingly, there are no specialist judges involved in the adjudication of ML cases; however, the Institute of Judicial Studies has conducted training sessions for judges on money laundering. In relation to terrorist financing and terrorist offenses in general, the Federal Supreme Court has exclusive jurisdiction for offenses in the CFT law. No special court exists in name, although terrorist cases are afforded special attention by way of expedition and allocation for adjudication.

234. **Statistics (applying R.32):** With the exception of the Dubai Police who were in a position to supply comprehensive and meaningful investigation statistics within a 24-hour period from the time of request, the overall approach to statistical collection, analysis and provision upon request was very poor and in some cases non-existent. Dubai Police statistics indicated that from January 2000 to February 2007, the Dubai Police had investigated 224 cases involving money laundering, of which 91 arose from financial crimes, nine from drug-related offenses, and 124 from money laundering as an act in itself. Reflecting the fact that Dubai is an international financial center and confirming local and overseas intelligence that foreigners attempt to launder money through Dubai, it was noted by the Dubai Police that, of the 224 cases investigated, 122 originated from countries other than the UAE, the highest being the United Kingdom with 43 cases, the United States with 13 and India with ten. In all, 30 separate countries were listed as being the origin of money laundering offenses investigated by the Dubai Police with European

nations being the origin of 20 of those cases. The Dubai police commenced 102 cases themselves in the same timeframe.

235. Law enforcement authorities across the UAE both in the federal sphere and in the larger emirates are at varying stages of development in relation to building their capacity for money laundering and terrorist financing investigations. While in some areas, awareness of AML/CFT laws, regulations and investigative techniques is approaching an advanced level, there are many areas that still require substantial development.

236. The knowledge base even within agencies who undertake the same type of work varies from emirate to emirate. For example, the mission visited the four emirates responsible for the major sea and airports in the UAE. While awareness levels were generally high, in one port the officer interviewed by the mission team was not aware of the existence of the cross-border cash declaration regulation.

237. The mission acknowledges that a large number of seminars, workshops, and conferences have taken place in recent years. The extent to which the information provided on these occasions has reached all of those persons with a day-to-day working requirement for AML/CFT issues particularly front line staff was difficult to ascertain.

### 2.6.2. Recommendations and Comments

238. The mission recommends that:

- Consideration be given to the establishment of a specialist training course in AML/CFT through the NAMLC and the NCFCT, in conjunction with the Institute of Judicial Studies and the various police colleges and customs authorities, so as to ensure a national approach to training. At a minimum, there should be a requirement that all officers who are involved in point-of-entry interdiction attend such a course.
- Consideration be given to establishing a course for all officers assigned to specialist AML/CFT units within law enforcement, for example, the Dubai Anti-Organized Crime Unit, the soon to be established Economic Crime Unit at the Abu Dhabi Police and Anti-Money Laundering Unit at the Ras Al Khaimah Police. It is recommended that such a course involve detailed exposure to all relevant UAE laws on AML/CFT as well as exposure to international best practice in the investigation and interdiction of crimes associated with AML/CFT.
- The FIU consider the dissemination of relevant money laundering and terrorist financing typologies to select units within law enforcement on a confidential basis to assist in criminal analysis and investigation.

### 2.6.3. Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	C	<ul style="list-style-type: none"> <li>• This Recommendation is fully met</li> </ul>
R.28	C	<ul style="list-style-type: none"> <li>• This Recommendation is fully met</li> </ul>

## 2.7. Cross Border Declaration or Disclosure (SR.IX)

### 2.7.1. Description and Analysis

239. **Legal Framework and Mechanisms to Monitor Cross-border Physical Transportation of Currency:** On January 26, 2002, the central bank issued the Regulation regarding Declaration when Importing Cash Money into the UAE (the Cross Border Cash Regulation). Amounts of cash exceeding AED 40 000 (USD 10 900) or its foreign equivalent are required to be declared to the customs authority. The ceiling applies to adults. Amounts of cash carried by children are added to their guardians' threshold level. The declaration applies only to incoming cash by way of passenger, post, shipment, and in the form of travelers' checks. Other forms of bearer negotiable instruments are not mentioned in the Cross Border Cash Regulation. There are no similar provisions relating to currency exports.

240. The central bank regulation is entitled "Declaration when Importing Cash". Signs are displayed at some points of entry alerting incoming passengers to the requirements. Customs officers are required to provide the required forms for completion by passengers who are to make a declaration that they exceed the normal cash limits and in circumstances where customs officers detect undeclared currency movements that exceed the cash limits. Signage at airports alerting customers to the law was not consistent across the UAE. In Abu Dhabi, the customs officer interviewed by the mission conceded that as at the date of the mission, there was no sign displayed at the airport in relation to the declaration requirements. This situation was rectified post mission and the authorities subsequently advised the mission team that signs in relation to declaration requirements are now prominently displayed at the airport.<sup>12</sup> A passenger is required to submit a truthful declaration to designated authorities only in cases where they have read the sign and realize that they need to make such a declaration. There is no requirement for a declaration to be made by all incoming passengers as to whether or not they are carrying cash in excess of the threshold. Those who seek to make a declaration are required to fill in the forms prescribed under the regulation.

241. The level of awareness across the operational customs units in those emirates visited by the mission was uneven. On occasions, senior officers displayed a working knowledge of the applicable laws and regulations while on other occasions, officers had no knowledge of the law at all, or were complying to a limited degree, and then only on the basis that they were told to report to the FIU, without knowledge as to the legal foundation for the reporting system.

242. Expenditure on detection hardware and software was well advanced in most emirates. Significant sums had been expended in the major ports on state of the art equipment to monitor both containers at ports and baggage at airports. In terms of interception and search of incoming small vessels, particularly dhows, the approach in both Dubai and Sharjah was at a high level: 24-hour surveillance, two stages of search firstly by the coast guard and secondly upon docking by customs officers who work, in Dubai at least, in conjunction with officers from the police, immigration and state security agencies.

243. **Request for Information on Origin and Use of Currency, Sanctions for Making False Declarations or Disclosures, and Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or TF:** In the event that a person fails to disclose that they are carrying cash over the threshold and it is discovered that they are in fact carrying such an amount, the customs officer is authorized under the Cross Border Cash Regulation to enquire as to the reason for non-declaration and, if not convinced as to the authenticity of the reasons provided, he

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<sup>12</sup> During the course of face-to-face meetings between the authorities and the assessors in January 2008, the customs authorities provided a written submission indicating that signage did in fact exist at the time of the on site mission, but that it was "poorly displayed".

is directed by the regulation to seize the cash and transfer the amount to the attorney-general to initiate proceedings pursuant to Article 18 of the AML Law which carries a penalty upon conviction of a fine of between AED 2 000 to AED 10 000 (USD 600 to USD 3 000).

244. While the regulation is promulgated in response to the requirements under the AML law, there are no special sanctions applicable where the transportation is for the purpose of ML and TF. For the purposes of these criteria, it is noted that Article 13 of the CFT law provides that whoever carries, transfers, or deposits property on the account of another or who conceals or disguises its nature with the intent or knowledge that it may be used in a terrorist act is punishable with life imprisonment. Such a provision can be applied to cash couriers who engage in the activity in support of terrorist acts or to provide finance for terrorist acts.

245. **Restraint of Currency:** In exercising their duties under Article 7 of the Cross-Border Regulation, the customs officers can stop and restrain for a reasonable period of time and can, where necessary, call in the aid of police officers to conduct further enquiries. Both the authorities and the private sector reported to the mission that the carrying of large amounts of cash is not unusual in the UAE.

246. In Sharjah, by way of example, the customs authorities indicated that seizure of cash was not a commonplace occurrence. From the perspective of Sharjah customs, the passenger would either have to be of interest by way of intelligence received or the amount of cash would have to be in excess of AED 300 000 to AED 400 000 (USD 82 000 to USD 110 000) before a suspicion would arise so as to necessitate consideration of further action by way of interview with the customer or contact with other law enforcement agencies. To undertake further enquiries in circumstances where passengers had declared the carriage of amounts equivalent to or less than AED 300 000 (USD 82 000) in cash was seen by the head of the Sharjah customs as an intrusion on an individuals' ability to conduct his private affairs. This is also confirmed by the public prosecutor's office in Dubai, in that most of the cross-border criminal cases taken are for failure to file and not for suspicious movements of cash over the border. The authorities were not in a position to provide statistics in this regard.

247. **Retention of Information of Currency and Identification Data by Authorities when Appropriate and Access of Information to FIU:** The customs authorities pursuant to Article 7 of the regulation are required to send information to the FIU. In addition, the Common Customs Law of the GCC States at Articles 127 and 128 also empower the customs officers to access and, if offenses are found, to seize all papers, documents, records and information directly or indirectly relating to customs operations. While the regulation of cross-border transportation of cash is clearly an aspect of customs operations, Articles 127 and 128 of the Common Customs Law of the GCC States are contained in a section of the rules dealing with smuggling, the definition of which does not include importation of cash, such carriage, in itself, not being an offense in the UAE.

248. In Sharjah and Dubai, information in relation to cross-border transportation of cash is made available by way of report to the FIU in hard copy format. The Sharjah customs have filed on average only 4-6 reports per year. At face value, this statistic is a matter for concern: not only does Sharjah cater to a number of incoming passengers by land from Oman and by sea from Iran, but both the sea cargo and air ports in Sharjah cater to vast numbers of incoming and outgoing passengers, cargo and containers. In Dubai, which is by far the busiest emirate in terms of both containers and passengers, the authorities indicated that they do submit reports but that the exact number for 2006 was not readily available. The Ras Al Khaimah customs advised the mission that

it had made no reports to the FIU although it was fully aware of its obligation to do so and demonstrated a thorough working knowledge of the legislation.<sup>13</sup>

249. **Domestic Cooperation between Customs, Immigration and Related Authorities:** The authorities indicated that via the mechanism of the NAMLC, cooperation between customs, immigration and related authorities is ensured and that cooperation between customs in each emirate is at a high level. No regulations under Article 10 of the AML law have been issued in this regard. No statistics were available to indicate the level of domestic cooperation or to indicate the extent to which such cooperation related to cross-border cash couriers. Accordingly, the mission's analysis in relation to domestic cooperation is of a general nature only.

250. In Dubai, the customs, immigration, and state security officers together with the police operate from the same premises in each sea and air port in Dubai. Small vessel arrivals are handled at a single entry point. There is extensive cooperation on a daily basis. Dubai has one international land border with Oman which is controlled by the customs centre.

251. In Sharjah, the department of immigration comes under the direct control of the ministry of interior which is also responsible for the police and customs services. The immigration service has officers stationed permanently at Sharjah International Airport and Port Khorfakkan. It administers passengers arriving and departing on the Iran ferry service which operates between Port Khalid and the southern Iranian port of Bandar Abbas. Visiting vessels must submit a detailed crew list upon arrival indicating a passport or seaman's book number. The Sharjah office operates on a 24-hour basis and is linked by computer to the central immigration database. Problems encountered by immigration services include country craft or coasters arriving with incomplete documentation for crew members.

252. Ras Al Khaimah noted full cooperation with all authorities and noted the small numbers of incoming passengers through Ras Al Khaimah entry points. There is no international airport and the volume of passenger traffic by sea is low.

253. **International Cooperation between Competent Authorities relating to Cross-Border Physical Transportation of Currency:** Bilateral arrangements between local customs in each emirate and overseas counterparts are permitted; but, in light of the expanding role of the FCA and the need for a national strategic approach to customs issues in AML/CFT, it is preferable that such arrangements are to be coordinated by the federal body. Intelligence exchange is coordinated by the FCA and bilateral relationships on general customs issues, although not specifically on SR IX issues, do exist. This is particularly so between Dubai customs and overseas customs authorities including the World Customs Organization (WCO) where the overall relationship is strong and productive. The former Director General of the Dubai Customs served in a senior position as a regional representative at the WCO in the late-1990s and strong working relations have existed since that time.

254. **Confiscation of Currency Related to ML/FT:** In addition to the power vested in the customs authorities to seize funds for the purpose of forwarding them to the attorney-general to initiate seizure proceedings pursuant to Article 7 of the Cross-Border Cash Regulations, the general confiscation provisions applicable to both money laundering and terrorist financing are found in the AML law and CFT law, respectively, and are discussed under Recommendation 3 in this report. There are no special provisions related solely to the confiscation of currency.

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<sup>13</sup> During the course of face-to-face meetings between the authorities and the assessors in January 2008, the FIU indicated that it was in possession of 29,897 cash transaction reports from UAE customs authorities.

255. **Confiscation of Currency Pursuant to UN SCRs:** The FIU makes available to law enforcement the UN lists pursuant to Resolution 1267. In this regard, the passenger is the responsibility of immigration and state security officers. Customs advised that by the time the passenger has reached point of contact with customs officials he has already been screened under the immigration and security agency procedures and any suspect cash would be seized by the state security agencies under the CFT Law.

256. **Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones:** The UAE is a party to the Kimberley Process and accordingly is obliged to report movements of rough diamonds. Statistics for the number of reports in 2006 were not available. The authorities advised that during 2006 no sanctions were brought by the UAE Kimberley Office against any rough diamond importers. Trade figures for rough diamonds were as follows: total imports, 42 384 130.19 carats valued at USD 1 561.5 million; total exports, 42 215 785.60 carats valued at USD 2 367.7 million.

257. Merchants in the gold market reported regular instances of gold and precious metal couriers plying their trade within the gold markets in the UAE. This legitimate trade was usually transacted by way of payments to predominantly Indian traders selling gold jewelry in return for either bullion or cash or both, and the instance of traders departing the country with large amounts of gold bullion and cash was not uncommon. The market traders indicated that the customs authorities were aware of such trade and strictly enforced the declaration aspects of the courier businesses to the extent that they applied to outgoing passengers. The obligations in this regard relate to trading licenses. AML/CFT obligations do not arise from a customs perspective in terms of outgoing passengers. On this matter, the customs authorities also noted that a person bringing gold and jewelry into the UAE for the purpose of trade must first be issued with a license to trade. Entry without a license will attract the interest of customs, albeit from a revenue and trade perspective, rather than an AML/CFT focus.

258. Any customs notifications to foreign agencies in relation to precious metals and stones was by way of the FCA although no customs units visited by the mission could indicate whether any such notifications had taken place. The Dubai Police indicated that if there was an intelligence request as opposed to a request for evidence, then such information would be shared with foreign counterparts directly. Evidence requests are governed by the Judicial Cooperation law and coordinated by federal authorities.

259. **Safeguards for Proper Use of Information:** Cross-border reports are forwarded to the FIU by facsimile and delivered in hard copy the following day. There is no encrypted online reporting mechanism. There are no special mechanisms for safeguarding information other than the usual requirements concerning access to restricted areas by members of the public.

260. **Implementation of SR.IX Best Practices:** The FATF International Best Practice Paper on Cross-Border Transportation of Cash by Terrorists and other Criminals has not received widespread distribution within the UAE. The major operational customs authorities within the larger emirates have in fact implemented many of the measures contained in the best practice paper.

261. **Additional Element – Computerization of Database and Availability of Database to Competent Authorities:** While the customs authorities retain incoming and outgoing passenger records and shipments in both hard copy and computerized format, there is no online access to other law enforcement authorities or the FIU. Access is arranged on an as needs basis using standard phone and postage communication channels.

### 2.7.2. Recommendations and Comments

262. A national strategic approach to the management of the cross-border transportation of cash and negotiable instruments is required. The FCA, in conjunction with local customs representatives and under the advice and guidance of the NAMLC and the NCFCT, should consider the design of a strategy to ensure a coordinated approach to the issue with particular reference to the following:

- Use and detection of negotiable instruments.
- An assessment for outgoing flows of cash and precious metals and stones.
- An assessment as to the extent to which FIU outreach work in the gold market is being undertaken.
- A coordinated approach to passenger profiling using an intelligence-led model in conjunction with other law enforcement agencies.
- Raising industry and public awareness by virtue of a media campaign.
- Conducting a risk analysis as to the need for increased vigilance at potentially vulnerable border points, including marine traffic with Iran via Sharjah and illegal migration at border crossings from Oman into Ras Al Khaimah, bulk cash transfers to South Asia and the Philippines in light of noted remittance flows, and land transfer points with Oman in light of the authorities' advice that there may be differing levels of awareness in other Gulf countries to AML/CFT issues.

263. In all regards, it is noted that the FATF International Best Practice Paper will be of assistance in developing a national strategy and the mission recommends dissemination of same under the auspices of the FCA.

264. The mission recommends that the customs authorities in conjunction with appropriate legal advisers carefully consider reliance on the Common Customs Law of the GCC states for document inspection and retention in relation to money laundering.<sup>14</sup>

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<sup>14</sup> During the course of face-to-face meetings between the authorities and the assessors in January 2008, the head of the FCA indicated that serious consideration was being given to the recommendations contained in the report including the drafting of a regulation covering reporting of outbound cash and negotiable instruments. It was noted that bulk cargo transfer of cash by financial institutions results in the completion of a customs dispatch form. In addition, the authorities (by way of letter dated January 31) indicated that for “outbound cash carried by persons, there is a procedure by which concerned passengers are required to obtain Police certificates, which are then lodged with Customs officials when they leave the country”. No law or regulation nor any statistics as to the extent of the practice was provided to support the information provide in the letter.

### 2.7.3. Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	NC	<ul style="list-style-type: none"><li>• Inconsistent enforcement of the reporting system.</li><li>• No system for the reporting of transportation of bearer negotiable instruments, either inbound or outbound.</li><li>• No system for the reporting of outbound cross-border transportation of cash.</li><li>• No sanctions or restraint powers for failure to disclose/declare or false disclosure/declaration of bearer negotiable instruments.</li></ul>

### 3. PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

265. **Legal Framework:** As described in Section 1 of this report, there are multiple agencies responsible for the oversight and supervision of financial institutions in the UAE. The authority of the central bank extends to banks, financial institutions (defined generally as entities engaged in extending credit or financing projects), licensed money remitters and money changers. The central bank also oversees the voluntary registration of the hawaladars, but since these are not regulated or supervised in the same manner as the licensed money remitters, none of the following description is relevant to this sector, which is addressed specifically in the discussion of Special Recommendation VI. The Emirates Securities and Commodities Authority covers the exchanges and brokers, while the ministry of economy and commerce is responsible for supervision of the insurance sector (and audit firms). The Dubai Financial Services Authority is the regulator for all financial services providers in the Dubai International Financial Center.

266. The financial sector AML preventive measures are addressed primarily in Federal Law 4/2002 (the AML law). The specific obligations imposed on the financial sector under this legislation are very limited and relate mostly to the filing of suspicious transaction reports. Article 23 provides for the issue of "executive regulations" to implement the provisions of the law. These may be issued by the Council of Ministers upon the recommendation of the NAMLC and the minister of finance. To date, no such regulations have been issued, but any matters addressed in the future under Article 23 would clearly fall within the scope of "law and regulation" as defined by the FATF.

267. Under Article 11, each regulatory agency is required "to establish appropriate mechanisms" to ensure compliance with the law by the institutions for which it is responsible, and this has been the primary route through which implementing provisions have been introduced. The format of the various provisions has varied significantly, and some actually predate the enactment of the AML law, but still remain in force. Specifically, they include the central bank Regulations 24/2000 (as amended up to June 2006), the ESCA Circular of February 2004, the Ministry of Economy Circular of January 2002, and the DFSA Rules of 2006. In addition, the central bank has, from time to time, issued other circulars that address issues of relevance to AML, in particular Notice 163 of 1998 relating to customer accounts, and Notice 1815 of 2001 in relation to outgoing transfers by moneychangers.

268. It should be noted that, while the federal AML/CFT laws apply throughout the country, including within the financial free zones, each regulator within the free zones is responsible, under Article 11, for implementing measures to ensure compliance. Therefore, although the central bank is generally the lead agency on matters relating to AML/CFT preventive measures, it has no supervisory authority within the DIFC (or any other financial free zones that might be created), where this responsibility falls to the DFSA.

269. The central bank's authority to issue notices and circulars is contained in several parts of the central bank law (including Articles 94 and 117), which provide for the promulgation of such instructions and directives as the bank may consider appropriate for the sound functioning of the banking and financial institution sectors. These articles were clearly drafted originally to address broader safety and soundness issues, but the authority of the central bank to issue rules specifically on AML is seen to be reinforced by Article 11 of the AML law. While the terminology appears to vary for the different instruments issued by the central bank (regulation, notice, circular, etc), they are all considered by the central bank and the financial sector participants to be equally enforceable under the central bank law, and may lead to administrative action under Section 112.

270. The ESCA's right to issue regulations is contained in Article 4 of Federal Law 4/2000 (the ESCA law). However, the circular issued in relation to AML is in the form of a board resolution, and the law does not provide explicitly for this type of issue to be addressed through resolution. Instead, the circular has been published on the basis of the general obligation, under Article 11 of the AML law, for the regulators to implement appropriate measures to ensure compliance. The circular issued by the ministry of economy in relation to the insurance sector appears to pre-date the AML law, and it does not cite the authority under which the ministry is acting, but under Article 84 of the insurance law, the ministry of economy has the authority to issue decisions and regulations necessary for the implementation of the law. The position with respect to the DFSA is discussed separately at the end of this section of the report. With respect to the Dubai Gold and Commodities Exchange, which is located in the Dubai Multi Commodities Center (and which currently trades principally in futures contracts for gold, silver, currency pairs and steel), a memorandum of agreement has been entered into between the DGCX and ESCA under which the DGCX has agreed to be bound by ESCA regulations and bylaws.

271. The instruments issued by the central bank and the other regulatory authorities must be considered, at best, as "other enforceable means", since they are not directly issued or authorized by the legislative body. A critical test for establishing whether, indeed, any instruments may be considered as other enforceable means is to have evidence of their citation in enforcement action. Following the mission's visit, ESCA reported that it had imposed penalties on two brokerage firms for violation of its AML circular. The central bank indicated that it has not yet taken any formal action under its AML regulations, but that it had taken a range of actions under other similar regulations issued by them, including the removal of the board of a bank and the restriction of a bank's activities.

### **Scope**

272. From the information made available to the mission, it was impossible to determine the extent to which the thirteen types of financial activity defined by the FATF were covered by the AML rules and regulations in the UAE. On the basis of the laws, regulations and other information provided, it would appear that only the banking (broadly defined), securities and insurance sectors are subject explicitly to the implementing rules issued by the authorities.

273. In the following discussion of the preventive measures, separate descriptions and analyses are provided (where relevant) of the specific provisions that relate to the banking, securities and insurance sectors. Unless otherwise specified, the description of the banking sector also includes the moneychangers and finance companies, since both are subject to central bank regulation. In the case of the DIFC, the relevant description is applicable to all entities operating in the center, since the DFSA applies a unitary approach to dealing with institutions undertaking the authorized activities. In addition, since the regulatory provisions within the DIFC differ from those in the rest of the UAE, the convention has been used in this report to describe those entities subject to supervision by the Central Bank, ESCA, and the Ministry of Economy as "domestic" entities in order to distinguish them from the free zone institutions.

### **Implementation issues**

274. As will be seen from the following description of the preventive measures in the financial sector, there is a high degree of non-compliance with the FATF standards at the formal level, in that the laws, regulations, and other enforceable procedures do not adequately address the specific issues required under the recommendations. However, from the discussions with the central bank examiners and the institutions that they supervise, it was apparent that a far higher level of compliance with the principles contained in the FATF Recommendation 5–7, in particular, is demanded in practice by the central bank than would appear to be the case from the basic requirements under the law, regulations and notices. The assessment process clearly does not permit an evaluation of the full extent of such compliance in the absence of documentary

evidence, but the examiners and the institutions appeared to be "speaking the same language" with respect to the expectations imposed on the financial industry. These expectations are being relayed not only through the inspection process, but also through a substantial number of training courses (in excess of 350) that have been run by the central bank, not only for the banking sector but for all those in the financial industry.

275. Unfortunately, the messages delivered through these processes are not being transformed systematically into formal guidance for the institutions, such that there is a risk that the information will be lost by existing market participants or will be unknown to new entrants to the market. Moreover, it is certainly not possible to state that the same level of instruction and education is reaching those domestic entities subject to supervision by regulators other than the central bank, since their AML/CFT inspection processes are far less developed. ESCA is a relatively new organization and has not yet established a robust system for AML compliance monitoring, although there is a basic level of awareness of the issues among the market participants. The ministry of economy does not undertake any inspections for AML compliance, and the resulting level of the institutions' awareness of their obligations is very low indeed. The mission was advised that the Ministry of Economy intends to establish a specialist monitoring unit to undertake such compliance inspections.

276. In the following discussion, the absence of formal compliance with the FATF standards (in the shape of appropriate rules and regulations) will have a significant impact upon the ratings against individual recommendations. Where it is considered that the banks have implemented measures (at the instigation of the central bank) that go beyond those specified in enforceable instruments, some limited benefit has been given in the rating. This approach is appropriate because of the very different levels of implementation across different parts of the financial sector.

### **3.1. Risk of Money Laundering or Terrorist Financing**

277. The UAE authorities have not undertaken a structured assessment of the vulnerability to, and risks of, money laundering and terrorist financing through the financial system in the country. Consequently, they do not apply a risk-based approach to the application of the preventive measures, and no sectors have been specifically exempted from the provisions under the AML/CFT legislation and regulations. In addition, the central bank regulations have not been structured so as to recognize the possibility of a risk-based approach to the implementation of the preventive measures at institutional level. This is in contrast to the approach adopted by the Dubai Financial Services Authority, which applies an overriding principle that institutions should have systems and controls that recognize and mitigate their specific risks.

### **3.2. Customer Due Diligence, Including Enhanced or Reduced Measures (R.5 to 8)**

#### **3.2.1. Description and Analysis**

##### **Domestic banks, financial institutions, licensed money remitters and money changers**

278. **Prohibition of Anonymous Accounts:** Article 4 of the Central Bank Regulation 24/2000 specifies that "it is strictly prohibited to open accounts with assumed names or numbers. The bank should always rely on the account holder's name as in the passport or the trade license in case of juridical persons".

279. When CDD is required: Article 3.1 of Regulation 24/2000 requires identification and verification to be undertaken at the time of opening an account. Article 5.1 contains similar provisions with respect to occasional cash transactions, but sets different thresholds for banks (AED 40 000) and money changers (AED 2 000). These figures equate to approximately USD 11 000 and USD 600, respectively, but they relate to both counter transactions (*e.g.* the issue

of drafts) and to wire transfers. While the figure for the money changers falls within the wire transfer threshold of USD 1 000 specified by the FATF, this is clearly not the case when transfers are undertaken by banks.

280. Article 6 of the regulation extends the CDD obligation to any transaction (regardless of whether a threshold would otherwise normally apply) when there are suspicions of money laundering activity. In the case of suspicions of terrorist financing, institutions are required (under Article 16.5) to freeze the transaction and report it to the central bank, which has the authority to impose an immediate freeze of seven days.<sup>15</sup> In such cases the institutions would simply wait for instructions from the central bank before proceeding further. There are no specific obligations to undertake fresh CDD when the institution has doubts about the veracity or accuracy of the information that it holds on the customer, although section 3.3 contains a passive duty to update any information that is subsequently provided with respect to the customer's identification.

281. **Identification measures and verification sources:** The standard customer identifiers specified in the regulation include the name, address and place of work. In the case of natural persons, institutions are required to check the applicant's passport and to retain a copy, which must be annotated by the account officer as a true copy. Passports are considered a universal and reliable form of verification in the UAE. All citizens are issued with the document at birth and are required to update them at five-year intervals. In the case of resident aliens, the passport will contain the work or residence visa, including information on the holder's legal status and address in the country. In practice, for foreign nationals, the information on the place of work is seen as most relevant, since this is a more effective route through which persons may be traced than the residential address, given the extensive use of short-term rentals among the foreign labor force. Accounts may only be opened across the counter on a face-to-face basis, and the regulations specify that the institution must physically check the passport, and not rely on certified copies or other forms of identification. There has been no evidence of the large-scale use of forged passports that might bring into question the wisdom of relying on a single form of identification.

282. With respect to transfers in excess of AED 2 000 made by moneychangers, the central bank issued a specific notice in October 2001 (Notice 1815/2001) expanding the list of approved identification documents to include the passport, UAE identity card, labor card for non-nationals, and the UAE drivers license.

283. **Identification of Legal Persons or Other Arrangements:** In the case of corporate customers, Article 3.1 of the regulation specifies that the institution must take the name and address of the entity and, in the case of a partnership, must record similar information for each of the partners. In addition, it must "obtain all information and documents with regard to juridical persons", but specifies, in particular, the government-issued trade license required by all businesses registered in the UAE. Institutions have typically interpreted "all documents" to mean the memorandum and article of association (or equivalent) and any documents that support the legal status of the company to conduct business in the jurisdiction. Considerable reliance appears to be placed on the trade license that all businesses must obtain, on the grounds that, in order to obtain the license, principals have to submit themselves to scrutiny by the relevant government department to establish that they are legally entitled to conduct business in the country (see the more detailed description under Recommendation 33). However, companies established in the various free-trade zones in the UAE (of which there are a rapidly increasing number) are also able to open accounts with domestic banks, and it is unclear what level of effective investigation and

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<sup>15</sup> But, as discussed elsewhere in this report, the terms of this provision appear to relate more specifically to actions to freeze funds of persons identified on the UN or other lists, rather than being a general obligation with respect to terrorist financing suspicions.

due diligence is undertaken by the respective authorities when permitting the companies to establish.

284. There are no provisions relating to trusts or similar arrangements, presumably on the basis that trusts cannot be established in the UAE (except within the DIFC) and that foreign trusts are not recognized. However, such factors would not necessarily preclude a financial institution from holding an account for a foreign trust. Within the DIFC, there are separate rules relating to the identification procedures for trusts, as discussed below.

285. **Identification of Beneficial Owners:** There is no explicit obligation to identify the beneficial ownership of the majority of companies, or to understand the ownership and control structure of the customer. Article 3.1 of the central bank regulations states that, when opening an account for a public shareholding company, a bank must obtain the name and address of the shareholders with holdings of 5% or more, but the document is no more explicit on what to do about verifying this information. In any event, such companies account for a very small proportion of the total number of corporate entities in the UAE, with the majority being either private joint stock, or (far more commonly) limited liability companies. Article 5.4 of the regulations limits the requirement to identifying the person on whose behalf it appears another person may be conducting transactions (*i.e.* someone who may be concealing his identity behind another). Similarly, Article 19(f) requires institutions to maintain records of "the identity of the persons making transactions in case they were other than the account holder(s) or beneficial owners," but again this appears to relate to circumstances where someone may simply be acting on behalf of another person. Neither of these provisions addresses the need for the institution to undertake CDD on the ultimate owners or controllers of a corporate client whose affairs are being conducted properly by its authorized officers. The importance of this is increased by the probability that, because of the ownership controls in place in the UAE (generally, a minimum 51% shareholding must be held by an UAE national), there may be a high incidence of non-UAE nationals seeking to use local nominee shareholders to evade the restrictions.

286. **Information on Purpose and Nature of the Business Relationship:** There is no explicit requirement within the regulations to obtain information at the outset on the purpose and intended nature of the business relationship. Various record-keeping requirements under Article 19 (relating, for example, to the volume of funds flowing through the account, and the source of funds) are specific to transactions arising from the operation of the account, and are not linked to the due diligence process. However, Articles 8–14 contain lists of unusual types of transactions of which institutions are expected to be mindful. Many of these imply that the institution must have a basic knowledge of the intended purpose of the account and what types of transaction might be out of keeping with the expected account relationship. In practice, institutions indicated (with some justification) that they would need to establish the basic facts about the purpose of the account in order to comply with the broader obligations under the AML regulations and the earlier notice. However, Articles 8–14 are only indicative of money laundering typologies, and their inclusion within the regulations does not impose any specific obligation on the institutions.

287. **Ongoing Due Diligence on Business Relationship:** Similarly, there is no explicit obligation to conduct ongoing CDD on the account relationship. Again, this is only implied by the provisions of Articles 8–14 of the regulation and the broader obligation to report suspicious transactions, although under an earlier regulation dealing with certain aspects of customer accounts (No.163 of 1998 which remains extant) institutions are required to monitor for transactions that are not commensurate with the income of the customers, thereby implying that some level of ongoing CDD (albeit very limited) is required. In respect of customer identification, Article 3.3 states that "all subsequent changes in the information provided on account holders should be updated regularly". This is somewhat ambiguous in terms of whether it requires institutions proactively to update the information, or simply to keep records up-to-date with respect to any additional information that may be provided from time to time. Some of the banks

appear to consider that it requires them to have procedures in place to ensure the information is regularly reviewed, but there is no evidence that this is a universal interpretation.

288. **Risk-Enhanced and simplified due diligence:** The regulations set a standard due diligence process to be applied in all cases, and there are no specific obligations to apply enhanced procedures with respect to high-risk customers. The indicators provided in Articles 8–14 make reference to certain high-risk scenarios (*e.g.* customers from drug-producing countries or from countries that do not adequately apply the FATF standards), but no additional due diligence procedures are required or specified. Generally, there is also no provision for simplified due diligence, the one exception being for transactions falling below the cash transaction thresholds specified for banks (AED 40 000) and money changers (AED 2 000).

289. **Timing of verification of identity and failure to complete CDD:** The central bank regulations do not provide for any delayed verification procedures. Article 3.1 requires both identification and verification to take place "when opening an account". The need physically to take possession of the passport during this process is understood by institutions to mean that the verification must be completed in the presence of the customer before any transactions can be undertaken. Such procedures are also required even if the customer wishes primarily to operate an internet or similar account. The obligation under Article 3 implies that institutions are not permitted to open accounts until they have satisfied themselves on the identity of the customer, but the regulations are silent on whether any failure to complete the process satisfactorily should be considered as grounds for filing a suspicious transaction report.

290. The regulations are equally silent on what actions an institution should take in the event that it can no longer be satisfied that it knows the genuine identity of a customer for whom it has already opened an account and cannot complete a fresh due diligence process. However, it appears that a broad interpretation is being given (by both the central bank and the institutions) to Article 15.5, which requires institutions to inform the central bank when they have suspicions about inward transfers from abroad and not to refuse or freeze the transfer or close the account without central bank approval. This is understood generally to mean that the institutions should seek central bank approval before closing any account about which they might have concerns or suspicions. If, indeed, this is the intent or common usage of Article 15.5, it needs significant amendment because the current text is quite specific on its scope.

291. **Treatment of Existing Customers:** The regulations contain no reference to the application of the CDD principles to customers who opened accounts prior to the introduction of the AML legislation, and the financial institutions do not appear to believe that there is an obligation either to apply the principle retroactively to all accounts, or to adopt any risk-based approach when considering the need to do so on a case-by-case basis. However, the central bank examiners have clearly taken the position that the current standards apply to all existing accounts, and are requiring banks to apply these standards through the examination process.

292. **Politically-exposed persons:** There are no requirements imposed on banks and other financial institutions with respect to PEPs (whether foreign or domestic); nor are PEPs referenced as a potential source of concern among warning indicators in Articles 8-14 of the regulation.

293. **Cross Border Correspondent Accounts:** There are no requirements or conditions imposed on banks with respect to correspondent banking relationships.

294. **Misuse of New Technology and Risk of Non-Face-to-Face Business Relationships:** Article 3.1 of the regulation requires institutions to take possession of the passport at the time of opening an account, and this is understood by institutions (and reinforced by the central bank) to mean that the process must be completed in the presence of the customer and that non-face-to-face account-opening is not permitted in any circumstances. While there are no explicit statements on the banks' obligations to have more general policies in place to prevent the misuse of modern

## Securities

295. **Prohibition of Anonymous Accounts:** Under the ESCA circular of February 2004, brokers are not expressly prohibited from maintaining anonymous accounts or accounts in fictitious names, but the use of unique investor numbers (see below) and the requirement for customer identification measures should preclude such accounts from being opened.

296. **Identification procedures:** Article 3 of the ESCA circular stipulates that brokers, when opening any account, should establish, by means of the presentation of formal supporting documents, their customers' full names and addresses. Investors who are natural persons must submit a passport, while legal persons must present a trade license (a type of legal authorization to operate a business). However, there is no direct obligation to undertake CDD measures at any stage where there is a suspicion of ML/FT, or in cases where there are doubts about the veracity or adequacy of previously obtained customer identification data.

297. Investors wishing to trade on either the Abu Dhabi Securities Market (ADSM) or the Dubai Financial Market (DFM) must obtain a unique investor number (IN) for each market. This number is issued either directly by the relevant market authorities, or by one of the limited number of brokers specifically accredited for this purpose. The documentation that has to be submitted varies from one market to the other. Existing guidance from DFM requires for individuals:

- For UAE nationals, copy of passport and family registration and copy of the driving license (if available).
- For non-UAE nationals, copy of (minimum two documents): passport, labor card (for UAE residents), birth certificate, government-issued ID.
- Investor Signature Form completed by the investor /the agent/the guardian.
- For a sole proprietor, copies of trade license and registration certificate.
- For a representative (agent), copy of the power of attorney authenticated by a notary public in addition to copy of the agent passport.

And for corporate bodies:

- Copy of trade license and registration certificate (authenticated by UAE embassy and country's ministry of foreign affairs for non-UAE licensed companies).
- Copy of power of attorney of the company's representative, authenticated by a notary public in addition to a copy of the representative's passport.
- Investor Signature Form completed by the company's representative.
- List of board of directors and partners and their nationalities.

298. The ADSM investors must provide the full name for natural persons, the commercial trade license, and establishment decree for legal persons. Natural and legal persons must also attach all necessary supporting documents. However, for customers that are corporate entities, there are no requirements to identify the directors or provisions regulating the power to bind the entity.

299. **Identification of Beneficial Owners and Purpose of Account:** There is no obligation under the ESCA circular to identify and verify the details of the beneficial owner. Likewise, there is no obligation to obtain information on the purpose and intended nature of the business relationship when performing transactions below the threshold specified under Article 4. However, for cash transactions equal to or exceeding AED 40 000, brokers are obligated under this article to complete a specific form containing a field that requires information on the purpose of the transaction. Given the limited scope of this requirement (since relatively few transactions are made in cash), there will be little by way of systematic collection of such information.

300. **Timing of Verification of Identity and failure to complete CDD:** The DFM and ADSM rules do not permit brokers to complete the verification of the customer following the establishment of the business relationship. As discussed above, investors need to apply and obtain a unique number from the exchange as a prerequisite for trading, and brokers are required to complete their own verification process before trading is undertaken. The rules do not explicitly require brokers to refuse to enter into a business relationship with the customer or to carry out a transaction when they have been unable satisfactorily to complete the verification process. Further, the need to terminate an existing business relationship or consider making an STR, when unable to satisfactorily complete CDD measures is not addressed in the rules.

301. **Other Factors under Recommendations 5–7:** All the remaining factors under Recommendations 5–7 are not addressed under the ADSM and DFM rules, including the need for ongoing due diligence, the maintenance of up-to-date information, enhanced CDD procedures for high risk customers, and the treatment of PEPs. However, there is no evidence to suggest that brokers in the UAE maintain clearing or other accounts on behalf of foreign counterparts such that the requirements of Recommendation 7 would apply.

302. **Misuse of New Technology and Risk of Non-Face-to-Face Business Relationships:** Investors in securities can place their orders through a broker by telephone, or in person, but the majority of orders are currently placed by telephone. Trading on the DFM and ADSM occurs on an electronic trading system, which automatically lists, matches, and executes trades. Securities brokers in the UAE provide investors with direct access to several trading platforms. There are no specific requirements in the AML rules that seek to address the risks posed in this area.

### **Dubai Gold and Commodities Exchange (DGCX)**

303. The Dubai Gold and Commodities Exchange operates within the DMCC free zone but, pursuant to a 2006 Memorandum of Agreement, ESCA regulates the DGCX in the same way it regulates the DSM and the ABSM. The DGCX has also issued by-laws to its members. Section E.4 of the bylaws requires members, prior to accepting instructions to trade on behalf of a client or accepting monies from a client, to obtain documents and information necessary to establish the client's identity and the source of funds. To implement the bylaws, DGCX has introduced a Know Your Customer (KYC) form to be completed by new clients when entering into relations with members. This requires the following:

- Information on the name and address of the client and beneficial owner, banking details and account type, profile (hedging, arbitrage, short/long term investment), profession, business name, estimated total net worth (or balance sheet in case of a corporate), source of wealth, origin of assets deposited into the account, estimated annual income and daily transactions, and a declaration of whether the client is a PEP.

304. No further AML obligations regarding CDD are imposed on the members by DGCX.

### Insurance

305. The ministry of economy circular on AML was issued to all insurance companies in January 2002. While the circular does not specify that it applies only to life policies and those linked to savings products, the overall tone of the document suggests that these products are its primary focus. Very few domestic insurance companies provide life insurance because the concept does not fit well with Islamic religious beliefs. As a result, this market is largely confined to foreign insurers serving the expatriate community, but the overall scale of business remains very small.

306. **Prohibition of Anonymous Accounts:** The issuance of contracts for life insurance, savings or other similar products in assumed names is specifically prohibited under clause 4 of the ministry of economy circular. Insurance companies are required to ascertain the customer's name from the passport, in the case of a natural person, or from the trade license in case of a juridical person.

307. **Identification Procedures:** The current circular imposes a complex set of conditions for the identification and verification of the identity of customers. CDD requirements apparently apply only in the following cases:

- When the customer exceeds the following thresholds.

**Statistical Table 2. Thresholds for CDD requirements**

	One-time Premium	Installment Premium
Individuals	AED 370 000 or equivalent	AED 92 000 or equivalent
Groups	AED 1 100 000 or equivalent	AED 275 000 or equivalent
Cash	AED 40 000 or equivalent	AED 40 000 or equivalent

- When the customer has insurance contracts with the same or with other companies wherein the total invested amount exceeds the thresholds set above.
- When receiving payment of more than AED 40 000 by a personal check, bank transfer, traveler checks or mail orders.
- When the cash amount received exceeds the accumulative total of AED 40 000 or the equivalent thereof in any one year
- In case of suspicion of money laundering.

308. Thus, CDD measures applicable to life insurance policyholders need not be performed unless the premium value exceeds the designated thresholds, which far exceed the FATF limits below which simplified CDD procedures may be permitted (USD 1 000 per annum or USD 2 500 as a single premium). Identification procedures apply in cases where the customer holds insurance contracts with other companies where the total amount invested exceeds the above-mentioned thresholds; but the mechanism or specific procedure for implementing such a requirement is left

to the discretion of the insurance company, as the circular does not give any guidance as to how this might be implemented. Therefore, it is unclear how it is possible to identify the number and value of policies held or maintained with other insurance companies. Only once the insurance company becomes aware that the customer holds relevant contracts with other insurance companies does it become mandatory to identify and verify the identity of the customer and keep records of that process. In principle, it seems possible for no customer identification to occur at the contract signature stage, and for a relationship to continue indefinitely until such time as the thresholds are known to be triggered, or there is a suspicion of money laundering.

309. In the case of a policy that meets the above criteria, Clause 3 of the ministry of economy circular requires insurance companies to verify the identity of the customer and obtain a statement of his financial position, the source of funds intended for the investment, reasons for insurance and net annual income over the last three years. In addition, they must obtain details of all the life insurance and savings contracts that the applicant has with the insurance companies in the UAE, and "the distribution of assets he owns, credit facilities he has received and name of banks he deals with". However, for customers that are corporate entities, there are no requirements to identify the directors or provisions regulating the power to bind the entity; nor is there an obligation to identify and verify the details of the beneficial owner.

310. The Customer Financial Statement Identification form attached to the ministry of economy circular (and which institutions are required to complete) makes reference to the applicant, payer, and assured (who could be one or more persons), but does not define the obligations of the insurer with respect to each. In the presence of three distinct individuals, it is not clear whether insurance companies are obligated to verify the identities of each of them. Apparently, they have the obligation to verify the identity of the applicant, since the form indicates details to be completed in relation to the applicant's name, address, date of birth, occupation, marital status and his relationship with the assured. However, there is no obligation to establish the relationship between the payer and the assured, or to obtain details of the payer's identity and source of funds, etc.

311. **Other Factors under Recommendations 5, 6, and 8:** The ministry of economy circular does not address any of the other issues within Recommendations 5, 6, and 8, including the need to need for enhanced due diligence for high-risk customers, and the treatment of PEPs.

### **Dubai International Financial Center (DIFC)**

312. The DIFC is the only financial free zone created so far in the UAE under Federal Law 8/2004. While federal criminal law applies to the free zones (including the AML law), the commercial and civil laws are restricted to those enacted specifically for the particular zone within the individual emirate. Therefore, the regulations issued by the central bank with respect to compliance with AML obligations are not deemed to apply to institutions within the DIFC. Here, an entirely separate framework has been created to regulate and supervise the financial institutions licensed to operate within the free zone. This regulatory function is vested in the Dubai Financial Services Authority which has a wide range of duties and powers normally associated with this function.

313. The DFSA has general rule-making powers under Article 23 of the Regulatory Law (DIFC Law 1/2004). More specifically, under Article 72(1) it is required to make rules "in connection with the creation and implementation of anti-money laundering measures, policies and procedures, including rules as to (a) the persons or classes of persons who shall be subject to any such measures, policies and procedures; and (b) the nature and extent of any duty, requirement, prohibition, obligation or responsibility applicable to such persons". In addition, the DFSA is deemed to be one of the competent authorities tasked under Article 11 of the Federal AML Law to introduce measures to ensure compliance by the financial institutions. Both of these primary law powers relate only to money laundering. Although the DFSA AML rules have been issued under

Article 72, they seek to expand the obligations to CFT issues by stating that "where the DFSA uses 'money laundering' either as a defined or undefined term, Authorized Firms are required to include terrorist financing in all considerations with regard to their policies, procedures, systems and controls". This is an imperfect solution (and would seem to rely on the general power to make rules under Article 23, if ever challenged), and the DFSA issued a Consultation Paper (No. 42) in January 2007 indicating its intention to seek amendments to the Regulatory Law specifically to make reference to rule-making powers for CFT.

314. The status of the DFSA rules as either regulations or other enforceable means, as defined by the FATF, is important in assessing overall compliance with Recommendation 5, in particular. There is no tradition of secondary legislation in Dubai, and the power to implement detailed measures, through issuing various instruments, is normally vested directly in the competent authorities under the governing primary law. In the case of the DFSA, Schedule 1 to the Regulatory Law states that "the Rules are legislation made by the DFSA under the Law and are binding in nature". Under Part 7 of the Regulatory Law, the DFSA has a range of powers to enforce compliance with its rules and to apply sanctions (see section 3.10 below). For the purposes of this assessment, therefore, the rules themselves are considered to be "other enforceable means", since they do not meet the FATF definition of regulations, which are required to be issued or authorized directly by a legislative body.

315. The version of the DFSA rules on AML that was in operation at the time of the mission's visit was issued in 2006.<sup>16</sup> They follow a format of specifying the particular rule and then providing guidance as to how that rule is interpreted by the DFSA, and what steps the institution might reasonably take to comply. While the rules impose a clear obligation (a firm "must" do certain things), the guidance is cast in terms of what the firm "should" do to comply. However, the status of the guidance is clearly laid down in Schedule 1 of the Regulatory Law, which specifies that "guidance is indicative and non-binding". As a result, it cannot be relied upon as a basis for compliance with the specific FATF standards.

316. Since federal criminal law applies throughout the DIFC, the following section does not repeat any analysis of the effects of the AML law. Instead, it focuses entirely on the DFSA rules and guidance, and identifies where the issues of law, regulation and other enforceable means are properly applied in meeting the requirements of Recommendations 5–9. Since the rules and guidance are extensive and mirror closely the form and substance of the FATF Recommendations, their coverage may best be explained by reference to the following table. This indicates where an FATF requirement is specifically addressed in full by either rule or guidance, and further indicates whether this complies with the FATF standards with respect to law, regulation or other enforceable means. Where there are other matters of substance to raise (*e.g.* where the rules and guidance do not fully cover specific matters), these are discussed in the text that follows the table. The DFSA applies a single regime to all its authorized firms, and therefore the following description applies to all financial activities in the free zone.

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<sup>16</sup> The DFSA has subsequently advised that a revised set of rules was issued in June 2007.

**Statistical Table 3. Coverage of DFSA rules and guidance**

<b>Issue</b>	<b>DFSA Rule</b>	<b>Guidance</b>	<b>FATF standard</b>
Recommendation 5			
Anonymous accounts	3.4.14 (b)		Law/regulation
CDD <ul style="list-style-type: none"> <li>• when establishing business relationships</li> <li>• when carrying out occasional transactions</li> <li>• when carrying out wire transfers</li> <li>• when suspicion of ML/TF</li> <li>• when inadequate or unreliable information</li> </ul>	3.4.3 (1) 3.4.3 (1) 3.8.1 (1) 3.4.7 (1) 3.4.4 (2)		Law/regulation
Identification and verification using reliable source documents	3.4.1 (2)	Appendix 1	Law/regulation
Verifying that person is authorized to act on behalf of another	3.4.2 (1)		Law/regulation
Verifying status of legal person or arrangement		Appendix 1	OEM
Identifying and verifying beneficial owner of funds	3.4.2 (2)		Law/regulation
Whether person is acting on behalf of another	3.4.2 (1)		Law/regulation
Understanding ownership and control <ul style="list-style-type: none"> <li>a) Legal person</li> <li>b) Legal arrangements</li> </ul>	3.4.2 (2) 3.4.2 (2)	Appendix 1	OEM
Identifying natural persons who ultimately control <ul style="list-style-type: none"> <li>a) Legal person</li> <li>b) Legal arrangement</li> </ul>	3.4.2 (2) 3.4.2 (2)	Appendix 1	Law/regulation
Purpose and nature of the relationship		Appendix 1	OEM
Ongoing due diligence			Law/regulation
Scrutiny of transactions	3.4.7 (3)		OEM
Keeping documents up-to-date	3.4.4 (1)		OEM
Enhanced CDD or high risk customers	3.7.1 (3)		OEM
Treatment of low risk customers	3.4.5 (1)		OEM
Timing of verification <ul style="list-style-type: none"> <li>a) Before transactions</li> <li>b) Controlled exceptions</li> </ul>	3.4.3 (1) 3.4.3 (3)		OEM
Failure to complete CDD satisfactorily	3.4.3 (1)		OEM
CDD on existing customers	3.4.3 (2)		OEM
Recommendation 6			
Risk management to identify PEPS	3.7.2		OEM
Senior management approval for PEPs		Appendix 2	OEM
Establish source of funds		Appendix 2	OEM
Enhanced due diligence	3.7.1 (3)	Appendix 2	OEM
Recommendation 7			
Information on respondent bank	3.4.13		OEM
Assess respondent's controls		Linked to 3.4.13	OEM

Issue	DFSA Rule	Guidance	FATF standard
Senior management approval		Linked to 3.4.13	OEM
Document responsibilities		Linked to 3.4.13	OEM
Payable-through accounts	3.4.13 (3)		OEM
Recommendation 8			
Prevent misuse of technological developments	3.7.1 (4)		OEM
Non-face-to-face business		Appendix 2	OEM

317. While the above table indicates that the DFSA rules and guidance covers all but one of the issues required under the relevant FATF Recommendations, there is a significant number of areas where the assessed status of the rules and accompanying guidance results in the overall structure falling short of the requirements specified by the FATF. These include all the matters that are required to be in law or regulation, and a number of issues (under Recommendations 6–8, in particular) which the DFSA has chosen to address in the guidance only. Within this overarching context, the following points may also be noted.

318. **Ongoing Due Diligence:** Although there are various requirements in the rules relating to the component parts of an ongoing due diligence process (*e.g.* transaction monitoring and maintaining up-to-date customer identification information), there is no explicit obligation within the rules to have in place an ongoing due diligence process.<sup>17</sup>

319. **Identification and Verification:** The DFSA guidance provides extensive lists of the type of documentation that might be considered appropriate in establishing the identity of different categories of customer, including natural persons, corporate entities, legal arrangements, clubs, cooperatives, and charitable, social or professional societies. These are very detailed and cover a wide range of eventualities.

320. **Beneficial Ownership:** The AML rules clearly impose an obligation on institutions (under 3.4.2) to "establish and verify the identity of both the customer and any other person on whose behalf the customer is acting, including that of the beneficial owner of the relevant funds". The term "beneficial owner" is comprehensively defined in the rules to include:

- An individual who ultimately owns customers' assets or controls a customer account.
- A person on whose behalf a transaction is being conducted.
- A person who exercises ultimate effective control over a legal person or arrangement.
- A person on whose instructions the signatories of an account, or any intermediaries instructing such signatories, are for the time being accustomed to act.
- A beneficiary of a trust.

<sup>17</sup> The DFSA has subsequently advised that in July 2007 it approved a policy proposal to impose on Authorized Firms a specific obligation for transaction monitoring and maintaining up-to-date customer identification information. This proposal will be put to public consultation in April 2008, with implementation likely in June 2008.

321. **Risk:** The DFSA requires institutions to apply a risk-based approach to CDD and ongoing monitoring of accounts. The guidance within the rules specifies generally the need to undertake a risk assessment of its customers, and to apply a level of identification and verification that is commensurate with the risk. There is a clear indication that institutions are required to apply enhanced procedures in cases where they identify a higher risk. With respect to lower risk, the rules provide specific exemptions from the detailed customer identification requirements in relation to other financial institutions authorized in the DIFC or in FATF jurisdictions.

322. **Terrorist Financing:** Although the rules refer exclusively to money laundering in the main body of the text, the introductory section makes clear the intention that equivalent procedures are required to address terrorist financing risks.

### 3.2.2. Recommendations and Comments

#### Domestic banking, securities and insurance

323. There are a substantial number of areas in which the current legal and regulatory provisions do not comply with the FATF standards. This is due, in part, to the fact that all the CDD requirements are embedded in the regulations, rules and notices issued by the regulatory authorities, and that these constitute "other enforceable means" as opposed to "law and regulation" as defined by the FATF. The areas where this consideration is relevant are:

- The basic obligation to undertake CDD when opening an account or under other circumstances specified under Recommendation 5 (including the application of thresholds in line with those specified in the Recommendation).
- The requirement to verify the customer's identity using reliable, independent source documents.
- The requirement to establish beneficial ownership.
- The requirement to verify that any person claiming to be acting on behalf of another is duly authorized to do so, and to verify the identity of the person on whose behalf he/she is acting.
- The requirement to conduct on-going due diligence.

324. Beyond these issues, the current requirements contained within the various regulations fall short of the FATF standard in that some or all of them fail either to address, or to impose a clear specific requirement with respect to, the following issues:

- Undertaking CDD on all wire transfers exceeding the equivalent of USD / EUR 1 000.
- Undertaking fresh CDD when the veracity or accuracy of previous information is doubted.
- Understanding the ownership and control structure of the customer.
- Establishing the purpose and intended nature of the business relationship.
- Undertaking enhanced CDD for high-risk customers.
- Implementing risk-based procedures with respect to undertaking CDD on customers whose accounts pre-date the introduction of the AML legislation.

- The treatment of existing accounts for which institutions are unable to complete satisfactory due diligence.
- Implementing specific CDD measures for PEPs and correspondent banking.

325. As discussed in the introduction to this section of the report, there appears to be a significantly higher level of expectation by the central bank (and implementation by the banking sector) of the FATF standards than might be suggested by the technical requirements under the current law and regulations. Certainly, the institutions interviewed showed a keen awareness of the international standards and indicated that the central bank examiners were benchmarking the institutions' CDD procedures against expectations that were not covered explicitly in the regulations, including extensive CDD obligations, ongoing due diligence and measures to address high-risk customers. However, these expectations are neither codified nor set down in guidance, and therefore it is impossible to say whether they are widely understood and implemented within the banking community. Moreover, there cannot be the same degree of comfort with respect to the securities and insurance sectors, since the regulatory framework is far less developed and these institutions appear less familiar with the AML/CFT concepts. Therefore, it is strongly recommended that, not only should action be taken to deal with those elements that are required by the FATF standard to be incorporated in law, regulation or other enforceable means, but that additional guidance be formulated to reflect the broader messages being relayed through the inspection and training programs.

326. Since many of the basic principles for effective AML/CFT measures are applicable across the financial sector, the authorities may wish to consider developing greater standardization in the respective circulars (including between the domestic and free zone sectors). Alternatively, they may consider producing a common circular that is jointly issued by the authorities, and sets some standard requirements, but provides for procedures that recognize, where appropriate, the unique characteristics of each sector's business.

## DIFC

327. The provisions within the DFSA rulebook are considerably more detailed than those provided under Regulation 24/2000. However, as indicated in the table above, many of the components do not tally with the FATF requirements to embed certain issues in law and regulation, and other issues in enforceable provisions, not guidance. While the governing AML legislation is Federal AML Law, the DIFC has its own primary legislation governing the financial services sector. The Regulatory Law already contains provisions that address money laundering and terrorist financing, and, if considered appropriate, may be amended to address some of the core items reflected in the table.

### 3.2.3. Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	NC	<p><i>Domestic banking, securities and insurance:</i></p> <ul style="list-style-type: none"> <li>• No core CDD obligations embedded in law or regulation (all sectors)</li> <li>• No requirement to establish beneficial ownership of legal entities and arrangements (all sectors)</li> <li>• No requirement to understand the ownership and control structure of legal entities (all sectors)</li> <li>• No requirement to verify that any person claiming to be acting on behalf of another is duly authorized to do so (all sectors)</li> <li>• No requirement to undertake ongoing due diligence (all sectors)</li> <li>• The threshold for verification of customer identity in respect of wire transfers</li> </ul>

	Rating	Summary of factors underlying rating
		<p>by banks significantly exceeds USD/EUR 1 000 (banking)</p> <ul style="list-style-type: none"> <li>• Threshold for CDD on insurance applicants significantly exceeds FATF threshold for low risk situations in this sector (insurance)</li> <li>• No obligation to undertake fresh CDD when the veracity or accuracy of previous information is doubted (all sectors)</li> <li>• No obligation to establish the purpose and intended nature of the business relationship (banking, securities)</li> <li>• No requirement to undertake enhanced CDD for high-risk customers (all sectors)</li> <li>• No requirement to implement risk-based procedures with respect to undertaking CDD on customers whose accounts pre-date the introduction of the AML legislation (all sectors)</li> <li>• For DGCX, no requirements for CDD beyond initial identification and verification process</li> </ul> <p><i>Other Domestic sectors:</i> No evidence of implementing rules relating to CDD</p> <p><i>DIFC:</i></p> <ul style="list-style-type: none"> <li>• No core CDD obligations embedded in law or regulation</li> <li>• No explicit requirement to undertake ongoing due diligence</li> </ul>
<b>R.6</b>	<b>NC</b>	<p><i>Domestic banking, securities and insurance:</i> No requirements specified with respect to PEPs</p>
<b>R.7</b>	<b>NC</b>	<p><i>Domestic banking:</i> No requirements specified with respect to correspondent banking</p>
<b>R.8</b>	<b>LC</b>	<p><i>Domestic securities and insurance:</i> No explicit obligation to have policies in place to prevent the misuse of technological developments</p>

### 3.3. Third parties and introduced business (R.9)

#### 3.3.1. Description and Analysis

##### Domestic banking, securities, and insurance

328. There are no provisions within the banking law or regulations with respect to third-party introductions, and the understanding among the regulators and financial institutions is that the institutions are obligated under the current regulations to undertake their own due diligence in every case and may not rely on introductions, even from within the same group.

329. Third-party introductions are not permitted in the securities sector, since investors are required to appear in person at the DFM, the ADSM or accredited brokers in order to complete the “Investor Number Form” and “Account Opening Form”, and to submit the documentations as required.

330. Generally speaking under the Insurance Law, insurance companies may sell insurance products directly or rely on insurance agents or brokers. While agents are required to be registered with the ministry of economy under Article 31 of the Insurance Law, there are no explicit requirements on them to undertake CDD and to provide the relevant documentation to the insurance company. The nature of the relationship between the insurer and the agent is determined

by contract between the two parties (Article 35 of the law). However, it is not clear how much business is obtained by the insurance sector through agents.

## **DIFC**

331. The DFSA rules provide for the conduct of some of the identification process under an outsourcing agreement with another entity, but this is under an arrangement akin to an agency agreement, where the responsibility for CDD remains with the authorized firm. In the case of introduced business, this is limited (in the rules rather than guidance) to intra-group introductions under conditions equivalent to those specified in Recommendation 9.

### **3.3.2. Recommendations and Comments**

332. Provisions should be introduced (in relation to domestic institutions) to cover the possibility that insurance products are being sold through agents and brokers.

### **3.3.3. Compliance with Recommendation 9**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.9</b>	<b>LC</b>	Uncertainty about provisions governing sales of insurance products through domestic brokers and agents.

## **3.4. Financial Institution Secrecy or Confidentiality (R.4)**

### **3.4.1. Description and Analysis**

#### **Domestic Banking, Securities and Insurance**

333. There is a range of standard secrecy provisions that protect confidential information held by financial institutions. However, under Article 100(1) of the central bank law, "the Bank may at any time it deems necessary, delegate one or more inspectors to ascertain the financial position of a particular bank and its adherence to applicable laws and regulations in the conduct of its business". Article 100(2) provides that "commercial banks shall allow the inspector referred to above to examine all books, accounts, documents, and papers bearing on his task and shall provide him with any information requested on time". Article 106 provides that "all information submitted to the Bank in accordance with the provisions of this law shall be treated as confidential except for statistical data that may be published on an aggregate basis". The requirements of investment banks and other financial institutions to provide central bank access to any information requested are addressed in various other provisions and regulations issued by the central bank. The central bank law does not provide any statutory gateways to share information with foreign counterparts, nor are there any provisions relating to the disclosure of information to other domestic authorities (although this would not inhibit flows between the central bank and the FIU given that they are legally the same institution). However, as discussed later in this report in the context of Recommendations 31 and 40, the absence of such gateways does not appear to preclude the disclosure of confidential information to counterparts in practice, and there is a body of evidence to show that disclosure takes place from time to time.

334. Article 33 of the ESCA Law provides that the Board of ESCA may compel any person having connection with securities activities to submit information to it. In addition, the provision gives ESCA the authority to conduct any investigation it considers appropriate, and to have whatever access is necessary. The ESCA Law provides the authority with an objective "to be in contact with international markets in order to obtain and exchange information and know-how," but does not provide a legal mechanism for sharing confidential information; nor are there any provisions relating to the disclosure of information to other domestic authorities. As in the case of

the central bank, the authorities have provided evidence (see the discussion under Recommendation 40) that they do not consider that the law precludes the sharing of confidential information, and that this has occurred on several occasions.

335. Under the Insurance Law, ministry of economy inspectors have the power to access all books, records and documents in order to carry out their duties. There are no specific provisions that relate to the ministry of economy's ability to cooperate with domestic and international counterparts.

336. All the regulatory agencies are members of the NAMLC, which has, as one of its statutory objectives, the aim of facilitating the exchange of information between the respective agencies. However, as is the case with the regulatory laws, the NAMLC governing legislation does not provide a mechanism for the exchange of confidential operational information between members.

## **DIFC**

337. The DFSA has extensive powers under the Regulatory Law to carry out its authorization, supervision and enforcement functions. These include the power to require reports, conduct on-site inspections of business premises of authorised entities and individuals, investigate and compel the production of documents, testimony and other information. Under Article 38(3) of the Regulatory Law, the DFSA may lawfully disclose confidential information where the disclosure is for the purpose of assisting another regulator in the performance of its regulatory functions. In addition, Article 39 gives the DFSA specific statutory authority to exercise its powers at the request, and on behalf, of the regulators, authorities, bodies or agencies listed in the article, including other regulators, government or regulatory authorities exercising powers in relation to AML, and civil or criminal law enforcement agencies.

### **3.4.2. Recommendations and Comments**

338. There are no apparent limitations to the information that may be obtained by the Central Bank, ESCA, DFSA and the ministry of economy, and there are generally comprehensive provisions governing access. Although there is evidence that the authorities are willing to share confidential information with counterparts, it is recommended that statutory gateways be introduced to establish a framework within which such cooperation takes place.

### **3.4.3. Compliance with Recommendation 4**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.4</b>	<b>LC</b>	Lack of clear statutory gateways through which the regulatory authorities may exchange confidential information with domestic authorities and foreign counterparts.

## **3.5. Record-Keeping and Wire Transfer Rules (R.10 & SR.VII)**

### **3.5.1. Description and Analysis**

339. Generally, under Articles 30–32 of the UAE Code of Commercial Practice, banks and other companies must keep commercial books, correspondence, cables, invoices and other documentation connected with the commercial business for a period of five years. The retention period extends from the date of the issue or receipt of the documents and does not allow for account-opening documents to be held for five years after account closure.

## **Domestic Banking**

340. More specific record-keeping requirements are contained in Articles 18–21 of the central bank regulations. Article 18.1 requires that institutions "are able to provide basic information on the account holder and to reconstruct the individual transactions undertaken, at the request of the authorities". Article 18.2 proceeds to state that institutions "should set up a files keeping system, and instruct the respective staff to maintain correspondence, statements and contract notes on transactions in special files, in such a way to enable the bank or financial institution to respond to the relevant authorities in a timely manner". Article 19 then lists a number of other specific information items that must be retained within the records, including customer identification data, the authorizations to operate the account, and the nature and volume of funds flowing through the account. Finally, Article 21 specifies that transaction data must be retained for a minimum of five years, and that account opening data must be retained for five years from the date of closure of the account.

341. There are only very limited provisions in place with respect to wire transfers. Article 5.1 of the central bank Regulations 24/2000 requires that, with respect to wire transfers against cash, checks drawn on another bank or travelers' checks, the institution must record the name and address of both the originator and the beneficiary on a special form designated by the central bank. The identity of the originator must be verified through an identification card. However, this procedure only applies in respect of such transfers exceeding AED 40 000 (about USD 11 000) placed through banks, although the threshold is much lower (AED 2 000 or USD 600) for moneychangers. The threshold for banks is significantly higher than the FATF requirement for when customer verification should take place (USD 1 000). There is no further reference in the regulations about what information must accompany the transfer, whether domestic or cross-border, or what procedures generally are expected of institutions when originating and receiving wire transfers. However, it is understood that the central bank has advised banks informally that they should follow the SWIFT standard procedures, although there is no evidence that banks are examined for strict compliance with any wire transfer rules. The regulations contain a number of "red flag" indicators in relation to incoming transfers (Articles 14 and 15), but these do not specifically address the issue of originator and payment information, as they largely relate to unusual patterns of transactions.

## **Securities**

342. Article 7 of the ESCA circular requires brokers to establish a record-keeping system to maintain correspondence, contracts, and transactions for a minimum period of five years. These files should be made available to the authorities' examiners upon request. In addition, ESCA Board Resolution No. 176/P of 2006 requires brokers to keep records of clients' data for a period of ten years. However, neither provision explicitly indicates that brokers are required to retain copies of customers' account opening documents, and they do not address the need to retain such documents for at least five years after the account has been closed. Pursuant to section E.4 of its by-laws, the DGCX requires that its members retain client records for a period of not less than six years, or such longer period as may be provided for in the FATF Recommendations. Further, section C.9.7 of the DGCX by-laws requires members to maintain accounting records in a form and at a location that will enable them to be conveniently and properly audited.

## **Insurance**

343. Clause 9 of the ministry of economy circular requires insurance companies to keep relevant documents, forms and files for a minimum period of five years from the date of the issuance of the insurance contract, and for these to be made available to the ministry's examiners upon their request. This leaves uncertainty about what records should be kept once this period has lapsed, particularly in the case of long-term policies.

## DIFC

344. There is no primary legislation that lays down the general record-keeping standards. Instead, the requirements for institutions in the DIFC are specified in various parts of the DFSA rulebook. The AML rules (3.4.8 and 3.4.9) state that information, correspondence and documentation used by an institution to verify the customer's identity must be retained for at least six years after the business relationship has ended. A similar time period is specified for records of transactions to be retained after the transaction date. The accompanying guidance indicates that all such information must be maintained in a manner that permits individual transactions to be reconstructed, and allows ready disclosure to the DFSA and any other competent authority.

345. With respect to wire transfers, the DFSA rules require institutions to undertake identification and verification procedures before engaging in any transactions (including wire transfers) on behalf of customers. This is irrespective of the value. Rule 3.8.1 states that the name, address, and account number (or unique identifier) must be included in the payment instruction. There are no exceptions to this principle with respect to batched or domestic transfers, but transfers where both the originator and beneficiary are financial institutions acting on their own behalf are exempt. The accompanying guidance to the rule indicates that institutions should ensure that the originator information remains with the payment instruction throughout its course, and advises institutions to conduct enhanced scrutiny of any incoming wire transfers that lack the originator information. Wire transfers constitute records that must be retained for six years.

346. Compliance with these procedures is monitored through the DFSA supervisory program, and sanctions may be applied in line with the procedures described in section 3.10 below.

### 3.5.2. Recommendations and Comments

347. The record-keeping requirements for the securities and insurance sectors do not clearly address the issue of the basic retention of customer identification material, and the need to retain the records beyond the closure of the account or relationship. It is recommended that provisions similar to those used in the central bank regulations be incorporated in the primary legislation.

348. The current requirements under the central bank regulations relating to wire transfers fall well short of the FATF requirements. It is recommended that the central bank issue specific regulations that specify the complete process institutions should undertake when both remitting and receiving wire transfers. The threshold for completing customer identification and verification procedures should be reduced from AED 40 000 to the equivalent of no more than USD 1 000.

### 3.5.3. Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	LC	<ul style="list-style-type: none"><li>• No clear requirements relating to the retention of account opening documents in the domestic securities sector.</li><li>• Record-keeping requirements in the domestic insurance sector are based on time at which the contract was issued, not from the time of termination of the relationship.</li></ul>
SR.VII	NC	<i>Domestic banks</i> <ul style="list-style-type: none"><li>• Threshold for banks to verify identity of originator exceeds USD 1 000 equivalent.</li><li>• No rules relating to what originator information should be included with the transfer.</li><li>• No rules on what to do with incoming transfers that lack originator information.</li><li>• No evidence of examination for compliance with any wire transfer rules, or of sanctions being available.</li></ul>

### **3.6. Monitoring of Transactions and Relationships (R.11 & 21)**

#### **3.6.1. Description and Analysis**

##### **Banking, Securities and Insurance**

349. Article 16.1 of the central bank Regulation 24/2000 requires financial institutions to report to the central bank "any unusual transaction aimed at money laundering". The article requires institutions to "keep in view" the indicators of largely unusual transactions referenced in the preceding Articles 8–15, which describe a range of typical ML typologies and scenarios. Article 5 of the ESCA circular requires brokers to report to ESCA (for onwards referral to the AMLSCU) "any unusual transactions". No further guidance is provided on what constitutes such a transaction, and so it is not clear whether institutions would take a broad view on issues of complexity and economic purpose of the transaction. A very similar provision is contained in Clause 5 of the ministry of economy circular, although, in this case, the circular contains examples of what might typically be an unusual transaction or a suspect customer.

350. In principle, if the broad range of unusual transactions is required to be reported, institutions would also be required, under the general record-keeping obligations, to record and retain information on their examination and analysis of those transactions. However, there is no explicit obligation to retain a record of the analysis of any transactions that were not considered worthy of reporting after further, detailed consideration by the institution.

351. Article 9.9 of regulation 24/2000 specifically requires banks, moneychangers and other financial institutions supervised by the central bank to pay particular attention to transfers originating from, or destined to countries that do not apply the FATF Recommendations or do not ensure implementation of the recommendations. There is, however, no formal mechanism for alerting institutions to those countries that pose a particular concern. As discussed above, there is no evidence that institutions might reasonably understand there to be an obligation to undertake a formal, written analysis of such transactions and to retain this record in the event that the transactions was not reported to the authorities as suspicious. No references to high-risk jurisdictions are included in the securities circulars. Annex 2 to the ministry of economy circular cites, as an example of a potential money laundering threat, customers who deal with companies in jurisdictions lacking ML laws or which are considered to be non-cooperative for AML purposes.

352. The UAE does not have any established mechanism for applying counter-measures with respect to jurisdictions that do not adequately apply the FATF Recommendations.

##### **DIFC**

353. The DFSA rules provide that an institution must have appropriate systems to monitor for, and identify suspicious transactions. The guidance attached to the rules identifies a number of types of transaction to which institutions should be alert, including unusual and complex transactions and those that have no apparent economic or other reasonable purpose. The rules require that the Money Laundering Reporting Officer review all internal reports of potentially suspicious activity, and document the steps taken to investigate the background to the transaction, and the reasons why any decision not to file an STR might have been taken. These records must be retained for at least six years.

354. The rules (3.6.1) require that institutions must have arrangements to ensure that they obtain and make appropriate use of any findings issued by the government or central bank, the FATF or the DFSA that relate to material deficiencies in a jurisdiction's AML controls.

### 3.6.2. Recommendations and Comments

355. The central bank and ministry of economy regulations steer institutions towards a relatively systematic review of unusual transactions and patterns of transactions. A similar approach could usefully be taken for the securities sector. Generally, it is unclear the extent to which institutions might consider themselves obligated to record in writing the results of their analysis of transactions that were initially judged as unusual, but which, upon further analysis, did not warrant reporting to the AMLSCU. It is recommended that guidance be provided to the institutions on this matter.

356. It is also recommended that the authorities institute a process under they may alert financial institutions to jurisdictions that are deemed not to apply adequately the FATF standards, and ultimately to require appropriate countermeasures to be taken against such jurisdictions.

### 3.6.3. Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	LC	<ul style="list-style-type: none"><li>• No explicit obligation on domestic institutions to record in writing their analysis of transactions initially judged to be unusual, but which were ultimately not reported to the FIU.</li></ul>
R.21	PC	<ul style="list-style-type: none"><li>• No obligations on domestic securities companies in relation to jurisdictions that might pose a particular ML risk.</li><li>• Uncertainty about whether domestic institutions are obligated to undertake written analysis of transactions with no apparent economic or lawful purpose, and to retain the record.</li><li>• No process in place for alerting institutions to jurisdictions that might have significant weaknesses in AML controls.</li><li>• No arrangements under which the authorities might require institutions to take countermeasures.</li></ul>

## 3.7. Suspicious Transaction Reports and Other Reporting (R.13-14, 19, 25 & SR.IV)

### 3.7.1. Description and Analysis

#### Domestic Banking, Securities and Insurance

357. **Reporting of STRs:** Article 7 of the AML Law establishes the FIU and specifies that financial institutions shall send reports of suspicious transactions to this unit. The law provides no definition of what constitutes a suspicious transaction or of the basis upon which a suspicion should be judged (e.g., actual suspicion or reasonable grounds to suspect). Article 15 creates an offense of failing to report, but only when the person has actual knowledge of an act that was related to money laundering.

358. Article 11 of the law provides that it is the role of the regulators to establish mechanisms to implement the law, especially with respect to STRs. For the banks, financial institutions and moneychangers, greater detail on the expected STR regime is contained in Regulation 24/2000. This includes an extensive list of indicators of unusual and potentially suspicious transactions, and, under Articles 16.1 and 16.2, establishes what appear to be parallel obligations to report both unusual and suspicious transactions. Specifically, Article 16.1 states that "all banks, moneychangers and other financial institutions, as well as their board members, managers and employees are obliged personally to report any unusual transaction aiming at money laundering (keeping in view the examples cited in the previous section)"; while Article 16.2 states that "in order to facilitate the verification process of suspected transactions that are aiming at money

laundering ... institutions should report such cases to the central bank". The AMLSCU has indicated that, in its view, both these clauses relate solely to suspicious transactions, since the term "unusual transaction" is qualified by the phrase "aiming at money laundering", which requires the institution to have some level of suspicion. However, this begs the question as to why there are two separate clauses apparently addressing the same obligation. Moreover, Article 16.6 specifies that "banks which fail to report unusual and suspicious transactions shall be penalized in accordance with the prevailing laws and regulations". It is not clear what these penalties might be, since the primary legislation only applies a sanction for failing to report knowledge of laundering.

359. As with the primary legislation, the central bank regulations do not indicate whether the institutions are expected to apply a subjective or objective test of suspicion, or both. A further uncertainty relates to the nature of the act of money laundering that forms the basis for filing an STR. In the AML law money laundering is defined by reference to a relatively narrow list of predicate offenses (see discussion under Recommendation 1). However, in the regulations money laundering is defined far more widely to include "any transaction aimed at concealing and/or changing the identity of illegally obtained money, so that it appears to have originated from legitimate sources, where in fact it has not". In the absence of any further definition of what constitutes "illegally obtained money" it might be assumed that this represents an "all crimes" approach to STR reporting, contrary to the narrower obligation implied within the primary legislation.

360. Neither the AML law nor the central bank rules seek to establish any value threshold for reporting, although the frequent use of an AED 40 000 indicator for banks and AED 2 000 for exchange houses in the list of unusual transactions might lead institutions to set this threshold as a marker in their monitoring systems. The obligation to report appears to be limited to actual transactions, given the absence in the Law and regulations to any reference to the reporting of attempted transactions. Nothing within the regulations restricts reporting on the grounds that transactions might also involve tax affairs, especially in view of the UAE tax-free status.

361. Neither the AML law nor the CFT law provides explicitly for the reporting of suspicions of terrorist financing. Article 23 of the CFT law provides that "whoever knows of a design to committing any of the offences provided in this law and does not communicate to the competent authorities shall be punished with imprisonment for a term not exceeding five years". The authorities have argued that knowledge of a design to commit an offence constitutes suspicion, but the provision clearly sets a standard which exceeds mere suspicion, and the severity of the punishment would suggest that actual knowledge is required. This provision is also in line with the general obligation in law to report knowledge of any offence.

362. However, amendments were made in 2006 to the Central Bank Regulation 24/2000 (which applies only to entities supervised by the central bank) to extend the definition of money laundering to include "monies that are destined to finance terrorism or criminal acts". Financing of terrorism is not defined in the regulations, and it is not clear how this provision ties in with the principles and definitions within the CFT law that might relate to terrorism, terrorist organization and similar terms. In addition, a new Article 16.5 was added to the regulations to provide that "in case of doubt that a transaction might be meant for terrorism or terrorist organizations or for terrorist purpose, the concerned financial institution should freeze the transaction/account and inform the financial intelligence unit at the central bank in writing immediately". The authorities have indicated that the decision to combine a freezing requirement with the suspicious transaction reporting obligation reflects the seriousness of the issue, although some institutions suggested that the provision was more specifically linked to actions required under the UN resolutions. While the reporting obligation under Article 16.5 does not appear to be circumscribed in this regard, it has to be noted that the obligation relates only to banks and other financial institutions regulated by the central bank, and it does not comply fully with the FATF standard, which requires the provision to be embedded in primary or secondary legislation.

363. With respect to the securities and insurance sectors, including the DGCX, the circulars issued by the regulatory authorities impose an obligation to report unusual transactions. This gives rise to the same uncertainties about the actual reporting standard to be adopted by institutions, as have been described above. There are no specific references to terrorist financing in either of the ESCA or ministry of economy circulars.

364. **Immunity:** Article 20 of the AML Law provides immunity to institutions and their directors, employees and authorized representatives from any criminal, civil or administrative liability that may result from breaching confidentiality as a result of fulfilling their obligations to report under the Law. A similar provision is contained in Article 39 of the CFT law, although this is primarily related to the freezing and seizing procedures, since there is no obligation under that law to report suspicions of terrorist financing.

365. **Tipping-off:** Article 16 of the AML law creates a tipping-off offense, but it is cast in narrow terms since the offense is only to inform an individual "that his transactions are being scrutinized for possible involvement in suspicious operations". This does not appear to preclude the possibility of alerting a third party related to, or associated with the person undertaking the transaction. The authorities have stated that this provision should be interpreted more broadly to include a prohibition on disclosure to third-parties who might then alert the customer (*i.e.* indirect disclosure), but there is no case law to support this wider interpretation, which would still not address the fundamental concept that the filing of STRs should not be disclosed to any person not authorized by law to receive the information. The authorities have also pointed to Article 12 of the AML Law which imposes a more general secrecy obligation, but this defines the obligation with respect to "information they have obtained in respect of criminal offenses referred to herein". This would not appear to apply to the reporting of unusual or suspicious transactions (which might, in fact, have no links at all to criminal activity), a view supported by the existence of Article 16, which clearly was intended to address the tipping-off offense. The Central Bank Regulations (Article 16.4) also address the issue of tipping-off, but deal with it in a similar manner to the law, by stating that the "institution or its employees must never contact the customer to inform him of what is going on". The ministry of economy circular uses exactly the same language, but the ESCA document does not address tipping-off.

366. Of concern also is the fact that, in some respects, the central bank regulations appear to require institutions to alert the customer to their suspicions, in direct contradiction to Article 16.4. Under Article 15.6 the central bank has the power to issue a freezing order on transactions, an action that it regularly takes following receipt of an STR. Where such orders are made, they may last up to seven days, but the reporting institution is required under the article to notify the customer of the central bank's action, and to request the customer to provide information to show that the transaction is legitimate. This requirement is further reinforced in the standard correspondence that is sent by the AMLSCU to institutions following submission of an STR, where the institution may be instructed to interview the client and to have him "prove that the funds emanated from legitimate sources". Such a process will obviously alert the customer to the fact that a transaction is being treated as suspicious, and therefore seems contrary to the general principle of secrecy. Moreover, the regulations are very vague about what happens at the end of the seven-day freezing period, as they appear to suggest that the order would lapse as a matter of common practice. In fact, it is understood that any extension would have to be approved by the attorney-general. The central bank states that, by freezing the account, the immediate problem of misuse of the funds has been addressed since the funds cannot be moved further within the financial system, and that there is, therefore, no immediate concern about the customer being alerted. However, this argument does not take account of the fact that the suspect may have additional funds within the same or other institutions, which he would then be able to remove, in the clear knowledge that his activities might be under investigation. In addition, the instruction to contact the customer does not appear to be given in the context of any specific analysis or investigation by the AMLCSU or law enforcement of the broader context of the STR.

367. The authorities have indicated that they see no immediate benefit in implementing an automatic cash reporting system. Instead, they have introduced certain provisions within the Central Bank and ESCA regulations which require financial institutions to record, on a designated form, the details of certain types of cash transaction in excess of AED 40 000, and to retain the forms on file so that they can be reviewed, when required, by the Central Bank and ESCA examiners.

368. **Feedback and Other Reporting:** The central bank's regulations contain detailed examples of types of transactions that might reasonably be regarded as unusual in order to assist the institutions to identify suspicious activity. In addition, the AMLSCU has conducted numerous courses and seminars for the financial industry. The assessment team received mixed reports on the value of these training courses. Some institutions felt that they were consistently at a level that was too basic for the needs of the compliance officers, since they largely focused on the core legal requirements. It was felt that greater value could be derived from the courses if the central bank were to provide greater feedback on its experiences in handling the STRs, and on the money laundering typologies that were emerging in the jurisdiction. In addition, some institutions felt that greater opportunity might be taken to provide for question and answer sessions to allow the compliance officers to raise practical issues that they are facing with the reporting obligations.

369. With respect to the feedback provided to individual institutions on their STRs, there is a general procedure to acknowledge receipt of all STRs on a standard form, which contains five tick-box items notifying the institution of any one of the following:

- The STR has been added to our STR database at AMLSCU and no action is required.
- The STR has been added to our STR database at AMLSCU and you should monitor the account regularly for suspicious movements.
- You should interview the customer, and inform us of the outcome of the interview.
- The case will be passed-on to the police for investigating concerned person/customer/entity's activities.
- Steps will be taken to freeze the accounts and pass on to the Public Prosecutor for further investigation.

370. The AMLSCU may also revert to an institution if it requires additional information on the circumstances of the transaction or account. The AMLSCU reports that it will usually seek to advise an institution if it considers that the institution has not applied sufficient diligence in its analysis of the transaction before filing the report. Such automatic acknowledgement of the STRs is a positive element in the process. However, there is no evidence that, once the initial acknowledgement has been sent, institutions are provided with further information on the value and relevance of STRs towards investigations and prosecutions. Moreover, there appears not to be a systematic process whereby the AMLSCU will revert to institutions about what might subsequently be expected of them, particularly in instances where it has ordered them to apply enhanced monitoring procedures, or where they may wish to terminate the relationship with the client. The institutions indicated that they usually had to press the AMLSCU for relevant instructions or consent.

## DIFC

371. The criminal law governing the STR system applies to the institutions in the DIFC and the general procedures described above apply. However, the DFSA rules have more expansive provisions, requiring institutions to report transactions where there is knowledge, suspicion or reasonable grounds to suspect that a person is engaged in money laundering. In addition, there is accompanying guidance on the issue of tipping-off. This advises that institutions must not alert any person to the fact that his transaction has been reported as suspicious, and further indicates that an institution may choose not to pursue its due diligence procedures if it considers that, by so doing, it might alert the customer.

372. The DFSA power to make rules in this area refers only to money laundering, but the DFSA has sought to extend its rules indirectly to terrorist financing by defining money laundering to include terrorist financing. However, the Authority has recognized the weakness in this approach and is proposing to seek amendments to the Regulatory Law to include the specific power to create rules on both matters, and it issued a Consultation Paper (No. 42) in January 2007 addressing this matter. The amendments were enacted subsequent to the mission's visit.

373. Institutions within the DIFC have filed a total of 10 STRs since inception of the center in 2004. The DFSA rules require that copies of the reports must also be filed with the regulator as well as the AMLSCU. The DFSA undertakes a review of each STR to determine whether it might reveal weaknesses in the institution's systems and controls. The DFSA reports that the majority of the reports related to potential fraud, primarily against the institution itself, involving the submission of forged documents. No cases have been reported involving established customers of an institution, where failures in CDD or other preventive measures might have occurred.

### STR Data

374. The following table provides details of the number of STRs filed by financial institutions over the period 2004–2006. The mission requested a further breakdown of the data, but this has not been received:

**Statistical Table 4. Number of STRs filed by financial institutions (2004–2006)**

	2004	2005	2006
Banks	252	250	475
Moneychangers and other financial institutions	38	49	73
DIFC institutions		2	8

375. The level of STR reporting in the domestic sector appears to be very low relative to the size of the market. It is also understood (from discussions with the private sector) that the reporting is heavily concentrated among a few institutions. These figures suggest that the system is not providing a proper basis for the analysis and investigation of money laundering threats in the jurisdiction. It may be that either the majority of institutions are not properly aware of their general obligations or that they are failing to implement effective monitoring procedures. Alternatively, it may be that they are applying a threshold of suspicion that is unreasonable high, although this was clearly not the case with some institutions, who indicated that their reporting was based on a test of whether the transaction was simply unusual. However, the central bank reports that, through its examination process, it is generally satisfied with the levels of compliance by the banks. The process for assessing compliance in the securities sector is less developed, while there is, as yet, no inspection program for the insurance companies.

376. While the total number of STRs from the institutions within the DIFC is small, this has to be seen in the context of a center which is very new, where many of the licensees are not yet operational, and where traditional deposit-taking is still very limited. Through its examination process, the DFSA reports that it has not yet encountered a situation where it considers that an institution has failed to file a report appropriately.

### **3.7.2. Recommendations and Comments**

377. While the STR regime has been in operation for several years with some degree of success, there is a lack of clarity as to the exact basis on which reports should be filed. The central bank regulations refer variously to unusual and suspicious transactions, and there is no indication of whether institutions are expected to apply a subjective or objective test to suspicion. In addition, there is an apparent variation in the definition of the money laundering offense between the primary law and the regulations, such that it is unclear what the scope of the reporting should be in relation to the predicate offenses. These issues appear to be a factor in creating variations in the nature and quality of reporting by individual institutions; for example, the benchmark for reporting that was cited by different institutions ranged from merely unusual transactions, to those that gave rise to a very high level of concern. Therefore, it is recommended that the precise nature of the obligation be clarified within the primary legislation, and that the requirements be extended to cover attempted transactions.

378. Linked to the requirement for a clearer definition of the reporting obligation, is a need to review the reasons why the current level of STRs, although increasing, appears to be significantly lower than might be expected in an economy of this size.

379. In the domestic sector, the reporting of suspicions of terrorist financing has only been extended to institutions subject to the supervision of the central bank. This obligation needs to be extended to all financial institutions, and, in order to comply with the FATF standard, needs to be incorporated within primary or secondary legislation as an explicit obligation. By addressing this issue under the CFT law, the authorities would also provide greater clarity as to the basis on which institutions should report (*e.g.* how are terrorism and terrorist organizations defined?).

380. The sanction for failing to report should not be limited to circumstances where there was actual knowledge of money laundering or terrorist financing activity, but should be tied to the more general obligation to report suspicions based upon whichever test (subjective or objective or both) is considered appropriate. In these circumstances the penalties might reasonably extend beyond criminal sanctions to include administrative and civil penalties.

381. The scope of the tipping-off offense appears to be too narrow, although it is recognized that there have been no cases in which the definition has been tested. However, it is recommended that the situation be placed beyond all doubt by making it clear that institutions may not inform any person of the fact that an STR has been filed, except as provided otherwise under the law. Associated with this is the need to ensure that the power of the central bank to order a temporary freeze on a transaction does not result in the institution having to alert the customer to the fact that his affairs are being investigated. While the power to apply a temporary freeze to a transaction is entirely reasonable, it should not be operated in a manner that would necessarily result in the customer being informed about the authorities' investigation into his affairs. The DFSA provision that effectively advises institutions to be wary of alerting a client of its suspicions through making additional enquiries is a useful addition that could be mirrored in the central bank regulations.

382. Timely feedback to the financial sector is essential in order to help improve the quality of the reporting. The central bank is to be commended for its efforts to run an outreach program on the AML obligations, but it needs to ensure that participants benefit from information on the current trends and typologies within the jurisdiction, and on the practical value being derived from STRs. Such forums should also be structured to allow the compliance officers, in particular, to

discuss with the authorities those issues that they are facing on a day-to-day basis where they need guidance or clarity. With respect to feedback on specific STRs, it is important that, where the AMLSCU has alerted an institution to the fact that it has particular interest in a report that has been filed, it should provide the institution with guidance to assist it to determine what actions it might reasonable take in future dealings with the account.

### 3.7.3. Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	NC	<ul style="list-style-type: none"> <li>No obligation in law or regulation to report suspicions related to terrorist financing.</li> <li>The obligation embedded in "other enforceable means" to report suspicions of terrorist financing applies only to institutions supervised by the central bank.</li> <li>Absence of a defined basis upon which money laundering suspicions should be reported (subjective or objective or both).</li> <li>Lack of clarity about the scope of the reporting obligation with respect to the definition of money laundering.</li> <li>No obligation to report attempted transactions.</li> <li>Low rate of reporting (and concentration among relatively few institutions) brings into question the overall effectiveness of the regime.</li> </ul>
R.14	PC	<ul style="list-style-type: none"> <li>Tipping-off offense is narrowly defined to include actions in relation to the customer only</li> <li>Concerns relating to the obligation imposed on institutions to notify customers immediately of a temporary freezing order imposed by the central bank.</li> </ul>
R.19	C	This Recommendation is fully met
R.25	PC	Little substantive feedback provided to individual reporting institutions.
SR.IV	NC	<ul style="list-style-type: none"> <li>No explicit requirement in law or regulation to report suspicions of terrorist financing.</li> <li>The obligation embedded in "other enforceable means" to report suspicions of terrorist financing applies only to institutions supervised by the central bank.</li> <li>No obligation to report attempted transactions.</li> </ul>

### 3.8. Internal controls, compliance, audit and foreign branches (R.15 & 22)

#### 3.8.1. Description and Analysis

##### Domestic Banking

383. Under Article 16.3(b) of the Central Bank Regulation 24/2000, banks, moneychangers, and other financial institutions are required to "ensure always that their internal control systems operate efficiently and cover appropriately the implementation of this regulation for anti-money laundering procedures". This implies that control systems must, at a minimum address CDD, record retention, the detection and reporting of unusual and suspicious transactions, and the prompt retrieval of records. However, there are no provisions that address the need to have appropriate risk management processes in place, neither generally with respect to the institution's overall business, nor specifically in relation to such things as customer acceptance, CDD, etc. There is no requirement for an AML policy to be developed by institutions, for the procedures to be documented, or for the policies and procedures to be communicated to employees.

384. Article 16.3(a) addresses the need for the appointment of a designated compliance officer "to be responsible, among other issues for contacting the central bank to report money laundering and suspected cases, and sending reports and maintaining some reports properly, in addition to training staff as well as receiving calls/contacts in this connection". The regulations are silent on the degree of access that the compliance officer may have to company records and data, and his role within an institution's management; but the central bank indicated that, through the examination process, they ensure that such officers have broad and timely access to all relevant files.

385. There are no provisions within regulation 24/2000 relating to the appointment of an independent audit function to test compliance, but the issue is addressed more generally under Central Bank Circular 23/00 of July 2000, which specifies certain oversight and reporting responsibilities of the internal audit function (but makes no specific reference to AML/CFT), and requires that it be accountable directly to the chairman.<sup>18</sup> In addition, Article 103 of the central bank law requires all financial institutions to appoint an independent external auditor, and in July 2002 the ministry of economy issued a circular to all audit firms specifying the role of the auditors with respect to AML compliance by companies in general, and financial institutions specifically. Auditors are required, under the ministry of economy circular, to verify that the client institutions are complying with regulation 24/2000 by scrutinizing a range of specified types of transaction, and by testing the overall control environment; but the circular does not provide for any specific output from the auditors in terms of a special report or audit note, and there is no evidence that such matters are systematically addressed in the auditors' management letter or other communication.

386. Article 17 of Regulation 24/2000 requires that "the compliance officer in each bank, moneychanger or any other financial institution should provide training to staff responsible for receiving cash or overseeing accounts and their reports, on all matters pertaining to money laundering". The article further specifies that the training should be pertinent to the responsibilities undertaken by the staff and should follow guidelines issued by the central bank, and also requires institutions to send relevant staff to the training programs provided by the central bank. Although the regulation might be seen to limit the scope of the training to certain categories of staff, it is apparent from the comments by the regulators and the institutions that a broad approach is taken in ensuring that the staff in all relevant areas receive AML training. The central bank itself has conducted over 300 training programs for the financial sector over the past few years.

387. There are no specific obligations imposed on the financial institutions to put in place screening procedures to ensure high standards when recruiting staff. However, senior staff appointments are subject to central bank vetting in accordance with procedures set down in its circular 10/1992 (see description of market entry provisions below).

388. Article 2 of Regulation 24/2000 specifically extends the scope of all the provisions of the regulation to "the branches and subsidiaries of UAE incorporated financial institutions operating in foreign jurisdictions which do not apply any such procedures or which apply fewer procedures". Article 22 goes on to state that institutions should notify the central bank when their foreign branches and subsidiaries "are prohibited from implementing any anti-money laundering procedures".

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<sup>18</sup> On April 9, 2007 ESCA issued its Corporate Governance Regulations for Joint-Stock Companies, which requires that all such companies should have a specialized internal control department that must undertake annual inspections of, among other things, "all basic control elements", including risk management. The mission was advised that all locally-incorporated banks are joint-stock companies.

## Securities and Insurance

389. The provisions governing AML systems and controls in the securities and insurance sectors are very basic. Both of the relevant circulars issued by ESCA and the ministry of economy require the appointment of a compliance officer, but do not specify the scope of the duties that are expected or the role of the appointee within the institution, beyond acting as the suspicious transaction reporting officer. ESCA Board Resolution 176/P of 2006 (which amends the regulations governing brokers) expands the role slightly, but only in as far as the compliance officer is required to report to ESCA any violations of laws, regulations and court decisions made against the broker's managers and personnel.<sup>19</sup> There are no specific obligations with respect to the internal audit function, but the July 2002 ministry of economy circular to auditors applies to their work on all companies, and includes a specific obligation to verify the effectiveness of internal control systems. Staff training is required under the securities circular, but not for insurance companies; nor is there any requirement about the screening of staff recruited by the institutions.

390. The ministry of economy circular extends to the foreign branches of insurance companies where they are operating in jurisdictions that apply lower standards, but there is no obligation to report to the ministry of economy when appropriate standards cannot be implemented. The circular to the securities sector is silent on this entire issue, but it appears that domestic brokers may not have any foreign branches.

## DIFC

391. The DFSA rules require institutions to "establish and maintain effective anti-money laundering policies, procedures, systems and controls to prevent opportunities for money laundering". As part of such controls, the rules require the appointment of a money-laundering reporting officer (MLRO), whose responsibilities are defined to include a number of specific functions, including oversight of the overall policies and procedures, compliance monitoring, and acting as the central point for receipt and analysis of internal reports of suspicious transactions. The rules specify that the MLRO must be of sufficient seniority to act on his own authority, to have direct access to the governing body and to senior management, to have control over adequate resources, and to have unrestricted access, on a timely basis, to whatever information is necessary to fulfill his responsibilities effectively. The MLRO is required to report, at least annually, to the governing body or senior management on the quality of the AML policies and procedures; and institutions are also obligated to have an internal audit function to monitor the appropriateness and effectiveness of the systems and controls generally.

392. Section 3.9 of the DFSA AML rules specifies that institutions must have in place arrangements to provide periodic information and training to employees, such that they are aware of the applicable legislation relating to money laundering, are familiar with the institution's internal controls and procedures, are alerted to recent ML trends and techniques, and are aware of the internal procedures for reporting suspicious transactions. Such training must be kept up-to-date and be extended to all employees. In the DFSA general rules, institutions are required to ensure that all members of staff are fit and proper, and this is expanded upon in the guidance to the AML rules, by reference to the need to take into account criminal convictions, adverse findings by courts or regulatory authorities, and engagement in dishonest or improper business practices.

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<sup>19</sup> The DGCX broker members are required to nominate a Compliance Officers DGCX Operations (CODOs), who are required to attend a DGCX training course which explains the exchange's expectations relating to the various money laundering preventive measures. The mission has been advised that these courses started some time after the on-site visit.

393. The DFSA rulebook requires institutions to ensure that their AML policies, systems and procedures apply to any branches and subsidiaries operating in a foreign jurisdiction. It further requires that, if any such branches are prevented or inhibited from complying with the obligations under UAE law or the DFSA rules, the institution must notify the DFSA promptly in writing.

### **3.8.2. Recommendations and Comments**

394. The provisions covering institutions within the DIFC are extensive, and, based upon the examination work carried out by the DFSA, are being implemented effectively. Within the domestic sector, the very basic systems and controls requirements for the banking sector generally go some way towards meeting the FATF standards, but those for the securities and insurance sectors fall well short. It appears that the central bank examination process focuses extensively on this aspect, and the external auditors have an obligation to review the control environment when undertaking the annual audit. The examiners have indicated that the overall quality of institutions' systems and controls to counter money laundering has improved significantly in recent years, but that there still remains room for improvement in many institutions. The same feedback has not been received with respect to the securities and insurance, where the inspections programs are far less developed.

395. There are several issues which the authorities should consider addressing within the domestic sector.

- There should be an explicit requirement in the regulations that institutions should assess their vulnerability to ML and FT, and formulate and document appropriate control procedures that recognize and adequately address the money laundering risk within their business.
- Institutions are required to appoint compliance officers, but the role should be defined more clearly, especially with respect to the jobholder's position within the management structure and his right of free access to both information and staff within the organization. More generally, there would be an advantage in laying down clear corporate governance expectations with respect to AML/CFT
- While there are procedures in place for the central bank to vet the suitability of senior management in institutions, it is also important that the institutions should themselves be required to have in place formal procedures to screen all staff employed in areas that are relevant to the AML control environment.
- The obligation to require AML/CFT training for staff should be extended to the insurance sector.
- There are limited provisions in place that require and define the role of an independent audit function for AML/CFT compliance purposes. The reliance on the external audit to perform routine AML/CFT compliance testing is possibly unreliable since it is unclear from the ministry of economy circular as to what the process should be for completing and communicating the output. The authorities should place an explicit obligation on institutions to implement an independent audit function to test AML compliance, but allow them the flexibility to rely on the external auditors if the arrangement is properly structured and documented.
- The current reporting requirement by foreign branches and subsidiaries of UAE banks applies only where they are prohibited from implementing any AML controls. This is an unreasonably high threshold for reporting back to the supervisors, since it appears to be based on an absolute rather than a qualitative criterion. The provision needs to be recast to ensure that the banks report all cases where they are prevented from implementing

appropriate procedures in line with the FATF standards. Similar arrangements should apply to other sectors where foreign branches exist.

### 3.8.3. Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	PC	<p>Domestic banking, securities, and insurance</p> <ul style="list-style-type: none"> <li>• No provisions governing the role of the designated compliance officer (beyond acting as the suspicious transaction reporting officer) and the scope of his access to information and management within an institution.</li> <li>• Limited requirements with respect to an adequately resourced, independent AML audit function.</li> <li>• No requirement to have screening procedures for all relevant staff.</li> <li>• No staff training requirements for insurance sector.</li> </ul>
R.22	LC	<p>Domestic banking, securities, and insurance: Limit to the basis on which institutions must inform the regulators of restrictions on their foreign branches' ability to implement appropriate AML controls.</p>

### 3.9. Shell Banks (R.18)

#### 3.9.1. Description and Analysis

396. There is no outright prohibition on the establishment of shell banks in the UAE, but this is controlled through the central bank's licensing policy, which requires that banks maintain a physical presence (including "mind and management") in the jurisdiction. Permission is required for each and every location from which a bank may wish to operate.

397. As indicated in the discussion under Recommendation 7, there are no provisions regarding the establishment of correspondent banking relationships, and no instructions have been issued with respect to dealings with foreign shell banks, either directly or through the fact that a foreign correspondent may itself provide facilities to shell operations.

#### DIFC

398. The DFSA authorization procedures prohibit the establishment of shell banks, since institutions are required to maintain a physical presence and to have the senior executive officer, the compliance officer and finance officer located in the DIFC. The AML rules specify that authorized institutions must not establish correspondent relationships with shell banks, and the accompanying guidance states that arrangements should be in place to guard against establishing relationships with correspondents who permit their accounts to be used by shell banks.

#### 3.9.2. Recommendations and Comments

399. It is recommended that the central bank should issue instructions to the banking sector to alert them to the need to avoid both direct and indirect dealings with foreign shell banks.

#### 3.9.3. Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	PC	<p>No provisions to prevent domestic banks from having correspondent relationships, either directly or indirectly, with foreign shell banks.</p>

### 3.10. The Supervisory and Oversight System—Competent Authorities and SROs Role, Functions, Duties, and Powers (Including Sanctions) (R. 17, 23, 25 & 29)

#### 3.10.1. Description and Analysis

##### Central Bank

400. **Powers and resources:** The central bank has statutory responsibility for the supervision and regulation of the banks, moneychangers, finance companies and money brokers. This is performed on a day-to-day basis by the Banking Supervision and Examination Department, although the ultimate statutory powers are vested in the governor and the board of directors. While the central bank law sets down a basic framework for the regulatory regime, the law gives extensive discretion to the board of directors to establish rules, regulations and instructions (of both a general and institution-specific nature) relating to the licensing and subsequent operations of the institutions. Typically, such regulations specify that the governor is the sole interpreter of the provisions and that his interpretation shall be final.

401. The AML law gives the central bank the key role in overseeing the AML regime, both by making the governor the chair of the National Anti-Money Laundering Committee, and by creating the FIU within the central bank. More generally, Article 11 of the Law provides that those agencies concerned with the licensing and supervision of financial institutions in the country "are required to establish appropriate mechanisms to ensure compliance of those institutions with anti-money laundering rules and regulations in the State". The central bank seeks to fulfill this requirement primarily through the promulgation of regulation 24/2000, and the use of its inspection, information-gathering and enforcement powers under the central bank law (*e.g.* Articles 94, 100, 105, and 112).

402. Article 99 of the central bank law requires the bank to establish a department to supervise the banking sector, and provides the board of directors with the discretion to determine the way in which it is set up, and to define the functions and conditions of operation of the department. The BSED currently has a total staff number of 75, including 65 field examiners. It has three divisions dealing with (a) licensing and follow-up, (b) offsite surveillance, and (c) on-site examination. The staff is split between the central bank headquarters in Abu Dhabi and its branch office in Dubai. All the supervisors undergo in-house training in AML and have also participated in the very large number of programs (approximately 360) that the central bank has organized for the financial services industry. It has long been the practice of the central bank to complement its locally-sourced staffing with expatriate examiners and advisers with extensive commercial and central banking experience. The central bank staff is subject to confidentiality standards embedded within both the law and their individual contractual arrangements.

403. The BSED powers of inspection and supervision are contained primarily in Sections 94, 100, and 105 of the central bank law. Article 94 empowers the bank to issue instructions and recommendations (of both a general and individual nature) to ensure the sound functioning of the banking system, and it is under this provision that the central bank has issued regulation 24/2000 relating to AML/CFT measures. Article 100 provides that the bank may at any time it deems necessary delegate one or more inspectors to ascertain a particular bank's financial position and to establish its compliance with prevailing laws and regulations. The article goes on to state that, in order to achieve this, the banks must allow an inspector "to examine all books, accounts, documents and papers bearing on his task, and shall provide him with any information requested on time". In addition, Article 105 provides that the central bank may request any statements, statistical data and other documents that it deems necessary to perform its tasks. These powers to request books, records and other information can be exercised administratively by the BSED without recourse to the courts or any other external body.

404. **Sanctions:** The central bank's powers of enforcement lie in three articles of its governing law. Article 112 provides for administrative sanctions in the event that a bank "should violate the provisions of its articles of association or of this law, or the regulations imposed by the Bank, or fail to submit statements and information required of it, or submit incomplete or inaccurate information". The list of sanctions is restricted to: (a) a warning, (b) a reduction or suspension of credit facilities granted to it, (c) prohibition from carrying out certain operations or the imposition of restrictions, and (d) removal from the bank register. These options appear somewhat limited, especially when dealing with AML compliance. However, in practice, the central bank does not typically rely on this article except for specific technical breaches of the law or regulations. Instead, when addressing concerns about compliance with prudential standards, and safety and soundness concepts (including AML controls), it invokes Article 94, under which it may issue instructions and recommendations (of both a specific and general nature) to ensure the sound functioning of the banking system. This is despite the existence of a further provision (in Article 100), which permits the central bank, after an inspection, to order an institution to take action to remedy any deficiencies identified.

405. Notwithstanding this apparent range of options, the central bank does not have the legal authority to levy financial sanctions (*e.g.* fines) except in relation to a failure to submit requested data in a timely fashion. The BSED has indicated that the application of Article 94 permits them to take action with respect to both the institution and individual members of the management (including removal from office), given the very broad terms in which it is framed. While there are no statistics available to indicate the number of (and basis for) actions that may have been taken, the central bank has indicated that on one occasion it fined an institution USD 6 million but it is unclear what was the legal authority for such action.

406. The powers of inspection and enforcement described above all relate specifically to the banking sector alone, under the provisions of the central bank law. Moneychangers and other financial institutions under the supervision of the central bank are subject to different legal and administrative requirements, which ultimately lead to a similar, but not identical structure. While the central bank law provides basic recognition of these other types of institution, it contains very little in the way of process relating to their supervision. Instead, reliance is placed on the authority of the board of directors of the central bank (*e.g.* under Articles 116 and 117) to issue directives to implement the broad objectives of the law. These directives then contain wide-ranging instructions in relation to the licensing, supervision, information-gathering and enforcement powers that the central bank is to assume over the sectors.

407. The specific provisions governing moneychangers are contained in Board Resolution No. 123/7/92. This requires all persons, whether natural or juridical, to obtain a license in order to carry out "money changing business," which is defined to include both the purchase and sale of foreign currencies and the handling of remittance business. However, not all moneychangers are licensed to undertake remittance business and this activity requires specific authorization by the central bank. The general procedures for licensing moneychangers are described below under the market entry provisions. The board resolution sets down a substantial number of conditions with which the licensees must comply on an ongoing basis. These include financial, integrity, organizational and operational criteria. Moneychangers are not permitted to operate through agents, and prior approval has to be obtained for any new outlet or change of location. The board resolution also vests the central bank with the powers to inspect the moneychangers at any time it considers appropriate, and to require the submission of any data or information that it may require. For the most part, the formal sanctioning powers center around the ability of the central bank to vary, restrict or revoke the license, but the practice of the central bank has been to integrate the overall supervision of this sector into their framework for banking supervision, and to apply the same principles and procedures as are described below.

408. While the definition of money changing business would appear to capture any person engaged in acting as a remitter, it has long been recognized that the network of Hawala dealers

will remain outside this system of regulation. The treatment of this sector is described below under SRVI.

409. **Market entry:** Article 83 of the central bank law prohibits the carrying out of banking business without a license issued by the central bank. The law also establishes a number of minimum financial and structural requirements for licensing, specifies the grounds on which a license may be withdrawn (including contravention of any laws, regulations and instructions), and provides that certain persons should be automatically disqualified from holding a position as a director or manager of a bank. This extends to persons who have been convicted of theft, dishonesty, fraud, embezzlement or fraudulently passing checks with insufficient funds. The law does not specify the broader "fit and proper" criteria, but these are alluded to in a central bank circular (No. 10 of 1992). This records a board resolution to require central bank vetting of all nominations by banks to the positions of chief executive, credit manager, head of internal audit, operations manager, branch manager, and chief dealer/treasurer. The circular requires the submission of details of the nominee at least one month before an appointment becomes effective, and indicates that the criteria used in assessing suitability will be "competence, character, integrity, qualifications, etc".

410. The law is largely silent on the licensing procedures for the other six categories of financial institution regulated by the central bank, but these are included within separate regulations issued at different times over the years. In the case of the exchange companies, these take the form of Board resolution 123/7/92 agreed in November 1992. Unlike the company law restrictions on foreign ownership (which require at least 51% Emirati participation), this resolution specifies that at least 60% of the shares must be owned by UAE nationals. Article 4.3 requires that the applicant must have "the necessary personal reliability and professional qualification" and further defines these in terms of good conduct, financial integrity and academic and professional experience. The resolution demands that, as an ongoing condition of the license, the management must be undertaken by persons approved by the central bank, and there should be no changes in the share capital and ownership without prior approval.

411. In principle, the procedures for licensing are similar for each type of institution, but since no new bank licenses have been issued in several years, the recent experience has largely been based on dealing with applications by finance companies and moneychangers. Among other things, applicants are required to file business plans, together with a range of information relating to the shareholders and directors. This includes identification documents, police clearance certificates, bank references over the previous seven years, evidence of financial integrity, declaration of beneficial ownership, proof of relevant professional qualifications and experience, and curriculum vitae. Where relevant, these details are checked against local sources of information. The central bank indicated that where applicants are foreign nationals (which is frequently the case with respect to the moneychangers), enquiries are made of relevant foreign regulatory counterparts. While the BSED is responsible for processing the applications, the sole decision on licensing rests with the central bank board.

412. While the securities legislation (Article 19 of Cabinet Resolution 12/2000) requires prior approval from the central bank for any holding in excess of 5% in a publicly-listed bank, there are no provisions on change in control that govern non-listed banks. However, the authorities have indicated that all locally-incorporated banks in the UAE are listed on the two exchanges, and that, in practice, the central bank also requires all foreign banks operating in the country to seek approval for significant changes in ownership. In the case of the moneychangers, Article 8 of the central bank Board Resolution 123/7/92 states that the ownership, capital and management shall not be changed without the prior approval of the central bank. Such changes are considered against the same criteria as for the original application, but the approval process may be delegated to the BSED staff in cases where there are no matters of national or market interest.

413. **Ongoing supervision:** As indicated above, the central bank has the legal authority to undertake on-site inspections of all the entities for which it has supervisory responsibility. Such inspections form the nucleus of the central bank's regulatory approach, and the majority of the BSED staff have been employed in an ongoing examination program since 2000. All institutions (banks, moneychangers, finance companies, etc.) are subject to a full-scope examination on a 12–18 month cycle, and this will always include an AML/CFT component. In addition, special or more limited-scope examinations may be undertaken at any time, usually based on the need to follow up on previously-identified compliance failures or to investigate emerging concerns.

414. Some of the examination program (not exclusively for AML) is driven by a risk-based approach,<sup>20</sup> which is informed by input from the offsite analysis, the institution's internal and external audit reports, and other available information and data. Depending on the size and nature of the institution, an examination may last between a few days and a few weeks, and the process involves a combination of classic examination techniques, including interviews with management and staff, a review of internal audit procedures and findings, study of the control environment, and the sampling of transactions and records. The cornerstone of the AML/CFT component is compliance with regulation 24/2000, although the examiners stated that their expectations, in terms of overall systems and controls, go significantly beyond the basic requirements of the regulation. Therefore, they were of the opinion that many of the points relating, for example, to Recommendations 5–7 that were not specified in the regulations were being enforced through the examination procedures, on the basis of sound banking practice. This could not be verified by reference to an examination manual or other documentation, but the views expressed by the financial institutions appeared to support this statement.

415. Although the financial institutions' auditors are required, under the ministry of economy circular of July 2002, to verify certain aspects of the clients' AML controls, the output from this review does not filter down to the central bank in a formal manner. Instead, the BSED examiners will identify any relevant exceptions highlighted in the auditors' management letter that is provided to the client at the end of the audit. While the auditors are also required under the circular to report any suspicious transactions (for which they have the general immunity for breaches of confidentiality under the law), there are no "whistle-blowing" provisions that provide a framework in which they might report more general concerns about a client institution.

416. The immediate output from the BSED examination process is a letter sent to the senior management summarizing the overall conclusions, and detailing any compliance failings and recommendations to address weaknesses. In the case of the banks, this letter is always signed by the governor (who takes an active role in deciding the final tone and content), but for other institutions it may be sent directly by the head of BSED. In addition, the results of the examination are fed into a risk map, which seeks to plot certain behavioral characteristics of the institution against the central bank's regulatory objectives. The results of this exercise will help determine the nature and intensity of the follow-up process. The examiners have indicated that there has been a major change in the AML culture within the financial institutions over the past three years, due to a combination of increased focus within the examination program, and the central bank's drive to provide training to the industry. However, common problems were reported to remain in the effectiveness of systems to monitor transactions and trends over extended periods of time, and a lack of consistency in the basis upon which STRs are being filed with the AMLSCU (i.e., whether they are based on genuine suspicion or are merely unusual). The level of CDD was considered to be reasonable overall, but the growth of corporate customers emanating from the increasing number of Free Zones within the UAE was posing an increasing challenge, given their predominantly foreign ownership.

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<sup>20</sup> The risk-based approach is implemented by examination staff based in the Dubai branch, but the mission was unable to confirm that this is applied universally throughout the BSED.

417. It appears that the central bank's procedures are relatively thorough and have been developed over the years through the employment of skilled examiners. However, with one exception, no formal enforcement action has ever been taken by the central bank against a financial institution for AML compliance failures. Instead, reliance has been placed on the general powers in the central bank law to require institutions to take measures to address specific problems. While members of BSED staff are able to recall specific examples of high profile cases where deficiencies have been identified, the department does not keep statistics that permit an assessment of the frequency and nature of the problems being encountered and addressed through the use of its general powers.

418. The central bank has taken extensive measures to help educate the financial institutions in the requirements under regulation 24/2000. In excess of 350 courses have been run for financial sector staff, including some programs targeted at specific institutions. An aim has been to train compliance officers in order to assist them to fulfill their obligation to provide training to staff within their institutions.

## ESCA

419. **Powers and resources:** The Federal Law 4/2000 (the ESCA law) gives ESCA broad regulatory and supervisory responsibility for licensed brokers. ESCA has the power to require information from licensees, and to conduct on-site inspections in addition to off-site review. Brokers must grant ESCA access to all accounts, minutes, documents and other data in their possession, such as ESCA considers necessary.

420. ESCA is chaired by a representative of the ministry of economy, but is an operationally independent public authority tasked with the responsibility of supervising the securities and commodities sector in the UAE. It is funded through a combination of monies provided by the Federal Government and listing, annual and other fees levied on brokers and listed companies. ESCA organizational structure is composed of a board of directors and an administrative apparatus. Chaired by the minister of economy, the board consists of five members representing the ministry of economy and commerce, the ministry of finance and industry and the central bank, and four members being persons of relevant experience drawn from other sources. ESCA administrative apparatus comprises a number of departments (each under the direction of a manager appointed by the board), including the supervision department, which consists of three sections overseeing licensing, inspection, and trading surveillance. As at March 2007, ESCA had 12 examiners responsible for supervising 98 securities brokers and 102 commodities brokers, but was in the process of hiring 10 additional staff to cater for the rapid expansion of the securities sector. The authorities advised that the examiners did not receive specific training on ML and TF issues. Articles 14–16 of ESCA code of conduct specify the confidentiality obligations of the agency's staff.

421. **Sanctions:** Article 43 of the ESCA law provides for the imposition of fines and imprisonment on any person who contravenes the provisions of the law and the regulations issued pursuant thereto. Article 22 of the brokers' regulations, as amended by ESCA Resolution 62/P of 2005, allows the ESCA chief executive or the board of directors of the relevant market to issue a warning to a broker or to impose a monetary penalty not exceeding AED 100 000 (about USD 27 000) for any breach of the regulations. However, it is to be noted that the regulations themselves do not directly or indirectly relate to AML/CFT. Article 5.3 of the ESCA circular regarding AML procedures imposes unspecified penalties on financial markets that fail to report unusual transactions. Beyond this, it is unclear what sanctions can be applied for failure to implement the wider provisions of the circular, since it was issued under the provisions of the AML law, not the ESCA law or regulations; but, subsequent to the onsite visit, ESCA has indicated that it has imposed financial penalties on two brokers for breaches of the ESCA circular on AML, although no details have been provided.

422. **Market entry:** Article 2 of the “Regulations as to Brokers” issued on April 8, 2000 provides for the creation of a register of brokers at ESCA where the names, addresses, registration number and date of registration must be recorded. Article 3 allows legal persons to act as brokers in the UAE, only after having obtained a license from ESCA that must be renewed annually, and Article 7 sets a number of threshold conditions for authorization. Applicants must be constituted within the UAE and must be at least 51% owned by UAE nationals. The paid in capital must not be less than AED 30 million.

423. Applicants are required to provide details of all their employees including broker’s representatives, together with a statement from the General Police Department indicating that each employee has not been convicted of any criminal offense. Applicants also have to provide a certificate from the central bank confirming the absence of records of any bad debts, and a certificate from the ministry of justice acknowledging that they have no outstanding judgments against them. According to Section 13 of Article 18, brokers must immediately inform ESCA and the market of any changes to the information contained in the license application form. Article 4 of ESCA Resolution No. 176 of 2006, sets a range of requirements for the general or executive manager, operations and trading managers, internal auditor, and broker’s representatives. They must be of good conduct and behavior, enjoy full legal capacity, hold university certificates, and possess practical experience of not less than three to five years. The authorities indicated that they were in the process of changing the by-laws to improve the fit and proper tests. Existing brokers will be granted a five-month grace period to comply with the new standards, but the authorities indicated their belief that a number of existing brokers would struggle to meet the new standards.

424. **Ongoing Supervision:** Biannual inspection visits are undertaken by ESCA for the purpose of ensuring compliance by brokers with applicable rules. This involves examining the broker’s internal control measures, practices and guidelines, including those related to AML. It is not clear whether ESCA maintains written guidelines prescribing the procedures that it must follow during an inspection, particularly with regards to detecting breaches of AML legislation. In addition to the powers to conduct inspections of brokers, ESCA has the authority to require the submission of balance sheets, profit and loss accounts and annual financial statements audited by an accredited auditor. However, there is no evidence to suggest that private audit firms have the obligation to submit to ESCA the results of their findings related to AML policies, procedures, books and records and sample testing performed in accordance with the ministry of economy circular. Besides on site inspections, ESCA conducts off-site reviews of periodical reports submitted by the State Audit in Dubai and a private audit firm in Abu Dhabi who conduct random inspections visits on behalf of DFM and ADSM to check compliance by brokers with ESCA rules and circulars.

425. ESCA indicated to the mission that the most common deficiencies discovered in the securities sector are generally of an administrative nature and not fundamental to AML, but private sector representatives indicated to the mission that the scope and duration of the AML/CFT-related inspections were generally limited.

#### **ADSM and DFM**

426. **Powers and Resources:** The Abu Dhabi Securities Market was established by local law No. 3/2000 and was inaugurated on November 15, 2000 and the Dubai Financial Market commenced trading on March 26, 2000 under Decree No. 14 of 2000. Both markets enjoy very similar legal and regulatory frameworks. The laws vest the ADSM and the DFM with financial and administrative independence, and provide the necessary supervisory and executive powers to exercise their functions. Both markets are administered by boards of directors comprised of a chairman and five members assigned for a term of three years. According to the provisions of Article 10 of the ESCA law, board members must not be convicted of any offense of dishonor or breach of trust or be declared bankrupt. The boards are empowered to investigate any activity on or connected with the markets, including any alleged breach of the ESCA, ADSM or DFM Laws

or any regulations passed under either of those laws, including rules and any orders or instructions of markets.

427. On March 23, 2004, the ADSM circulated the ESCA regulation to all UAE licensed brokers, requiring them to apply AML procedures. The regulation sets out certain CDD measures in relation to customer identification, record keeping and reporting obligations.

428. The ADSM and DFM sources of funds are mainly listing and annual fees levied on listed companies and brokers operating in the market, as well as fees levied on trading and fees for services rendered by the market. Fines levied on brokers and companies also represent an additional income for the ADSM.

429. **Sanctions:** The ADSM and DFM boards are authorized to refer any broker to the disciplinary committee of the ESCA, if the broker:

- Violates the provisions of the ESCA law and any regulations passed under that law.
- Fails to settle their transactions.
- Submits forged or false documents, information or reports.
- Performs an act, directly or indirectly, intended to mislead the public in relation to trading on the Market.

430. Additionally, the boards may impose any of the following penalties for non-compliance with the rules (Article 27 of the ESCA law):

- A warning.
- A financial penalty not exceeding AED 100 000 (equivalent of approximately USD 27 250).
- Partial or full confiscation of the guarantee.
- Suspension for a period of not more than one week.
- A recommendation to ESCA that the broker be removed from the ADSM Register.

Where a broker has not complied with its AML/CFT obligations, the wording of the ESCA law does not make it clear whether sanctions can be applied directly for AML/CFT failings.

431. **Market Entry:** Any company wishing to obtain a broker's access license and to register in the ADSM or DFM Register must complete, sign and deliver an application in writing to the market. The threshold conditions are those applied by ESCA, as described above.

432. **Ongoing Supervision:** The ADSM has subcontracted two of the top five audit firms operating in the UAE to conduct random biannual inspection visits to brokers to determine their degree of compliance with the applicable laws and regulations. Audit firms are also instructed to report any violations that they may come across during their examination visits. Reported violations are referred to a special committee established at ADSM. Non-compliant brokers are required to take corrective measures, and failure to do so may attract fines and penalties up to AED 100 000.

433. The ADSM has in place a surveillance system that is used by 21 exchange markets around the world. The system gives alerts of any price manipulations and abnormal activities in the market. The system also sends red flags whenever brokers' liabilities exceed their bank guarantees. Brokers exceeding their trading limits are pulled out by the system.

434. Since its establishment, the ADSM has reported to ESCA four cases involving insider trading and market manipulation. The AMLSCU confirmed its receipt of the cases; however, ESCA indicated that they are currently investigating only one case involving market manipulation. The ADSM stated that in one of the cases the perpetrator was penalized by being required to compensate investors.

## **DGCX**

435. **Powers and resources:** The DGCX is a joint-venture company established between the DMCC and two Indian partners. Unlike the ADSM and the DFM, it does not derive its regulatory powers from statute, but, instead, it has entered into a legally-binding memorandum of agreement with ESCA, under which the DGCX has accepted to be subject to ESCA Resolution No. 157 of 2005 concerning the Regulations as to Listing and Trading of Commodities and Commodities Contracts. The memorandum specifically states that the DGCX is not subject to the ESCA laws and regulations, but does require that the DGCX enforce compliance with its own rules and regulations, which must be approved by ESCA. Section C.9.2 (e) of its by-laws empowers the DGCX to enter the offices of brokers at any time for the purpose of supervision and monitoring compliance with the by-laws and ESCA laws, rules and regulations. However, the DGCX is extremely understaffed, and there are only two examiners assigned for on-site inspections.

436. **Sanctions:** Where DGCX is satisfied that a member has been guilty of a breach of the by-laws or other misconduct or has made a materially false or misleading statement in the course of application for membership status, DGCX has the powers to:

- Terminate the membership status of any member.
- Suspend a member for a period as determined by the board.
- Fine a member such amount as may be determined by the exchange.
- Reprimand a member.
- Direct that a member not employ or continue to employ a particular representative.
- Bring matter to a member's notice.
- Order payment of all or part of the DGCX costs of the relevant investigation and disciplinary procedure.
- Impose conditions in relation to the future conduct of a member including, but not limited to: *i*) measures to ensure compliance; *ii*) directions that a member desist from specified conduct; and *iii*) directions in relation to open positions.

437. It is important to note that, while the by-laws give the DGCX the authority to impose a wide range of civil and administrative sanctions, they are not specifically aimed at AML/CFT failings, because of the by-laws' limited specific scope in relation to AML/CFT matters, although by-law E.5(b) states that "A Member shall provide such further documents and/or information as the exchange may specify from time to time in order to ensure ongoing compliance with any FATF Recommendation(s)". Thus, there are no administrative penalties

which can be imposed against directors and controlling owners of members directly for AML/CFT breaches, only indirectly by not meeting fit and proper criteria.

438. **Market Entry:** The DGCX has created two categories of membership. A member may be admitted as a trade member, who may trade for his own account only, or broker member, who is entitled to trade for his own account and on behalf of clients. An applicant for membership must first lodge with DGCX an application, providing such undertakings, information and documents, as DGCX requires. The application must be signed by the applicant or a duly authorized officer who agrees to be bound by the exchange by-laws and any amendments thereof. In determining whether to approve an application, the DGCX is entitled to consider the business integrity, financial probity and standard of training and experience of the applicant and (in case of a firm or corporation) its directors, partners, officer and employees. To achieve this, the DGCX requires applicants to provide details of memberships of commodities and/or securities exchanges held directly and indirectly. Applicants must state if they have ever been denied membership or clearing privileges by any commodity or securities exchange, including membership suspension and termination. They must also submit a statement indicating their experience (including directors, partners, offices and employees) in precious metals, currencies and commodities market (further illustrated in the DGCX application for membership). Independent checks to ensure the existence of conditions of sound and prudent management are the main criteria for assessment of the suitability of members by the DGCX. Once processed and approved by the DGCX, the application is submitted to ESCA, which is the only authority responsible for the licensing of brokers to become exchange members.

439. Licensed Members must notify the DGCX of proposed changes in legal person's control and ownership whenever the following take place:

- The transfer of 15% or more of the issued share capital.
- The transfer of such lesser percentage of the issued share capital whereby one party becomes the holder of 15% or more of the issued share capital.
- The issue of any new shares whereby one party becomes the holder of 15% or more.
- When a firm or corporation enters into any agreement as a result of which control of the Member becomes vested in persons other than those recorded with the exchange.

440. Members must also notify the DGCX in writing of any change in management or shareholding in excess of 5% of the issued share capital.

441. **Ongoing supervision:** The DGCX supervision is largely conducted to collect information on the operations and financial position of brokers. The current supervision is founded on the number and volume of transactions executed by brokers. There are approximately 216 commodities brokers registered to trade on the DGCX floor, of which only 116 are active on the exchange, although ten members account for 80% the business conducted on the exchange. The DGCX on-site supervision has focused predominantly on the activities of the "top 10," which, however, encompasses more than ten members as this "league table" of firms changes regularly. Considering the large number of active members, therefore, there is a significant number of members that are not routinely inspected by the DGCX. Off-Site supervision would have assisted the DGCX to allocate its limited resources properly; however, the by-laws do not obligate members to produce self-assessment reports that might assist the DGCX to determine which member will be visited on-site.

## Ministry of Economy

442. **Powers and resources:** The ministry of economy is the designated authority to regulate the insurance sector.<sup>21</sup> The ministry of economy's power to compel production of or obtain access to insurance companies' records is not predicated on the need to obtain a court order. According to Paragraph 1 of Article 79 of the law "government employee appointed by the minister to supervise the application of the law shall have judicial powers to prove violation thereof". Insurance companies, agents and surveyors and loss evaluators, according to Paragraph 2, must grant the said employees' access to all books, records and documents in their possession provided the inspection is carried out during the official working hours.

443. There is a significant lack of human resources at the ministry to undertake supervision of the insurance sector, and it appears that relatively few staff members have received training on issues and developments related to ML/FT. Article 5 of Federal Law 9/1984 (the insurance law) provides for the establishment of a Supervisory Committee to supervise the activities of insurance companies. The committee would be comprised of representatives of the relevant authorities in the member emirates. The authorities indicated to the mission that a decision was taken on February 15, 2007 to establish a new independent committee, and that they were in consultation with the International Association of International Supervisors about this development.

444. **Sanctions:** Article 25 of the insurance law authorizes the minister to suspend the insurance company from accepting transactions for a period not exceeding six months when:

- The company fails to present its books or documents for checking conducted by the ministry in accordance with the provisions of the law.
- It becomes clear that the company is not abiding by the provisions of its Memorandum and Articles of Association, the provisions of the law or the Executive Regulations thereto.

445. If the company fails to rectify its position within the prescribed period, the minister may grant it another grace period or issue a decision canceling its registration as specified under Articles 22, 23 and 24 of the law.

446. While there is a range of penalties available under Chapter 8 of the law, the range is only limited to registration and administrative issues. There are no administrative penalties which can be imposed against directors and controlling owners of insurance companies directly for breaches of the provisions of the law. The available sanctions also do not include the possibility to directly bar persons from the sector. The ministry of economy has no sanctioning powers that are specific to breaches of AML/CFT requirements, or that have relevance to related matters such as the adequacy of systems and controls.

447. **Market entry:** Persons intending to establish an insurance company must first set up a public joint-stock company. Once the registration phase is completed, the ministry enters the company in its Insurance Companies Register. It then grants it a registration certificate stating the fields of insurance in which it can engage. Subsequently, the Certificate of Registration is transmitted to the Economic Department of the relevant emirate in which the insurance company is intending to undertake its business activities. Once licensed by the Emirate's Economic Department, the ministry of economy extends the insurance license to the company.

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<sup>21</sup> A new Insurance Law was promulgated in February 2007, but did not come into force until September 2007. This law provides for the creation of a new regulatory authority for the insurance industry, for which funding had been allocated by end-2007 and the task of organizing the new body had commenced. Regulations designed to implement the new law were still under preparation in January 2008.

448. Legal and statutory measures to prevent criminals from holding a management function or being the beneficial owner of insurance companies are specified within Article 11 of the insurance law. This prohibits individuals convicted of any crime constituting a breach of honor or trust (including persons whose properties have been sequestered or previously declared bankrupt) from establishing or managing insurance companies. The same provisions apply to insurance agents and loss evaluators and all persons approaching the public with operations related to insurance services.

449. Article 15 (8) of the insurance law requires the notification to the ministry of economy of any change in directors within 15 days of the event. In addition, Article 19 requires the company to notify the ministry of economy, within 30 days, of any change in the information contained in the original application. This would include changes in recorded shareholders.

450. There is no requirement for the ministry of economy to assess whether board members and managing directors of insurance companies possess sufficient knowledge and experience to be able to fulfill their obligations in a satisfactory manner. Likewise, there are no minimum standards in relation to the behavior of officers and employees of licensed companies.

451. **Ongoing supervision:** The ministry of economy does not undertake inspections of insurance companies for AML compliance (although the creation of a specialist unit to undertake such inspections is planned), and no guidance and feedback is being provided to the insurance sector with respect to their AML obligations.

## **DIFC**

452. **Powers and resources:** The DFSA is the designated competent authority tasked under the Regulatory Law to act as the single regulator for the financial services sector within the DIFC. It is also one of the agencies designated under Article 11 of the AML law to establish appropriate mechanisms to ensure compliance by institutions with the AML law. The regulatory law sets down a number of statutory objectives for the DFSA relating to stability, fairness and good governance within the market. While the federal anti-money laundering and terrorist financing legislation applies in the DIFC, the DFSA has the power under Article 72 of the regulatory law to make rules in connection with the creation and implementation of AML measures, policies and procedures. The regulations issued by the central bank are not applicable in the DIFC.

453. The regulatory law affirms the DFSA independence. The chairman and board are appointed by the President of the DIFC and may only be dismissed for just cause in compliance with DIFC law. These provisions were introduced following earlier concerns about the ability of the government arbitrarily to remove board members from their positions. Funding is provided through a combination of fees from the authorized institutions and direct contributions from the DIFC. In 2006, the DFSA had total funding of USD 31.3 million (compared with USD 19.5 million in 2005), of which approximately 13% came from fees and the balance from the Dubai Government. The DFSA expects the proportion represented by the fee income to rise progressively over the coming years as the business in the center develops, since the fee structure is based on a combination of fixed levies and turnover.

454. The DFSA is structured to operate on a functional rather than a sector-specific basis. Separate departments have been established to cover authorization, supervision, markets and enforcement, supported by policy and legal specialists. At end-2006 there was a total staff complement of 99, an increase of 44% over the previous year. In the key supervisory areas, there were 15 professional staff in the Authorization Division, 15 in supervision, 4 in enforcement and 6 in legal and policy. It is expected that once the first rush of license applications has been processed, staffing allocations will be focused increasingly on the Supervision Division. Staff at all levels has been recruited from outside Dubai with the majority having had extensive experience in regulatory authorities or financial institutions in major financial markets. For

example, the supervision area includes two staff members who are former money laundering reporting officers at institutions in the UK. Regular internal training is provided to all relevant staff and four such courses were provided in 2006. Staff members are subject to Article 37 of the regulatory law which governs potential conflicts of interest, and to a DFSA Code of Values and Ethics. Breaches of the code may lead to counseling, disciplinary action (including termination of employment) and ultimately civil and criminal proceedings. Article 38 of the law imposes a confidentiality requirement on staff, preventing disclosure of confidential information, except by consent or in order to exercise their functions under the law. Overall, the DFSA appears to be well resourced financially, well staffed by experienced professionals, and sufficiently flexible to address the developments in its role as the market grows to have an increasing volume of business.

455. The DFSA powers of inspection and information-gathering are contained in Part 5 of the regulatory law. This provides that the DFSA may enter the premises of any authorized firm for the purpose of inspecting and copying information or documents. It may also require an institution to provide whatever information and documents the DFSA considers necessary to meet its objectives. This includes the possibility of an institution being required to furnish a special report by a person nominated or approved by the DFSA. Such reports may address compliance with the terms of a license, adequacy of systems and controls, complaints against the institution and financial matters. The DFSA exercises its inspection powers on a routine basis (see description of the ongoing supervision process below). Part 5 of the regulatory law also gives the DFSA the power to conduct investigations.

456. **Sanctions:** The criminal sanctions provided under the AML law applies equally to institutions in the DIFC, but the central bank's regulatory sanctions do not extend to the free zone. The DFSA is granted enforcement powers under Parts 6 and 7 of the regulatory law. Where relevant, these powers are applicable with respect to both natural and legal persons. Part 7 provides for a range of sanctions, including the following:

- Commencement of administrative proceedings before the Financial Markets Tribunal enabling the DFSA to impose conditions on a license, withdrawing authorization, or suspending an authorized individual.
- Imposition of unlimited fines through the Financial Markets Tribunal procedures.
- Appointment of new persons to act as managers of an institution.
- Acceptance of an enforceable undertaking, a breach of which may result in a court order.
- Imposition of administrative fines directly by the DFSA not exceeding USD 5 000 in the case of a natural person and USD 25 000 in the case of a body corporate.
- Publication of an administrative censure.
- Application to the courts for injunctions and orders.
- Application to the courts for a winding-up order.

457. In addition, the DFSA may exercise less formal powers through the framework of the risk mitigation plans communicated to institutions (see the following description of ongoing supervision) and by the receipt of "unenforceable" undertakings, which do not provide for automatic recourse to the courts to ensure compliance, but which may still provide the basis for formal action in the event of non-performance.

458. To date, the DFSA has needed to have only limited recourse to its formal enforcement powers. None of its actions has any linkage to money laundering issues, but they do indicate a willingness and ability to implement the general enforcement process. By end-2006 it had taken two actions, the first to obtain an enforceable undertaking in relation to false statements concerning regulatory status in the DIFC, the second to obtain an injunctive court order restricting statements about regulatory status in the DIFC. A further "unenforceable" undertaking has also been obtained in respect of unauthorized investment advice.

459. **Market entry:** Articles 41 and 42 of the regulatory law require that any person wishing to engage in financial services in the DIFC must apply for a license from the DFSA (*i.e.* it is substantially an unitary regime where similar licensing requirements apply in respect of any financial services activity undertaken in the center). Article 45 provides that the DFSA may make rules to specify the requirements for licensing, and these are published in the rulebook. The rules establish a number of threshold conditions for authorization, including a fit and proper test for directors, shareholders and controllers. Full disclosure of ownership and control is required, together with information on the source of funds for the establishment of the entity. Specific requirements are imposed on the senior executive officers, finance officers and compliance officers. The DFSA reports that it has rejected the appointment of at least one compliance officer on the grounds, primarily, of a lack of relevant experience. The licensing process also includes a specific review of the AML controls to ensure that they meet the requirements of the AML law and the DFSA rules. At the time of the mission's onsite visit, approximately 111 institutions had been authorized, the majority of which were involved in brokerage and corporate finance. By March 2007, approximately 70% of the licensees reported some form of financial activity, but very little deposit-taking was being undertaken through the DIFC at that time. No start-up banks are permitted under the financial free zone legislation, with all the licensees required to be branches, subsidiaries or joint-ventures of existing institutions outside the DIFC.

460. The DFSA rules require authorized institutions to obtain approval for any change of controller, which is defined to include any person who alone or with an associate (a) holds 10% or more of the shares, (b) is able to exercise or control 10% or more of the voting rights, (c) is able to exercise significant influence over the management via a shareholding, or (d) meets one of these conditions through a holding company. The approval process is triggered on each occasion that a controller breaches a holding threshold of 10%, 30% and 50%. The DFSA defines certain licensed functions at a senior level within authorized firms, and requires that the positions be held by authorized individuals who must receive approval from the DFSA based on standard fit and proper tests.

461. Responsibility for consideration of applications rests with the Authorization Department which makes a recommendation to an Authorization Committee. On the basis of the committee's decision to endorse or reject the recommendation, a license is either granted or refused. To date, there has been one formal rejection of an application, but approximately 10% of the initial applications do not progress to the licensing stage. There are currently 5–10 new applications per month.

462. Money service providers may not operate within the DIFC; as such services are not included within the DFSA rules as activities that may be provided by authorized institutions.

463. **Ongoing Supervision:** Since the DIFC is a relatively new concept (established in 2004), the primary focus, to date, of the DFSA has been on the licensing process. There has, inevitably, been only limited experience in the wider supervisory procedures, and it has not yet been subject to any formal, independent assessment of compliance with the Basel or the International Association of Insurance Supervisors (IAIS) standards, although an IOSCO assessment was recently undertaken as part of the January 2007 FSAP. Although a detailed and extensive regulatory system appears to be in place, its full implementation is still underway, and it has yet to be tested comprehensively in view of the early stage of development of the market. As indicated

above, about one-third of the authorized institutions had not commenced full operations by March 2007, and the scale of the business currently being undertaken is very low. The total assets of the banking, investment and insurance intermediation firms reported at end-2006 were just under USD 1 billion, with deposits of only USD 550 million. The majority of the assets remain funded either by shareholders' equity (in the case of the locally-incorporated institutions) or deposits from other financial institutions or intra-group funds (in the case of the branches).

464. The DFSA applies fundamentally a risk-based approach to supervision. As part of this, it adopts a continuous risk management cycle, which comprises the identification, assessment, prioritisation, and mitigation of risks arising from a range of areas within a firm, including business, operations, internal controls and compliance arrangements. Assessing the effectiveness of the money laundering controls established and maintained by the firm is seen as a vital component of the risk assessment process.

465. The DFSA has various supervisory tools available such as on-site visits (including theme and special visits) desk based reviews, and high level meetings to carry out such assessments. All institutions are subject to a risk review within 6 months of authorization. The time period before this process would usually be repeated is determined by the risk rating of the firm. If risk is considered 'high', a periodic assessment will be undertaken at least annually and where the risk is considered to be 'medium' and 'low' it will be undertaken at least every 18 months and every two years, respectively. The DFSA has developed a procedures manual that directs their inspection process. This is not published, but the general principles are laid down in the supervision section of the DFSA rulebook. Inspections result in a report by the case officer, which includes a risk assessment, risk mitigation plan and a timeframe for implementation. These reports go for consideration by the Supervision Committee comprising senior members of the DFSA staff. Reports resulting in low risk assessments will be referred back to the line management for routine action, but higher risk assessments will necessitate ongoing involvement by the committee until the risks have been adequately mitigated. The assessments and the risk mitigation plans are submitted to the institution and form the basis for ongoing monitoring and, where necessary, any informal or formal enforcement action.

466. In the course of 2006, the DFSA undertook 26 routine inspections, and has a target of 100 for 2007, of which 36 had been undertaken by end-April 2007. The risk ratings resulting from the 2006 inspections were divided almost equally between low and medium, with no institutions being found to have major deficiencies in their control environment, including AML/CFT. During June 2005, Supervision and Enforcement Departments conducted the first theme review of the AML procedures with particular emphasis on the experience concerning the STR process. The objective of this review was to ascertain if STRs should have been filed by the institutions in the period from September 2004 to June 2005. All authorized institutions underwent desk-based reviews. Subsequently, eight entities were visited on-site, during which a review of systems and controls, and sampling of transactions were undertaken. The DFSA reports that there was no indication that STRs should have been filed by the firms examined, and the overall impression of AML compliance was satisfactory. The DFSA provided follow up action to ensure that certain steps were taken to address what were seen largely to be cases where the group practice adopted by institutions, although of a high standard, did not fully comply with the specific requirements under the DFSA rules. The issues identified were not considered by the DFSA to be material, although it has sought remedial action where appropriate. All actions are now considered by the DFSA to be closed. The DFSA plans to undertake another similar theme review in 2007.

467. As previously indicated, the DFSA has rule-making powers, which it has used extensively to create the regulatory framework and procedures under which institutions are expected to operate. These powers include specific reference under Article 72 of the regulatory law to rules in connection with the creation and implementation of AML measures, policies and procedures. The current rules and accompanying guidance are extensive and address a wide range of issues relating not only to the institutions' legal obligations, but also broader risk mitigation procedures.

These rules form the benchmark against which institutions are measured for AML compliance through the supervisory process. The DFSA has indicated that, although it considers the actual risk of money laundering through authorized institutions to be low, given the current nature of the market, it demands high levels of compliance with the rules because of the potential reputational damage to the DIFC, were there to be a lapse. As indicated, the DFSA reports that the level of compliance has been high so far, and that it has not had to apply sanctions to any institution for AML failures. There is no reason to disagree with this analysis, and the DFSA supervisory process with respect to AML/CFT compliance appears to be robust at this stage. It has also to be noted that the DFSA currently has a common risk assessment baseline for all institutions that it supervises, which means that, despite the implementation of a broad risk-based approach to supervision, all institutions are currently subject to full-scope inspections at this point in the development of the market.

### **3.10.2. Recommendations and Comments**

468. Overall, while some of the powers of the central bank are specified very generally within the law, it appears that they provide a reasonable basis for fulfilling the Bank's regulatory functions in a flexible manner. However, there are various ways in which the framework might be improved. The procedures relating to the supervision and regulation of the domestic securities and insurance markets are far less developed. Overall, the following recommendations are made.

- There is some potential for confusion under the current framework, in which the core powers and responsibilities of the central bank vis-à-vis the banking sector are spelt out in the primary law, but even the high level matters relating to licensing, supervision and enforcement for the other sectors are implemented through decisions of the Bank's Board of Directors. While the latter approach undoubtedly has the advantage of flexibility, it would be preferable to reinforce the key powers and functions by including them in the law.
- The central bank's ability to give instructions to financial institutions to address non-compliance with AML/CFT requirements appears to work reasonably well in the case of relatively minor deficiencies. However, there are limited enforcement options available between an enhanced follow-up procedure, subsequent to an examination (using Article 94 of the central bank law), and the use of more draconian formal powers to bring about a change in management or to impose restrictions on the business or the license. While the central bank has indicated that it has fined one institution, there is generally a lack of evidence of how the central bank might apply proportionate sanctions for serious deficiencies that warranted more than the normal supervisory follow-up procedure. The introduction of a broader range of sanctions (including a power to levy fines beyond those currently provided for late filing of data) would provide a greater degree of flexibility and proportionality.
- The absence of any data relating to the levels of compliance by institutions with their AML obligations is of concern, since it leaves the central bank without a valuable tool to monitor trends within the various financial sectors. Since the examiners provide formal letters to the institutions to identify the deficiencies and to require remedial action, there is a ready source from which a database could be constructed to monitor the types of weakness being discovered.
- The auditing profession has an obligation, under the instruction issued by the ministry of economy, to undertake AML compliance testing of their clients. At present, the results of this are only relayed to the regulators through their review of any relevant exceptions noted in the auditors' management letter. Since the work is required to be undertaken in all cases, there would be advantages in having the results framed in a free-standing report that would be made available automatically to the relevant regulatory authorities. It would also be advantageous to create a "whistle-blowing" provision under which the auditors would be

given general protection in the event that any concerns they might express would be protected from claims of breach of client confidentiality.

- The central bank is to be commended for its efforts to provide training to the financial sector. It is apparent, from discussions with both the BSED staff that the content of these programs, combined with the feedback provided in the course of the examination process, is intended to go beyond the basic requirements of regulation 24/2000. If, indeed, the central bank's expectations of the industry's AML systems and controls do extend beyond the limits of the regulation, it would be invaluable to formulate these expectations into written guidance to help ensure consistency of understanding and implementation. Since the obligations under the AML law apply to all financial institutions in the UAE, including those within the DIFC, it would be sensible to ensure that the expectations imposed on the institutions should clearly be compatible. While the rules introduced by the DFSA do not fully address the FATF requirements, they provide a more detailed framework for compliance, and they might reasonably form the basis of a more common set of requirements.
- It is recommended that the UAE clarify the laws concerning the ability of the ESCA, the DGCX, and ministry of economy to sanction brokers and insurance companies for AML/CFT breaches, including powers to impose disciplinary and financial sanctions, and to withdraw, restrict or suspend the entity's license.
- There should be "fit and proper" standards for directors and senior management of insurance companies. Directors and senior management should possess the expertise (qualifications, experience) and integrity (employment record) needed to undertake their functions in a satisfactory manner.
- The ministry of economy should create a well-staffed AML/CFT unit or at least a team of examiners specializing in AML/CFT measures to check insurance companies' compliance with AML on an ongoing basis.
- Due to the ever-expanding role of ESCA and the DGCX, consideration should be given to recruiting personnel with supervisory experience for both agencies to be allocated specifically for AML compliance supervision.
- ESCA and the DGCX should develop guidance to assist securities and commodities brokers in identifying suspicious transactions more easily.

### 3.10.3. Compliance with Recommendations 17, 23, 25 & 29

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	PC	<p><i>Domestic banking</i></p> <ul style="list-style-type: none"> <li>• Limited range of formal sanctions available to central bank</li> <li>• Lack of evidence relating to use by the central bank of enforcement measures for AML compliance failures</li> </ul> <p><i>Domestic securities and insurance</i></p> <ul style="list-style-type: none"> <li>• Limitation to, or lack of, administrative penalties that can be imposed against brokers and insurance companies for AML/CFT breaches.</li> </ul> <p><i>Money service businesses</i></p> <ul style="list-style-type: none"> <li>• No sanctions available against hawaladars (see SRVI)</li> </ul>
R.23	PC	<p><i>Domestic banking, moneychangers, securities and insurance</i></p> <ul style="list-style-type: none"> <li>• Voluntary registration process only for hawala dealers, and absence of effective monitoring systems (see SRVI)</li> <li>• No "fit and proper" requirements for board members and managing directors of insurance companies</li> </ul>

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
		<ul style="list-style-type: none"> <li>• Limited scope of AML/CFT inspections for the securities sector (including within the DGCX)</li> <li>• No supervision of insurance sector for compliance with AML/CFT obligations</li> </ul>
R.25	PC	<ul style="list-style-type: none"> <li>• Lack of clarity for institutions about what are the central bank's expectations, through its inspection program, in respect of AML systems and controls in financial institutions</li> <li>• Inadequate guidance to assist the insurance and securities sectors to implement and comply with STR requirements</li> </ul> <p>Section-specific rating would be: PC</p>
R.29	PC	<ul style="list-style-type: none"> <li>• Limited range of formal sanctions available to central bank</li> <li>• No formal powers of inspection over hawala dealers</li> <li>• No examination program available in the insurance sector</li> <li>• No sanctions powers for hawaladars</li> </ul>

### 3.11. Money or Value Transfer Services (SR.VI)

#### 3.11.1. Description and Analysis

469. Money remittance services in the UAE are provided either by licensed institutions, especially moneychangers, or by Hawala dealers (hawaladars). The regulatory regime for the moneychangers has been described in the section dealing with the banking sector, and therefore the description in this section focuses substantially on the oversight of hawaladars. However, the conclusions and rating of SRVI take into account the treatment of the regulated sector.

470. The UAE authorities have taken a strong lead internationally in trying to address the issue of remittances made through the Hawala system. In the so-called Abu Dhabi Declaration on Hawala of May 16, 2002, the system was recognized as an important means of permitting low-paid workers' remittances to be made cheaply and efficiently, but concern was also expressed about the potential for abuse of the system. Therefore, the declaration laid down a number of principles, including the application of the FATF Recommendations to this sector, and the implementation of an effective, but not overly-restrictive regulatory framework to ensure compliance with the recommendations. Since that time, the UAE authorities (led by the central bank) have hosted several further international conferences on this issue, and they have taken a leading role in examining ways of bringing the sector under a system of proportionate regulation that seeks to limit the risk of driving the business entirely underground. However, while the following analysis seeks to reflect the relative robustness of the measures taken by the UAE authorities, they have ultimately to be benchmarked against the FATF standard, which contains specific requirements relating to the legal infrastructure to address both formal and alternative remittance service providers.

471. The UAE has opted for a system of voluntary registration of hawaladars. On 3 November, 2002 the central bank published an announcement in the local press indicating that it was commencing a process of issuing certificates to those who registered. The announcement made no reference to the actual procedures that would be adopted by the central bank, but a system has been implemented under which the registrants are interviewed by staff members of a special unit in the BSED, who seek to establish basic facts about the background and current business activities of the registrant, as well as to record the name, address and other contact details. This information is sought against a pledge from the central bank that it will maintain strict confidentiality, especially in view of the fact that the operations of the hawaladars' counterparties in many countries are operating outside their domestic law. As a result, no list of registered hawaladars is publicly available.

472. At the time of the mission's visit, there had been approximately 250 applicants, of whom 211 had been registered. Those refused registration have all been UAE citizens for whom the central bank does not consider the process to be applicable, on the grounds that they should have a license to operate in the formal sector if they are providing remittance services. It is not clear whether the central bank undertakes any further investigation of these cases to ensure that the individuals are not, in fact, continuing to operate illegal remittance businesses. There are no estimates of the number of hawaladars who may not, so far, have sought to register, but approximately 25 approaches had been received by the central bank in the first three months of 2007. The central bank believes that the steady flow of registrants reflects the word-of-mouth message within the sector that registration has some value.

473. The central bank has taken the view that it would be impracticable to extend the full obligations of Regulation 24/2000 to the hawaladars, in view of their lack of sophistication and education. However, the registration certificate is issued subject to three conditions: that the registrant will comply with any regulations and instructions issued by the central bank; that he will provide the central bank with a list (quarterly) of all inward and outward remittances made (including details of the remitter and the beneficiary); and that he will report any suspicious transactions to the AMLSCU. The standard form on which hawaladars are required to report implies that they must undertake a basic customer identification procedure in order to be able to record the name, nationality and passport number. So far, no STRs have been received from this sector, and there is no basis for knowing whether the customer identification and record-keeping procedures are being maintained properly. The BSED reviews the quarterly returns to monitor for large transactions that may require discussion with the hawaladar, but any such follow-up is very rare. The BSED is of the opinion that the absence of any STRs reflects the fact that the hawaladars' customers are typically people who are known personally to them through family or business contacts.

474. The central bank has no authority to inspect the hawaladars, although visits are occasionally made to the premises to confirm that the person has correctly registered the address. Equally, there is no authority to apply sanctions for failure to comply with the conditions imposed, apart from revoking the registration. The implications of revocation are far from clear, given the lack of legal underpinning for the regime. Essentially, therefore, the central bank can rely only on moral suasion to bring about compliance with its instructions.

475. A key feature of, and incentive for, registration is the issue of a certificate by the central bank, which the registrant can use to facilitate obtaining access to the formal banking and remittance system. While the certificate does not guarantee access (since institutions are still required to undertake their own due diligence), its existence means that the bank or moneychanger is made aware that the flows of funds that are being handled may not relate to the primary trading or other business that the hawaladar may be undertaking. The original announcement by the central bank setting up the registration system states that the "certificate will be necessary to deal with banks or moneychangers and avoid any money laundering suspicion," thereby suggesting that institutions should be able to take some comfort that activities of registered hawaladars are in some way regulated. In practice, this is not the case to any material extent. Moreover, there is no obligation on the financial institution to identify separately the proceeds of the Hawala activity or to have any knowledge of the nature of the underlying transactions that are being handled by the hawaladars. Therefore, there is an increased risk that any undesirable funds being received by the hawaladars can be masked and transmitted through

476. The provision of money remittance services is not a permitted activity within the DIFC, and the physical nature of the center makes it almost inconceivable that Hawala operations might be undertaken in the center.

### 3.11.2. Recommendations and Comments

477. As discussed under Section 3.10, the central bank has a long-standing regulatory regime for money remitters within the formal financial system, and it applies standards equivalent to those targeted at the banking sector. Therefore, the extent of compliance with the requirements of SRVI for the formal sector match the levels identified generally under Recommendations 4–11, 13–15, 21–23 and SRVII. As these levels of compliance are relatively low, the inclusion of the formal sector within the overall rating for SRVI has a marginal, but not a material impact.

478. The UAE authorities have made a positive start towards bringing the hawala dealers under a formalized monitoring system, against a background of not wishing to take measures that might drive the sector further underground. This is always going to be a difficult balancing act, and the central bank is to be commended for taking the initiative, at the domestic and international levels, to study ways in which the issues might be studied further.

479. A number of valuable measures have been implemented with respect to the informal sector, and these have proved successful in bringing a material part of the alternative remittance system into a semi-formal structure, but it has to be noted that the structure of the current system falls significantly short of the FATF standard in that the registration system is voluntary; the application of the broader principles contained in Regulation 24/2000 have been extended to the hawaladars on only a partial (and informal) basis; and there are no effective means through which the central bank can ensure compliance with these basic requirements. Moreover, the use of the registration certificate as a type of introduction to obtain access to the formal financial system gives rise to some significant concerns. These concerns may be addressed, in part, if the central bank were to take powers to undertake occasional inspections of hawaladars (on a case-by-case basis), to ensure that they are complying with the basic obligations with respect to CDD, record-keeping, and STR reporting. At present, the registration process gives a degree of legitimacy without there being any verification that the corresponding obligations are being fulfilled. To make this process effective, it would be necessary to move to a more formalized system under which the obligations ultimately became enforceable, with appropriate sanctions for non-compliance.

480. An associated step would be to introduce a mandatory registration system, which would also necessitate the central bank taking a proactive role in identifying persons who may be operating as hawaladars without having registered. This might also be accompanied by clear guidance to the banks and moneychangers that they should only provide services to registered hawaladars, and that they should seek, as far as possible, to differentiate between (and monitor separately) the transactions that result from the customers' Hawala operations and those that might be linked to trading or other business. At present, some of the indicators included in Regulation 24/2000 might lead an institution to report an unregistered hawaladar's transactions as suspicious, but there is no obligation not to provide services to such customers.

### 3.11.3. Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	NC	<ul style="list-style-type: none"> <li>• Voluntary system of registration for hawala dealers</li> <li>• No formal, legally enforceable obligations imposed on hawaladars</li> <li>• No legal powers to oversee the activities of hawaladars to ensure compliance with standards of CDD, record-keeping, etc</li> <li>• Potential scope for abuse through use of registration certificate to access formal financial system</li> <li>• Limitations on standards applied to remitters in the formal sector as reflected in analysis of relevant Recommendations covering the financial sector</li> </ul>

#### **4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS**

##### **Description**

481. In the UAE the designated non-financial businesses and professions operate in the domestic sector, the financial free zone and the commercial free zones. The DNFBPs active in the country are: dealers in real estate, dealers in precious metals and precious stones, trust and company service providers, auditors who also provide accounting services, and lawyers. Casinos are prohibited under UAE laws. Notaries are only employed by the ministry of justice (MOJ) and, while they do take identification details of persons appearing before them and do maintain records of that identification in their role as employees of the MOJ, they fall outside the intended scope of the standard as they do not prepare for or engage in any financial transactions for clients. The mission was informed that there is a very small market for strict accounting services, and so these services are provided by the auditors. Domestic auditors are prohibited from providing services other than auditing and accounting services, but, in practice, some do act as company service providers (CSPs), and would, therefore, be captured by the FATF definition of a DNFBP in respect of this activity. There is a requirement under a ministry of economy circular for auditors to file STRs with the AMLSCU.

482. The authorities were not able to provide statistics on the total number of DNFBPs operating in the UAE.

##### **Domestic sector and in the commercial free zones**

483. In the domestic sector DNFBPs are dealers in real estate, dealers in precious metals and precious stones, CSPs, auditors who also provide accounting services, and lawyers. There is no evidence of activities by trust service providers in the domestic market, and there is no trust law that would allow for the establishment of trusts. Dealers in precious metals and stones cover a large range and number of entities in the UAE including bullion dealers, wholesalers, manufacturers and retailers. All of them engage in cash transactions with their customers and, therefore, fall within the scope the FATF Recommendations. The CSP activities in the domestic sector are conducted by lawyers and accountants, but a CSP license is not required.

484. DNFBPs are registered by the Chamber of Commerce (COC) or the ministry of economy, depending on the legal structure. The chamber of commerce registers establishments/sole traders and limited liability companies, and the ministry of economy registers public and private joint stock companies, general partnerships and foreign companies. The chamber of commerce and the ministry of economy do not register DNFBP's until they receive copies of the relevant business or professional license from the designated authorities. The chamber of commerce and ministry of economy registrars have no supervisory responsibilities for the DNFBPs, except for compliance with the registration requirements, which include the submission of annual returns and payment of fees.

485. The designated supervisors of DNFBPs are the auditors' department within the ministry of economy for auditors who also provide accounting services; the MOJ for lawyers who also provide CSP services; the Planning and Development/Economic Department for all other DNFBP activities that are conducted through companies and partnerships; and the ministry of municipalities for all other DNFBP activities that are conducted through establishments/sole traders.

486. The same types of DNFBPs that operate in the domestic sector also operate in the commercial free zones. Free zones are physical locations with defined boundaries, generally set up with concessions that encourage their use as entrepôt facilities for various industrial and

commercial goods. They also benefit from the absence of local ownership controls. The authorities were unable to provide the mission with the number of free zones existing in the UAE or the number of DNFBPs operating within them.

487. The Jebel Ali free zone (based in Dubai) also allows for the formation of international business companies (IBCs). There is no requirement for physical presence of the IBCs, which must, however, be represented by a registered agent (*i.e.* a company service provider) which itself must be registered and overseen by the registrar's office at the Jebel Ali Free Zone Authority (JAFZA). There are about 90 CSPs and 2000 IBCs registered to date by the JAFZA. The CSP activities in the other free zones are restricted to the formation of companies established and conducting business in the zones. The mission was advised, however, that a free zone in Ras Al Kamiah will also shortly offer the formation of IBCs with no requirement for a physical presence. In both cases the mission was advised that the IBCs are being created to hold local real estate holdings in order, *inter alia*, to circumvent the current 50% local ownership requirements imposed across the UAE domestically.

488. The Dubai Multi Commodities Center is a commercial free zone that can register and license a range of business activities to operate within its borders, including wholesale dealers in precious metals and stones. Currently, the DMCC is only licensing dealers in precious metals and stones. Other ancillary services providers will be licensed at a later date and will be located in the Jumeirah Lake Towers in the free zone. The Dubai Gold and Commodities Exchange is also located within this free zone (see discussion of the DGCX under Section 3 of this report). The DMCC plays an important role in maintaining the integrity of the diamond trade as it is the authority that issues the Kimberly Process certificates for all diamonds entering the UAE.

### **Financial Free Zone**

489. The Dubai International Financial Center is the only designated financial free zone in the UAE, within which the full range of DNFBPs (with the exception of casinos) may be registered. There are two supervisors for the businesses and professions operating in the DIFC: the Dubai Financial Services Authority and the Dubai International Financial Center Authority. The DFSA licenses and regulates the trust service providers as authorized financial businesses, which are, therefore, subject to the relevant requirements described under Section 3 of this report. In addition, the DFSA regulates, as Ancillary Service Providers (ASPs), all those who provide accountancy or legal services to authorized firms and market institutions. DIFCA regulates all other businesses and professions that do not fall under the umbrella of the DFSA (including lawyers and accountants who do not service the financial sector).

### **Legal Framework**

486. The AML/CFT laws apply to several types of DNFBP that operate in the domestic sector and all the free zones. Real estate dealers and dealers in precious stones and metals may be technically captured under the category of "other financial, commercial and economic establishments" by the words "and others" in the definition in Article 1 of the AML law. However, the respective supervisors have not issued implementing regulations for DNFBPs under Article 11 of the AML Law. While certain officials in the MOJ indicate that lawyers and accountants would also be covered under the same definition, others in the MOJ as well as a number of lawyers were of the opinion that they are not covered under the AML law. In the mission's view, lawyers and accountants would not be captured, as they are categorized as professions under both the Commercial Code and the Civil Code. In these statutes "Professions" include lawyers and accountants and are separately defined from "Other Financial, Commercial and Economic Establishments." Accordingly, for lawyers and accountants to be covered under the AML or CFT law, professions should be separately defined in the law. In addition, the MOJ has not issued any AML/CFT requirements for lawyers, and the regulations issued by the ministry of economy only relate to accountants acting in the capacity as auditors.

490. The DMCC published an AML/CFT policy statement on 11 March 2007, which is applicable to DMCC staff, DMCC members (*i.e.* businesses established within the free zone) and DMCC members' subsidiaries and affiliates. No AML/CFT regulations governing the activities of the CSPs within the Jebel Ali Free Zone have been issued by the JAFZA.

491. The AML and CFT laws apply to all operations in the DIFC by virtue of Article 3(1) of Federal Law 8/2004. Operations are defined to include various financial services and supporting activities (financial and cash brokerage services and advice, provision of goods and services to companies and establishments and individuals in the financial free zone). The financial free zone is left to establish its own rules and procedures to implement the AML and CFT laws. The DIFCA had drafted relevant regulations for DNFBPs operating in the DIFC (including lawyers who are not providing financial services advice and who are not, therefore, captured by the DFSA rules) at the time of the on-site visit, but they were not yet in force.<sup>22</sup> The DFSA has issued comprehensive rules for ASPs (which cover lawyers and accountants operating purely under the DFSA's purview as institutions providing ancillary financial services) and TSPs (which are regulated as financial institutions).

#### **4.1. Customer Due Diligence and Record-Keeping (R.12)**

##### **4.1.1. Description and Analysis**

###### **Domestic sector and commercial free zones**

492. There are no requirements under the AML law for CDD and record keeping measures for DNFBPs that would satisfy recommendations 5, 6, 8–11 and none of the designated supervisors has issued any regulations in relation to these issues.<sup>23</sup> Lawyers practicing law domestically are subject to the Lawyers Act, but it does not require any CDD or record keeping measures.

493. The ministry of economy's Circular dated July 16, 2002 for auditors (relating to the filing of STRs) does not require CDD for clients or record keeping. Although the law authorizing auditors may have some relevant provisions regarding CDD, the mission was unable to confirm this from the source material provided.

494. The DNFBPs, as entities registered and licensed under the Economic Department and Municipality of each emirate, are required to keep accounting records for at least five years, but there is no requirement to keep CDD documents. Some of the DNFBPs belong to international groups which have global reporting requirements regarding CDD and record keeping measures. Others are members of self-disciplined industry groups (though not SROs under the standard) such as the UAE Accounting Association for auditors and accountants and the Dubai Gold and Jewelers Group (DGJG) for dealers in precious metals and stones, and therefore have adopted a voluntary code of best practice which may have broad guidelines on CDD and record-keeping. In some cases, they may obtain the customer's name, residential address, and national identification information (passport number and issuing country).

495. The DMCC policy document, which states that it has mandatory application, supported by unspecified sanctions, covers a number of issues relating to CDD and record-keeping.

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<sup>22</sup> Subsequent to the mission, DIFCA issued its AML/CFT Regulations applicable to DNFBPs which became effective on July 18, 2007. The regulations are extensive and closely follow the language of the relevant FATF Recommendations, but they are not taken into account for the purposes of this report because their implementation date falls outside the timeframe of the assessment.

<sup>23</sup> See previous footnote regarding DIFCA's July 2007 AML/CFT Regulations which contain CDD and record-keeping requirements.

However, the specific CDD measures are addressed only to the DMCC itself for the purpose of vetting prospective members. Similarly, the record-keeping requirements appear to relate only to the DMCC's documentation linked to the members' registration, and to the handling of any suspicious activity reports that members are required to submit to the DMCC (rather than directly to the AMLSCU).

### **Financial Free Zone**

496. The TSPs are required by the DFSA to apply the same CDD and record-keeping measures as for financial institutions identified in section 3 of this report.

497. Under the relevant DFSA rules, the ASPs must identify their customers and take risk-based procedures to verify the identity. The ASP must establish whether the customer is acting on his own behalf or on behalf of another person and must establish and verify the identity of both the customer and any other person on whose behalf the customer is acting, including the beneficial owner of the funds. Exceptions to CDD requirements under the DFSA regime include introduced business if the customer is a DFSA authorized firm, an ASP, an authorized market institution or a person subject to equivalent AML requirements. The ASPs must conduct enhanced CDD for PEPs, have appropriate risk management systems to determine whether a customer is a PEP, seek senior management approval for transactions involving them, take appropriate measures to establish the source of wealth and funds and conduct enhanced ongoing monitoring of the business relationship. The ASPs may also rely on CDD undertaken by intermediaries for introduced business, but the ultimate responsibility for CDD measures remains with the ASPs. Customer and transaction records must be retained for six years from the date of the transaction, and for terminated businesses, records, for at least six years from the date of termination. The mission was informed by the ASPs, TSP, and the DFSA that the rules on CDD and record-keeping measures are being implemented, but only limited scope examinations were conducted to test the effectiveness of implementation.

#### **4.1.2. Recommendations and Comments**

##### **Domestic sector and the commercial free zones**

- Broaden the list of persons covered by the AML/CFT laws to explicitly include the DNFBPs operating in the UAE. The AML law should apply to all DNFBPs when they engage in the activities identified in definition of DNFBPs in the FATF Recommendations.
- Include the requirements for CDD and record-keeping measures for DNFBP activities in the AML law or regulations issued by the respective regulators.
- Provide training to DNFBPs on their obligations for CDD and record-keeping measures when the AML/CFT laws are amended to explicitly include them.

##### **Financial Free Zone**

- Provide training to DNFBPs on their obligations for CDD and record keeping measures when the regulations are issued.

### 4.1.3. Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	NC	<ul style="list-style-type: none"> <li>With the exception of the DFSA, none of the designated DNFBP regulators has issued any relevant AML/CFT regulations at the time of the onsite visit.</li> <li>Lawyers and accountants not covered by the AML or the CFT law.</li> </ul>

## 4.2. Suspicious transaction reporting (R.16)

### 4.2.1. Description and Analysis

498. In view of the fragmented legal framework, the following table seeks to summarize the application of the provisions relating to STRs, tipping-off and legal protection with respect to the different classes of DNFBP in the domestic and free zone environments.

**Statistical Table 5. STRs, tipping-off and legal protection related to DNFBPs**

Activity	AML Law	CFT Law	Regulatory rules
Domestic and Jebel Ali free zone			
Lawyers	No	No	No
Accountants	No	No	Yes
Dealers in Precious metals and stones	Yes	Yes	No
CSPs	Yes	Yes	No
TSPs	n/a	n/a	n/a
Real estate dealers	Yes	Yes	No
DIFC (non-financial)			
Lawyers	No	No	Draft
Accountants	No	No	Draft
Dealers in Precious metals and stones	Yes	Yes	Draft
CSPs	Yes	Yes	Draft
TSPs	Yes	Yes	Yes
ASPs	Yes	Yes	Yes
Real estate dealers	Yes	Yes	Draft
DIFC (under DFSA)			
Lawyers ( as they are licensed as ASPs)	Yes	Yes	Yes
Accountants ( as they are licensed as ASPs)	Yes	Yes	Yes
Dealers in Precious metals and stones	n/a	n/a	n/a
CSPs	n/a	n/a	n/a
TSPs	Yes	Yes	Yes
ASPs	Yes	Yes	Yes
Real estate dealers	n/a	n/a	n/a

Activity	AML Law	CFT Law	Regulatory rules
DMCC			
Lawyers	No	No	Pending
Accountants	No	No	Pending
Dealers in Precious metals and stones	Yes	Yes	Pending
CSPs	Yes	Yes	Pending
TSPs	n/a	n/a	n/a
Real estate dealers	Yes	Yes	Pending

### Domestic sector

499. Article 7 of the AML law imposes a reporting obligation on a broad range of entities (including businesses, but not professions, captured within the definition of a DNFBP), but the majority of the entities have no idea that they have such obligations, as domestic DNFBP supervisors have not issued regulations or done any outreach. The only regulations that have been issued relate to auditors who have an obligation to file STRs under the ministry of economy's Circular dated July 16, 2002 when they are conducting an audit of a client. This circular has been issued under the Commercial Companies Law (8/1984) and the Federal Law 22/1995 in relation to the regulations governing the audit profession. The mission was not given access to these laws. It should be noted that the circular has not been issued under the AML law since the auditors (and accountants, more generally) are not covered by this statute as they are professionals and not "other financial, commercial and economic establishments". The circular does not include provisions for tipping off, nor does it provide for legal protection for reporting suspicious transactions in good faith.

500. Lawyers are not covered by the AML law and the Ministry of Justice has not issued any regulation or circular regarding the filing of STRs by lawyers.

### Commercial Free Zones

501. Section 11 of the DMCC policy statement of March 2007 requires "management, staff and members [of the DMCC] to report any suspicious activity or information directly to the Financial Compliance Officer". The designated recipient is, in fact, the head of compliance of the DMCC itself, who is then given the responsibility under Section 11.4 to investigate the report and to decide whether or not to forward the report to the AMLSCU. Therefore, this system interposes a third party between the member and the FIU when filing a report. However, DNFBPs visited by the mission in the commercial free zones were generally not aware of the overall STR reporting regime, and to date, no such reports have been filed by DNFBPs in the free zones. No regulations have been issued by the Jebel Ali Free Zone Authority and no information was provided on the AML/CFT regime in the other commercial free zones.

### Financial Free Zone

502. The TSPs are authorized as financial institutions by the DFSA and are subject to the requirements described under Recommendation 13. The position with respect to ASPs is slightly more complex. The position taken by the DFSA is that ASPs (unlike professionals providing legal and accountancy services in the domestic sector or elsewhere within the DIFC) are captured by the STR obligations under federal AML law on the grounds that they fall within the definition of "establishments licensed and supervised by agencies other than the central bank, such as insurance companies, stock exchanges and others". This is based on the fact that ASPs are licensed and regulated, not as lawyers and accountants, but as providers of financial activities within the

meaning of the Federal Law. This interpretation appears reasonable, and as a result, the ASPs would have the benefit of the legal protection provided under the AML law for filing STRs in good faith. In addition, ASPs are required to monitor for and report suspicious transactions under the DFSA's own regulations, which contain provisions against tipping-off. The ASPs must file reports with the AMLSCU and also send a copy to the DFSA.

503. The DFSA regulations for ASPs require them to have policies and procedures, systems and controls to ensure compliance with the UAE laws, detect suspicious transactions, maintain an audit trail of transactions and comply with the ASP rules and appoint an MLRO. The MLRO should be at a senior level, and should act independently and report on the compliance function at least annually to the governing body or senior management. He should have unrestricted access to all customer and transaction information. The ASPs should provide periodic training to all employees on the identity and responsibilities of the MLRO, the compliance function and AML. Under the ASP license, there is a requirement for an external audit that includes internal controls to prevent ML and FT. TSPs have the same requirements as those for DFSA authorized firms described in Section 3 of this report.

504. DNFBPs operating both under the DFSA regime and more widely within the DIFC are generally aware of the AML law and the requirement to file STRs. However, there is mixed knowledge of where STRs should be filed. Some believe that they should be filed with the DFSA while others believe that they should be filed with the AMLSCU with a copy to the DFSA. Their understanding of suspicious activities again appears to be similar to that of their counterparts in the domestic sector.

505. At the time of the on-site visit, DIFCA had not issued its final AML regulations, but when issued,<sup>24</sup> the regulations will require DNFBPs to file STRs with the AMLSCU on a prescribed form and to submit a copy to DIFCA compliance department when they suspect or have reasonable grounds to suspect that funds received or being offered in an actual transaction are proceeds of criminal activity or related to ML or FT.<sup>25</sup> The AML draft regulations are generally comprehensive but there is no mention of submitting STRs regardless of possible involvement of fiscal matters.

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<sup>24</sup> DIFCA issued the regulations on July 18, 2007.

<sup>25</sup> Subsequent to the mission, DIFCA issued its AML/CFT Regulations applicable to DNFBPs which became effective on July 18, 2007.

### Box 1. Legal Privilege

Lawyers are currently not captured under the AML law except for those practicing as ASPs who are registered with the DFSA. Lawyers practicing domestically in the UAE indicated that if they were obligated to file STRs, they would find it difficult as it would breach their legal professional privilege or professional secrecy. Domestically, there is a concept of professional secrecy. Articles 41 and 42 of Federal Law 23/1991 impose a strict legal privilege which may be broken, however, if the disclosure would result in preventing the commission of a crime. The mission was advised that lawyers would only file STRs if they had much more than a suspicion of a possible criminal offense. In fact, they would need very strong proof before they would file STRs. If they did file an STR, they would advise the client that they had reported to the authorities. The lawyers with whom the mission spoke indicated that it would more likely that they would not conduct the transaction, terminate the client relationship and advise the client why they were terminating the relationship. As this would then only be an attempted transaction, the majority of lawyers would not file the STR.

The position would be a little different for lawyers who are ASPs and therefore required to file STRs pursuant to DFSA Rules. Article 82 of the Regulatory Law and Article 8 of DIFC law No. 3 of 2004 Law on the Application of Civil and Commercial Law (Law 3/2004) govern this matter with regard to legal privilege.

Article 82 of the regulatory law states that:

“82(2) Where the DFSA requires a lawyer to give information or to produce a document or to answer a question, and the giving of the information or the production of the document or the answer to the question would involve disclosing a Privileged Communication made by, on behalf of, or to, the lawyer in his capacity as a lawyer, the lawyer is entitled to refuse to comply with the requirement unless:

- (a) where the person to whom, or by, or on behalf of whom, the communication was made is a body corporate that is under official management or is being wound up, the official manager or liquidator of the body as the case may be consents to the lawyer complying with the requirement; or
- (b) otherwise, the person to whom, or by, or on behalf of whom, the communication was made consents to the lawyer complying with the requirement.

82(3) Where a lawyer so refuses to comply with a requirement, he shall, as soon as practicable, give to the DFSA a written notice setting out:

- (a) where the lawyer knows the name and address of the person to whom, or by whom, or on behalf of whom, the communication was made, then that name and address; and
- (b) where the requirement to give information or produce a document relates to a communication which was made in writing, then sufficient particulars to identify the document containing the communication.”

Under the regulatory law, privileged communication is defined as “a communication attracting a privilege arising from the provision of professional legal advice and any other advice or from the relationship of lawyer and client or other similar relationship, but does not include a general duty of confidentiality”.

Article 8(2) of Law 3/2004 indicates that “the relevant jurisdiction is to be the one first ascertained under the following paragraphs:

- (a) so far as there is regulatory content, the DIFC Law or any other law in force in the DIFC; failing which,
- (b) the law of any jurisdiction other than that of the DIFC expressly chosen by any DIFC Law, failing which,
- (c) the laws of a jurisdiction which appears to the Court of Arbitrator to be the one more closely related to the facts of and the persons concerned in the matter; failing which,
- (d) the laws of England and Wales”.

For lawyers registered as ASPs under the DFSA rules, Article 82 of the regulatory law would apply to the filing of STRs and would allow a lawyer to exercise legal privilege in communications with the DFSA unless his client waives that privilege. If the STR related to matters that were not covered by legal privilege, then the lawyer would have to file the STR.

For lawyers registered in the DIFC, their legal privilege would be governed by the laws of England and Wales under Article 8(2)(d) of Law 3/2004 as there are no specific provisions currently governing legal privilege in the DIFC. Legal privilege exists under English law. Lawyers subject to English law believe that it does not extend to the commission of criminal offenses by the lawyers themselves. As STRs must be filed only when a lawyer engages in certain types of financial transactions on behalf of a client, any suspicion a lawyer would have in those circumstances would involve the commission of an offense by the lawyer himself as an accomplice. Therefore, legal privilege would not apply and an STR would be filed. It is, however, unclear whether all lawyers operating in the DIFC would agree with this view.

Currently, lawyers in the DIFC are not obliged to file STRs as they are not covered by the AML law. They will be required to file STRs pursuant to the DIFC Regulations when those regulations come into force.<sup>26</sup>

Once lawyers become subject to the AML law, there may be some question jurisdictionally as to which law of privilege would apply for both the DFSA and DIFC registered lawyers.

#### **4.2.2. Recommendations and Comments**

##### **Domestic sector and the commercial free zones**

506. Only one STR had been filed with the AMLSCU by a DNFBP at the time of the mission, this being by an auditor. While other categories of domestic DNFBPs believe that they are covered under the AML/CFT laws, they are generally not aware of the requirements of these laws. There is little awareness of what constitutes a suspicious activity, the obligation to file STRs, with whom the STRs should be filed or of the existence of the AMLSCU. Understanding of suspicious activities is generally restricted to large cash transactions and unusual customer behavior, such as anxiety.

507. The authorities should consider the following recommendations:

- Add “professionals” to the AML law as a category of persons to be covered by the requirements to the law so that lawyers, accountants and other relevant professionals are clearly brought within the legislative framework for STR reporting.
- When lawyers are covered by the provisions of the AML law, agree which law of privilege will apply to lawyers operating in both the DIFC and DFSA.
- Domestically, DNFBP regulators for lawyers and accountants should issue implementing regulations requiring lawyers and accountants to file STRs when they engage in the activities identified in the FATF Recommendations.
- Domestically, respective DNFBP regulators should issue implementing regulations for dealers in precious metals and stones and real estate dealers when they engage in the activities identified in the FATF Recommendations and require the DNFBPs to file STRs.
- Include provisions for legal protection and tipping-off in the ministry of economy circular.
- Issue implementing regulations in the DMCC concerning the filing of STRs for dealers in precious metals and stones, lawyers, accountants, auditors and company service providers (CSPs).
- Issue implementing regulations for the CSPs in the JAFZA regarding the filing of STRs.

<sup>26</sup> The regulations have been in force since July 2007.

- Issue implementing regulations in the other free zones regarding filing of STRs.
- Provide training to DNFBPs on their obligations for reporting suspicious transactions.
- Conduct consultation, training, and outreach for lawyers to properly interpret and apply legal privilege when monitoring transactions and filing STRs.

#### 4.2.3. Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	NC	<ul style="list-style-type: none"> <li>• No provision in the AML law covering “Professionals” as defined by the civil code and the commercial code including lawyers and accountants.</li> <li>• Although the dealers in precious metals and stones, CSPs and real estate dealers that operate in the UAE may be technically captured under the category of “other commercial and economic establishments”, the respective supervisors have not issued regulations with regard to reporting suspicious transactions.</li> <li>• The ministry of economy circular for auditors does not provide for tipping-off or legal protection for reporting suspicious transactions in good faith.</li> </ul>

### 4.3. Regulation, supervision and monitoring (R.24-25)

#### 4.3.1. Description and Analysis

508. **Domestic sector and the commercial free zones:** The respective licensing authorities for DNFBPs in the domestic sector are responsible for the AML/CFT supervision of their licensees. Casinos are prohibited under UAE Law and professionals are not subject to the AML or CFT laws. The supervisors in the domestic sector include the ministry of economy for auditors and accountants and the ministry of justice for the lawyers. The Emirate Economic Department licenses all DNFBPs that operate as partnerships and companies and the Emirate municipality licenses those that operate as sole traders/establishments. Lawyers, auditors and accountants who operate under these structures would be licensed by the ministry of justice and ministry of economy, respectively, as well as either the Emirate Economic Department or the Emirate Municipality.

509. In the domestic sector, the ministry of economy regulates the auditors and accountants under the auditors’ law and issued a circular to the auditing profession on July 16, 2002 relating to AML/CFT. The circular requires auditors to perform verification procedures of their clients’ compliance with the AML law, and the central bank Regulation 24/2000. The ministry of economy does not have the authority to conduct on-site inspections of auditors so the extent of its oversight involves licensing and renewal of licenses. The ministry of economy has sanctioning powers that include administrative fines to revocation of the license. There is a move to amend the auditors’ law which would allow auditors to engage in other types of business activity and provide for move supervisory oversight, including for compliance with the AML/CFT laws. The UAE Accounting Association started in 1997 and has 660 members. It has no supervisory role and has never suspended or canceled membership.

510. The Economic Department and Municipality in each Emirate licenses all domestic DNFBPs. The extent of their oversight involves the issuance and renewal of business licenses. The mission was informed that they conduct an annual limited scope on-site inspection which typically takes 5–120 minutes. The inspection would involve compliance with the nature of business under the license and physical presence in the address on the license, but there is no

AML component. Sanctioning powers involve administrative fines to revocation of the license and are levied using a “ladder of compliance”.

511. The ministry of justice licenses the domestic lawyers, but they are not subject to the AML law as “professionals” are not captured within the definition of affected entities. The ministry of justice has not issued any implementing regulations on AML/CFT and has therefore not sanctioned its members for non-compliance with the AML/CFT laws. Further, the ministry of justice does not conduct on-site inspections. The extent of its oversight involves the issuance and renewal of licenses to practice law before the courts.

512. No supervisor in the domestic sector has issued any guidance or feedback on AML/CFT to DNFBPs under its oversight.

513. Each commercial free zone has a regulatory authority for the DNFBPs that operate within the respective zones. In the DMCC, the authorities oversee the activities of dealers in precious metals and stones. At the time of the mission's visit, the focus was substantially on the registration process, and there was no AML/CFT supervision included within the annual inspection to check compliance with the business license.<sup>27</sup> Within the Jebel Ali free zone the JAFZA does not undertake AML or other inspections of the registered service providers.

514. No AML/CFT regulation or guidance had been issued for DNFBPs operating in the commercial free zones at the time of the mission. Some DNFBPs are also members of industry bodies, such as the UAE Accounting Association for auditors and accountants, and the Dubai Gold and Jewelers Group (DGJG) for dealers in precious metals and stones. DNFBPs that belong to these bodies do practice CDD and record keeping to a limited extent, but not for compliance with the AML/CFT laws. There is no oversight for AML/CFT, no written regulations and these bodies have no sanctioning powers and would not qualify as SROs under the standard.

515. **Financial Free Zone:** The DFSA rules for ASPs and TSPs are generally comprehensive and meet the requirements of the FATF Recommendations that apply to DNFBPs. No full-scope on-site inspections for AML/CFT compliance had taken place at the date of the mission's visit, but most had undergone risk-assessments. All DFSA licensees undergo risk-assessments six months after the grant of the license and follow-up risk assessments may be conducted depending on the rating. These risk assessments have a ML/TF component. Additionally, examinations, titled “STR theme reviews” have been conducted on the ASPs. These examinations mainly focused on the filing and reporting of STRs.<sup>28</sup> The DFSA has sanctioning powers which range from administrative fines to revocation of the license and are levied using a “ladder of compliance”.

516. The DIFCA regulates the DNFBPs not captured under the DFSA regime, including the CSPs, lawyers, accountants, jewelers and real estate dealers, although currently only CSPs and jewelers have been registered. The ROC registers all companies operating in the DIFC. Prior to registration, ROC conducts due diligence checks on directors, officers, officers, shareholders, ultimate shareholders and beneficial owners (who enjoy direct and indirect benefits from owning in excess of 10% of the equity). Such checks include both individuals and corporate shareholders. After registration, ROC conducts an annual limited scope on-site inspection for compliance with the companies law. The share register is inspected for changes in ownership that do not match the

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<sup>27</sup> The DMCC subsequently indicated that, with effect from May 2007, it had started quarterly inspections which include an assessment of compliance with the AML/CFT policy statement issued in March 2007. However, it is unclear what sanctions the DMCC can apply in the event of non-compliance.

<sup>28</sup> Subsequent to the mission, the DFSA indicated that during 2007 it inspected the vast majority of ASPs for AML/CFT purposes. Following its initial AML/CFT theme review in 2005, the DFSA conducted its second review in July 2007, which included an on-site review of 37 ASPs.

ROC's own records, and the personnel file and documents on the annual general meeting are also examined. Sanctioning powers range from administrative fines to revocation of the license and are levied using a “ladder of compliance”. There was no oversight for AML/CFT at the time of the mission's visit since the DIFCA, AML/CFT regulations were still in draft form, but there were plans for on-site inspections once the regulations were issued. The DFSA and the ROC have general sanctioning powers.

#### 4.3.2. Recommendations and Comments

##### Domestic sector and the Commercial Free Zones

- Add “lawyers, auditors, accountants, and professionals” to the AML law as a category of persons to be covered by the requirements to the law so that lawyers, accountants and other relevant professionals, including CSPs, are clearly brought within the legislative framework for AML purposes.
- Designate in the AML law or respective implementing regulations, specific authorities with oversight of DNFBPs to provide for effective systems for monitoring and ensuring DNFBPs’ compliance with the AML/CFT requirements under the AML law. A supervisory and control authority should be designated for each DNFBP sector. All DNFBPs subject to the AML law should be subject to oversight for compliance with AML/CFT requirements.
- Respective DNFBP regulators should issue AML regulations to all DNFBPs that cover the requirements under FATF Recommendations 12, 16 and 24.
- Agencies assigned oversight responsibility should have adequate legal authority, resources and capacity to monitor and enforce compliance with AML/CFT requirements.
- Conduct AML/CFT awareness raising-training of all DNFBPs when AML law is amended and the regulations are issued.

##### Financial Free Zone

- Expand scope of AML/CFT on-site inspections of TSPs and ASPs.
- Conduct AML/CFT awareness-raising training of all DNFBPs in the DIFC.
- Commence AML/CFT on-site inspections of DIFC DNFBPs.

#### 4.3.3. Compliance with Recommendations 24 & 25

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	NC	<ul style="list-style-type: none"> <li>• “Professionals” (lawyers, accountants, auditors) are not subject to the AML law except for ASPs who are registered with the DFSA.</li> <li>• No regulations issued domestically for DNFBPs, except for accountants when acting as auditors.</li> <li>• The DMCC free zone regulations on AML/CFT have only limited application to its members.</li> <li>• The Jebel Ali free zone has no AML/CFT regulations for its company service providers.</li> <li>• DIFCA had drafted but not issued its AML regulations at the time of the onsite visit.</li> <li>• There is limited AML/CFT on-site supervision by the DFSA of the trust service providers and ancillary service providers.</li> </ul>
R.25	PC	<ul style="list-style-type: none"> <li>• No regulations/guidelines have been issued for DNFBPs, except by the DFSA,</li> </ul>

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
		the DMCC and the ministry of economy (for domestic auditors only) (Section-specific rating would be NC).

#### 4.4. Other non-financial businesses and professions & Modern-secure transaction techniques (R.20)

##### 4.4.1. Description and Analysis

517. **Legal Framework:** The UAE authorities have included all economic activities in the category of “other commercial and economic establishments” in Article 1 of the AML law, but no specific guidelines or regulations have been issued for other categories of non-financial businesses and professions under Article 11 of the Law.

##### Other Vulnerable DNFBPs

518. It is the assessors’ view the UAE authorities have not considered the need to apply AML/CFT measures to those non financial businesses that they regard as presenting a potential ML or FT risk, since no specific activities have been listed in the AML/CFT laws and no AML/CFT regulations have been issued by designated supervisors.

519. The mission was informed that there is a developed market for dealers in high-value luxury goods such as new cars and auction houses in the UAE, although no statistics were provided by the authorities. These activities are licensed by the ministry of economy, the economic department or the municipality depending on the legal structure, but there is no AML/CFT supervision of them. Although bank checks and deposits are frequently used to purchase these items, it is understood that there are instances where they are purchased for cash.

520. **Modernization of Conduct of Financial Transactions:** The mission was informed that there is a very high cash usage in the UAE economy, although no statistics were provided by the authorities. The authorities are supportive of the increasing use of modern means of conducting financial services such as credit and automated teller machine (ATM) cards, but the authorities have not issued any guidance to banks on the thresholds for cash transactions. These facilities are, however, becoming increasingly available, with the number of ATM’s more than doubling from 2002 to 2007 and the number of ATM and credit cards increasing between two and three fold. ATMs exist in the commercial center of each emirate and the banks are expanding the network throughout the UAE.

##### 4.4.2. Recommendations and Comments

- Broaden the list of activities covered by the AML/CFT laws to explicitly include dealers in high-value goods such as luxury and new cars, and auction houses.
- Continue to encourage the use of secure transfer systems when conducting financial transactions such as, ATMs and credit cards in order to reduce reliance on cash transactions and consider issuing guidance to banks on thresholds for cash transactions.

##### 4.4.3. Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	PC	Authorities have not considered the need to apply AML/CFT measures to those non financial businesses that they regard as presenting a potential ML or FT risk, since no specific activities have been listed in the AML/CFT laws and no AML/CFT regulations have been issued by designated supervisors.

## **5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS**

### **5.1. Legal Persons – Access to beneficial ownership and control information (R.33)**

#### **5.1.1. Description and Analysis**

521. A description of the types of legal person that may be created in the UAE is contained in Part 1 of this report. Legal persons are incorporated by registering the company at the ministry of economy in the case of public and private joint stock companies, or at the local Department of Planning and Economy of each emirate in the case of all other types of company. In each case the filing requirements are similar, and include:

- Company name and the memorandum and article of association.
- Name, nationality, date of birth and domicile of each partner or shareholder.
- Identity document of each of the shareholders together with proof of legal status in UAE, where applicable.
- The proposed activities.
- The address of the main office and of any branches.
- Capital, allocation of shares and the means of financing whether in cash, kind, rights, real estate, etc.
- Date of incorporation of the company and its termination date, if any.
- Names of the management of the company, including details of who may sign on its behalf and their authority.
- The company's financial year.
- The proposed allocation of the profits and losses.

522. There are no annual filing requirements for all except the joint-stock public companies, which must provide an annual statement of changes in shareholders. In the case of legal persons established at the emirate level, although the licenses are renewable on an annual basis, they may be subject to advance payment of fees for a period of up to four years. However, all changes in the information provided at the initial registration stage must be notified immediately to the licensing department and the appropriate documentation provided (*e.g.* in the case of changes of shareholders, the identity documents must be supplied). The mission was unable to establish what the sanctions might be for failure to report changes promptly (or at all), and what procedures exist for monitoring compliance with the reporting obligation. The information on registered shareholdings is not publicly available, but may be accessed by law enforcement and the courts upon request.

523. The respective Departments of Planning and Economy all have compliance divisions responsible for undertaking inspections of registered companies. The primary purpose of these is to establish that the company is operating from its registered address (including any approved branches), is using its registered name at the premises, is being managed by the registered persons, and is engaging in the activity for which it is licensed (licenses are issued for specific

types of activity and any change in the nature of the business requires re-licensing).<sup>29</sup> The intention is that every business should be inspected on an annual basis, and this schedule is generally respected.

524. The respective local and federal legislation provides the departments with the power to enter the premises of businesses, to inspect and, if necessary, seize documents, and ultimately to close down a business. The police and the courts are able to access the information held by the registering Departments by simple request.

### **Free Zones**

525. Similar procedures appear to be adopted in the free zones, and the NAMLC issued an instruction to addressed to all Free Trade Authorities and Corporations on 5 December 2001 requiring them to establish the "name and address of the owner" of companies being registered, and to obtain details of those who hold 5% or more of the shares in a public company. There are now a substantial and rapidly growing number of commercial free zones within the various emirates, and each is operated in an independent fashion according to its governing legislation. Therefore, it was impossible for the mission to do more than a rudimentary sampling of their laws and procedures. In addition, it had originally been the mission's understanding, from information received at the outset, that all corporations established within the free zones were required to have an operational physical presence. However, information came to light very late in the mission to indicate that, in at least one of the commercial free zones (Jebel Ali), companies were able to be established with simply an accommodation address, and with no substantive presence or structure within the zone. These were classified as "offshore companies." This significantly reduces the level of comfort attached to the authorities' general licensing and ongoing monitoring procedures for legal persons. Further, the mission could not be satisfied that there is any process for establishing the beneficial ownership of offshore companies or that there is any mechanism for acquiring the relevant information though the use of investigative powers in the Jebel Ali free zone.

526. In the case of the Dubai International Financial Center, all those activities that are undertaken in the DIFC, but do not require authorization by the DFSA, are subject to licensing by the DIFC itself. The registration process involves the submission of normal incorporation documentation, and details of shareholding and beneficial ownership are required. Background checks on the beneficial owners are undertaken using professional investigators, and all applications are put before a Registration Review Committee. The two key objectives are to ensure the reputation of the center (and, thereby, the investment in its infrastructure) and to protect the interests of others operating in the center. The DIFC registrants must file an annual return (including audited financial statements) and also notify the authorities of any change in the application details. Occasional inspections are undertaken to check the premises, staffing and activities of the companies.

#### **5.1.2. Recommendations and Comments**

523. The UAE appears, in principle, to have a culture of strong control over the activities of the corporate sector in the domestic economy. Ownership details have to be submitted (and verified against identity documents) at the time of registration, and the law requires any changes to be notified and approved by the authorities. All such information is accessible to the investigatory authorities, and the relevant registration departments have broad powers to enter

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<sup>29</sup> Typically, the departments will also have responsibility for consumer protection issues and trademark infringements, which give rise to other types of inspection and investigation from time to time.

premises, to review documents and to require the submission of information. However, there are two main concerns.

- First, it is not clear that what procedures are in place to require the declaration of beneficial ownership when the shareholdings are being registered, and how the authorities verify any such declaration. Second, in view of the restrictions on foreign ownership of businesses in the UAE, there is clearly a considerable risk that foreign investors will seek to use nominees to hold the minimum 51% equity that must be registered in the name of a UAE national.<sup>30</sup> This risk must be further compounded by the fact that the expatriate population outnumbers the UAE nationals many times. In such circumstances, it is far from clear the extent to which the authorities seek (or are able) to establish that the shareholdings genuinely reflect the beneficial interest. The authorities should consider the introduction of additional procedures to ensure that the registration process involves a declaration of beneficial ownership, as appears to be the intention of the current controls.
- The creation of offshore companies within the Jebel Ali commercial free zone appears to have created a situation where there is no knowledge of or access to information on beneficial ownership for such companies. Since all such companies are required to have registered agents who, it is understood, are the CSPs (usually UAE lawyers), provisions should be introduced to impose obligations on these registered agents to acquire and maintain information on beneficial ownership of the companies for which they act. The mission understands that a similar structure is about to be introduced in Ras Al Khaimah.

### 5.1.3. Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	PC	<ul style="list-style-type: none"> <li>• Lack of evidence of how the authorities confirm that registered shareholders are beneficial owners.</li> <li>• Uncertainty as to the extent to which nominee shareholders are used to conceal foreign ownership of domestic companies.</li> <li>• Absence of procedures to provide access to information on beneficial ownership on companies registered in the Jebel Ali free zone.</li> </ul>

## 5.2. Legal Arrangements — Access to beneficial ownership and control information (R.34)

### 5.2.1. Description and Analysis

527. There is no provision for the creation of trusts or similar arrangements under UAE Federal law, and foreign trusts are not recognized. However, trust law has been created in the DIFC, which is understood to be a unique case so far. This provides for the creation of express trusts, which, under the regulatory law, may only be administered by a trust service provider licensed and supervised by the DFSA. Only two such service providers had been authorized by March 2007, and they are subject fully to the DFSA AML rules. These provide that the service provider must establish and record the identity of the beneficial owner, which is defined to

<sup>30</sup> This risk has indeed been acknowledged by the authorities through the enactment of Federal Law 17/2004 (Law on Combating Commercial Concealment), which makes it an offence for both parties to create nominee arrangements of this nature. However, the MOE has indicated that it was unaware of any prosecutions having been mounted under the statute, although the procedures for investigating suspicions of concealment have recently been strengthened.

include both "a person who exercises ultimate control over a legal person or arrangement," and a beneficiary as defined in the trust law. The accompanying guidance indicates that this definition is intended to include the identity of any settlor and controller who has the power to remove the trustee. In addition, the conduct of business rules (18.13.1) state that "a trust service provider must, at all times, have verified documentary evidence of the settlers, trustees and principal named beneficiaries of the trusts for which it provides trust services".

528. The DFSA rules provide for an exemption from authorization as a trust service provider in the case of lawyers and accountants when they (a) arrange for a person to act as trustee in respect of an express trust; or (b) provide services with respect to the creation of an express trust, provided that the provision of such services is solely incidental to the practice of law or accounting the person is not holding himself out as providing trust services. This permits the lawyers and accountants to advise on the creation of trusts, but not to act as trustee. This restriction on who may act as a trustee in the DIFC applies equally in the case of the administration of foreign trusts by professional service providers.

529. Access to information held by the trust service providers is available to the DFSA under the regulatory law and the rules, but, as of March 2007, no trusts had been created within the DIFC.

### 5.2.2. Recommendations and Comments

- In as far as this matter is relevant to the DIFC only, the measures appear to be adequate to ensure compliance with the Recommendation.

### 5.2.3. Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	C	This Recommendation is fully met in the DIFC and is not applicable domestically in the UAE.

## 5.3. Non-profit organisations (SR.VIII)

### 5.3.1. Description and Analysis

530. All NPOs are required to be registered and licensed in the UAE. The ministry of social affairs (MSA) is responsible for the licensing of charities in all emirates, including the Emirate of Dubai where the licensing of charities by the Department of Islamic Affairs and Charitable Activities (DIACA) is considered a prerequisite for the licensing by the ministry. The oversight of charities in Dubai is coordinated between the ministry and DIACA. While most NPOs in Dubai are jointly supervised by both the MSA and DIACA, 12 are only supervised by DIACA. Existing data at the ministry of social affairs indicates that there are 121 NPOs in the UAE, of which 5 are charitable organizations.

531. The authorities have reviewed their legislative structure and are satisfied that the legal framework is a robust one for preventing abuse (see below). To become licensed on NPO need to have 20 members at least 18 years of age. Members must have a good reputation, and they must never have been convicted of any crime involving fidelity or integrity, unless a pardon has been granted. All of these matters are checked either by the ministry of social affairs or DIACA (for Dubai supervised charities).

532. Requirements for the registration and licensing of NPOs obligate founding members to submit the following information to the ministry of social affairs:

- The name of the NPO and its location in the UAE. (The name should be derived from the objectives hailed by the organization, without making any confusion between it and any other organization working in the same field, regionally).
- The objectives for which the NPO has been established.
- The names of the founding members, their titles, ages, professions and the location of their residences.
- Terms and conditions of membership, types of membership, measures for accepting or dropping membership, and the rights and duties of the members.
- The manner by which the board of directors is structured, its liabilities, methods of conducting work, number of members, and the duration period of its term.
- The basic rules for organizing regular general assemblies and non-regular general assemblies, measures of invitation, terms and conditions stipulating its illegibility and stating its liabilities.
- The resources funding the organization, how they are being used, the manner through which expenditures are monitored, and the financial annual statement towards year-end.

533. Most UAE licensed NPOs operate within the geographic scope of the state while only two societies direct their efforts to aid relief in Indonesia, Bangladesh, and Pakistan as a result of crises and natural disasters. NPOs focus on providing social services and charitable aids to certain categories, like orphans, the elderly, and poor families and individuals. Some of them are meant to orient alms, and manage and finance charitable projects on behalf of donors.

534. It should be noted that in the DIFC, it is technically possible to create a charitable trust pursuant to Article 28 of the trust law (DIFC Law 11/2005), but the DFSA has confirmed that there are currently no charitable trusts operating in the financial free zone.

535. The inclusion of a provision allowing the creation of a charitable trust provides for a case where a private client wishes to donate funds to a particular charitable cause or to create a foundation. It may not be meant for the wide collection of funds as is envisaged by Special Recommendation VIII, but it still would allow an individual or a group of persons to disburse funds for charitable purposes. The DIFCA indicates that DIFCA has strict licensing provisions for all entities operating in the DIFC and that should a NPO wish to operate in the DIFC, similar licensing provisions would be imposed on the NPO. DIFCA concurs with the mission that nothing is currently in place.

536. There is no supervisory structure currently in place to oversee such charitable trusts in the DIFC. The only provision is found in Article 28(4) of the trust law and states that if a trust becomes unlawful or contrary to public policy in the DIFC, the court may apply cy-pres to vary or terminate the trust in a manner consistent with the settlor's intentions. While this affords some measure of oversight, it is not in line with the requirements of this recommendation.

537. **Legal Framework:** NPOs in the UAE are governed under the following laws: Federal Law 6/1974 ; Cabinet Resolution No. 386/5 of 1994 regarding-fund raising for charitable purposes; Ministerial Resolution No. 348 of 1993 regarding fund-raising from the public; Ministerial Resolution No. 538 of 1994 regarding the amendment of the resolution on fundraising

## **Review of the Domestic Non-Profit Sector**

538. The UAE authorities have reviewed their legal framework and find that it is generally adequate. The UAE statutory provisions governing societies date back to 1974. Article 22 of the Union Law of 1974 empowers the ministry of social affairs to dispatch a representative to attend the general assembly's meetings of the societies. Article 35 prohibits the society from accepting donations from any person outside the UAE, before obtaining permission from the ministry. Since 1974, several ministerial decrees have been issued.

539. In 1993, the Central Bank of the UAE issued circular number 14/93 instructing banks not to open accounts for associations except for those that present a true "Declaration Decision" issued and signed by the ministry of social affairs. The circular also requires banks to keep information on account holders updated. In 1994, the ministry of social affairs issued Ministerial Resolution No. 538 mandating that all licensed charities interested in transferring funds overseas must do so via the Red Crescent Organization, the Zayed Charitable Foundation or the Muhammad Bin Rashid Charitable Trust.<sup>31</sup> The mission was advised that Sheikh Mohammed Ibn Rashid al-Makthoum issued an edict (while the on-site visit was taking place) that mirrors the above resolution regarding the transferring of funds overseas. The mission was not able to obtain a copy of this edict. This edict was put in place to clarify that the 12 charities supervised by DIACA must also comply with the transfer of funds overseas.

540. In April 1999, the ministry of social affairs issued another Ministerial Resolution No. 193 obliging NPOs to adopt a unified financial system for the purpose of controlling expenses. Article 40 of the resolution subjects licensed charities to the ministry's financial control in order to verify soundness of donations and expenses carried out by the society, which should be in accordance with its Articles of Association. The ministry for this purpose may, at any time, review society's books, records and documents whenever deemed necessary. The society must also appoint a financial controller; it must also submit a copy of the general previous annual account to each of the ministry and state audit within a maximum 15 days from the date of approval of general assembly.

541. In December of 2001, the National Committee for Anti-Money Laundering issued a cautionary notice to both UAE nationals and residents advising them to exercise prudence when transferring or receiving cash funds from abroad. In the event of receiving a request for financial assistance from outside the UAE, nationals and residents are advised to send the money via a number of umbrella organizations, by attaching the original request for financial assistance in order to deliver the funds with the knowledge of the officials and avoid unnecessary awkward situations.

542. In January 2006, DIACA issued Rules for Licenses of Religious and Charitable Societies and Organization of their Activities in the Emirate of Dubai which requires charities to be licensed by the department, to receive the prior approval of the department before raising or collecting funds, and make annual filings with the department. DIACA may also carry out "all necessary procedures" to supervise the charities and may seek the assistance of any authority in Dubai in performing its control duties.

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<sup>31</sup> The ministry of social affairs advised the mission in January 2008 that all international transfers were conducted only through the Red Crescent. The mission was not able to verify this information.

543. As indicated above, the authorities have reviewed the above legal framework and have found it to be adequate in efforts to protect the sector against abuse. Furthermore, from the required filings of NPOs and the onsite visits conducted, the ministry of social affairs has access to information on the activities and features of the NPO sector, which could to a certain degree identify the features and types of NPOs that are at risk of being misused for terrorist financing. Founding members must submit a range of information on the name of the NPO and its location, the objectives for which it has been established, names of the founders and their titles, the volume of funds received and its resources, and channels of expenditure.

544. NPOs are also reviewed annually by either the ministry of social affairs or DIACA (for Dubai-based charities). The ministry also relies on several other sources of information in an attempt to target and obtain information on NPOs that could be at risk of being used for terrorist financing by virtue of their activities. The sources of information are: the annual administrative and financial reports submitted by NPOs regarding their activities; the reports from inspection visits conducted by the examiners of the ministry of social affairs; the statistical reports of the ministry of social affairs; the reports of the state audit on NPOs; and the reports of accounts auditors.

545. Ministry of social affairs examiners are conducting periodic inspection visits at NPOs for the purpose of verifying their degree of compliance with applicable laws, legislations and resolutions. Feedback reports are submitted to the ministry as a result of examiners' attendance of NPOs General Assembly meetings. The UAE unified financial system along with reports submitted as a result of chartered accountant auditors' review of NPOs activities, also enable the close monitoring of expenditure channels. The state audit is also following up on certain financial and administrative aspects related to NPOs; it is also submitting reports to the ministry of social affairs on measures adopted by NPOs, particularly with regard to financial matters and expenditures channeling. The ministry confirmed that it has not come across any violations or infringements related to their obligations under the applicable laws and regulations. DIACA was only established in 2005, but has conducted on-site examinations of its licensees.

546. The UAE authorities indicated that there is a full awareness by officials of NPOs regarding the dangers of terrorism, particularly after the 9/11 attacks, which stirred genuine fears for those concerned with charitable activities. Authorities also stated that NPOs' activities in the UAE are focused upon providing social services and charitable aids to certain categories, like orphans, the elderly, and poor families and individuals. NPOs' ultimate objective would be to manage and finance charitable projects on behalf of donors.

547. **Outreach to the NPO Sector to protect it from terrorist financing abuse (VIII.2):** The central bank has undertaken a number of training sessions for the NPO sector, some in conjunction with the UK Charities Commission. They also inaugurated the GCC Conference on NPOs which has continued to be held each year since its inception. The ministry of social affairs has not undertaken an outreach program to raise awareness in the NPO sector, but has conducted audit inspection visits and desk top monitoring through periodic audit reports. This helps to monitor the evolution of the NPOs sector. Such outreach should focus on the vulnerabilities to terrorist abuse and terrorist-financing risks for NPOs, and should also encourage the implementation of a set of measures so as to safeguard against potential risks.

548. **Supervision and Monitoring of NPOs (VIII.3):** The ministry of social affairs reviews NPOs annual budgets that reveal projects and disbursements forecasted for the subsequent fiscal year. It also conducts annual examination visits to societies to verify not only the basis of fund raising as per Resolution 538, but also aspects and soundness of expenditures. The ministry of social affairs looks into books, records and all other types of documents that are identified by the law; this includes inward/outward payments, minutes of the meetings, list of donors and beneficiaries. Emirates' inspectors and state audit also oversee societies' internal procedures, audit reports, minutes of meetings, lists of members and summarize their findings in reports

which they transmit to the Ministry for review. In turn, the ministry inspects deviations, changes in behavior, and violations.

549. As discussed above, all outgoing international transfers of funds must be conducted through one of three NPOs. These are reviewed by the ministry of social affairs for all NPOs licensed by the ministry. In Dubai this will be reviewed by DIACA, although to date only three Dubai registered charities donate abroad and all may only donate goods such as food and blankets, usually in the case of emergencies arising after natural disasters. No funds have been transferred abroad from NPOs registered by DIACA.

550. Article 36 of Federal Law 6/1974 gives the minister the authority to dissolve the society in any of the following cases: if the number of its members fall below 20 as per item 1 of Article 2 of the law; if the society's activities are not achieving its objectives or if it becomes unable to achieve them; if it uses its funds in manners different from those identified; if it fails to meet its financial commitments; if it refuses to be supervised or presents false statement for the purpose of misleading; if it commits a serious violation of its articles of association or the provisions of the law.

551. Article 41 of the law imposes criminal and civil sanctions on persons who violate the provisions of the law. Penalties include three months in prison and/or a fine of AED 500. A stricter punishment may be applied from other laws, if warranted. The minister may decide, instead of dissolving the society, to appoint an Interim Board to take over the responsibilities of the dissolved board.

552. Information on the purpose and objectives of societies' stated activities is available within its bylaws that are approved by the ministry of social affairs, which also retains all types of information related to the founding and board members. Members receive updates on the activities of the society through reports presented and discussed during annual general assembly meetings. Although information on the activities of societies is available to the ministry, there is no obligation under the law for societies to make this information available to the public, either directly or indirectly.

553. Article 18 of the law requires societies to maintain in their premises records, books and publications related to: names of members and their membership paid fees; minutes of meetings of board of dDirectors; account books of revenues and expenses supported by documentary evidence

554. Article 16 of the law empowers the ministry of social affairs to review at any time societies' books, records and documents, which contain, in addition to the above, information on the objectives and scope of their activities. Even though the law requires societies to maintain all necessary records, it does not specify the retention period, which according to the FATF standards must not be less than five years.

555. **Measures to ensure effective Information Gathering and investigation and responding to international requests for information (VIII.4):** Domestic co-operation, co-ordination and information sharing among the appropriate authorities that hold relevant information on NPOs of potential terrorist financing concern is taking place between the ministry of social affairs and other concerned authorities. The cooperation is also encompassing state agencies such as the DIACA to reach senior staff of charities, especially when it comes to OFAC and UN sanctioned lists. NPOs are also instructed to obtain either the ministry's or the department's approval before executing any remittance to beneficiaries living outside the UAE.

556. Information that is obtained regarding the administration and management of a particular society may be obtained during the course of examination by the ministry of social affairs and DIACA. In addition, the law requires societies to submit full range of information to the ministry

557. DIACA is in the process of developing an electronic link to facilitate the prompt and secure exchange of information on NPOs with various government agencies. Meanwhile, there is coordination among relevant authorities in addition to information sharing between DIACA and the state audit, the central bank, and police security systems. Less coordination is evident between the ministry of social affairs and other concerned agencies.

558. The UAE authorities indicate that the contact point for receiving international requests for information regarding particular NPOs suspected of aiding or supporting terrorists or making suspicious financial transactions, etc. is the ministry of foreign affairs which then passes the request to the ministry social affairs. If relevant, the request would also be passed to DIACA.

### 5.3.2. Recommendations and Comments

- While the central bank has done outreach into the NPO sector, the ministry of social affairs and DIACA should continue to reach out to NPOs. This outreach should encourage NPOs to *i)* conduct transactions via traceable channels by making disbursements by wire transfers or checks paid to the first beneficiary only; *ii)* enact and practice sound governance and fiscal policies to collect information on and vet key employees, members of the governing body, and potential grantees; *iii)* develop and implement a set of specific practices by screening donors and beneficiaries' names against a list that set forth those organizations and individuals that have been designated as being associated with terrorism; and *iv)* provide information on directing suspicions and referrals to the appropriate federal law enforcement authority (FIU).
- Introduce new rules requiring NPOs to maintain, for a period of at least five years, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the NPO. Specify the retention period of all domestic and international transactions, which must not be less than five years.
- Take measures to require NPOs to make public the information on the purpose and objectives of their stated activities; and the identity of persons who own, control or direct their activities, including senior officer, board members and trustees publicly available either directly from the NPO or through appropriate authorities.
- In the DIFC, the relevant authorities should review the trust law (DIFC Law 11/2005) which allows the creation of charitable trusts in order to clarify the possible implications of such vehicles under this recommendation. The authorities should also take the appropriate corrective actions to put an appropriate supervisory system in place.

### 5.3.3. Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	LC	<ul style="list-style-type: none"> <li>• No information publicly available either directly from the NPO or through appropriate authorities although information is maintained at the ministry of labour and social affairs.</li> <li>• Even though the law requires NPOs to maintain all necessary records, it does not specify the retention period, which must be for at least five years.</li> <li>• In the DIFC, the trust law allows for the creation of charitable trusts but there is no supervisory system envisaged for such trusts.</li> </ul>

## 6. NATIONAL AND INTERNATIONAL CO-OPERATION

### 6.1. National co-operation and coordination (R.31)

#### 6.1.1. Description and Analysis

##### **Legal Framework and Mechanisms for Domestic Cooperation and Coordination in AML/CFT**

559. **The National Committees:** Article 9 of the AML Law provides for the establishment of the National Anti-Money Laundering Committee. Article 10 provides that the terms of reference of the committee shall include the facilitation of the exchange of information and coordination between agencies represented in the NAMLC. Pursuant to Article 9 of the AML law, membership of the NAMLC includes the foreign ministry, the ministries of interior, justice, finance and industry, economy and commerce, agencies concerned with issuing trade and industrial licenses, the central bank and the UAE Customs Board (disbanded and the functions are now performed by the Federal Customs Authority – FCA). The governor of the central bank is the chairman of the NAMLC.

560. The NAMLC meets on at least six occasions per year, as required when a new UN list in relation to TF is published and for the consideration of urgent matters. The committee can, and often does, conduct meetings by telephone especially in urgent matters.

561. Article 36 of the CFT law provides for the establishment of the National Committee for Combating Terrorism. Article 37 provides that the competence of the committee shall include the exchange of information relating to combating terrorism with similar entities at other states and international and regional organizations. Pursuant to Article 36 of the CFT law, membership of the NCFCT includes the foreign ministry, the ministries of interior, justice, defense, the State Security Authority, the central bank, the Customs Federal Corporation (disbanded but the functions are now performed by the FCA) and any other entity joined by a decision of the Council of Ministers. The Under-Secretary of the ministry of foreign affairs is the chairman of the NCFCT.

562. The NCFCT meets, at a minimum, four times per year and adopts similar practices to those employed by the NAMLC in relation to urgent matters. The mission notes that, pursuant to Article 36, any other entity can be afforded membership of the NCFCT by way of a decision of the Council of Ministers. A similar provision does not appear in regards to the NAMLC. The authorities noted that this was under consideration and pointed to the fact that the AML law predates the CFT law by two years. The mission was informed that it is now the practice of those responsible for drafting laws in the UAE to ensure flexibility in the drafting of all laws to allow for expeditious changes in the membership of committees established by mechanical provisions, such as those establishing the NAMLC and the NCFCT. In practice, notwithstanding the absence of a legislative basis for membership, the ministry of foreign affairs has been a regular participant in the meetings of the NAMLC since 2004. A proposed amendment to the law to include the ministry of foreign affairs as a member of the NAMLC is currently under consideration by the cabinet.

563. The NAMLC and the NCFCT are the principal organs for AML/CFT coordination and decision making in the UAE. The mission notes that the membership is comprised of very senior officers. This is advantageous in terms of applying rigor and authority to the process of considering action to be taken and ensuring adherence in the implementation of such action. At the same time, the logistics in ensuring an efficient and effective functioning of such a high-level committee can be challenging. It is unclear that technical persons at a lower level meet to agree technical issues before the high level meetings take place.

564. Customs services in the UAE operate at both a federal and emirate level. From the time of independence in 1971 up until 1981 there was no federal customs body. With the passage of the Greater Arab Area Free Trade Agreement (GAAFTA) in 1981 a customs concert was established to promote cooperation amongst the seven emirate customs authorities. In 2003, the FCA was established to unify the customs authorities in terms of policy, procedure, international cooperation and to enhance domestic cooperation. The FCA replaced the UAE Customs Board (referred to in the AML law as a member of the NAMLC) and the Customs Federal Corporation (referred to in the CFT law as a member of the NCFCT).

565. The FCA has no operational capacity and all front line enforcement is undertaken by the individual emirates customs services. The FCA has a small staff located in modern offices in Abu Dhabi. It recognizes the need for further development and is actively seeking to engage with the World Customs Organization as well as customs authorities in other countries notably GCC members, the US and UK in order to enhance its role and status within the UAE and internationally.

566. While there is no prohibition on the development of bilateral ties between emirates-based customs and foreign counterparts, the FCA has indicated that it is important that it plays a major role in the development of a federal response to customs issues. This is particularly true for the cross-border transportation of cash and negotiable instruments in light of the mission's experience of being exposed to highly-variable responses from different emirates-based customs services when discussing knowledge and implementation of existing laws in relation to this matter.

567. Policing and emergency services in the UAE are the responsibility of the ministry of interior. Each emirate has its own police force although the uniforms and insignia, with the exception of local name badges, are the same across the country. Policing in Abu Dhabi, Umm al Qiwain, Fujairah and Ajman is coordinated under the central command of the ministry of interior in Abu Dhabi. Policing in Sharjah, Ras Al-Khaimah and Dubai is coordinated by the police command in each of those emirates with ultimate authority being vested in the ministry in Abu Dhabi.

568. It is important to note that, in the investigation of all crimes, and in particular money laundering and terrorist financing, the police and state security officers act at the direction of the public prosecutors office. The public prosecutor's office authorizes certain investigative actions, such as the deployment of special investigative techniques, and in particular coordinates the freezing and seizing of proceeds of crime.

569. Notwithstanding the apparent disconnect from the concept of a federal model, the authorities indicated that the level of domestic cooperation is high, and that the ministry of interior remains the supreme authority on matters of policing in the UAE. The mission notes that, of the larger emirates, Dubai currently engages in a quarterly strategic crime and systems review, including assessing public views on policing. The Dubai Police has a strategic plan and each of its departments has developed its own sub-plans based on the overall strategic direction of the force.

570. Abu Dhabi Police are instituting a program of strategic analysis of process, systems, function, structure, risk and operational effectiveness. The fact that such an approach is being taken at emirate level is encouraging. A similar approach at the federal level would ensure that domestic cooperation is instituted on a nationwide basis. The fact that such an approach is required now in 2007, 35 years after federation, is an indication that progress towards an integrated federal approach to policing has not been a high priority. In the face of the risks presented by money laundering and terrorist financing in a fast-paced and growing economy such as the UAE, the risk in not promoting and expediting a coordinated federal response to AML/CFT is extremely high. The mission recommends that this issue be pursued without delay. The introduction of a national identity card containing personal information including photograph and

fingerprint data is, subject to privacy and ethical considerations, a welcome and important step in adopting a national approach to policing.

571. Prosecutions in the UAE are the responsibility of the ministry of justice. Prosecutions in Abu Dhabi, Sharjah, Umm al Qiwain, Fujairah and Ajman are coordinated under the central command of the ministry of interior in Abu Dhabi. However, prosecutions in Ras Al-Khaimah and Dubai are conducted by the public prosecutors office in each of those emirates under the command of their own Attorney-general implementing federal criminal laws. Ultimate authority is vested in the federal Attorney-general in Abu Dhabi.

572. While representatives from police, customs and prosecution offices have attended a number of training courses both within individual emirates and on a national basis through the central bank, there is at present no formal mechanism for case review and feedback on ML and TF matters investigated and/or prosecuted by the various arms of UAE law enforcement. Feedback is provided where necessary on a case-by-case basis.

573. The FIU, unlike the other law enforcement agencies considered above, has a national focus and does not face the local/federal issues of its counterparts. Through the governor of the central bank and the head of the FIU, it takes an active role in the deliberations of the NCFCT and the NAMLC. Its national profile, while high, could be enhanced, particularly in the DNFBP sector. Like other entities, the mechanism the FIU employs to coordinate and cooperate with other domestic entities on money laundering and terrorist financing has been somewhat ad hoc. The FIU relies principally on the conduct of training programs to which it has devoted considerable time and resources with, it is noted, a high degree of success in terms of attendance of officers from government agencies.

574. In the important area of taking action to freeze suspected proceeds of crime, the level of domestic coordination is high. The authorities informed the mission that there is an immediate simultaneous report of the freeze action by the central bank and/or Attorney-general's office to the relevant prosecutor's office, which in turn is in a position to notify the relevant police and customs authorities. There were, however, no statistics or other information made available to the mission to indicate the number of times that this has occurred or the timeliness of such notifications.

575. It is of concern that the FIU lacks on line access to extrinsic databases of its law enforcement partners. While the mission was advised that information from such databases is available to the FIU on request, the timeliness of such access is a matter for consideration and concern.

### **Cooperation among Regulators**

576. With the exception of the DFSA (under Article 39 of the Regulatory Law), there is no legal authority for the regulatory agencies to exchange confidential information with other competent authorities in the UAE. However, some bilateral arrangements are evolving. While the DFSA and the central bank and AMLSCU have close working relations on AML compliance matters, there is currently no structured cooperation agreement between them. This is in contrast to the DFSA's memorandum of understanding (MOU) with the ESCA and with the law enforcement agencies. The relationship between the central bank and the DFSA is potentially complex. In some respects it is a straightforward home-host relationship since institutions (or group companies) subject to supervision by the central bank have obtained authorization also in the DIFC. On the other hand, the central bank and the DFSA have a common responsibility under the AML law to implement procedures to ensure compliance by the banks with the law. This relationship is further complicated by the fact that the central bank has separate roles as both the supervisor and the FIU.

577. It is understood that discussions on one or more possible MOUs between the central bank and the DFSA have been taking place for some time, but that agreement has yet to be reached on an appropriate format. The delay in achieving what must be a highly desirable agreement between the two authorities appears to be caused by difficult discussions over an unrelated issue. This relates to a lack of consensus over whether, under the provisions of the federal statute governing the financial free zones, the central bank is, itself, the designated competent authority that has ultimate powers to inspect the DIFC in order to ensure that it is operating in compliance with federal law. At the time of the on-site visit the federal government had made no designation under this provision,<sup>32</sup> and the governor of the DIFC is on record as having stated that the DIFC believes that a precedent has been established whereby the UAE Council of Ministries is the competent authority. While it is clearly important that steps be taken to resolve this issue, it remains unclear why this should delay the finalization of the quite separate MOU on the home/host relationship between the DFSA and the central bank.

### **Mechanisms for Consultation between Competent Authorities and Regulated Institutions**

578. The mission had the opportunity to meet with a number of entities in the private sector in addition to the various representatives of local and federal government entities. On the whole, the level of domestic cooperation and coordination between the public and private sector concerning the development and implementation of policies and activities to combat money laundering and terrorist financing was very low and a cause for serious concern.

579. In some sectors, notably the domestic banking sector and the domestic money changers, the interaction was positive and encouraging. In others particularly the DNFBBs and the “other entities”, as described by various articles the AML law, as well as entities in the free zones, the level of interaction, consultation, coordination and feedback was very low and, on occasions, non-existent.

580. **Statistics:** The authorities were unable to offer statistics on the extent of domestic cooperation among relevant authorities.

#### **6.1.2. Recommendations and Comments**

581. With regard to domestic cooperation in money laundering and terrorist financing, the mission notes that prior to 2001 the UAE operated in a loose but effectively workable framework of inter-agency contact along informal channels with no written procedures. In a relatively small country where the vast majority of personnel in senior positions are UAE nationals, who in turn comprise only 20% of the population, and are therefore relatively well known to each other, this arrangement was, while not ideal, suitable for the needs of the UAE at the time.

582. In 2007, the position has changed remarkably. As noted earlier, the risks and challenges involved in the money laundering and terrorist financing aspects of a country witnessing exponential growth in population, investment and infrastructure cannot be understated. Accordingly the necessity for a dramatic improvement and formalization of communication channels is absolutely imperative.

583. The mission recommends that:

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<sup>32</sup> Subsequent to the mission's visit, a Federal Cabinet resolution under Federal law No. 8 of 2004 was issued on July 30, 2007. Among other things, this provides that inspections of financial free zones (FFZs), for the purpose of complying with Federal Law No. 8, will only occur by way of Federal Cabinet resolution and through the Ministerial Committee. The resolution also requires FFZs, directly or through their relevant authorities, to enter into memoranda of understanding with relevant UAE authorities.

- Consideration be given to an amendment of Article 9 of the AML law in line with Article 36 of the CFT law, to provide that any other entity joined by the Council of Ministers be afforded membership of the NAMLC, thereby permitting greater flexibility in the committee and reflecting a similar provision in the CFT law relating to the NAMLC.
- The FCA plays a major role in the development of a federal response to customs issue.
- Consideration be given to appointing a sub-committee of highly-skilled officers at a technical level who are in a position, as result of their day-to-day duties, to ensure consistent and expeditious implementation of the decisions of the NAMLC and the NCFCT. Both the AML law and the CFT law allow for organizational regulations to be issued concerning the conduct of the work of the committees.
- In light of the often disparate approaches to AML/CFT issues across the emirates, especially at a local level, it is absolutely imperative that a strategic coordinated national approach be adopted and fully implemented for AML/CFT issues in the UAE. It is incumbent upon the NAMLC and the NCFCT to lead the way in this regard. Other concerned agencies can also play a part in this process by way of their own national strategic approach to specific issues within their domain.
- In the face of the high level of risk presented by money laundering and terrorist financing in a fast-paced and growing economy such as the UAE, an integrated federal approach to policing and a coordinated federal response to AML/CFT are extremely important. The mission recommends that the progress that has been made in this area, particularly in relation to policing and, to a lesser extent to customs, be extended to all agencies involved in the law enforcement sector, including the FIU and the state security services.
- The NAMLC and NCFCT should consider appointing a working group to prepare a template for case analysis and feedback on all money laundering and terrorist financing matters, irrespective of whether the matter proceeds to trial. This template can then be distributed to all relevant agencies with directive that it be completed at the conclusion of every money laundering case and returned to the committees for consideration. This will have the effect of disseminating knowledge of money laundering and terrorist financing issues and act as a means of achieving continuous improvement across all sectors. The mission suggests that representatives from the various police colleges, the Institute for Judicial Studies, the FIU and relevant officers from the ministry for justice and ministry of interior form the membership of this working group.
- There should be legal authority for all the regulatory agencies to cooperate and exchange confidential information (with adequate safeguards) with other domestic regulators and agencies that have AML/CFT responsibilities.

### 6.1.3. Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	LC	<ul style="list-style-type: none"> <li>• Lack of an enhanced strategic coordinated national approach to domestic cooperation and coordination.</li> <li>• No legal provisions to permit the regulatory authorities to exchange information with other domestic authorities.</li> <li>• Need to improve coordination amongst the emirates-level customs authorities and FCA.</li> </ul>

## **6.2. The Conventions and UN Special Resolutions (R.35 & SR.I)**

### **6.2.1. Description and Analysis**

#### **Legal Framework**

584. **Ratification of AML Related UN Conventions:** The UAE has signed the Vienna Convention. It ratified the convention by Federal Decree on 3/5/1990, and has criminalized drug trafficking and money laundering. The UAE has signed the Palermo Convention and ratified it on May 7, 2007.

585. **Ratification of CFT Related UN Conventions:** The ICSFT was signed and ratified 10/8/2005. The UAE has enacted the CFT law which criminalizes terrorist financing in line with the ICSFT.

586. **Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19):** The AML law has criminalized money laundering in compliance with the Vienna Convention under Article 2. For discussion of confiscation provisions, see text at Recommendation 3. For mutual legal assistance and extradition provisions, see discussion at Recommendations 36-39.

587. **Implementation of SFT Convention:** The UAE has enacted the CFT law which criminalizes terrorist financing under Articles 4, 12, and 13. Ancillary offenses are listed in Articles 20-23 of that law. Freezing provisions are set out in Articles 31-34.

588. **Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34):** This convention was ratified on May 7, 2007. For discussion of the implementation of the confiscation provisions, see text at Recommendation 3. For a discussion of the implementation of the mutual legal assistance and extradition provisions, see discussion at Recommendations 36-39. Furthermore, criminalization of obstruction of justice is criminalized in Articles 248 -249 and Articles 262-270 of the Penal Code. The UAE has also recently passed Federal Law 51/2006 on Combating Trafficking of Human Beings as an organized crime.

589. **Implementation of UNSCRs relating to Prevention and Suppression of FT:** Article 32 of the CFT law allows the governor of the Central Bank to freeze property suspected of being used in the financing of terrorism where those assets are located at a bank or other financial establishments. The Attorney-General has the power to freeze any property by his own order under Article 31 of the CFT law. In practice, the UNSCR 1267 lists are not circulated to ESCA registrants or ministry of economy registrants. DNFBPs are not receiving copies of the UNSCR 1267 lists. In addition, it does not appear that the UNSCR 1373 lists are considered by the authorities in the UAE. Rather, a blanket policy decision seems to have been taken to only circulate the UN 1267 and successor lists.

590. **Ratification or Implementation of Other relevant international conventions:** The UAE has signed and ratified the Merida Convention on Anti-Corruption.

### **6.2.2. Recommendations and Comments**

591. The mission recommends that the UAE should:

- More fully circulate the UNSCR 1267 lists to all financial institutions and other institutions that may be holding terrorist assets.
- Consider the UNSCR 1373 lists on a regular basis to determine whether they should be circulated.

- Extend the offense of FT to include the financing of all of the acts set forth in the treaties in the annex of the UN FT Convention.

### 6.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	C	<ul style="list-style-type: none"> <li>• This Recommendation is fully met.</li> </ul>
SR.I	PC	<ul style="list-style-type: none"> <li>• No consideration of UNSCR 1373 lists.</li> <li>• No circulation of the UNSCR 1267 lists to DIFC, ESCA registrants, or the ministry of economy registrants nor to persons in the DNFBP sectors.</li> </ul>

### 6.3. Mutual Legal Assistance (R.36-38, SR.V)

#### 6.3.1. Description and Analysis

592. **Legal Framework:** Mutual assistance in the UAE is governed by Federal Law 39/2006 (the judicial cooperation law) and by the various mutual legal assistance treaties that have been agreed between the UAE and other countries. The authorities noted that where the law does not expressly provide for the provision of assistance, and in the absence of a negotiated agreement with an individual country, the Council of Ministers has instructed the responsible authorities to provide whatever assistance is required, subject to a number of conditions set out in Article 53 of the judicial cooperation law. The mechanism for taking action on all requests is via the NAMLC and NCFCT. Upon consideration of the matter the relevant Committee directs the foreign request to the appropriate authority.

593. The authorities were not in a position to supply the mission with copies of the written direction of the Council of Ministers in relation to mutual legal assistance treaties (MLATs), or any resolutions of the NAMLC or NCFCT in relation to mutual legal assistance.

594. The mission had some discussions with the authorities on the previous mutual legal assistance regime. It is the mission's view that prior assistance lacked clarity, uniformity and efficiency.

595. **Widest Possible Range of Mutual Assistance:** Article 43 of the judicial cooperation law provides a non-exhaustive list of areas in which assistance may be provided. Areas covered by direct reference in the law are contained in the comparative table below:

**Table 6. Statistical Mutual Assistance**

Palermo Convention Requirements As Set Out In FATF Methodology Mutual legal assistance should include:	UAE Federal Law on Judicial Cooperation Article 43 Judicial Assistance includes:
(a) the production, search and seizure of information, documents, or evidence (including financial records) from financial institutions, or other natural or legal persons;	Article 43(5) Seizure of property and search of persons and locations.
(b) the taking of evidence or statements from persons;	Article 43(2) Hearing statements of person.
(c) providing originals or copies of relevant documents and records as well as any other information and evidentiary items,	Article 43(6) Provision of information and evidence. Article 43(7) Provision of original documents and records or certified copies thereof.
(d) effecting service of judicial documents;	Article 43(4) Service of judicial documents.

<b>Palermo Convention Requirements As Set Out In FATF Methodology</b> <b>Mutual legal assistance should include:</b>	<b>UAE Federal Law on Judicial Cooperation Article 43</b> <b>Judicial Assistance includes:</b>
<i>(e) facilitating the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country</i>	<i>Article 43(1) Specifying the identification and locations of persons.</i> <i>Article 43(3) Availability of persons in custody to give evidence before foreign judicial authorities.</i>
<i>(f) identification, freezing, seizure, or confiscation of assets laundered or intended to be laundered, the proceeds of ML and assets used for or intended to be used for FT, as well as the instrumentalities of such offenses, and assets of corresponding value</i>	<i>Article 43(5) Seizure of property and search of persons and locations.</i>

596. The non-exclusive nature of Article 43(1)–(7) permits the authorities to provide further or other assistance. The most important and potentially most restrictive feature of Article 43, however, is that on one construction of the law it covers assistance in a relatively limited set of circumstances. The request must come from a foreign judicial authority to conduct judicial proceedings in the UAE in respect of an offense with which the UAE judicial authority has competence to deal, were it committed in the UAE. One available construction is that for a judicial authority to make the request, a judicial proceeding in some form must have been launched and would, therefore, preclude assistance at an investigative stage where there is not yet a case pending before a foreign judicial authority. The authorities advised that it is not necessary for a foreign judicial proceeding to have commenced in order for the UAE to grant assistance. The legal basis for the position of the authorities was that the concept of judicial proceedings extends to ongoing investigations and is not limited to prosecutions and other judicial proceedings. This approach is based on the authorities’ view of established international practice in mutual legal assistance. The mission also notes that Article 5 of the Penal Procedures Code states that the public prosecution is part of the judiciary. The authorities noted that the basis upon which assistance is determined is a consideration of the merits of the case. In practice, there is no general refusal to provide assistance on the grounds that judicial proceedings have not commenced in the requesting country.

597. Depending on the construction, it is open to infer that judicial letters rogatory are required and may restrict the ability of ministries of justice or attorney-general’s offices from making such requests. The letters rogatory process can often be a very slow process involving both the criminal justice system as well as the diplomatic service in the form of the foreign ministry.

598. For a general discussion of the freezing, forfeiture and seizing provisions of the UAE, please see text for both Recommendation 3 and SR III in this report. It would appear that the extensive powers, vested in the attorney-general, the Governor of the Central Bank and the public prosecutors office to undertake confiscation action are also available in the case of a request for mutual legal assistance either by virtue of the provisions of the judicial cooperation law or by individual treaties of mutual legal assistance. The authorities provided the mission with a list of treaties relating to judicial cooperation, extradition, and mutual legal assistance (Box 2).

## Box 2. Judicial Cooperation Treaties Ratified by the UAE

### Multilateral Treaties

1. Treaty on Enforcement of Judgments, Commissions and Judicial Summons Between the States of Gulf Cooperation Council- Federal Decree No. 41 of 1996.
2. Al Riyadh Convention on Judicial Cooperation - Federal Decree No. 53 of 1999.
3. GCC states Convention on Transfer of Sentenced Persons- - Federal Decree No. 92 of 2006.

### Bilateral Treaties

1. Treaty on Judicial Cooperation, Enforcement of Judgments and Extradition between The State of United Arab Emirates and Republic of Tunisia - Federal Decree No. 23 of 1975.
2. Treaty on Judicial Cooperation, between the State of United Arab Emirates and The Republic of Somalia- Federal Decree No. 80 of 1978.
3. Treaty on Security Cooperation and Extradition, between the State of United Arab Emirates and Kingdom of Saudi Arabia - Federal Decree No. 104 of 1982.
4. Treaty on Judicial Cooperation, between the State of United Arab Emirates and the People's Democratic Republic of Algeria- Federal Decree No. 12 of 1984.
5. Treaty on Judicial Cooperation in civil and commercial matters and Enforcement of Judgments, between the State of United Arab Emirates and the Republic of France- Federal Decree No. 31 of 1992.
6. Treaty on Judicial Cooperation, between the State of United Arab Emirates and The Hashemite Kingdom of Jordan- Federal Decree No. 106 of 1999.
7. Treaties on Mutual Legal Assistance In Criminal Matters and Judicial Cooperation in civil and commercial matters and Extradition, between The State of United Arab Emirates and The Republic of India-Federal Decree No. 33 of 2000.
8. Treaty on Legal and Judicial Cooperation, between The State of United Arab Emirates and The Arab Republic of Egypt- Federal Decree No. 83 of 2000.
9. Treaty on Legal and Judicial Cooperation, between The State of United Arab Emirates and The Arab Republic of Syria- Federal Decree No. 60 of 2002.
10. Treaty on Extradition between The State of United Arab Emirates and The People's Republic of China- Federal Decree No. 25 of 2003.
11. Treaties on Mutual Legal Assistance In Criminal Matters and Judicial Cooperation in civil and commercial matters and Extradition, between The State of United Arab Emirates and The Republic of Armenia-Federal Decree No. 26 of 2003.
12. Treaty on Legal and Judicial Cooperation In Civil and Commercial Matters, between The State of United Arab Emirates and The People's Republic of China- Federal Decree No. 55 of 2004.
13. Treaty on Judicial Cooperation between The State of United Arab Emirates and The Republic of Sudan- Federal Decree No. 8 of 2005.
14. Treaties on Judicial Cooperation in civil and commercial matters and Extradition, between The State of United Arab Emirates and The Islamic Republic of Pakistan -Federal Decree No. 12 of 2005.
15. Treaty on Judicial Cooperation in Criminal Matters, Extradition, and Civil and Commercial Matters between The State of United Arab Emirates and Kingdom of Morocco - Federal Decree No. 75 of 2006.

599. **Provision of Assistance in Timely, Constructive and Effective Manner, Efficiency of Processes, and Timeliness in Responding to Requests for Provisional Measures including Confiscation:** As noted in the comments in this report relating to Recommendation 37 and 39 concerning extradition, the authorities indicated that a set of standardized forms relating to extradition and mutual legal assistance are being developed so that a simplified nationwide approach can be adopted to the procedural aspects of extradition and mutual legal assistance.<sup>33</sup>

<sup>33</sup> During the course of face-to-face meetings between the authorities and the assessors in January 2008, the ministry of justice provided a copy of one of the forms in Arabic relating to the provision of legal assistance. This document comprehensively sets out the requirements for the provision of mutual legal assistance.  
(continued)

600. The authorities emphasized that a training program for all concerned agencies is to commence in 2007 to raise awareness of the new law. Due to the varying nature of requests for mutual legal assistance, the authorities were not in a position to provide a minimum time period within which mutual legal assistance requests were determined. However, the mission was informed that all requests are accorded a significant status within the ministry of justice and, while delays were acknowledged, the reasons often lay with poor or incomplete requests being received from requesting countries. The authorities were not in a position to supply examples of incomplete requests or statistics as to the number of request received, the number that were delayed by virtue of incomplete request details or the nature of the missing information.<sup>34</sup>

601. **No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance:** Article 53 of the judicial cooperation law provides that a request for judicial assistance may be refused in the following circumstances:

- If the act upon which the request is based is not considered a crime if it is committed in the state territory.
- If the execution of the request would prejudice state sovereign, security or public order or other essential interest.
- If the request relates to a political crime.
- If it relates to a purely financial crime such as tax or customs offenses.
- If there are substantial grounds for believing that the request for assistance has been made for the purposes of trying a person on account of race, gender, religion, nationality or political opinion or that the person's rights might be prejudiced for any of those reasons.
- If it contravenes the double jeopardy principle of trying a person twice for the same crime.
- If the criminal case is discontinued for any of the reasons provided for in both the requesting state and the UAE.
- If the request requires the implementation of compulsory measures which are incompatible with UAE laws.
- If the act upon which the request is based is an offense only by virtue of the military law and not under penal laws.

602. **Provision of Assistance Regardless of Possible Involvement of Fiscal Matters:** In relation to the provision in Article 53(4) allowing for possible refusal of assistance in a fiscal offense, the authorities noted that, under UAE law, personal income tax is not imposed and accordingly a policy decision has been made by the authorities not to burden the UAE legal system with the adjudication of matters constituting a breach of a foreign criminal law where the corresponding act in the UAE is not an offense within the UAE criminal law.

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assistance and emphasizes that the UAE provides assistance on the basis of reciprocity notwithstanding the absence of a formal written agreement.

<sup>34</sup> During the course of face-to-face meetings between the authorities and the assessors in January 2008, the ministry of justice noted that training had commenced with a number of concerned agencies, that a specialist international cooperation and planning unit was operating efficiently within the ministry and that in 2007 six requests for MLA in ML had been received from the UK and had been actioned by the public prosecution office in Dubai.

603. Notwithstanding this general approach, the policy is not universally applied in that there is a discretion to permit assistance in all of the areas covered by Article 53 including the fiscal offense areas. In this regard, the authorities noted the assistance provided by the UAE to the United Kingdom in 2006 and 2007 concerning VAT (sales tax) carousel fraud investigations and prosecutions.

604. **Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws:** With the unlikely exception of the applicability of the “other essential interest” provision of Article 53(2) of the judicial cooperation law (*i.e.* the refusal of assistance where the execution of a request would prejudice state sovereign, security or public order or other essential interest), there are no impediments to a provision of assistance based on secrecy or confidentiality requirements in laws governing financial institutions and DNFBPs. Other than requesting information from lawyers, no confidentiality provision should preclude the provision of assistance. See also discussion of legal privilege regarding obtaining information from lawyers at Recommendation 16.

605. Article 39 of the CFT law provides that financial establishments and their staff will not be liable for breach or non-observance of any restriction imposed for the securing of the confidentiality of information by virtue of compliance with any requirement under the CFT law to provide documents or information.

606. **Availability of Powers of Competent Authorities, and Availability of Powers of Competent Authorities Required under R28 and SRV:** The powers granted to the public prosecutors office under the Penal Procedures Law No. 36 of 1992 are extensive, and in the absence of specific investigative provisions in other laws these powers apply to the execution of matters under those laws. All such powers are applicable to requests for mutual legal assistance, subject to the direction of the public prosecutors office in consultation with the ministry of justice, which is responsible for the completion of mutual legal assistance requests.

607. Article 72 of the Penal Procedures Law stipulates that a member of the public prosecution may order the holder of anything which he considers should be seized to duly produce such a thing. Legal professional privilege applies to documents, including correspondence, created for, or in the possession of, the lawyer where those documents were created or delivered to the lawyer in contemplation of legal proceedings (Article 77). See also the discussion of legal privilege at Recommendation 16.

608. **Avoiding Conflicts of Jurisdiction and Additional Element under SR V:** The authorities indicated that there is no express provision in UAE law governing the mechanism by which a determination is made as to the most appropriate venue for the prosecution of a person who is facing trial in two countries. In the event of multiple requests for mutual legal assistance, Article 27 of the judicial cooperation law provides that the minister of justice will make a final decision having taken into consideration any existing treaty, any risk to the security of the UAE, the place and time of the commission of the alleged offense, the nationality of any person involved, and the order in which the request were received. In making a determination, the authorities seek to identify the place in which the most serious elements of the crime were committed. A decision is made accordingly, subject at all times to the requirement that it is not inconsistent with other laws of the UAE.

609. **International Cooperation under SR V:** In relation to confiscation of proceeds and instrumentalities involved in offenses of terrorist financing, the provisions of the CFT law expressly provide for confiscation action relating to acts in the UAE. In terms of international cooperation, the CFT law grants the NCFCT the authority to exchange information with other states but makes no specific reference to confiscation actions. Article 42 of the CFT law invokes the Penal Code and the Penal Procedure Law, but there is no reference in those statutes to international cooperation.

610. The Preamble to the judicial cooperation law explicitly refers to the CFT law and, accordingly, international cooperation and access to the widest range of mutual legal assistance in terrorist financing matters can, it would appear, be invoked pursuant to the mechanisms both within that legislation and as advised by the authorities; namely, that where the law does not expressly provide for the provision of assistance, and in the absence of a negotiated agreement with an individual country, the Council of Ministers has instructed the responsible authorities to provide whatever assistance is required.

611. **Dual Criminality and Mutual Assistance:** Article 7(4) of the judicial cooperation law effectively dispenses with the need for dual criminality in extradition and mutual legal assistance matters. It is immaterial to the request that the offense upon which the request is based is not an offense in the UAE, that the offense is placed within a different denomination or that its elements are different from the name or elements of the offense in the UAE. However, Article 53, as noted above, retains a discretionary refusal on the grounds of lack of dual criminality.

612. **Property of Corresponding Value:** Article 21 of the AML law permits a UAE court upon request of a judicial authority to order the “pursuit, freezing or provisional attachment of property or proceeds derived from or instrumentalities used in a money laundering offense”. The scope of money laundering offenses in the UAE, as governed by Article 2 of the AML law, does not cover all of the predicate offenses outlined in the FATF Recommendations.

613. In relation to the offense of terrorist financing, Article 12 of the CFT law provides that property or articles that are the subject of the offense of terrorist financing shall be forfeited, and that forfeiture extends to the proceeds of the offense or property equivalent to its value, if the proceeds had been transferred, substituted in whole or in part or mixed with other property gained from legal sources. An identical provision in relation to forfeiture of property of corresponding value also applies to the offenses of furnishing terrorists with property, advice and equipment (Article 4), carrying, transferring, depositing concealing or disguising terrorist financing (Article 13) and where legal persons commit or contribute to the commission of terrorist offenses (Article 25).

614. **Coordination of Seizure and Confiscation Actions:** Part III of the judicial cooperation law makes provision for the public prosecutor to facilitate the delivery under court order of all things, including property and vehicles used in the commission of a crime that is the subject of a request for mutual legal assistance. Some of the mutual legal assistance treaties (MLATs) provided to the mission make express provision for the coordination of efforts, including efforts concerning coordination of seizure and confiscation. The authorities were not in a position to advise the mission whether all of the individual mutual legal assistance treaties between the UAE and other countries contain such provisions.

615. Both the Dubai and Sharjah Police reported that they were recently involved in a multi-national, multi-agency money laundering case which involved the seizure and confiscation of assets and property in a number of countries including the UAE.

616. **Asset Forfeiture Fund and Additional Element under SR V:** There is no special fund in existence for the deposit of proceeds of confiscated property from money laundering or terrorist financing offenses for use in law enforcement, health, education or other appropriate purposes. The decision to institute such an arrangement is a matter of policy for determination by the Council of Ministers. All confiscated funds go the public treasury and the government decides on the utilization and allocation of such funds. The authorities were of the view that the concept of an asset forfeiture fund is worthy of further consideration and have undertaken to discuss the matter further in the relevant ministries and with the NAMLC and NCFCT. Article 58 of the judicial cooperation law permits the division of proceeds of crime for which judicial assistance has been provided with the foreign judicial entity. The terms and procedures for dividing such proceeds is a matter for the minister of justice in coordination with competent authorities.

617. **Sharing of Confiscated Assets and Additional Element under SR V:** The sharing of confiscated assets is authorized under UAE law. Article 58 of the judicial cooperation law provides that proceeds of offenses in respect of which judicial assistance was provided may be shared with a foreign judicial authority. Article 58 further states that the minister of justice, in coordination with concerned authorities, shall specify the conditions and proceedings through which such sharing of proceeds is to take place. In light of the recent enactment of this law, the minister has not yet issued any specifications in this regard, and as at the date of the mission there had been no confiscated asset sharing between the UAE and other countries.<sup>35</sup>

618. **Recognition of Foreign Orders for Confiscation of Assets from Organizations Principally Criminal in Nature:** Article 22 of the AML law provides that any ruling or judicial order providing for the confiscation of property, proceeds or instrumentalities relating to money laundering, which is issued by a court of a competent judicial authority in a country to which the UAE is bound by a ratified treaty, may be recognized. There are no specific provisions in the UAE that provide for the confiscation of assets from organizations that are principally criminal in nature. Vibrant financial centers with emerging entities, such as free zones, and other financial services existing in an environment of variable regulation, are by nature extremely attractive to organized criminal groups. Concerns, expressed to the mission by law enforcement agencies in the UAE as to emerging risks of organized crime from South Asia and the former Soviet Union, highlight the need for legislation to specifically outlaw organized crime, and to recognize foreign court orders that would permit confiscation and other action against such criminal groups.

619. **Recognition of Foreign Orders for Civil forfeiture:** The authorities were unable to provide the mission with information on such recognition.

620. **Recognition of Foreign Orders for Confiscation of Property which Reverses Burden of Proof:** The authorities were unable to provide the mission with information on such recognition.

621. **Statistics:** The authorities were unable to provide statistics on mutual legal assistance by the time of the finalization of the report.

### 6.3.2. Recommendations and Comments

622. The ministry of justice should expedite the roll out of the mutual legal assistance forms and set target dates with judicial, prosecutorial and law enforcement agencies for training and awareness programs in extradition and mutual legal assistance under the new law.<sup>36</sup>

### 6.3.3. Compliance with Recommendations 36–38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	LC	<ul style="list-style-type: none"> <li>Recently enacted legislation and therefore implementation not able to be assessed</li> <li>No statistics available to assess effectiveness</li> </ul>

<sup>35</sup> During the course of face-to-face meetings between the authorities and the assessors in January 2008, the Dubai Police advised the assessors that in late 2007 significant sums had been the subject of sharing arrangements between the UAE and the UK arising from a successful joint multi national task force operation against a major international drug trafficking and money laundering syndicate.

<sup>36</sup> During the course of face-to-face meetings between the authorities and the assessors in January 2008, the Ministry of Justice advised that training session had been conducted in February and March 2007 in relation to the then newly created legislation.

<b>R.37</b>	LC	<ul style="list-style-type: none"> <li>• No evidence of widespread implementation to date</li> </ul>
<b>R.38</b>	PC	<ul style="list-style-type: none"> <li>• Recently enacted legislation and therefore implementation not able to be assessed.</li> <li>• No formal consideration of asset forfeiture fund</li> <li>• No statistics available to assess effectiveness</li> </ul>
<b>SR.V</b>	LC	<ul style="list-style-type: none"> <li>• Recently enacted legislation and therefore implementation not able to be assessed.</li> <li>• No statistics available to assess effectiveness</li> </ul>

## 6.4. Extradition

### 6.4.1. Description and Analysis

623. **Legal Framework:** Extradition is governed by the provisions of the judicial cooperation law, and is coordinated by the ministry of justice in conjunction with the ministry of foreign affairs. The NAMLC and the NCFCT are apprised of developments in extradition matters concerning AML/CFT by the representatives of each of the relevant federal ministries on each committee.

624. **Dual Criminality and Mutual Assistance:** Article 7(4) of the judicial cooperation law effectively dispenses with the need for dual criminality in extradition and mutual legal assistance matters. It is immaterial to the request that the offense upon which the request is based is not an offense in the UAE, that the offense is placed within a different denomination or that its elements are different from the name or elements of the offense in the UAE. Article 53, as noted above, retains a discretionary refusal on the grounds of lack of dual criminality.

625. **Money Laundering as Extraditable Offense:** The offense of money laundering is an extraditable offense. Article 7(4) of the judicial cooperation law provides that extradition shall be granted for the person sought, if the offense for which extradition is granted constitutes an act committed within the territory of the UAE, punishable with deprivation of liberty of at least one year, or a more severe penalty. The offense of money laundering pursuant to Article 2 of the AML law is punishable by imprisonment for a term not exceeding seven years as per the provisions of Article 13 of the AML law.

626. **Extradition of Nationals:** Nationals of the UAE, by virtue of their nationality, cannot be extradited pursuant to Article 9 of the judicial cooperation law. In instances where an UAE national is sought for trial in another country, the authorities indicated that the UAE, upon receipt of a request from the country seeking the extradition, undertakes to submit the case for prosecution within the UAE without delay. The institution of criminal proceedings is subject to the receipt and analysis of the case materials by both the ministry of justice and the relevant public prosecutors office within the UAE. The authorities were not in a position to indicate how many times this has occurred, the timeliness with which the matter was dealt with or the outcome of such proceedings.

627. **Additional Element under SR V:** The offenses of committing terrorist acts and terrorist financing are extraditable offenses. The offense of terrorist financing pursuant to Article 12 of the CFT law is punishable by life or provisional imprisonment. The penalties for the range of offenses covering various acts of terrorism under the CFT law range from imprisonment for five years to the imposition of the death penalty. Pursuant to Article 4 of the CFT law, the provision of a safe haven for individuals involved in terrorist financing, or the commission or planning of terrorist offenses under the CFT law, is an offense punishable by life or provisional imprisonment. Accordingly, with all penalties in the CFT law being deprivation of liberty of over one year, all offenses under the CFT law are, therefore, offenses for which extradition is available under Article 7(2) of the judicial cooperation law.

628. **Efficiency of Extradition Process and Existence of Simplified Procedures relating to Extradition:** Due to the recent enactment of the judicial cooperation law, the authorities indicated that no regulations had been issued under the law as at the date of the mission and no procedures have been issued for processing extradition requests. The authorities emphasized that a training program for all concerned agencies is to commence in 2007 to raise awareness of the new law.

629. Pursuant to Article 11 of the judicial cooperation law the process by which a person is extradited is by way of application in writing via diplomatic channels. The documents must be translated into Arabic by the requesting party and contain all relevant identification and offense details, copies of applicable legal texts, arrest orders and/or judgments. Unless the subject waives his right to a hearing, the application is determined by a court in closed session and the subject is entitled to legal representation. If the matter is determined by a court, rights of appeal exist. Any decision of a court has to be confirmed by the minister of justice. A set of standardized forms relating to extradition and mutual legal assistance are being developed so that a simplified nationwide approach can be adopted to the procedural aspects of extradition and mutual legal assistance.

630. Pursuant to Article 11 of the judicial cooperation law, the extradition of a person to the UAE can proceed where the extradition is based solely on a warrant of arrest or judgment. In a similar vein, pursuant to Article 34 of the judicial cooperation law, the extradition of a person from the UAE to another country can proceed on the basis of an arrest warrant only. These provisions are equally applicable to extradition for terrorist financing offenses.

631. Due to the varying nature of requests for extradition, the authorities were not in a position to provide a minimum time period within which extradition requests were determined. The mission was informed, however, that all requests are accorded a significant status within the ministry of justice and, while delays were acknowledged, the reasons often lay with poor or incomplete requests being received from requesting countries.

632. Pursuant to Article 7(3) of the judicial cooperation law, an extradition request will not be granted where the period of imprisonment that is to be served or remains to be served is less than six months.

633. There is a simplified procedure for the extradition of a person who waives the right to adjudication by a court. A written voluntary waiver to a hearing by the person the subject of the application is required. The matter is then considered by the minister of justice on a recommendation from the public prosecutors office. This applies for both money laundering and terrorist financing offenses.

634. The authorities stated that while they are concerned to ensure expeditious resolution of extradition matters, a process by which direct transmissions of extradition requests being made to the relevant ministry without first passing through the ministry of foreign affairs and, in relation to AML/CFT matters, the relevant committee that is the NAMLC or NCFCT is not in accordance with the practice and procedures of the UAE. The UAE is, by virtue of its history and its

Constitution, a nation that operates within a hierarchical system of sanction of rule of law by firstly the Council of Ministers under the federal system and, ultimately, by the ruler of the UAE himself. There is, however, a risk that this process of involving the ministry of foreign affairs will lead to undue delays in the extradition process.

635. **Statistics:** Statistics were not available to the assessment mission team as at the date of the finalization of the report.

#### 6.4.2. Recommendations and Comments

- The authorities should give consideration as to whether a more streamlined process for dealing with extradition requests might be developed.
- The extradition law, while new, appears sound and workable. As noted above in relation to the mutual legal assistance, the ministry of justice should expedite the roll out of the extradition forms and set target dates with judicial, prosecutorial and law enforcement agencies for training and awareness programs in extradition and mutual legal assistance under the new law.

#### 6.4.3. Compliance with Recommendations 37 and 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
<b>R.39</b>	LC	Recently enacted legislation and therefore implementation not able to be assessed.
<b>R.37</b>	LC	Recently enacted legislation and therefore implementation not able to be assessed.
<b>SR.V</b>	LC	Recently enacted legislation and therefore implementation not able to be assessed. No statistics available to assess effectiveness

#### 6.5. Other Forms of International Co-operation (R.40 & SR.V)

##### 6.5.1. Description and Analysis

636. **The NAMLC:** Article 9 of the AML Law provides for the establishment of the NAMLC, and pursuant to Article 10, its terms of reference include the role of representing “the State in international money laundering forums”. One of the NAMLC’s functions is to oversee the international cooperation efforts of the officers of its member agencies. Those agencies engaged in international cooperation in AML/CFT are principally the FIU, and to a lesser extent, the police and customs authorities. The NAMLC, therefore, discusses international information requests regarding money laundering.

637. The ministry of foreign affairs is not represented on the NAMLC. Representatives of the ministry of foreign affairs indicated to the mission that, in practice, notwithstanding the absence of a legislative basis for membership, the ministry has been a regular participant in the meetings of the NAMLC since 2004. A proposed amendment to the law to include the ministry as a member of the NAMLC is currently under consideration by the cabinet. There is provision in Article 10 of the AML law for competent authorities in the country to refer matters to the NAMLC. The authorities were not in a position to provide details as to the number of referrals made by the ministry of foreign affairs in relation to requests from foreign authorities.

638. **The NCFCT:** Article 36 of the CFT law provides for the establishment of the NCFCT. Under the chairmanship of the Under-Secretary of the Ministry of Foreign Affairs, it consists of representatives of the ministry of foreign affairs, the ministry of interior, the ministry of justice, the central bank, the Customs Federal Corporation (now replaced by the Federal Customs

Authority), and any other entity joined by a decision of the Council of Ministers. Article 37 of the law provides that the competence of the committee shall include the exchange of information relating to combating terrorism with similar entities in other states and international and regional organizations. The authorities were not in a position to provide to the mission information or statistics as to the number or type of international or regional cooperative arrangements in relation to terrorism and intelligence exchange, or the number of times that the NCFCT has exchanged information in relation to counter terrorism. Similarly, the mission was unable to meet State Security, located within the ministry of interior, who are in charge of investigating all matters in relation to terrorism.

### **Cooperation by Law Enforcement**

639. In the absence of any written rules, memoranda of understanding or similar instruments, the approach taken by the UAE law enforcement authorities is to invoke a tradition of assistance, of which the authorities spoke with conviction and pride. A direction by the Council of Ministers to provide whatever assistance was required in the absence of written agreements was also cited as a means of authorizing and encouraging the timely and effective sharing of information and facilitation of cooperation. A copy of the direction was not made available to the mission.

640. Intelligence exchange between law enforcement agencies takes place on a less official level than that under a mutual legal assistance treaty (MLAT) or the judicial cooperation law, and full utilization is made of the diplomatic and police liaison officers from various countries that have officers stationed in embassies and consulates in Dubai and Abu Dhabi. According to the authorities, these channels of communication have resulted in information and intelligence flows both into and out of the UAE, with no unreasonable or restrictive conditions placed on such exchanges. All Police have access either directly, or through the ministry of interior, to the INTERPOL system.

641. Exchange of information is available both spontaneously and on request by all agencies in the law enforcement sector, irrespective of whether an agreement is in place. These exchanges are subject at all times to the same considerations that apply under the mutual legal assistance provisions in Article 43 of the judicial cooperation law, as explained in the section on mutual legal assistance above. The consideration of such matters was, however, not a matter of form or procedure, but was simply the practice adopted by the Police.

642. The police forces in the UAE, under the umbrella of the ministry of interior, can and do conduct inquiries on behalf of foreign counterparts. The police in the larger emirates, particularly Dubai, have built strong and effective channels for the exchange of information with international counterparts, leading to a number of significant and successful cases in recent years. For example, between January 2000 and February 2007, the Dubai police have assisted in 122 cases at the request of a broad range of countries. These investigations relate to money laundering, drugs, and financial crime. Similar statistics were not available for the other police forces. Several law enforcement agencies have received letters of appreciation from foreign counterparts for the role that the UAE played in assisting in investigations. All police interviewed were able to cite specific examples of their cooperation with overseas agencies.

643. The mission conducted meetings with the customs authorities in Abu Dhabi, Dubai, Sharjah and Ras Al Khaimah. These units reported that all foreign enquiries are directed through the Federal Customs Authority. In the larger ports particularly Dubai, inquiries are often undertaken on behalf of overseas counterparts. Dubai Customs noted extensive cooperative efforts with the US Customs authorities, including the adoption of the Container Security Initiative and the Secure Ports Initiative, which provides for a rigorous regime of extensive physical and sophisticated electronic detection, inspection and document review, with the aim of identifying suspect cargo on containers and on vessels generally.

644. In terms of international cooperation outside the realm of the judicial cooperation law, the authorities indicated that the discretionary approach adopted under that law is applied, and that provision of assistance is available irrespective of the type of offense, including tax matters. A letter of appreciation from UK authorities in relation to assistance provided by the UAE in recent VAT Carousel fraud investigations was shown to the mission by Dubai police.

645. The authorities were not in a position to cite examples of indirect exchange of information through non-counterparts, other than one instance where information was supplied to a country by virtue of the use of that country's representative who was stationed in a third country in the region. In instances where a number of UAE agencies are involved in responding to a direct or indirect foreign request, the matter would be coordinated by the ministry of foreign affairs, or if the matter involves evidentiary matters, the request is dealt with by the ministry of justice in conjunction with the ministry of foreign affairs.

646. Article 12 of the AML law provides that all concerned agencies must treat the information they have obtained in respect of criminal offenses referred to in the AML law as confidential and must refrain from breaching confidentiality except to the extent required for use in investigations, legal actions or law suits relating to violations to the provisions of the AML law. In policing, encryption is used in web and facsimile exchange of information and the secure INTERPOL channels of information are also utilized by the criminal investigation departments of the larger emirates.

#### **Cooperation by the FIU**

647. Pursuant to Article 7 of the AML law, the FIU “shall make the information available to law enforcement agencies to facilitate their investigations. The said Unit may exchange information on suspicious transactions with their counterparts in other countries in accordance with international conventions to which the State is a party, or on the basis of reciprocity”. The term “information” is not defined, but if it is restricted to STRs, the spontaneous dissemination of information will not necessarily include matters concerning both money laundering and the underlying predicate offense.

648. The FIU indicated that, since being admitted to the Egmont Group in 2002, it has regularly shared information with other FIUs through the Egmont secure web system. The FIU is generally able to assist with overseas investigations through cooperation with other Egmont Group members and GCC member states, and by way of reciprocal arrangements with other nations. The FIU reported that it had initiated 109 requests and had responded to 254 requests through the Egmont secure web system. The FIU noted that it had negotiated one MOU with the Serious and Organized Crime Agency of the United Kingdom for the exchange of financial information and that nine other MOUs are in various stages of finalization. Information as to participation in Egmont working groups was also not available.

649. The FIU can search its own database on behalf of foreign counterparts. It cannot search law enforcement databases directly, but requests are made to law enforcement agencies to conduct searches and report the results to the FIU for onwards transmission. The FIU indicated that, as a matter of practice, its extensive network of contacts within the range of competent authorities in the UAE enables it to gather such information as is required to meet a foreign request. The legislative basis for doing so is not clear, and clarification of the legal standing of such a procedure is recommended. The FIU can access public administrative and commercially available databases, although no information was provided as to the extent to which this practice is adopted to add value to the analysis of STRs.

## Cooperation by Supervisors

650. With the limited exception of ESCA (see below), there are no provisions in any of the regulatory laws that provide gateways and conditions for the disclosure of confidential information to foreign counterparts. The ministry of justice has stated that, as a matter of law, it considers that, unless there is an outright statutory prohibition on such exchanges, it considers that they are permissible and within the power of the regulatory authorities. As indicated below, several of the authorities have provided evidence of cases where they have supplied confidential information at the request of foreign counterparts and other agencies. However, it remains difficult to reconcile this interpretation with situations where there is a specific or general duty of confidentiality imposed on public bodies or employees. For instance, Article 106 of the central bank law clearly states that information submitted to the central bank by licensed institutions will remain confidential, and the law does not appear to offer exceptions to this principle.

651. **Central Bank:** There are no statutory provisions in the central bank law that permit the central bank to cooperate and exchange confidential information with foreign counterparts. Staff members are bound by the confidentiality provisions of the law (including Article 106 of the central bank law which assures the confidentiality of information submitted by the banks), and there are no gateways for disclosure to third parties. In 1985, in response to the Basel Committee initiatives, the central bank published a circular to banks indicating that it proposed to cooperate with foreign counterparts, but this was subject to the rider that the information would be limited to an exchange of views only, and would not involve the breakdown of the secrecy provisions. Within this context, the central bank has concluded five MOUs with foreign counterparts, but these are cast in very general terms and relate to the exchange of views on market developments and similar issues, rather than confidential information specific to institutions or their customers.

652. Notwithstanding these apparent limitations, the central bank provided some evidence (including letters of appreciation) of a number of cases where it had responded to requests for assistance from foreign agencies (although the underlying details of the information provided were not shared with the mission). In the majority of cases these agencies were not regulatory counterparts (*i.e.* banking supervisors) but were a tight group of FIUs or law enforcement agencies, to which the AMLSCU/central bank had been able to respond by drawing on the central bank's regulatory powers to acquire information. To this extent, the role of the central bank and the AMLSCU in providing cooperation appear indistinguishable. The reported actions taken included obtaining and forwarding details of accounts held within the UAE and freezing accounts using the powers under Article 4 of the AML law. The central bank has also granted approval, on at least one occasion, for foreign regulators to visit the UAE to conduct an AML/CFT examination of a licensed bank, including having access to customer accounts.

653. **ESCA:** While ESCA is given an objective within its statute to cooperate with foreign counterparts, there are no provisions that address the mechanism through which this might be achieved and under what conditions. In practice, ESCA has entered into 19 MOUs with foreign regulators using the IOSCO Multilateral MOU as its model. There is no legal or procedural requirement to enter into an MOU before information can be shared, but where a request is received from an agency with which there is no such agreement, ESCA will seek to enter into an exchange of letters that includes assurances of confidentiality. ESCA does not maintain any statistics on the numbers of requests that it has received, but it indicated that all had been addressed positively. ESCA indicated that, to date, all the requests related specifically to information on the brokers registered in the UAE, and none had concerned client details or transactions.

654. **Ministry of Economy:** The mission was unable to identify any provisions that relate to the ministry of economy's ability to cooperate with international counterparts in respect of its responsibilities for the insurance industry. There is no evidence that the ministry of economy has ever received or responded to a request for cooperation.

## DFSA

655. Article 38 of the regulatory law contains a general confidentiality provision in relation to confidential information obtained by staff in the course of their duties, but it also permits the DFSA to disclose such information to a number of specified parties, including a financial services regulator, authorities responsible for performing functions relating to AML, and civil and criminal law enforcement agencies. In these cases, the counterpart may be either inside or outside the UAE. In addition, Section 39 provides that the DFSA may, where it considers appropriate to do so, exercise any of its powers under the law (or any other laws administered by it) in order to assist the same list of agencies in the performance of their regulatory functions. This includes the exercise of its powers to obtain information, to carry out investigations and to take statements under oath. The DFSA has published a policy statement establishing the guiding principles under which it will cooperate with foreign counterparts. As a matter of policy the DFSA will cooperate unless:

- The request would require the DFSA to act in a manner that would violate applicable UAE criminal laws, DIFC laws or DFSA policies.
- The regulator making a request is not a financial services regulator. A financial services regulator for the purposes of this policy, means a regulator whose principal mandate includes regulating one or more of securities, commodities, asset management, collective investment schemes, insurance and re-insurance, banking, Investment services, trust service providers, Islamic finance and companies).
- The request is in relation to criminal or enforcement proceedings and criminal or enforcement proceedings have already been initiated in the DIFC or UAE relating to the same facts or same persons, or the same persons have already been penalized or sanctioned on substantively the same charges and to the same degree by the DFSA or the competent authorities in the UAE.
- The request would be prejudicial to the “public interest” of the DIFC.
- The requesting authority refuses to give corresponding assistance to the DFSA.
- Complying with the request would be so burdensome as to prejudice or disrupt the performance of DFSA regulatory functions and duties. Or
- The authority fails to demonstrate a legitimate reason for the request.

656. In deciding whether to comply with a request to disclose confidential information under Articles 38 and 39, the DFSA, as a matter of policy, will satisfy itself that there are legitimate reasons for the request and that the regulator or authority requesting the information has the appropriate standards in place for dealing with client confidentiality.

657. Although the DFSA does not require an MOU in order to cooperate with a foreign counterpart, at the time of the mission's visit it had entered into such agreements with regulators in fourteen countries outside the UAE. In June 2006, the DFSA announced that it had become a signatory to the IOSCO Multilateral MOU, which obviates the need for bilateral MOUs with the other signatories. Since 2005, the DFSA has provided assistance to foreign counterparts and law enforcement in 12 cases. Only one of these has involved the disclosure of confidential information held by the DFSA, but one of the requests has also involved having to use its powers to obtain or compel the disclosure of information on behalf of a foreign regulator. This latter request required the DFSA to take 10 statements in evidentiary form for use in a foreign court. The vast majority of cases have centred on providing assistance in tracing fraudulent activity. The DFSA has

established procedures for dealing with foreign requests. These require a formal acknowledgement within one week, with a substantive response target of one month, depending on the complexity or longevity of the matter.

### **Implementation**

658. There do not appear to be any significant impediments to the exchange of information with international counterparts by the law enforcement agencies. Significant cooperative efforts have taken place in recent years, resulting in a number of successful cases in which the role of the UAE authorities has been acknowledged by international partners. However, there does not appear to be any coordinated national approach to measuring international cooperation in money laundering and terrorist financing, and thereby addressing ways in which international cooperation might be further enhanced.

659. The absence of data on the level of cooperation offered by the FIU makes it impossible to judge the effectiveness of the process. Moreover, there are doubts about the legal basis on which the FIU may share information beyond that linked directly to an STR, and about its ability to draw data from other confidential databases to which it has access. These matters should be addressed to provide a sound basis for the FIU's cooperation efforts.

660. The central bank, ESCA, and the ministry of economy have no statutory authority to share information with foreign counterparts, although exchanges of both a specific and general nature take place in practice, but only limited data were made available to the mission.

### **6.5.2. Recommendations and Comments**

- In line with earlier recommendations, a national strategy on AML/CFT should be put in place for law enforcement agencies which would, inter alia, address international cooperation issues. The NAMLC and the NCFCT should provide guidance and direction in the establishment of clear guidelines and a framework for international cooperation, building upon existing channels of cooperation.
- Statutory gateways should be introduced to clarify the process under which the regulatory authorities are able to exchange confidential information, subject to conditions of reciprocity and equivalence of confidentiality.
- Training for the law enforcement agencies in international cooperation procedures, including appropriate safeguards, may be useful.

### **6.5.3. Compliance with Recommendation 40 and Special Recommendation V**

	<b>Rating</b>	<b>Summary of factors relevant to s.6.5 underlying overall rating</b>
<b>R.40</b>	<b>PC</b>	No legal provisions defining the gateways through which the Central Bank, ESCA or the ministry of economy may share confidential information with foreign counterparts
<b>SR.V</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• Timeliness and effectiveness are a concern</li> <li>• No statistics available to assess the effectiveness</li> </ul>

## 7. OTHER ISSUES

### 7.1. Resources and Statistics

	Rating	Summary of factors relevant to Recommendations 30 & 32 & underlying overall rating
R.30	PC	<ul style="list-style-type: none"> <li>• The FIU lacks specialist analytical resources and expertise</li> <li>• There is no code of conduct for government officials</li> <li>• Lack of specialist skills course in ML/TF analysis or investigation</li> <li>• Limited specialist resources and training for financial supervision staff</li> <li>• Inadequate resources applied to AML/CFT compliance in the commercial free zones</li> </ul>
R.32	PC	<ul style="list-style-type: none"> <li>• Even though some agencies maintain meaningful statistics, the use of such statistics as a routine management tool is generally very limited</li> </ul>

**Table 1. Ratings of compliance with FATF Recommendations**

Forty Recommendations	Rating	Summary of factors underlying rating <sup>37</sup>
<b>Legal systems</b>		
1. ML offense	<b>PC</b>	<ul style="list-style-type: none"> <li>• Limited predicate offenses which cover less than half of the minimum categories of offenses.</li> <li>• Authorities unable to confirm that when proving property is the proceeds of crime, it should not be necessary to obtain a conviction for the predicate offense.</li> <li>• Authorities unable to confirm that predicate offenses include a range of offenses in each of the designated categories of offenses.</li> <li>• Limited implementation <i>i.e.</i> only two prosecutions taken outside Dubai and no evidence provided regarding the number of Dubai prosecutions.</li> </ul>
2. ML offense—mental element and corporate liability	<b>LC</b>	Limited implementation - <i>i.e.</i> only two prosecutions taken outside Dubai and no evidence provided regarding the number of Dubai prosecutions.
3. Confiscation and provisional measures	<b>LC</b>	In the absence of comprehensive statistics the assessors could not make conclusions as to the effectiveness of the confiscation laws.
<b>Preventive measures</b>		
4. Secrecy laws consistent with the Recommendations	<b>LC</b>	Lack of clear statutory gateways through which the regulatory authorities may exchange confidential information with domestic authorities and foreign counterparts.
5. Customer due diligence	<b>NC</b>	<p><i>Domestic banking, securities and insurance</i></p> <ul style="list-style-type: none"> <li>• No core CDD obligations embedded in law or regulation (all sectors).</li> </ul>

<sup>37</sup> These factors are only required to be set out when the rating is less than Compliant.

Forty Recommendations	Rating	Summary of factors underlying rating <sup>37</sup>
		<ul style="list-style-type: none"> <li>• No requirement to establish beneficial ownership of legal entities and arrangements (all sectors).</li> <li>• No requirement to understand the ownership and control structure of legal entities (all sectors).</li> <li>• No requirement to verify that any person claiming to be acting on behalf of another is duly authorized to do so (all sectors).</li> <li>• No requirement to undertake ongoing due diligence (all sectors).</li> <li>• The threshold for verification of customer identity in respect of wire transfers by banks significantly exceeds USD/EUR 1 000 (banking).</li> <li>• Threshold for CDD on insurance applicants significantly exceeds FATF threshold for low risk situations in this sector (insurance).</li> <li>• No obligation to undertake fresh CDD when the veracity or accuracy of previous information is doubted (all sectors).</li> <li>• No obligation to establish the purpose and intended nature of the business relationship (banking, securities).</li> <li>• No requirement to undertake enhanced CDD for high-risk customers (all sectors).</li> <li>• No requirement to implement risk-based procedures with respect to undertaking CDD on customers whose accounts pre-date the introduction of the AML legislation (all sectors).</li> <li>• For DGCX, no requirements for CDD beyond initial identification and verification process.</li> </ul> <p><i>Other Domestic sectors</i></p> <ul style="list-style-type: none"> <li>• No evidence of implementing rules relating to CDD.</li> </ul> <p><i>DIFC</i></p> <ul style="list-style-type: none"> <li>• No core CDD obligations embedded in law or regulation.</li> <li>• No explicit requirement to undertake ongoing due diligence.</li> </ul>
6. Politically exposed persons	<b>NC</b>	Domestic banking, securities and insurance: No requirements specified with respect to PEPs
7. Correspondent banking	<b>NC</b>	Domestic banking: No requirements specified with respect to correspondent banking
8. New technologies and non face-to-face business	<b>LC</b>	Domestic securities and insurance: No explicit obligation on domestic institutions to have policies in place to prevent the misuse of technological developments.
9. Third parties and introducers	<b>LC</b>	Uncertainty about provisions governing sales of insurance products through domestic brokers and agents.

Forty Recommendations	Rating	Summary of factors underlying rating <sup>37</sup>
10. Record-keeping	<b>LC</b>	<ul style="list-style-type: none"> <li>• No clear requirements relating to the retention of account opening documents in the domestic securities sector.</li> <li>• Record-keeping requirements in the domestic insurance sector are based on time at which the contract was issued, not from the time of termination of the relationship.</li> </ul>
11. Unusual transactions	<b>LC</b>	No explicit obligation on domestic institutions to record in writing their analysis of transactions initially judged to be unusual, but which were ultimately not reported to the FIU.
12. DNFBP–R.5, 6, 8–11	<b>NC</b>	<ul style="list-style-type: none"> <li>• With the exception of the DFSA, none of the designated DNFBP regulators had issued any relevant AML/CFT regulations at the time of the onsite visit.</li> <li>• Lawyers and accountants not covered by the AML or the CFT law.</li> </ul>
13. Suspicious transaction reporting	<b>NC</b>	<ul style="list-style-type: none"> <li>• No obligation in law or regulation to report suspicions related to terrorist financing.</li> <li>• The obligation embedded in "other enforceable means" to report suspicions of terrorist financing applies only to institutions supervised by the central bank.</li> <li>• Absence of a defined basis upon which money laundering suspicions should be reported (subjective or objective or both).</li> <li>• Lack of clarity about the scope of the reporting obligation with respect to the definition of money laundering.</li> <li>• No obligation to report attempted transactions.</li> <li>• Low rate of reporting (and concentration among relatively few institutions) brings into question the overall effectiveness of the regime.</li> </ul>
14. Protection and no tipping-off	<b>PC</b>	<ul style="list-style-type: none"> <li>• Tipping-off offense is narrowly defined to include actions in relation to the customer only.</li> <li>• Concerns relating to the obligation imposed on institutions to notify customers immediately of a temporary freezing order imposed by the central bank.</li> </ul>
15. Internal controls, compliance and audit	<b>PC</b>	<p><i>Domestic banking, securities and insurance</i></p> <ul style="list-style-type: none"> <li>• No provisions governing the role of the designated compliance officer (beyond acting as the suspicious transaction reporting officer) and the scope of his access to information and management within an institution.</li> <li>• Limited requirements with respect to an adequately resourced, independent AML audit function.</li> <li>• No requirement to have screening procedures for all relevant staff.</li> <li>• No staff training requirements for insurance sector.</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>37</sup>
16. DNFBP–R.13–15 & 21	<b>NC</b>	<ul style="list-style-type: none"> <li>• No provision in the AML law covering “Professionals” as defined by the Civil Code and the Commercial Code including lawyers and accountants.</li> <li>• Although the dealers in precious metals and stones, CSPs and real estate dealers that operate in the UAE may be technically captured under the category of “other commercial and economic establishments”, the respective supervisors have not issued regulations with regard to reporting suspicious transactions.</li> <li>• The ministry of economy circular for auditors does not provide for tipping-off or legal protection for reporting suspicious transactions in good faith.</li> </ul>
17. Sanctions	<b>PC</b>	<p><i>Domestic banking</i></p> <ul style="list-style-type: none"> <li>• Limited range of formal sanctions available to central bank.</li> <li>• Lack of evidence relating to use by the central bank of enforcement measures for AML compliance failures.</li> </ul> <p><i>Domestic securities and insurance</i></p> <ul style="list-style-type: none"> <li>• Limitation to, or lack of administrative penalties that can be imposed against brokers and insurance companies for AML/CFT breaches.</li> </ul> <p><i>Money service businesses</i></p> <ul style="list-style-type: none"> <li>• No sanctions available against hawaladars (see SRVI).</li> </ul>
18. Shell banks	<b>PC</b>	No provisions to prevent domestic banks from having correspondent relationships, either directly or indirectly, with foreign shell banks
19. Other forms of reporting	<b>C</b>	This recommendation is fully met.
20. Other NFBP & secure transaction techniques	<b>PC</b>	Authorities have not considered the need to apply AML/CFT measures to those non-financial businesses that they regard as presenting a potential ML or FT risk, since no specific activities have been listed in the AML/CFT laws and no AML/CFT regulations have been issued by designated supervisors.
21. Special attention for higher risk countries	<b>PC</b>	<ul style="list-style-type: none"> <li>• No obligations on domestic securities companies in relation to jurisdictions that might pose a particular ML risk.</li> <li>• Uncertainty about whether domestic institutions are obligated to undertake written analysis of transactions with no apparent economic or lawful purpose, and to retain the record.</li> <li>• No process in place for alerting institutions to jurisdictions that might have significant weaknesses in AML controls.</li> <li>• No arrangements under which the authorities might require institutions to take countermeasures.</li> </ul>
22. Foreign branches & subsidiaries	<b>LC</b>	Domestic banking, securities and insurance: Limit to the basis on which institutions must inform the regulators of restrictions on their foreign branches' ability to implement appropriate AML controls.

Forty Recommendations	Rating	Summary of factors underlying rating <sup>37</sup>
23. Regulation, supervision and monitoring	<b>PC</b>	<p>Domestic banking, moneychangers, securities and insurance</p> <ul style="list-style-type: none"> <li>• Voluntary registration process only for hawala dealers, and absence of effective monitoring systems (see SRVI).</li> <li>• No "fit and proper" requirements for board members and managing directors of insurance companies.</li> <li>• Limited scope of AML/CFT inspections for the securities sector (including within the DGCX).</li> <li>• No supervision of insurance sector for compliance with AML/CFT obligations.</li> </ul>
24. DNFBP—regulation, supervision and monitoring	<b>NC</b>	<ul style="list-style-type: none"> <li>• "Professionals" (Lawyers, accountants, auditors) are not subject to the AML law except for ASPs who are registered with the DFSA.</li> <li>• No regulations issued domestically for DNFBPs, except for accountants when acting as auditors.</li> <li>• The DMCC free zone regulations on AML/CFT have only limited application to its members.</li> <li>• The Jebel Ali free zone has no AML/CFT regulations for its company service providers.</li> <li>• There is limited AML/CFT on-site supervision by the DFSA of the trust service providers and ancillary service providers.</li> </ul>
25. Guidelines & Feedback	<b>PC</b>	<ul style="list-style-type: none"> <li>• Little substantive feedback provided to individual reporting institutions.</li> <li>• Lack of clarity for institutions about what are the central bank's expectations, through its inspection program, in respect of AML systems and controls in financial institutions.</li> <li>• Inadequate guidance to assist the insurance and securities sectors to implement and comply with STR requirements.</li> <li>• No regulations/guidelines have been issued for DNFBPs, except by the DFSA, the DMCC and the ministry of economy (for domestic auditors only).</li> </ul>
<b>Institutional and other measures</b>		
26. The FIU	<b>PC</b>	<ul style="list-style-type: none"> <li>• Assessors could not conclude that in practice the FIU was the sole national center for receipt, analysis, and dissemination of STRs.</li> <li>• Lack of operational independence of the FIU in light of BSED involvement.</li> <li>• Inadequate dissemination of STRs to law enforcement.</li> <li>• No publication of annual reports with statistics, trends, typologies and information on FIU activities.</li> <li>• In light of legal and resource shortcomings, in addition to a lack of comprehensive statistics, assessors were not able to conclude that the FIU was effective in its core functions of receiving,</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>37</sup>
		analyzing and disseminating STRs.
27. Law enforcement authorities	<b>C</b>	This Recommendation is fully met.
28. Powers of competent authorities	<b>C</b>	This Recommendation is fully met.
29. Supervisors	<b>PC</b>	<ul style="list-style-type: none"> <li>• Limited range of formal sanctions available to central bank.</li> <li>• No formal powers of inspection over hawala dealers.</li> <li>• No examination program available in the insurance sector.</li> <li>• No sanctions powers for hawaladars.</li> </ul>
30. Resources, integrity, and training	<b>PC</b>	<ul style="list-style-type: none"> <li>• The FIU lacks specialist analytical resources and expertise.</li> <li>• There is no code of conduct for government officials.</li> <li>• Lack of specialist skills course in ML/TF analysis or investigation.</li> <li>• Limited specialist resources and training for financial supervision staff.</li> <li>• Inadequate resources applied to AML/CFT compliance in the commercial free zones.</li> </ul>
31. National co-operation	<b>LC</b>	<ul style="list-style-type: none"> <li>• Lack of an enhanced strategic coordinated national approach to domestic cooperation and coordination.</li> <li>• No legal provisions to permit the regulatory authorities to exchange information with other domestic authorities.</li> <li>• Need to improve coordination amongst the emirates level customs authorities and FCA.</li> </ul>
32. Statistics	<b>PC</b>	<ul style="list-style-type: none"> <li>• Even though some agencies maintain meaningful statistics, the use of such statistics as a routine management tool is generally very limited.</li> </ul>
33. Legal persons–beneficial owners	<b>PC</b>	<ul style="list-style-type: none"> <li>• Lack of evidence of how the authorities confirm that registered shareholders are beneficial owners.</li> <li>• Uncertainty as to the extent to which nominee shareholders are used to conceal foreign ownership of domestic companies.</li> <li>• Absence of procedures to provide access to information on beneficial ownership on companies registered in the Jebel Ali free zone.</li> </ul>
34. Legal arrangements – beneficial owners	<b>C</b>	This Recommendation is fully met in the DIFC and is not applicable domestically in the UAE.

<b>Forty Recommendations</b>	<b>Rating</b>	<b>Summary of factors underlying rating<sup>37</sup></b>
<b>International Cooperation</b>		
35. Conventions	<b>C</b>	This Recommendation is fully met.
36. Mutual legal assistance (MLA)	<b>LC</b>	<ul style="list-style-type: none"> <li>Recently enacted legislation and therefore implementation not able to be assessed.</li> <li>No statistics available to assess effectiveness.</li> </ul>
37. Dual criminality	<b>LC</b>	<ul style="list-style-type: none"> <li>No evidence of widespread implementation to date.</li> <li>Recently enacted legislation and therefore implementation not able to be assessed.</li> </ul>
38. MLA on confiscation and freezing	<b>PC</b>	<ul style="list-style-type: none"> <li>Recently enacted legislation and therefore implementation not able to be assessed.</li> <li>No formal consideration of asset forfeiture fund.</li> <li>No statistics available to assess effectiveness.</li> </ul>
39. Extradition	<b>LC</b>	<ul style="list-style-type: none"> <li>Recently enacted legislation and therefore implementation not able to be assessed.</li> </ul>
40. Other forms of co-operation	<b>PC</b>	No legal provisions defining the gateways through which the Central Bank, ESCA or the ministry of economy may share confidential information with foreign counterparts
<b>Nine Special Recommendations</b>		
SR.I Implement UN instruments	<b>PC</b>	<ul style="list-style-type: none"> <li>No consideration of UNSCR 1373 lists.</li> <li>No circulation of the UNSCR 1267 lists to DIFC, ESCA registrants, or the Ministry of Economy registrants nor to persons in the DNFBP sectors.</li> </ul>
SR.II Criminalize terrorist financing	<b>LC</b>	Unclear that FT applies to financing a terrorist (without an act or the contemplation of one)
SR.III Freeze and confiscate terrorist assets	<b>PC</b>	<ul style="list-style-type: none"> <li>No consideration of any 1373 lists by the appropriate authorities.</li> <li>No circulation of the 1267 lists to the DGCX the DIFC or the DNFBP sector.</li> <li>Slow circulation of lists to some sectors.</li> </ul>
SR.IV Suspicious transaction reporting	<b>NC</b>	<ul style="list-style-type: none"> <li>No explicit requirement in law or regulation to report suspicions of terrorist financing.</li> <li>The obligation embedded in "other enforceable means" to report suspicions of terrorist financing applies only to institutions supervised by the central bank.</li> <li>No obligation to report attempted transactions.</li> </ul>
SR.V International cooperation	<b>LC</b>	<ul style="list-style-type: none"> <li>Recently enacted legislation and therefore implementation not able to be assessed.</li> <li>Timeliness and effectiveness are a concern.</li> <li>No statistics available to assess the effectiveness.</li> </ul>
SR.VI AML/CFT requirements for money/value transfer services	<b>NC</b>	<ul style="list-style-type: none"> <li>Voluntary system of registration for hawala dealers.</li> <li>No formal, legally enforceable obligations imposed on hawaladars.</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>37</sup>
		<ul style="list-style-type: none"> <li>• No legal powers to oversee the activities of hawaladars to ensure compliance with standards of CDD, record-keeping, etc.</li> <li>• Potential scope for abuse through use of registration certificate to access formal financial system.</li> <li>• Limitations on standards applied to remitters in the formal sector as reflected in analysis of relevant Recommendations covering the financial sector.</li> </ul>
SR.VII Wire transfer rules	<b>NC</b>	<p><i>Domestic banks</i></p> <ul style="list-style-type: none"> <li>• Threshold for banks to verify identity of originator exceeds USD 1 000 equivalent.</li> <li>• No rules relating to what originator information should be included with the transfer.</li> <li>• No rules on what to do with incoming transfers that lack originator information.</li> <li>• No evidence of examination for compliance with any wire transfer rules, or of sanctions being available.</li> </ul>
SR.VIII Nonprofit organizations	<b>LC</b>	<ul style="list-style-type: none"> <li>• No information publicly available either directly from the NPO or through appropriate authorities although information is maintained at the Ministry of Labour and Social Affairs.</li> <li>• Even though the law requires NPOs to maintain all necessary records, it does not specify the retention period, which must be for at least five years.</li> <li>• In the DIFC, the Trust Law allows for the creation of charitable trusts but there is no supervisory system envisaged for such trusts.</li> </ul>
SR.IX Cash Border Declaration & Disclosure	<b>NC</b>	<ul style="list-style-type: none"> <li>• Inconsistent enforcement of the reporting system.</li> <li>• No system for the reporting the transportation of bearer negotiable instruments, either inbound or outbound.</li> <li>• No system for the reporting of outbound cross-border transportation of cash.</li> <li>• No sanctions or restraint powers for failure to disclose/declare or false disclosure/declaration of bearer negotiable instruments.</li> </ul>

**Table 2. Recommended action plan to improve the AML/CFT system**

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
<b>1. General</b>	
<b>2. Legal System and Related Institutional Measures</b>	
Criminalization of Money Laundering (R.1, 2, & 32)	<ul style="list-style-type: none"> <li>• Widen the list of predicate offenses to cover the minimum list of offenses as defined in the Glossary of the FATF 40+9, which may require the criminalization of acts that are currently not criminal offenses in the UAE.</li> <li>• Ensure that the money laundering offense is more fully implemented in the emirates beyond Dubai.</li> </ul>
Criminalization of Terrorist Financing (SR.II & R.32)	<ul style="list-style-type: none"> <li>• Criminalize offense of financing a terrorist without the contemplation of an act.</li> </ul>
Confiscation, freezing, and seizing of proceeds of crime (R.3 & 32)	<ul style="list-style-type: none"> <li>• Clarify the rights of third parties in confiscation actions under the AML law and the CFT law.</li> </ul>
Freezing of funds used for terrorist financing (SR.III & R.32)	<ul style="list-style-type: none"> <li>• The authorities should circulate lists issued under UNSCR 1373, in compliance with their UN obligations.</li> <li>• The NCFCT should distribute the lists issued under UNSCR 1267 to all authorities whose licensees may be holding terrorist funds or other assets.</li> <li>• An appropriate authority, possibly the NCFCT, should maintain the statistics which meet international standards on freezing accounts under SR III.</li> </ul>
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<ul style="list-style-type: none"> <li>• Amend the AML law to ensure that the FIU is the national center for the receipt of STRs and relevant information concerning suspected ML or FT activities.</li> <li>• Amend the AML law and grant more powers to the FIU to request additional information from all reporting entities in relation to STRs that have been submitted.</li> <li>• The FIU should hire more staff to perform the analysis of the STRs.</li> <li>• Amend the confidentiality provisions of the AML law to include a comprehensive confidentiality clause for all persons either seized of information held by the FIU or those who report transactions to the FIU.</li> <li>• Conduct a strategic analysis of future IT needs with a view to the staged introduction of appropriate software and hardware to enhance the capability of the FIU, including the introduction of a relational database to assist in the analysis of STRs. Also consider conducting a number of meetings and fact finding exercises via the Egmont Group's Information Technology Working Group in order to achieve this end.</li> <li>• Consider the attachment of FIU officers (for training purposes) to regional or international FIUs who have a similar profile of rapid growth and an active domestic and offshore financial sector.</li> <li>• Embed law enforcement officers at the FIU to improve law enforcement liaison and to expedite access to STR data.</li> <li>• Develop an online access to extrinsic databases to permit enhanced STR analysis.</li> <li>• Conduct a public awareness campaign and outreach sessions to law enforcement and in particular to those entities who are covered by the AML/CFT laws and regulations but are not in the mainstream of the financial services sector.</li> </ul>

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	<ul style="list-style-type: none"> <li>• Establish a specialist training course in AML/CFT through the NAMLC and the NCFCT, in conjunction with the Institute of Judicial Studies and the various Police Colleges and Customs authorities so as to ensure a national approach to training.</li> <li>• Establish a training course for all officers assigned to specialist AML/CFT units within law enforcement.</li> <li>• The FIU should disseminate relevant money laundering and terrorist financing typologies to select units within law enforcement on a confidential basis to assist in criminal analysis and investigation.</li> </ul>
<b>3. Preventive Measures–Financial Institutions</b>	
Risk of money laundering or terrorist financing	
Customer due diligence, including enhanced or reduced measures (R.5–8)	<p><i>Domestic banking, securities and insurance</i></p> <ul style="list-style-type: none"> <li>• Address the core issues that the FATF requires to be embedded in law or regulation (as opposed to "other enforceable means").</li> <li>• Introduce documented requirements to address the broad range of detailed provisions specified under Recommendation 5.</li> <li>• Introduce specific provisions in relation to politically exposed persons and correspondent banking relationships.</li> <li>• Formulate guidance to assist institutions to understand regulatory expectations where they go beyond the standards laid down in regulation, etc.</li> <li>• Wherever possible, harmonize the requirements imposed by the different regulatory authorities, in both the domestic and free zone.</li> </ul>
Third parties and introduced business (R.9)	Introduce provisions to cover the possibility that insurance products are being sold through agents and brokers.
Financial institution secrecy or confidentiality (R.4)	Introduce statutory gateways to establish a clear framework within which exchanges of information with regulatory counterparts may take place.
Record keeping and wire transfer rules (R.10 & SR.VII)	<ul style="list-style-type: none"> <li>• Introduce requirements for the securities and insurance sectors in relation to the retention of customer identification material for at least five years from the end of the business relationship.</li> <li>• Issue regulations that specify the complete process that institutions should undertake when both remitting and receiving wire transfers.</li> <li>• Reduce the threshold for completing customer identification and verification procedures from AED 40 000 to the equivalent of no more than USD 1 000.</li> </ul>
Monitoring of transactions and relationships (R.11 & 21)	<ul style="list-style-type: none"> <li>• Specify the obligation that financial institutions must record in writing (and retain for at least five years) their analysis of transactions that were considered unusual, but were not reported to the FIU.</li> <li>• Provide greater guidance to the securities sector on what might constitute unusual transactions for ML/FT purposes.</li> <li>• Establish a mechanism for alerting institutions to (and ultimately taking countermeasures against) jurisdictions that do not adequately apply FATF standards.</li> </ul>

<b>FATF 40+9 Recommendations</b>	<b>Recommended Action (in order of priority within each section)</b>
Suspicious transaction reports and other reporting (R.13, 14,19, 25, & SR.IV)	<ul style="list-style-type: none"> <li>• Clarify the precise basis (objective or subjective suspicion, or merely unusual) upon which transactions are to be reported to the FIU.</li> <li>• Clarify whether the reporting obligation is linked to any criminal activity or to those offenses that are defined as predicates for ML.</li> <li>• Specify that the reporting obligation applies also in relation to attempted transactions.</li> <li>• Undertake a review of the pattern of reporting among institutions and between sectors to identify whether there are any unusually low levels.</li> <li>• Introduce a clear statutory obligation for all institutions to report suspicions of terrorist financing.</li> <li>• Introduce specific sanctions for failing to report suspicious transactions.</li> <li>• Extend the scope of the tipping-off offence to cover disclosures to all parties other than where required by law.</li> <li>• Review the current procedures under which institutions are required to inform their customers when a temporary freeze order has been applied by the central bank.</li> <li>• Improve the depth, quality and timelines of the qualitative feedback to institutions in relation to their STR filings.</li> <li>• Develop the scope of the information provided to, and interaction with, participants in the FIUs outreach programs.</li> </ul>
Cross Border Declaration or disclosure (SR IX)	<ul style="list-style-type: none"> <li>• Develop a national strategic approach to the management of the cross border transportation of cash and negotiable instruments.</li> <li>• Consider reliance on the Common Customs Law of the GCC States for document inspection and retention in relation to money laundering.</li> </ul>
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<ul style="list-style-type: none"> <li>• Introduce provision requiring institutions to assess their vulnerability to ML and FT, and to formulate and document appropriate control procedures that recognize and adequately address the money laundering risk within their business.</li> <li>• Define more clearly the role of the compliance officer, especially with respect to the jobholder's position within the management structure and his right of free access to both information and staff within the organization.</li> <li>• Require institutions to have in place formal procedures to screen all staff employed in areas that are relevant to the AML control environment.</li> <li>• Extend the obligation to require AML/CFT training for staff to the insurance sector.</li> <li>• Place an explicit obligation on institutions to implement an independent audit function to test AML compliance, allowing the flexibility to rely on the external auditors if the arrangement is properly structured and documented.</li> <li>• Require the foreign branches of UAE institutions to report all cases where they are prevented from implementing appropriate procedures in line with the FATF standards.</li> </ul>
Shell banks (R.18)	Issue instructions to the banking sector to alert them to the need to avoid both direct and indirect dealings with foreign shell banks through correspondent relationships.
The supervisory and oversight system—competent authorities and SROs	<ul style="list-style-type: none"> <li>• Reinforce the key powers and functions of the central bank in relation to the non-banking sector by including them in the law.</li> </ul>

<b>FATF 40+9 Recommendations</b>	<b>Recommended Action (in order of priority within each section)</b>
Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 25, & 32)	<ul style="list-style-type: none"> <li>• Introduce a broader range of sanctions (including a power to levy fines beyond those currently provided for late filing of data) that may be applied by the central bank.</li> <li>• Maintain a database to permit effective monitoring of institutions' AML compliance levels and trends</li> <li>• Require the results of the auditors' AML reviews to be framed in a free-standing report that would be made available automatically to the relevant regulatory authorities.</li> <li>• Create a "whistle-blowing" provision under which the auditors would be given general protection in the event that any concerns they might express would be protected from claims of breach of client confidentiality.</li> <li>• Formulate guidance to clarify for institutions cases where the central bank's regulatory expectations go beyond the limits of the current law and regulations.</li> <li>• Ensure that the regulations that apply to the domestic a free zone sector are fully compatible.</li> <li>• Clarify the laws concerning the ability of the ESCA, DGCX and ministry of economy to sanction brokers and insurance companies for AML/CFT breaches, including powers to impose disciplinary and financial sanctions, and to withdraw, restrict or suspend the entity's license.</li> <li>• Specify the "fit and proper" standards for directors and senior management of insurance companies, and require prior approval for any changes in ownership and management.</li> <li>• Create within the ministry of economy a well-staffed AML/CFT unit or at least a team of examiners specializing in AML/CFT measures to check insurance companies' compliance with AML on an ongoing basis.</li> <li>• Increase the number of staff with AML compliance experience in both the ESCA and DGC to permit an expansion of the supervision program.</li> <li>• ESCA and DGCX should develop guidance to assist securities and commodities brokers in identifying suspicious transactions more easily.</li> </ul>
Money value transfer services (SR.VI)	<ul style="list-style-type: none"> <li>• Introduce legally enforceable provisions in relation to the registration, oversight and sanctions applicable to the hawaladars.</li> <li>• Progressively extend the scope of the preventive measures that are applied to the hawaladars.</li> </ul>
<b>4. Preventive Measures–Nonfinancial Businesses and Professions</b>	
Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> <li>• Broaden the list of persons covered by the AML/CFT laws to explicitly include the DNFBPs (as defined) operating in the domestic and commercial free zone sectors.</li> <li>• Include the requirements for CDD and record keeping measures for DNFBP activities in the AML law or regulations issued by the respective DNFBP regulators.</li> <li>• Provide training to DNFBPs on their obligations for CDD and record keeping measures.</li> </ul>
Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> <li>• Add "Professionals" to the AML law as a category of persons to be covered by the requirements to the law so that lawyers, accountants and other relevant professionals are clearly brought within the legislative framework for STR reporting.</li> <li>• When lawyers are covered by the provisions of the AML law,</li> </ul>

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
	<p>agree which law of privilege will apply to lawyers operating in both the DIFC and DFSA.</p> <ul style="list-style-type: none"> <li>• Domestically, issue implementing regulations in relation to the filing of STRs by the various DNFBNs.</li> <li>• Include provisions for legal protection and tipping off in the ministry of economy circular to auditors.</li> <li>• Issue implementing regulations in the various free zones concerning the filing of STRs.</li> <li>• Provide training to DNFBNs on their obligations for reporting suspicious transactions.</li> <li>• Conduct consultation, training and outreach for lawyers to properly interpret and apply legal privilege when monitoring transactions and filing STRs.</li> </ul>
Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)	<ul style="list-style-type: none"> <li>• Domestic and commercial free zones</li> <li>• Add “lawyers, auditors, accountants, Professionals” to the AML law as a category of persons to be covered by the requirements to the law so that lawyers, accountants and other relevant professionals, including CSPs, are clearly brought within the legislative framework for AML purposes.</li> <li>• Designate in the AML law or respective implementing regulations, specific authorities with responsibility for AML/CFT oversight, compliance monitoring and enforcement with respect to DNFBNs.</li> <li>• Issue AML regulations to all DNFBNs that cover the requirements under FATF Recommendations 12, 16 and 24.</li> <li>• Conduct AML/CFT awareness raising training of all DNFBNs when AML law is amended and the regulations are issued.</li> </ul> <p><i>DNFBNs in the financial free zones</i></p> <ul style="list-style-type: none"> <li>• Expand the scope of AML/CFT on-site inspections of TSPs and ASPs.</li> <li>• Conduct AML/CFT awareness raising training of all DNFBNs in the DIFC.</li> <li>• Commence AML/CFT on-site inspections of DIFC DNFBNs.</li> </ul>
Other designated non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> <li>• Broaden the list of activities covered by the AML/CFT laws to explicitly include dealers in high value goods such as luxury and new cars, and auction houses.</li> <li>• Continue to encourage the use of secure transfer systems when conducting financial transactions such as, ATMs and credit cards in order to reduce reliance on cash transactions.</li> </ul>
<b>5. Legal Persons and Arrangements &amp; Nonprofit Organizations</b>	
Legal Persons—Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> <li>• Consider the introduction of additional procedures to ensure that the company registration process involves a declaration of beneficial ownership.</li> <li>• Introduce provisions to impose obligations on registered agents in the Jebel Ali Free-Zone to acquire and maintain information on beneficial ownership of the companies for which they act.</li> </ul>
Legal Arrangements—Access to beneficial ownership and control information (R.34)	
Nonprofit organizations (SR.VIII)	<ul style="list-style-type: none"> <li>• Reach out to NPOs with a view to protecting the sector from terrorist financing abuse. This outreach should encourage NPOs to</li> </ul>

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
	<p>conduct transactions via traceable channels, enact and practice sound governance and fiscal policies, develop and implement a set of specific practices by screening donors and beneficiaries.</p> <ul style="list-style-type: none"> <li>● Introduce new rules requiring NPOs to maintain, for a period of at least 5 years, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the NPO. Specify the retention period of all domestic and international transactions, which must not be less than 5 years.</li> <li>● Take measures to require NPOs to make the information on the purpose and objectives of their stated activities; and the identity of persons who own, control or direct their activities, including senior officer, board members and trustees publicly available either directly from the NPO or through appropriate authorities.</li> <li>● In the DIFC, the relevant authorities should review the Trust Law (DIFC law 11/2005) which allows the creation of charitable trusts in order to clarify the possible implications of such vehicles under this Recommendation. The authorities should also take the appropriate corrective actions to put an appropriate supervisory system in place.</li> </ul>
<b>6. National and International Cooperation</b>	
National cooperation and coordination (R.31 & 32)	<ul style="list-style-type: none"> <li>● Amend Article 9 of the AML law in line with Article 36 of the CFT law, to provide that any other entity joined by the Council of Ministers be afforded membership of the NAMLC thereby permitting greater flexibility in the Committee and reflecting a similar provision in the CFT law relating to the NAMLC.</li> <li>● Increase the role of the FCA in the development of a federal response to customs issue.</li> <li>● Appoint a sub-committee of highly skilled officers at a technical level who are in a position as result of their day to day to duties to ensure consistent and expeditious implementation of the decisions of such a senior body.</li> <li>● Adopt a strategic coordinated national approach for AML/CFT issues in the UAE under the leadership of the NAMLC and NCFCT.</li> <li>● Extend the integrated federal approach to combating AML/CFT to all agencies involved in the law enforcement sector, including the FIU and the state security services.</li> <li>● Appoint a working group to prepare a template for case analysis and feedback on all money laundering and terrorist financing matters, irrespective of whether the matter proceeds to trial.</li> <li>● Provide clear legal authority for all regulatory agencies to cooperate and exchange information with other domestic agencies.</li> </ul>
The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> <li>● Circulate the UNSCR 1267 lists to all financial institutions and other institutions that may be holding terrorist assets.</li> <li>● Review the UNSCR 1373 lists on a regular basis to determine whether they should be circulated.</li> <li>● Extend the offense of FT to include the financing of all of the acts set forth in the treaties in the Annex of the UN FT Convention.</li> </ul>
Mutual Legal Assistance (R.36, 37, 38, SR.V & 32)	<ul style="list-style-type: none"> <li>● The ministry of justice should expedite the roll out of the mutual legal assistance forms and set target dates with judicial, prosecutorial and law enforcement agencies for training and awareness programs in extradition and mutual legal assistance</li> </ul>

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
	under the new law.
Extradition (R. 39, 37, SR.V & R.32)	Consider developing a streamlined process for dealing with extradition requests.
Other Forms of Cooperation (R. 40, SR.V & R.32)	<ul style="list-style-type: none"> <li>• Implement a national strategy for law enforcement agencies specifically to address international cooperation issues.</li> <li>• Introduce statutory gateways to clarify the procedures under which the regulatory authorities may exchange confidential information with foreign counterparts.</li> <li>• Introduce training for the law enforcement agencies in international cooperation procedures.</li> </ul>
<b>7. Other Issues</b>	
Other relevant AML/CFT measures or issues	

## ANNEX 1

### **List of all bodies met on the on-site mission ministries, other government authorities or bodies, private sector representatives and others**

#### **Abu Dhabi**

Ministry of Foreign Affairs  
Ministry of Interior  
Ministry of Finance & Industry  
Ministry of Economy  
Ministry of Justice  
Ministry of Social Affairs  
Central Bank of the UAE  
Anti-Money Laundering and Suspicious Cases Unit (AMLSCU)  
Attorney General's Office, Abu Dhabi  
Department of Planning and Economy Abu Dhabi  
Economic Development Department  
Abu Dhabi Police  
State Security Authority  
General Secretariat of Municipalities  
Federal Customs Authority  
Emirates Securities and Commodities Authority  
Abu Dhabi Customs Department  
Abu Dhabi Securities Market

#### **Dubai**

Attorney General's Office, Dubai  
Dubai Financial Services Authority  
Dubai International Financial Centre  
Dubai Gold and Commodities Exchange  
Dubai Financial Market  
Dubai Police  
Department of Dubai Customs  
Dubai Multi Commodities Centre  
Dubai Islamic Affairs and Charitable Activities Department  
Dubai Economic Development Department

#### **Ras Al Khaimah**

Ras Al Khaimah Courts Department  
Ras Al Khaimah Police General Head Quarters  
Ras Al Khaimah Customs and Ports Department  
Ras Al Khaimah Investment Authority

#### **Sharjah**

Sharjah Police  
Sharjah Ports and Customs Department

#### **Private sector institutions and others**

Abu Dhabi Chamber of Commerce and Industry  
Federation of Chamber of Commerce and Industry

Emaar Properties  
Ras Al Khaimah Properties  
Bait Al Khair Society  
Ernst & Young  
Al Tamimi & Associates  
Joy Allukkas Group  
Global Advocates  
Dubai Chamber of Commerce  
Gold and Jewellery Group  
Standard Chartered Bank  
Accountants and Auditors Association  
Odeh & Company  
Abu Dhabi Islamic Bank  
Al Ansari Financial Services  
Al Sayegh Jewellery  
Standard Chartered Bank  
Dubai Islamic Bank  
UAE Exchange Centre  
Emirates Bank Association  
Ernst & Young  
Ras Al Khaimah National Insurance Company  
Emirates Securities  
Dubai Gold & Jewellery Group  
Damas Jewellers  
Alukkas Jewellers  
National Bank of Abu Dhabi  
Abu Dhabi National Insurance Company  
Al Dar Properties

## ANNEX 2

### List of all laws, regulations and other material received

#### THE UNITED ARAB EMIRATES STATUTES, REPORTS AND GUIDELINES DEALING WITH AML/CFT

#### Table of Contents

#### 1. Codes

- 1.1. The Federal Law No. 3 of 1987 on the Penal Code
- 1.2. The Federal Law/Code on the Issuance of Penal Procedures Law No. 35 of 1992
- 1.3. The Federal Law on Penal Procedures No. 36 of 1992
- 1.4. The Civil Code of 1985
- 1.5. The Code of Commercial Practice
- 1.6. The Code on Civil Procedures

#### 2. Criminal (including AML/CFT) Laws

- 2.1. The Federal Law Regarding the Criminalization of Money Laundering No. 4 of 2002
- 2.2. The Federal Law Regarding the Criminalization of Terrorism No. 1 of 2004
- 2.3. The Constitutional Amendment No. 1 of 2004
- 2.4. The Federal Law Concerning Financial Free Zones No. 8 of 2004
- 2.5. The Federal Decree to Establish Financial Free Zone in Dubai No. 35 2004
- 2.6. The Federal Law on Combating Trafficking in Human Beings No. 51 of 2006
- 2.7. The Federal Law on Combating Counterfeiting in Commercial Matters No. 4/1979
- 2.8. The Federal Law on Insider Commercial Dealing No. 17 of 2004
- 2.9. The Federal Law on the Issuance of Penal Procedures Law No. 35 of 1992
- 2.10. The Federal Law on Penal Procedures No. 36 of 1992
- 2.11. The Federal Law on Civil Procedures No. 5 of 1985
- 2.12. The Common Customs Law of the GCC States
- 2.13. The Law of the Dubai International Financial Center (DIFC) No. 9 of 2004
- 2.14. The Law of the Judicial Authority at the Dubai International Financial Center No. 12 of 2004
- 2.15. The DIFC Law No. 1 of 2004

#### 3. Commercial Laws

- 3.1. The Federal Law on Banking No. 10 of 1980
- 3.2. The Federal Law on Insurance No. 9 of 1984
- 3.3. The Federal Law on the Incorporation of the Insurance Authority No. 6 of 2007
- 3.4. The Federal Law on the Notary Public No. 22 of 1991
- 3.5. The Federal Company Law No. 8 of 1984
- 3.6. The Federal Law on the audit profession No. 22 of 1995

- 3.7. The Federal Law (ESCA) No.4 of 2000
- 3.8. The Federal Law on NPOs No. 6 of 1974
- 3.9. The Union Law on Import/Export and Transit of Rough Diamonds No. 13 of 2004
- 3.10. The Federal Law on Judicial Cooperation Law No. 39 of 2006
- 3.11. The DIFC Real Property Law No. 4 of 2007
- 3.12. The DIFC Strata Title Law No. 5 of 2007
- 3.13. The DIFC Data Protection Law No. 1 of 2007
- 3.14. The DIFC Limited Partnership Law No. 4 of 2006
- 3.15. The DIFC Companies Law No. 3 of 2006
- 3.16. The DIFC Trust Law No. 11 of 2005
- 3.17. The DIFC Personal Property Law No. 9 of 2005
- 3.18. The DIFC Law relating to the Application of DIFC Laws No. 10 of 2005
- 3.19. The DIFC Law on the Application of Civil and Commercial Laws No. 3 of 2004
- 3.20. The DIFC Law on Arbitration No. 8 of 2004
- 3.21. The DIFC Law on Contracts No. 6 of 2004
- 3.22. The DIFC Law on Courts No. 10 of 2004
- 3.23. The DIFC Law on Employment No. 4 of 2005
- 3.24. The DIFC Law on Obligations No. 5 of 2005
- 3.25. The DIFC Limited Liability Partnership Law No. 5 of 2004
- 3.26. The DIFC General Partnership Law No. 11 of 2004
- 3.27. The Central Bank Law No. 10 of 1980
- 3.28. The Abu Dhabi Securities Market Law No. 3 of 2000
- 3.29. The Dubai Financial Market Decree No. 14 of 2000
- 3.30. The DGCX By-laws

#### **4. Regulations, Declarations, Guidelines and Resolutions**

- 4.1. The Central Bank Regulations concerning the procedures for Money Laundering as amended No. 24 of 2000 (as amended June 2006)
- 4.2. The Central Bank Circular on outgoing transfers by money changers No. 1815 of 2001
- 4.3. The Central Bank Regulation on the Declaration when importing Cash Money into the UAE Jan 2002
- 4.4. The Central Bank Circular 23/00 (of 22 July 2000) on Required Administrative Structure in Banks
- 4.5. The Central Bank Circular No. 10 of 1992
- 4.6. The Central Bank Circular on Customer Accounts No. 163 of 1998
- 4.7. The Central Bank Circular on current accounts No. 14 of 1993
- 4.8. The Central Bank Board Resolution on exchange companies No. 123/7/92
- 4.9. The Central Bank Board Resolution No. 58/3/96 on the Regulation of Finance Companies
- 4.10. The DIFC Draft Regulations on AML/CFT 2007
- 4.11. DFSA Rulebook 2006
- 4.12. The DFSA Code of Values and Ethics
- 4.13. The ESCA's Regulations to Brokers issued April 2000
- 4.14. The ESCA circular on AML/CFT Procedures Feb 2004

- 4.15. The ESCA Code of Conduct
- 4.16. The ministry of economy Circular to Auditors July 2002
- 4.17. The ministry of economy Circular to Insurance Companies on AML/CFT Procedures Jan 2002
- 4.18. The Cabinet Resolution on fund raising for charitable purposes No. 386/5 of 1994
- 4.19. The Ministerial Resolution on fund raising from the public No. 348 of 1993
- 4.20. The Ministerial Resolution on the amendment of the resolution on fundraising from the public No. 538 of 1994
- 4.21. The Ministerial Resolution on the unified financial system governing NPOs No. 193 of 1999
- 4.22. The Abu Dhabi Declaration on Hawala 5/2002
- 4.23. The JAFZA Offshore Companies Regulations of 2002
- 4.24. The NCAML Cautionary Notice for AML regarding Financial remittances of 2001.

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FEDERAL LAW NO- (4) OF 2002  
*REGARDING*  
CRIMINLIZATION OF MONEYLEAUNDERING

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## **Federal Law No (4) of 2002 Regarding Criminalization of Money Laundering**

**We**, Zayed Bin Sultan Al-Nahyan, President of the United Arab Emirates,

Having Perused:

The Constitution and,

Federal Law No (1) of 1972 , regarding jurisdictions of the Ministries and powers of the Ministers, and amending laws thereof, and,

Union Law No (10) of 1980 , regarding the Central Bank, the Monetary System and Organization of Banking and amending laws thereof, and,

The Penal Code promulgated by Union Law No (3) of 1987, and,

The Penal Code Procedures promulgated by Federal Law No (35) of 1992, and,

Federal Law No (14) of 1995 regarding Fighting Narcotics and Psychotropic Substances, and,

Federal Decree No (55) of 1990, regarding Approval to Join the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and,

In accordance with presentations by the Minister of Finance and Industry, approval of the Cabinet, approval of the National Federal Council and ratification of the Supreme Union Council,

*Promulgate the following Law:*

### **Definitions**

#### **Article (1)**

In the application of this law, and unless the context require otherwise, the following words and expressions shall bear the meanings set out against them:

<b>The State</b>	The United Arab Emirates
<b>The Minister</b>	The Minister of Finance and Industry
<b>The Central Bank</b>	The Central Bank of the United Arab Emirates

<b>The Governor</b>	The Governor of the Central Bank
<b>The Committee</b>	The National Anti-Money Laundering Committee
<b>Property</b>	Assets of every kind, whether corporeal or incorporeal, moveable or immovable, and the legal documents or instruments evidencing title to those assets or any rights related thereto.
<b>Money Laundering</b>	Any act involving transfer, conversion or deposit of Property, or concealment or disguise of the true nature of those Property, which were derived from any of the offences stated in Clause (2) of Article (2) herein.
<b>Proceeds</b>	Any property resulting directly or indirectly from the commission of any of the offences stated in Clause (2) of Article (2) herein.
<b>Freezing or Seizure</b>	Temporarily prohibition of the transfer, conversion, disposition or movement of Property by an Order issued by the competent authority.
<b>Confiscation</b>	Permanent deprivation of Property by Order of a competent court.
<b>Instrumentalities</b>	Any item in any way used or intended for use in commission of any of the offences stated in Clause (2) of Article (2) herein.
<b>Financial Institutions</b>	Any bank, finance company, money –changing establishment, financial or monetary intermediary or any other establishment licensed by the Central Bank, whether publicly or privately owned.
<b>Other Commercial and Economic Establishments</b>	<b>Financial,</b> Establishments licensed and supervised by agencies other than the Central Bank, such as insurance companies, stock exchanges and others.

## Chapter One Definition of Money Laundering

### Article (2)

- 1- Where a person intentionally commits or assists in commission of any of the following acts in respect of Property derived from any of the offences stated in Clause (2) of this Article, such person shall be considered a perpetrator of the Money Laundering offence:
  - a. The conversion , transfer or deposit of Proceeds, with intent to conceal or disguise the illicit origin of such Proceeds.
  - b. The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of Proceeds.
  - c. The acquisition, possession or use of such Proceeds.
  
- 2- For the purposes of this law, Property shall mean those derived from the following offences:
  - a. Narcotics and psychotropic substances.
  - b. Kidnapping, piracy and terrorism.
  - c. Offences committed in violation of the environmental laws.
  - d. Illicit dealing in fire- arms and ammunition.
  - e. Bribery, embezzlement, and damage to public property.
  - f. Fraud, breach of trust and related offences.
  - g. Any other related offences referred to in international conventions to which the State is a party.

### Article (3)

Without prejudice to administrative penalties stated in the law, Financial Institutions and Other Financial, Commercial and Economic establishments operating in the State shall be criminally liable for the offence of Money Laundering if intentionally committed in their respective names or for their account.

## **Chapter Two Commitments of Government Agencies**

### **Article (4)**

The Central Bank may, in accordance herewith, order the freezing of suspected Property with Financial Institutions for a period not exceeding seven (7) days.

The Public Prosecution Office may order Seizure of suspected Property, Proceeds or Instrumentalities, in accordance with its established procedures.

A competent court may order Provisional Attachment, for undetermined periods, on any Property, Proceeds or Instrumentalities, if they have resulted from, or were associated with, a Money Laundering offence.

### **Article (5)**

- 1- Without prejudice to the provisions of Article (4) hereof, the Attorney General shall have the exclusive authority to initiate criminal action against a perpetrator of any of the offences stated herein.
- 2- Orders for seizure of or provisional attachment on Property with Financial Institutions shall only be executed through the Central Bank.

### **Article (6)**

The Central Bank shall set a ceiling for the amount that may be brought into the State in cash without the need for declaration, and any amount in excess thereof shall be subject to the declaration system as established by the Central Bank.

### **Article (7)**

There shall be established, within the Central Bank, a " Financial Information Unit" to deal with Money Laundering and suspicious cases, and to which reports of suspicious transactions shall be sent from all Financial Institutions and Other Financial, Commercial and Economic Establishments. The Committee shall determine the format for reporting suspicious transactions and the methods of communicating reports to the said Unit. The said Unit shall make the information available to law enforcement agencies to facilitate their investigations. The said Unit may exchange information on suspicious transactions with their counterparts in other countries in accordance with international conventions to which the State is a party, or on the basis of reciprocity.

### Article (8)

- 1- Following investigation of cases reported to it, the Unit referred to in Article (7) hereof should notify the Attorney General to take necessary action.
- 2- If a Money Laundering case was directly reported to the Public Prosecution Office, the latter shall take necessary action following consultations with the said Unit.

### Article (9)

The Minister shall form an anti- money laundering committee named " The National Anti- Money Laundering Committee" under the chairmanship of the Governor, consisting of representatives of the following agencies, as per their respective nominations:

- The Central Bank
- The Ministry of Interior
- The Ministry of Justice, Islamic Affairs and Awqaf
- The Ministry of Finance and Industry
- The Ministry of Economy and Commerce
- Agencies concerned with issuing trade and industrial licenses
- The UAE Customs Board

### Article (10)

The terms of reference for the said committee shall be as follows:

- To propose anti-Money Laundering rules and procedures in the State.
- To facilitate exchange of information and coordination between agencies represented therein.
- To represent the State in international anti-Money Laundering forums.
- To propose organizational regulations regarding the workings of the Committee.
- Any other matters referred to it by competent authorities in the country.

The Board of Directors of the Central Bank shall determine remuneration for the Committee's members, and the organizational regulations shall determine the timing and manner of discharge of the Committee's tasks.

### **Article (11)**

Agencies concerned with the licensing and supervision of Financial Institutions or Other Financial, Commercial and Economic Establishments are required to establish appropriate mechanisms to ensure compliance of those institutions with anti-Money Laundering rules and regulations in the State, including reporting of suspicious cases, upon detection thereof, to the Unit referred to in Article (7) hereof.

### **Article (12)**

All concerned agencies must treat the information they have obtained in respect of criminal offences referred to herein, as confidential, and must refrain from breaching confidentiality except to the extent required for use in investigations, legal actions, or lawsuits relating to violations to the provisions of this law.

## **Chapter Three Penalties**

### **Article (13)**

Whoever commits any of the acts set out in Clause (1) of Article (2) of this law, shall be punished by imprisonment for a term not exceeding seven years, or by a fine not exceeding AED 300,000 (UAE dirhams three hundred thousand) and not less than AED 30,000 (UAE dirhams thirty thousands), in addition to confiscation of the Proceeds, or the equivalent thereof, if such Proceeds were wholly or partially converted into, or combined with, other Property derived from lawful sources.

### **Article (14)**

Whoever violates the provisions of Article (3) of this law shall be punished by a fine not less than AED 300,000 (UAE dirhams three hundred thousand), and not exceeding AED 1,000,000 (UAE dirhams one million), in addition to confiscation of the Proceeds, or Property of value equivalent thereto, or the equivalent of those Proceeds if the latter were wholly or partially converted into, or combined with other property derived from lawful sources.

### **Article (15)**

Chairmen, directors, managers and employees of Financial Institutions or Other Financial, Commercial and Economic Establishments who know of, yet fail to report to the Unit stated in Article (7) hereof any act that occurred within their establishments and was related to the Money Laundering offence, shall be punished by imprisonment or by a fine not exceeding AED 100,000 (UAE dirhams hundred thousand) and not less than AED 10,000 (UAE dirhams ten thousand) or by both penalties.

### **Article (16)**

Whoever informs any person that his transactions are being scrutinized for possible involvement in suspicious operations, or that security authorities or other competent authorities are investigating his possible involvement in suspicious operations, shall be punished by imprisonment for a term not exceeding one year, or by a fine not exceeding AED 50,000 (UAE dirhams fifty thousand) and not less than AED 5,000 (UAE dirhams five thousands) or by both penalties.

### **Article (17)**

The maximum penalty prescribed for false notification shall be imposed on whoever notifies the competent authorities, in bad faith, of the commission of the Money Laundering offence, with intent to cause damage to another person.

### **Article (18)**

Whoever violates provisions of Article (6) hereof shall be punished by a fine of not less than AED 2,000 (UAE dirhams two thousand) and not exceeding AED 10,000 (AED ten thousand).

Amounts that arise from such violation shall be attached, and unless proven to be associated with another offence, shall be released only by a Public Prosecution Order.

### **Article (19)**

Whoever violates any of the other provisions herein shall be punished by imprisonment or by fine not exceeding AED 100,000 and not less than AED 10,000.

### **Article (20)**

Financial Institutions and Other Financial, Commercial and Economic Establishments, as well as their directors, employees and authorized representatives shall be immune from any criminal, civil or administrative liability, which may result from providing required information, or breaking a restriction imposed by a legislative, contractual, regulatory or administrative provision, for safeguarding confidentiality, unless such reporting was proved to have been done in bad faith.

## **Chapter Four International Cooperation**

### **Article (21)**

The competent judicial authority may, as per request of a judicial authority in another country to which the State is bound by an approved treaty and provided the act is established as a criminal offence in the State, or on condition of reciprocity, order the pursuit, freezing or provisional attachment of Property or Proceeds derived from or Instrumentalities used in a Money Laundering offence.

### **Article (22)**

Any ruling or judicial Order providing for the confiscation of Property, Proceeds or Instrumentalities relating to Money Laundering offences, issued by a court or a competent judicial authority in a country to which the State is bound by a ratified treaty, may be recognized.

## **Chapter Five General Provisions**

### **Article (23)**

The Council of Ministers shall, upon proposal by the Committee and presentations by the Minister, issue the executive regulations for the provisions of this law.

### **Article (24)**

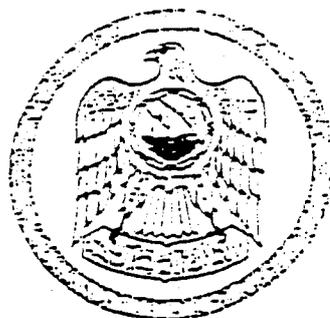
Any provision contrary to or contravening the provisions of this law shall be repealed.

### **Article (25)**

This law shall be published in the Official Gazette and shall come into force as from the date of publication thereof.

**Zayed Bin Sultan Al Nahyan  
President of the United Arab Emirates**

*Promulgated by us at the Presidential Court in Abu Dhabi  
On: 8 Dhilqaida 1422 Hijri  
Corresponding To: 22 January 2002*



# الإمارات العربية المتحدة الجريدة الرسمية

العدد ثلاثمائة وستة وستون - السنة الثانية والثلاثون - ذو القعدة ١٤٢٢ هـ - فبراير ٢٠٠٢ م

## قانون اتحادي رقم (٤) لسنة ٢٠٠٢م في شأن تجريم غسل الأموال.

نحن زايد بن سلطان آل نهيان رئيس دولة الإمارات العربية المتحدة  
بعد الإطلاع على الدستور ،

وعلى القانون الاتحادي رقم (١) لسنة ١٩٧٢ بشأن اختصاصات الوزارات  
وصلاحيات الوزراء والقوانين المعدلة له ،

وعلى القانون الاتحادي رقم (١٠) لسنة ١٩٨٠ في شأن المصرف المركزي  
والنظام النقدي وتنظيم المهنة المصرفية والقوانين المعدلة له ،

وعلى قانون العقوبات الصادر بالقانون الاتحادي رقم (٣) لسنة ١٩٨٧ ،

وعلى قانون الإجراءات الجزائية الصادر بالقانون الاتحادي رقم (٣٥) لسنة  
١٩٩٢ ،

وعلى القانون الاتحادي رقم (١٤) لسنة ١٩٩٥ في شأن مكافحة المواد المخدرة  
والمؤثرات العقلية ،

وعلى المرسوم الاتحادي رقم (٥٥) لسنة ١٩٩٠ بالموافقة على الانضمام إلى  
اتفاقية الأمم المتحدة لمكافحة الاتجار غير المشروع في المخدرات والمؤثرات  
العقلية لعام ١٩٨٨ ،

وبناء على ما عرضه وزير المالية والصناعة، وموافقة مجلس الوزراء ، وموافقة  
المجلس الوطني الاتحادي وتصديق المجلس الأعلى للإتحاد ،

أصدرنا القانون الآتي :-

### تعريف

#### المادة (١)

في تطبيق أحكام هذا القانون تكون للكلمات والعبارات التالية المعاني الواردة أمام  
كل منها ما لم يدل سياق النص على خلاف ذلك :

الدولة : دولة الإمارات العربية المتحدة .

التوزير : وزير المالية والصناعة .

المصرف المركزي : مصرف الإمارات العربية المتحدة المركزي .

المحافظ : محافظ المصرف المركزي .

اللجنة : اللجنة الوطنية لمواجهة غسل الأموال .

الأموال : الأصول أيضا كان نوعيا مادية كانت أو معنوية ، منقولة أو ثابتة ،

والمستندات أو الصكوك التي تثبت تملك الأصول أو أي حق متعلق بها .

غسل الأموال : كل عمل ينطوي على نقل أو تحويل أو إيداع أموال أو إخفاء أو

تمويه حقيقة تلك الأموال المتحصلة من إحدى الجرائم المنصوص عليها

في البند (٢) من المادة (٢) من هذا القانون .

المتحصلات : أية أموال ناتجة بطريق مباشر أو غير مباشر من ارتكاب أية جريمة

من الجرائم المنصوص عليها في البند (٢) من المادة (٢) من هذا

القانون .

التجميد أو العجز : الحظر المؤقت على نقل الأموال أو تحويلها أو التصرف فيها

أو تحريكها بأمر يصدر من السلطة المختصة .

المصادرة : نزع ملكية الأموال بصورة دائمة بموجب حكم صادر من محكمة

مختصة .

الوسائط : أي شيء يستخدم أو يراد استخدامه بأي شكل في ارتكاب جريمة من

الجرائم المنصوص عليها في البند (٢) من المادة (٢) من هذا القانون .

المنشآت المالية : أي بنك أو شركة تمويل أو محل صرافة أو وسيط مالي ونقدي

أو أي منشأة أخرى مرخص لها من قبل المصرف المركزي سواء كانت

مبنية مبنية عامة أو خاصة .

المنشآت المالية الأخرى والتجارية والاقتصادية : المنشآت التي يتم ترخيصها

ومراقبتها من قبل جهات أخرى غير المصرف المركزي كالتأمين

والأسواق المالية وغيرها .

## الفصل الأول

### تعريف غسل الأموال

#### المادة (٢)

١. يعد مرتكباً جريمة غسل الأموال كل من أتى عمداً أو ساعد في أي من الأفعال التالية بالنسبة للأموال المتحصنة من أية جريمة من الجرائم المنصوص عليها في البند (٢) من هذه المادة :
  - أ - تحويل المتحصلات أو نقلها أو إيداعها بقصد إخفاء أو تمويه المصدر غير المشروع لها .
  - ب - إخفاء أو تمويه حقيقة المتحصلات ، أو مصدرها ، أو مكانها أو طريقة التصرف فيها أو حركتها أو الحقوق المتعلقة بها أو ملكيتها .
  - ج - اكتساب أو حيازة أو استخدام تلك المتحصلات .
٢. لأغراض هذا القانون تكون الأموال هي المتحصلة من الجرائم الآتية :
  - أ - المخدرات والمؤثرات العقلية .
  - ب - الخطف والقرصنة والإرهاب .
  - ج - الجرائم التي تقع بالمخالفة لأحكام قانون البيئة .
  - د - الاتجار غير المشروع في الأسلحة النارية والذخائر .
  - هـ - جرائم الرشوة والاختلاس والإضرار بالعمال العام .
  - و - جرائم الاحتيال وخيانة الأمانة وما يتصل بها .
  - ز - أية جرائم أخرى ذات الصلة والتي تنص عليها الاتفاقيات الدولية التي تكون الدولة طرفاً فيها .

#### المادة (٣)

تكون المنشآت المالية والمنشآت المالية الأخرى والتجارية والاقتصادية العامة في الدولة مسؤولة جنائياً عن جريمة غسل الأموال إذا ارتكبت بإسمها أو لحسابها عمداً وذلك دون إخلال بالجزاءات الإدارية المنصوص عليها في القانون .

## تفصل تثنى

### التدابير الحفات الحوسمة و اختصاصاتها

#### المادة (٤)

للمصرف المركزي أن يأمر وفقا لهذا القانون بتجميد الأموال التي يشبه بها لدى المنشآت المالية لمدة لا تزيد على (٧) أيام .  
وللنسيابة العامة أن تأمر بالتحفظ على الأموال أو المتحصلات أو الوسائط المشبه بها وفق الإجراءات المتبعة لديها .  
وللمحكمة المختصة أن تأمر بالحجز التحفظي لمدة غير محددة لأية أموال أو متحصلات أو وسائط إذا كانت ناتجة عن جريمة غسل أموال أو مرتبطة بها .

#### المادة (٥)

١. مع عدم الإخلال بما نص عليه في المادة (٤) من هذا القانون لا يتم إقامة الدعوى الجزائية على مرتكب إحدى الجرائم المنصوص عليها في هذا القانون إلا من النائب العام .
٢. لا يتم تنفيذ قرارات التحفظ والحجز التحفظي على الأموال لدى المنشآت المالية إلا عن طريق المصرف المركزي .

#### المادة (٦)

يحدد المصرف المركزي الحد الأعلى للمبالغ التي يسمح بإدخالها إلى الدولة نقدا دون الحاجة إلى الإفصاح عنها ، ويخضع ما زاد عنها إلى نظام الإفصاح الذي يضعه المصرف المركزي .

#### المادة (٧)

تنشأ بالمصرف المركزي " وحدة معلومات مالية " لمواجهة غسل الأموال والحالات المشبوهة ترسل لها تقارير المعاملات المشبوهة من كافة المنشآت المالية والمنشآت المالية الأخرى والتجارية والاقتصادية ذات الصلة ونحدد اللجنة نموذج تقرير المعاملات المشبوهة وطريقة إرساله إليها ، وعليها أن تضع المعلومات

المستوفرة لديها تحت تصرف جهات تطبيق القانون تسهيلات للتحقيقات التي تقوم  
بها ، ويمكن لهذه الوحدة أن تتبادل مع الوحدات المشابهة في الدول الأخرى  
معلومات تقارير الحالات المشبوهة عملا بالاتفاقيات الدولية التي تكون الدولة  
طرفا فيها أو بشرط المعاملة بالمثل .

#### المادة (٨)

١. تتولى الوحدة المنصوص عليها في المادة (٧) من هذا القانون بعد دراسة  
الحالات المنبئة إليها إبلاغ النيابة العامة لاتخاذ الإجراءات اللازمة .
٢. إذا ورد البلاغ بحالات غسل أموال إلى النيابة العامة مباشرة فعليها اتخاذ  
الإجراءات اللازمة بعد استطلاع رأي الوحدة المذكورة فيما تضمنه البلاغ .

#### المادة (٩)

يشكل الوزير لجنة برئاسة المحافظ تعنى بمواجهة غسل الأموال في الدولة  
تسمى " اللجنة الوطنية لمواجهة غسل الأموال " تتكون من ممثل أو أكثر عن  
الجهات التالية بناء على ترشيحها :

- المصرف المركزي .
- وزارة الداخلية .
- وزارة العدل والشئون الإسلامية والأوقاف .
- وزارة المالية والصناعة .
- وزارة الاقتصاد والتجارة .
- الجهات المعنية بإصدار الرخص التجارية والصناعية .
- مجلس الجمارك في الدولة .

#### المادة (١٠)

تختص اللجنة بما يأتي :

- اقتراح الأنظمة والإجراءات الخاصة بمواجهة غسل الأموال في الدولة .
- تسهيل تبادل المعلومات والتنسيق بين الجهات الممثلة فيها .

- تمثيل الدولة في المحافل الدولية المتعقبة بمواجهة غسل الأموال .
  - اقتراح اللوحة التنظيمية الخاصة بعمل اللجنة .
  - أية أمور أخرى تحال إليها من قبل الجهات المختصة بالدولة .
- وتحدد مكافأة أعضاء اللجنة بقرار من مجلس إدارة المصرف المركزي ، كما تحدد اللوحة التنظيمية مواعيد وطريقة عمل اللجنة .

#### المادة (١١)

على الجهات المعنية بالترخيص والرقابة على المنشآت المالية والمنشآت المالية الأخرى والتجارية والاقتصادية أن تضع الآليات المناسبة للتأكد من إلتزام المنشآت المشار إليها بالأظمة واللوائح الخاصة بمواجهة غسل الأموال في الدولة بما في ذلك رفع تقارير الحالات المشبوهة فور حدوثها إلى الوحدة المشار إليها في المادة (٧) من هذا القانون .

#### المادة (١٢)

على جميع الجهات أن تعامل المعلومات التي تحصل عليها والمتعلقة بالجرائم المنصوص عليها في هذا القانون بالسرية ولا تكشف سريتها إلا بالقدر الذي يكون ضروريا لاستخدامها في التحقيقات أو الدعاوى أو القضايا المتعلقة بمخالفة أحكام هذا القانون .

#### الفصل الثالث

#### العقوبات

#### المادة (١٣)

يعاقب كل من يرتكب أحد الأفعال المنصوص عليها في البند (١) من المادة (٢) من هذا القانون بالحبس لمدة لا تزيد على سبع سنوات أو بالغرامة التي لا تجاوز (٢٠٠.٠٠٠) ثلاثمائة ألف درهم ولا تقل عن (٣٠.٠٠٠) ثلاثين ألف درهم أو بالعقوبتين معاً مع مصادرة المتحصلات أو ممتلكات تعادل قيمتها قيمة تلك المتحصلات أو ما يعادل تلك المتحصلات إذا حولت أو بدلت جزئياً أو كلياً إلى ممتلكات أخرى أو اختلطت بممتلكات أخرى اكتسبت من مصادر مشروعة .

المادة (١٤)

يعاقب كل من يخالف حكم المادة (٣) من هذا القانون بالغرامة التي لا تقل عن (٣٠٠٠٠٠ ر.د.) ثلاثمائة ألف درهم ولا تزيد على (١٠٠٠٠٠٠ ر.د.) مليون درهم ، مع مصادرة المتحصلات أو مستلكات تعادل قيمتها قيمة تلك المتحصلات أو ما يعادل تلك المتحصلات إذا حولت أو بدلت جزئياً أو كلياً إلى مستلكات أخرى أو اختلطت بمستلكات أخرى اكتسبت من مصادر مشروعة .

المادة (١٥)

يعاقب بالحبس أو بالغرامة التي لا تجاوز (١٠٠٠٠٠٠ ر.د.) مائة ألف درهم ولا تقل عن (١٠٠٠٠٠٠ ر.د.) عشرة آلاف درهم أو بالعقوبتين معا رؤساء وأعضاء مجالس الإدارة ومدراء وموظفو المنشآت المالية والمنشآت المالية الأخرى والتجارية والاقتصادية الذين علموا وامتنعوا عن إبلاغ الوحدة المنصوص عليها في المادة (٧) من هذا القانون بأي فعل وقع في منشأتهم وكان متصلاً بجريمة غسل الأموال .

المادة (١٦)

يعاقب كل من يقوم بإخطار أي شخص بأن معاملته قيد المراجعة بشأن قيامه بعمليات مشبوهة أو أن السلطات الأمنية وغيرها من الجهات المختصة تقوم بالتحري عن قيامه بعمليات مشبوهة بالحبس مدة لا تجاوز سنة أو بالغرامة التي لا تجاوز (٥٠٠٠٠٠ ر.د.) خمسين ألف درهم ولا تقل عن (٥٠٠٠٠ ر.د.) خمسة آلاف درهم أو بالعقوبتين معا .

المادة (١٧)

يعاقب بالحد الأقصى لجريمة البلاغ الكاذب كل من يتقدم بسوء نية ببلاغ للجهات المختصة بارتكاب جريمة غسل أموال بقصد الإضرار بشخص آخر .

المادة (١٨)

يعاقب كل من يخالف حكم المادة (٦) من هذا القانون بغرامة لا تزيد على (١٠٠٠٠) عشرة آلاف درهم ولا تقل عن (٢٠٠٠) ألفي درهم .  
ويتم الاحتفاظ على المبالغ موضوع المخالفة إلى أن يفرج عنها بقرار من النيابة العامة ما لم يثبت ارتباطها بجريمة أخرى .

المادة (١٩)

يعاقب بالحبس أو بالغرامة التي لا تزيد على (١٠٠٠٠٠) مائة ألف درهم ولا تقل عن (١٠٠٠٠) عشرة آلاف درهم كل من يخالف أي حكم آخر من أحكام هذا القانون .

المادة (٢٠)

تعفى المنشآت المالية والمنشآت المالية الأخرى والتجارية والاقتصادية وأعضاء مجالس إدارتها وموظفوها ومثلوها المرخص لهم قانونا من المسؤولية الجنائية أو المدنية أو الإدارية التي يمكن أن تترتب عن تقديم المعلومات المطلوبة أو عن الخروج على أي قيد مفروض لضمان سرية المعلومات بنص تشريعي أو عقدي أو نظامي أو إداري وذلك ما لم يثبت أن الإبلاغ قد تم بسوء نية بقصد الإضرار بصاحب المعاملة .

## الفصل الرابع

التعاون الدوليالمادة (٢١)

يجوز للسلطة القضائية المختصة بناء على طلب من سلطة قضائية بدولة أخرى تربطها بالدولة اتفافية مصدق عليها أو بشرط المعاملة بالمثل إذا كان الفعل الإجرامي معاقبا عليه في الدولة ، أن تأمر بتعقب أو تجميد أو وضع الحجز التحفظي على الأموال أو المتحصلات أو الوسائط الناتجة عن جريمة غسل الأموال أو مستخدمة فيها .

المادة (٢٢)

يجوز الاعتراف بأي حكم أو أمر قضائي ينص على مصادرة أموال أو متحصلات أو وسائل متعلّقة بجرائم غسل الأموال يصدر من محكمة أو سلطة قضائية مختصة بدولة أخرى تربطها بالدولة اتفاقية مصدق عليها .

## الفصل الخامس

أحكام عامةالمادة (٢٣)

يصدر مجلس الوزراء اللوائح التنفيذية لأحكام هذا القانون ، بناء على اقتراح اللجنة وعرض الوزير .

المادة (٣٤)

يلغى كل حكم يخالف أو يتعارض مع أحكام هذا القانون .

المادة (٢٥)

ينشر هذا القانون في الجريدة الرسمية ويعمل به من تاريخ نشره .

زايد بن سلطان آل نهيان  
رئيس دولة الإمارات العربية المتحدة

صدر عنا في أبوظبي :  
بتاريخ : ٨ ذي القعدة ١٤٢٢ هـ  
الموافق : ٢٢ يناير ٢٠٠٢ م



# الإمارات العربية المتحدة الجريدة الرسمية

العدد اربعمائة وسبعة عشر - السنة الرابعة والثلاثون - جمادي الآخرة ١٤٢٥هـ - أغسطس ٢٠٠٤م

مرسوم بقانون إتحادي رقم (١) لسنة ٢٠٠٤م  
في شأن  
مكافحة الجرائم الإرهابية

نحن زايد بن سلطان آل نهيسان  
رئيس دولة الإمارات العربية المتحدة ،  
بعد الإطلاع على الدستور ،  
وعلى القانون الاتحادي رقم (١) لسنة ١٩٧٢ بشأن اختصاصات الوزارات وصلاحيات  
الوزراء والقوانين المعدلة له ،  
وعلى القانون الاتحادي رقم (١٠) لسنة ١٩٧٣ في شأن المحكمة الاتحادية العليا  
والقوانين المعدلة له ،  
وعلى القانون الاتحادي رقم (١١) لسنة ١٩٧٦ في شأن الأسلحة النارية والذخائر  
والمتفجرات والقوانين المعدلة له ،  
وعلى القانون الاتحادي رقم (١٠) لسنة ١٩٨٠ في شأن المصرف المركزي والنظام  
النقدي وتنظيم المهنة المصرفية والقوانين المعدلة له ،  
وعلى قانون العقوبات الصادر بالقانون الاتحادي رقم (٣) لسنة ١٩٨٧ ،  
وعلى قانون الإجراءات الجزائية الصادر بالقانون الاتحادي رقم (٣٥) لسنة ١٩٩٢ ،  
وعلى القانون الاتحادي رقم (٤) لسنة ٢٠٠٢ في شأن تجزيم غسل الأموال ،  
وبناء على ما عرضه وزير العدل والشؤون الإسلامية والأوقاف ، ووزير الداخلية  
وموافقة مجلس الوزراء ،

أصدرنا المرسوم بقانون الآتي :

مادة (١)

في تطبيق أحكام هذا المرسوم بقانون يقصد بالكلمات والعبارات التالية المعاني  
المبينة قرين كل منها ، ما لم يقتض السياق معنى آخر:  
الدولة: دولة الإمارات العربية المتحدة.  
الحكومة: الحكومة الاتحادية وحكومات الإمارات .  
الأموال العامة: العقارات والمنقولات المملوكة للدولة أو الأشخاص الاعتبارية العامة أو التي  
تكون مخصصة لمنفعة عامة.  
المرافق العامة: المشروعات التي تنشئها الحكومة أو تشرف على إدارتها والخدمات  
والأنشطة التي تقدمها بقصد تحقيق غرض من أغراض النفع العام  
لخدمة الجمهور.

الأسلحة التقليدية: الأسلحة النارية والذخائر والمتفجرات المنصوص عليها في قانون الأسلحة النارية والذخائر والمتفجرات .

الأسلحة غير التقليدية: الأسلحة والمواد النووية والكيميائية والبيولوجية.

الأمسوال: الأصول أياً كان نوعها مادية كانت أو معنوية، منقولة أو غير منقولة، بما في ذلك العملة الوطنية والعملات الأجنبية والأوراق المالية والتجارية، والمستندات أو الصكوك التي تثبت تملك الأصول أو أي حق متعلق بها.

المتحصلات: الأموال الناتجة أو العائدة بطريق مباشر أو غير مباشر من ارتكاب أي جريمة من الجرائم المنصوص عليها في هذا القانون.

التجميد: وقف الحسابات أو الأرصدة والحظر المؤقت على تحريك الأموال أو تحويلها أو استبدالها أو التصرف فيها.

التحفظ: الحظر القضائي على نقل الأموال أو تحريكها أو تحويلها أو استبدالها والتمنع من إدارتها أو التصرف فيها أو الحجز عليها.

المصادرة: مصادرة الأموال لصالح الخزينة العامة بحكم قضائي.

المنشآت المالية: البنوك أو شركات التمويل أو محلات الصرافة أو الوسطاء الماليون والنقديون أو أية منشأة مالية أخرى مرخص لها بالعمل في الدولة من قبل المصرف المركزي ، سواء كانت مملوكة ملكية عامة أم خاصة .

المنشآت المالية الأخرى والتجارية والاقتصادية: المنشآت التي يتم ترخيصها ومراقبتها من قبل جهات أخرى غير المصرف المركزي كمنشآت التأمين والأسواق المالية.

الشخص المعنوي: أحد الأشخاص الاعتبارية العامة أو الخاصة التي أضفى عليها المشرع الشخصية القانونية، فيما عدا مصالح الحكومة ودوائرها الرسمية والهيئات والمؤسسات العامة.

## مادة (٢)

يقصد بالعمل الإرهابي في تطبيق أحكام هذا المرسوم بقانون كل فعل أو امتناع عن فعل يلجأ إليه الجاني ، تنفيذاً لمشروع إجرامي فردي أو جماعي ، بهدف إيقاع الرعب بين الناس أو ترويعهم، إذا كان من شأن ذلك الإخلال بالنظام العام أو تعريض سلامة المجتمع وأمنه للخطر أو إيذاء الأشخاص أو تعريض حياتهم أو حرياتهم أو أمنهم للخطر بمن في ذلك ملوك ورؤساء الدول والحكومات والوزراء وأفراد عائلاتهم وأي ممثل أو موظف رسمي لدولة أو لمنظمة دولية ذات صفة حكومية وأفراد أسرهم الذين يعيشون في كنفهم المقررة لهم الحماية وفقاً للقانون الدولي أو إلحاق الضرر بالبيئة أو بأحد المرافق أو الأملاك العامة أو الخاصة أو احتلالها أو الاستيلاء عليها أو تعريض أحد الموارد الطبيعية للخطر.

### مادة (٣)

يعاقب بالإعدام أو السجن المؤبد كل من أنشأ أو أسس أو نظم أو أدار جمعية أو هيئة أو منظمة أو مركز أو جماعة أو عصابة، أو تولى زعامة أو قيادة فيها بغرض ارتكاب أحد الأعمال الإرهابية المنصوص عليها في هذا القانون.

وتقضي المحكمة بحل الجمعيات أو الهيئات أو المنظمات أو المراكز المذكورة وإغلاق أمكنتها.

ويحكم في جميع الأحوال بمصادرة الأموال والأمتعة والأسلحة والأدوات والمستندات والأوراق وغيرها مما يكون قد استعمل في ارتكاب الجريمة أو أعد لاستعماله فيها أو يكون موجوداً في الأمكنة المخصصة لإجتماع أعضاء هذه الجمعيات أو الهيئات أو المنظمات أو المراكز أو الجماعات أو العصابات.

كما تقضي المحكمة بمصادرة كل مال يكون متحصلاً من الجريمة أو يكون في الظاهر داخلاً ضمن أملاك المحكوم عليه إذا ثبت أن هذا المال مورد مخصص للتصرف منه على الجمعيات أو الهيئات أو المنظمات أو المراكز أو الجماعات أو العصابات المذكورة.

### مادة (٤)

يعاقب بالسجن المؤبد أو المؤقت كل من أمد الجمعيات أو الهيئات أو المنظمات أو المراكز أو الجماعات أو العصابات المذكورة في المادة السابقة بأية أموال أو أسلحة تقليدية أو غير تقليدية أو غيرها من المواد التي تعرض حياة الناس أو أموالهم للخطر أو مهمات أو مستندات صحيحة أو مزورة أو وسائل اتصال أو أية أدوات أخرى أو معلومات أو مشورة مما تعينها على تحقيق أغراضها مع علمه بذلك.

ويعاقب بذات العقوبة كل من قدم لروساء أو مديري أو أعضاء إحدى الجمعيات أو الهيئات أو المنظمات أو المراكز أو الجماعات أو العصابات سكناً أو ماوى أو مكاناً للاجتماع فيه أو غير ذلك من التسهيلات مع علمه بالغرض الذي ترمى إليه.

ويحكم في جميع الأحوال بمصادرة الأموال والأشياء محل الجريمة.

كما تقضي المحكمة بمصادرة متحصلات الجريمة، أو ممتلكات تعادل قيمتها إذا كانت المتحصلات قد حولت أو بدلت جزئياً أو كلياً أو اختلطت بممتلكات أخرى أكتسبت من مصادر مشروعة.

مادة ( ٥ )

يعاقب بالسجن المؤبد أو المؤقت كل من انضم إلى إحدى الجمعيات أو الهيئات أو المنظمات أو المراكز أو الجماعات أو العصابات المنصوص عليها في المادة (٣) من هذا المرسوم بقاتون أو شارك فيها بأية صورة مع علمه بأغراضها.  
وتكون العقوبة السجن المؤبد أو المؤقت الذي لا تقل مدته عن عشر سنوات إذا تلقى الجاني تدريبات عسكرية أو أمنية لدى أي من الهيئات أو المنظمات أو المراكز أو الجماعات أو العصابات المذكورة أو كان من أفراد القوات المسلحة أو الشرطة أو الأمن أو كان من أفراد الجمارك .

مادة ( ٦ )

يعاقب بالسجن المؤبد أو المؤقت الذي لا تقل مدته عن عشر سنوات كل من أكره أو حمل شخصاً على المشاركة أو الانضمام إلى أي من الجمعيات أو الهيئات أو المنظمات أو المراكز أو الجماعات أو العصابات المذكورة في المادة (٣) من هذا المرسوم بقاتون أو عمل على منعه من الانفصال عنها.  
وتكون العقوبة الإعدام إذا ترتب على فعل الجاني موت شخص.

مادة ( ٧ )

يعاقب بالسجن المؤبد أو المؤقت كل من درب شخصاً أو أكثر على استعمال الأسلحة التقليدية أو غير التقليدية أو وسائل الاتصال المنكية أو اللاسلكية أو الإلكترونية أو أية وسيلة اتصال أخرى أو علمه فنونا حربية أو أساليب قتالية أيا كانت ، بقصد الاستعانة به لتنفيذ عمل إرهابي.

مادة ( ٨ )

يعاقب بالحبس مدة لا تزيد على خمس سنوات كل من روج بالقول أو الكتابة أو بأية طريقة أخرى لأي من الأفعال أو الأغراض المنصوص عليها في هذا المرسوم بقاتون. ويعاقب بذات العقوبة كل من حاز بالذات أو بالوساطة أو أحرز أية محررات أو مطبوعات أو تسجيلات أيا كان نوعها تتضمن تحبيذاً أو ترويحاً لعمل إرهابي إذا كانت معدة للتوزيع أو لإطلاع الغير عليها، وكل من حاز أو أحرز أية وسيلة من وسائل الطبع أو التسجيل أو العلاقات استعملت أو أعدت للاستعمال ولو بصفة مؤقتة لطبع أو تسجيل أو إذاعة شيء مما ذكر.  
ويحكم في جميع الأحوال بمصادرة الأموال والأشياء محل الجريمة وأدوات ارتكابها.

مادة (٩)

يعاقب بالسجن المؤبد كل من سعى لدى دولة أجنبية أو لدى جمعية أو هيئة أو منظمة أو مركز أو جماعة أو عصابة، يكون مقرها خارج الدولة أو أحد ممن يعملون لمصلحة أي منها، وكذلك كل من تخابر معها أو معه للقيام بأي عمل من أعمال الإرهاب داخل الدولة أو في الخارج ضد ممتلكاتها أو مؤسساتها أو موظفيها أو دبلوماسيتها أو مواطنيها، أو الاشتراك في ارتكاب شيء مما ذكر.

وتكون العقوبة الإعدام إذا وقعت الجريمة موضوع السعي أو التخابر.

مادة (١٠)

يعاقب بالسجن المؤبد أو المؤقت كل مواطن تعاون أو التحق بقوات أو ميليشيات مسلحة أو جمعية أو هيئة أو منظمة أو مركز أو جماعة أو عصابة إرهابية أيا كانت تسميتها أو شكلها أو أهدافها، يكون مقرها خارج الدولة، وتتخذ من الإرهاب أو التدريب العسكري وسائل لتحقيق أغراضها حتى ولو كانت أعمالها غير موجهة إلى الدولة.

ويعاقب بذات العقوبة كل من وجد في الدولة بعد ارتكاب أحد الأفعال المنصوص عليها في الفقرة السابقة، أو ارتكب في الخارج فعلاً منها وكان موجهاً إلى الدولة أو مضرراً بمصالحها.

وتكون العقوبة السجن المؤبد أو المؤقت الذي لا تقل مدته عن عشر سنوات إذا تلقى الجاني تدريبات عسكرية أو أمنية فيها.

وتكون العقوبة السجن المؤبد إذا شارك الجاني في أي من عملياتها الإرهابية.

مادة (١١)

يعاقب بالسجن المؤبد أو المؤقت كل من دخل مقر إحدى البعثات الدبلوماسية أو القنصلية أو مقر إحدى الهيئات والمنظمات الدولية في الدولة عنوة أو بمقاومة السلطات المختصة فيها بهدف ارتكاب عمل إرهابي.

وتكون العقوبة السجن المؤبد إذا وقع الفعل مقترناً بطرف استعمال السلاح أو وقع من أكثر من شخص.

فإذا ترتب على الفعل وفاة شخص كانت العقوبة الإعدام.

مادة (١٢)

يعاقب بالسجن المؤبد أو المؤقت كل من اكتسب أو قدم أو جمع أو نقل أو حول أموالاً، بطريق مباشر أو غير مباشر، بقصد استخدامها أو مع العلم بأنها سوف تستخدم كلها أو بعضها في تمويل أي من الأعمال الإرهابية المنصوص عليها في هذا المرسوم بقانون داخل الدولة أو خارجها سواء وقع العمل المذكور أو لم يقع.

ويحكم بمصادرة الأموال أو الممتلكات محل الجريمة ومتحصلاتها أو ممتلكات تعادل قيمتها إذا حولت أو بدلت كلياً أو جزئياً أو اختلطت بممتلكات أخرى اكتسبت من مصادر مشروعة.

مادة (١٣)

يعاقب بالسجن المؤبد أو المؤقت كل من نقل أو حول أو أودع أموالاً لحساب شخص آخر، أو أخفى أو موه طبيعة هذه الأموال أو حقيقة مصدرها أو مكانها، وكذا كل من حاز هذه الأموال أو تعامل بها بطريق مباشر أو غير مباشر إذا كان ذلك بقصد استخدامها أو مع العلم بأنها سوف تستخدم كلها أو بعضها في تمويل أي من الأعمال الإرهابية المنصوص عليها في هذا القانون داخل الدولة أو خارجها سواء وقع العمل المذكور أو لم يقع.

ويحكم بمصادرة الأموال محل الجريمة ومتحصلاتها أو ممتلكات تعادل قيمتها إذا حولت أو بدلت كلياً أو جزئياً أو اختلطت بممتلكات أخرى اكتسبت من مصادر مشروعة.

مادة (١٤)

يعاقب بالسجن المؤبد أو المؤقت كل من صنع أو حضر أو جهز أو استورد أو جلب أو حاز أو أحرز أسلحة غير تقليدية أو الأجزاء التي تستعمل في صنعها أو تحضيرها أو تجهيزها أو نقلها أو شرع في نقلها عن طريق البريد، أو إحدى وسائل النقل العام أو الخاص، أو أي وسيلة أخرى، وكان ذلك بقصد استخدامها في ارتكاب أحد الأعمال الإرهابية المنصوص عليها في هذا القانون.

وتكون العقوبة السجن المؤبد إذا كان الجاني قد اختلس أو سرق أياً من تلك الأسلحة أو حصل عليها بإحدى وسائل الخداع أو الاحتيال أو إذا اتصف بصفة كاذبة أو تزياً بدون وجه حق بزي موظف حكومي أو دولي، أو استعمل محرراً مزوراً في سبيل التوصل إلى حيازتها.

وتكون العقوبة الإعدام أو السجن المؤبد إذا هدد الجاني باستخدام تلك الأسلحة للقتل أو إحداث إصابات خطيرة بالأشخاص أو تدمير الأملاك أو المرافق العامة أو الخاصة، بقصد التأثير على السلطات العامة بالدولة أو بدولة أخرى أو منظمة دولية في أداؤها لأعمالها أو الحصول منها على منفعة أو مزية من أي نوع.

وتكون العقوبة الإعدام إذا ترتب على فعل الجاني موت شخص.

مادة (١٥)

يعاقب بالسجن المؤبد كل من اختطف بأية طريقة وسيلة من وسائل النقل الجوي ، أو البري أو المائي، بهدف ارتكاب عمل إرهابي.  
وتكون العقوبة السجن المؤبد إذا ترتب على الفعل المذكور جرح أو إصابة أي شخص كان داخل الوسيلة أو خارجها ، أو إذا قاوم الجاني بالقوة أو العنف السلطات العامة أثناء تادية وظيفتها في استعادة الوسيلة من سيطرته .  
وتكون العقوبة الإعدام إذا ترتب على فعل الجاني موت شخص داخل الوسيلة أو خارجها.

مادة (١٦)

يعاقب بالسجن المؤبد كل من أتلّف أو عرض عمداً للخطر أو عطل وسيلة من وسائل النقل الجوي أو البري أو المائي أو إحدى منشآت الملاحة الجوية أو البرية أو المائية، أو عرقل الخدمات فيها وكان ذلك بهدف ارتكاب عمل إرهابي .  
وتكون العقوبة السجن المؤبد إذا ترتب على الفعل المذكور جرح أو إصابة أي شخص كان داخل الوسيلة أو المنشأة أو خارجها .  
وتكون العقوبة الإعدام إذا ترتب على فعل الجاني موت شخص داخل الوسيلة أو المنشأة أو خارجها.  
ويحكم على الجاني بغرامة تعادل ضعف قيمة الأشياء التي أتلّفها.

مادة (١٧)

يعاقب بالسجن المؤبد أو المؤقت كل من قبض على شخص في غير الأحوال المصرح بها في القوانين أو اللوائح ، أو احتجزه أو حبسه كرهينة أو هدد باستمرار احتجازه أو حبسه وكان ذلك بهدف ارتكاب عمل إرهابي، بقصد التأثير على السلطات العامة بالدولة أو بدولة أخرى أو منظمة دولية في أداؤها لأعمالها أو الحصول منها على منفعة أو مزية من أي نوع.  
وتكون العقوبة السجن المؤبد إذا كان المجني عليه من ملوك ورؤساء الدول والحكومات والوزراء وأفراد عائلاتهم وأي ممثل أو موظف رسمي لدولة أو لمنظمة دولية ذات صفة حكومية وأفراد أسرهم الذين يعيشون في كنفهم المقررة لهم الحماية وفقاً للقانون الدولي ، أو إذا اتصف الجاني في سبيل ارتكابها بصفة كاذبة أو تريباً بدون وجه حق بزي موظف حكومي أو دولي ، أو ابرز محرراً مزوراً أو إذا نشأ عن الفعل جرح أو إصابة ، أو إذا قاوم أفراد السلطة العامة أثناء قيامهم بتحرير الرهينة أو المقبوض عليه .  
وتكون العقوبة الإعدام إذا ترتب على فعل الجاني موت شخص.

مادة (١٨)

يعاقب بالسجن المؤقت كل من تعدى على أحد القائمين على تنفيذ أحكام هذا المرسوم بقاتون أثناء تأديته لواجباته أو بسببها أو قاومه بالقوة أو العنف أو بالتهديد باستخدامها .  
وتكون العقوبة السجن المؤبد إذا نشأ عن التعدي أو المقاومة عاهة مستديمة ، أو كان الجاني يحمل سلاحاً ، أو قام بخطف أو احتجاز أي من القائمين على تنفيذ أحكام هذا المرسوم بقاتون أو زوجه أو أحد أصوله أو فروعه .  
وتكون العقوبة الإعدام إذا نتج عن التعدي أو المقاومة أو الخطف أو الاحتجاز موت شخص .

مادة (١٩)

يعاقب بالإعدام كل من استعمل متلجرات أو أسلحة غير تقليدية في ارتكاب أي من الجرائم المنصوص عليها في الفقرات الأولى من المواد (١٥) و(١٦) و(١٧) من هذا المرسوم بقاتون .

مادة (٢٠)

يعاقب بالسجن مدة لا تزيد على عشر سنوات كل من حرض على ارتكاب جريمة من الجرائم المنصوص عليها في هذا المرسوم بقاتون إذا لم يترتب على هذا التحريض أثر .

مادة (٢١)

يعاقب بالسجن المؤقت كل من اشترك في اتفاق جنائي الغرض منه ارتكاب جريمة من الجرائم المنصوص عليها في هذا القانون أو اتخاذها وسيلة للوصول إلى الغرض المقصود من الاتفاق .  
ويعاقب بالسجن المؤبد كل من حرض على الاتفاق أو كان له شأن في إدارة حركة هذا الاتفاق .  
ويعفى من العقوبات المقررة في هذه المادة كل من بادر من الجناة بإبلاغ السلطات بوجود الاتفاق ويمن اشتركوا فيه قبل البدء في ارتكاب أية جريمة من الجرائم المنصوص عليها في هذه المادة .

مادة (٢٢)

يعاقب بالسجن مدة لا تزيد على خمس سنوات كل من دعا آخر إلى الانضمام إلى اتفاق يكون الغرض منه ارتكاب جريمة من الجرائم المنصوص عليها في هذا المرسوم بقاتون إذا لم تقبل دعوته .

مادة (٢٣)

يعاقب بالسجن مدة لا تزيد على خمس سنوات كل من علم بوجود مشروع لارتكاب إحدى الجرائم المنصوص عليها في هذا المرسوم بقانون ولم يبلغه إلى السلطات المختصة . ويجوز الإعفاء من هذه العقوبة إذا كان من امتنع عن الإبلاغ زوجاً للجاني أو من أصوله أو فروعه.

مادة (٢٤)

يعفى من العقوبات المقررة للجرائم المنصوص عليها في هذا المرسوم بقانون كل من يادر من الجناة بإبلاغ السلطات القضائية أو الإدارية بما يعلمه عنها قبل البدء في تنفيذ الجريمة . ويجوز للمحكمة الإعفاء من العقوبة أو التخفيف منها إذا حصل البلاغ بعد تمام الجريمة ويمكن الجاني السلطات المختصة أثناء التحقيق من القبض على مرتكبي الجريمة الآخرين ، أو على مرتكبي جريمة أخرى معاملة لها في النوع والخطورة.

مادة (٢٥)

مع عدم الإخلال بأية عقوبة أشد ينص عليها قانون آخر، يعاقب بغرامة لا تقل عن مائة ألف درهم ولا تزيد على خمسمائة ألف درهم كل شخص معنوي ارتكب ممثلوه أو مديروه أو وكلاؤه أو ساهموا في ارتكاب إحدى الجرائم المنصوص عليها في هذا المرسوم بقانون إذا وقعت باسمه أو لحسابه . ويحكم بكل الشخص المعنوي وإغلاق المكان الذي يزاول فيه نشاطه ومصادرة الأموال والأشياء محل الجريمة أو بغرامة إضافية تعادل قيمتها في حالة تعذر ضبطها وذلك مع عدم المناس بحقوق الغير حسن النية. كما تقضي المحكمة بمصادرة متحصلات الجريمة أو ممتلكات تعادل قيمتها إذا حولت أو بدلت كلياً أو جزئياً أو اختلطت بممتلكات أخرى اكتسبت من مصادر مشروعة.

مادة (٢٦)

في تطبيق أحكام هذا المرسوم بقانون لا يترتب على تقرير مسئولية الشخص المعنوي استبعاد المسئولية الجنائية للأشخاص الطبيعيين الفاعلين الأصليين أو الشركاء عن ذات الوقائع التي تقوم بها الجريمة.

مادة (٢٧)

يعاقب بالسجن المؤقت لمدة لا تزيد على خمس سنوات كل من ارتكب تنفيذاً لغرض إرهابي إحدى الجرائم المنصوص عليها في الفقرة الأولى من كل من المادتين (١٩٠) و (٢٩٠) والمادة (٢٩٦) والفقرتين الأولى والثانية من المادة (٣٣٩) والمادة (٣٤٨) من قانون العقوبات.

ويعاقب بالسجن المؤبد أو المؤقت كل من ارتكب تنفيذاً لغرض إرهابي إحدى الجرائم المنصوص عليها في الفقرة الأولى من المادة (١٨٩) والفقرة الثانية من كل من المادتين (١٩٠) و (١٩٣) والمادة (١٩٥) والفقرة الأولى من المادة (١٩٦) والمادتين (٢٠٢) و (٣٠١) والفقرة الأولى من المادة (٢٩٧) والمواد (٣٠١) و (٣٠٢) و (٣٠٤) و (٣٣٦) و (٣٣٧) من قانون العقوبات.

ويعاقب بالسجن المؤبد كل من ارتكب تنفيذاً لغرض إرهابي إحدى الجرائم المنصوص عليها في الفقرة الأولى من المادة (١٩٣) والفقرة الثانية من كل من المادتين (١٩٦) و (٢٩٠) والمادة (٢٩٩) من قانون العقوبات.

ويعاقب بالإعدام كل من ارتكب تنفيذاً لغرض إرهابي الجريمة المنصوص عليها في المادة (٣٣٢) من قانون العقوبات.

مادة (٢٨)

مع عدم الإخلال بأحكام الفصل الثاني من الباب الثاني من الكتاب الأول من قانون العقوبات، تسري أحكام هذا المرسوم بقانون على كل من ارتكب إحدى الجرائم الواردة به خارج الدولة إذا تم ارتكابها:

- (أ) ضد أحد مواطني الدولة.
- (ب) ضد الأملاك العامة للحكومة في الخارج، بما في ذلك السفارات أو غيرها من الأماكن الدبلوماسية أو القنصلية التابعة لها.
- (ج) بهدف حمل الدولة على القيام بعمل أو الامتناع عنه.
- (د) على متن وسيلة مواصلات مسجلة لدى الدولة أو تحمل علمها.

كما تسري أحكام هذا المرسوم بقانون على كل من وجد في إقليم الدولة بعد أن ارتكب في الخارج إحدى الجرائم المنصوص عليها فيه والواردة في إحدى الاتفاقيات الدولية النافذة التي تكون الدولة طرفاً فيها ، وذلك في حالة عدم تسليمه .

مادة (٢٩)

تختص المحكمة الاتحادية العليا دون غيرها بالفصل في الجرائم المنصوص عليها في هذا المرسوم بقانون ، والنظر في التظلمات الواردة في المادة (٣٣) من هذا المرسوم بقانون .

مسادة (٣٠)

يكون للنائب العام أو لمن يفوضه من المحامين العاملين أن يأمر مباشرة بالإطلاع أو الحصول على أية بيانات أو معلومات تتعلق بحسابات أو ودائع أو أمال أو خزائن أو تحويلات أو تحركات لأموال قامت دلالت كافية لدى النيابة العامة على أن لها علاقة بتمويل أو ارتكاب إحدى الجرائم المنصوص عليها في هذا المرسوم بقانون ، واقتضى كشف الحقيقة ذلك الإطلاع أو الحصول على تلك البيانات أو المعلومات لدى المصرف المركزي أو أية منشأة مالية أو تجارية أو اقتصادية أخرى.

مسادة (٣١)

يتم التجميد أو التحفظ بناء على أمر النائب العام لأية أموال أو أرصدة أو حسابات أو ممتلكات أو متحصلات يشتبه استعمالها في ارتكاب أو تمويل إحدى الجرائم المنصوص عليها في هذا المرسوم بقانون ، لحين الانتهاء من التحقيقات التي تجرى بشأنها.

مسادة (٣٢)

مع عدم الإخلال بنص المادة (٣١) من هذا المرسوم بقانون ، لمحافظ المصرف المركزي أو من يقوم بمقامه أن يأمر بالتجميد أو بالتحفظ لمدة لا تتجاوز سبعة أيام ، وذلك لأية أموال أو أرصدة أو حسابات يشتبه استعمالها في ارتكاب أو تمويل إحدى الجرائم المنصوص عليها في هذا المرسوم بقانون أو المتحصلات الناتجة عنها والمودعة في البنوك وغيرها من المنشآت المالية على أن يخطر النائب العام بذلك خلال سبعة أيام من تاريخ صدور الأمر ، وللنائب العام إلغاء الأمر الصادر من المحافظ أو الأمر باستمرار التجميد .

مسادة (٣٣)

لمن صدر ضده قرار النائب العام عملاً بأحكام المادتين (٣١) و (٣٢) من هذا المرسوم بقانون أن يتظلم منه أمام المحكمة المختصة ، فإذا رفض تظلمه فله أن يتقدم بتظلم جديد كلما انقضت ثلاثة أشهر من تاريخ القرار برفض تظلمه .  
ويكون التظلم بتقرير لدى المحكمة المختصة ، وعلى رئيس المحكمة أن يحدد جلسة لنظره يعلن بها المتظلم وكل ذي شأن ، وعلى النيابة العامة أن تقدم مذكرة برأيها في التظلم وتفصل المحكمة في التظلم خلال مدة لا تتجاوز أربعة عشر يوماً من تاريخ التقرير به ، وتصدر المحكمة قرارها بإلغاء القرار الصادر من النائب العام أو تعديله أو رفض التظلم .

مادة (٣٤)

للمحكمة المختصة أن تأمر بالتحفظ على الأموال أو الممتلكات أو المتحصلات لحين الانتهاء من المحاكمة .  
وفي جميع الأحوال لا يتم تنفيذ قرارات التحفظ أو تجميد الأموال لدى المنشآت المالية إلا عن طريق المصرف المركزي .

مادة (٣٥)

استثناء من أحكام قانون الإجراءات الجزائية ، يكون الأمر الصادر بالحبس الاحتياطي من النيابة العامة في الجرائم التي تنطبق عليها أحكام هذا المرسوم بقانون بعد استجواب المتهم لمدة أربعة عشر يوماً ، يجوز تمديد هذا المدة أخرى مماثلة إذا اقتضت مصلحة التحقيق ذلك ، على ألا تتجاوز ستة أشهر ، ولا يجوز مد هذه المدة إلا بأمر من المحكمة المختصة .

مادة (٣٦)

تتشأ بموجب هذا المرسوم بقانون لجنة تسمى "اللجنة الوطنية لمكافحة الإرهاب" يصدر بتشكيلها قرار من مجلس الوزراء وتتكون من ممثل عن كل من الجهات التالية بناء على ترشيحها:

- وزارة الخارجية .
- وزارة الداخلية .
- وزارة العدل والشئون الإسلامية والأوقاف .
- جهاز أمن الدولة .
- وزارة الدفاع .
- المصرف المركزي .
- الهيئة الاتحادية الجمركية .
- أية جهة أخرى يصدر بضمها قرار من مجلس الوزراء .

ويصدر مجلس الوزراء قراراً يحدد فيه رئاسة اللجنة ونظام عملها واجتماعاتها وآلية إصدار قراراتها وغير ذلك من الأمور التي تحتاج إليها لقيامها بمهامها .

مادة (٣٧)

تختص اللجنة بما يأتي :

- التنسيق بين الجهات المختصة بالدولة في جميع المسائل المتعلقة بمكافحة الإرهاب .
- تبادل المعلومات المتعلقة بآلية عملية تتصل بإحدى الجرائم المنصوص عليها في هذا المرسوم بقانون مع السلطات المختصة بالدولة .

- اقتراح التشريعات والأنظمة والإجراءات الخاصة بمكافحة الإرهاب.
- متابعة تنفيذ قرارات مجلس الأمن المتعلقة بمكافحة الإرهاب وغيرها من القرارات الدولية ذات الصلة، بالتنسيق مع الجهات المختصة بالدولة.
- إعداد تقارير الدولة التي ترفع إلى لجنة مكافحة الإرهاب التابعة لمجلس الأمن، والرد على استفساراتها وغيرها من الجهات المختصة المعنية، بالتنسيق مع الجهات المختصة بالدولة.
- تبادل المعلومات المتعلقة بمكافحة الإرهاب مع الكيانات المماثلة في الدول الأخرى ومنظمة الأمم المتحدة وغيرها من المنظمات الدولية والإقليمية، بالتنسيق مع الجهات المختصة بالدولة.
- أية أمور أخرى تتعلق بمكافحة الإرهاب تحال إليها من مجلس الوزراء.

#### مسادة (٣٨)

تلتزم جميع الجهات المختصة بتطبيق أحكام هذا المرسوم بقانون بسرية المعلومات التي تحصل عليها تنفيذاً لأحكامه ولا تكشف سريتها إلا بالقدر الذي يكون ضرورياً لاستخدامها في أغراض الاستدلال أو التحقيق عن الجرائم المنصوص عليها فيه. ويعاقب بالسجن المؤقت الذي لا تزيد مدته على خمس سنوات كل من يعمل بأي من تلك الجهات ويفصح لأي شخص عن إجراء من إجراءات الإخطار أو الاستدلال أو الفحص التي تتخذ بشأن تلك الجرائم، أو عن البيانات المتعلقة بها.

#### مسادة (٣٩)

لا يسأل المصرف المركزي والمنشآت المالية والمنشآت المالية الأخرى والتجارية والاقتصادية وأعضاء مجالس إدارتها وموظفيها وممثلوها المرخص لهم قانوناً، جنائياً أو منجياً عن تنفيذ الأوامر والقرارات الصادرة بتجميد الحسابات أو التوقف على الأموال لدى هذه الجهات أو عند الخروج عن أي قيد مفروض لضمان سرية المعلومات تنفيذاً لأحكام هذا المرسوم بقانون، وذلك ما لم تكن تلك الإجراءات اتخذت بسوء نية.

#### مسادة (٤٠)

استثناء من نص الفقرة الثانية من المادة (٢٠) والمادة (٣١٥) من قانون الإجراءات الجزائية، لا تقضي الدعوى الجزائية، ولا تسقط العقوبة المحكوم بها بمضي المدة في الجرائم المنصوص عليها في هذا المرسوم بقانون.

مادة (٤١)

لا يجوز تطبيق أحكام المادتين (٩٧) ، (٩٨) من قانون العقوبات عند الحكم بالإدانة في جريمة من الجرائم المنصوص عليها في هذا المرسوم بقانون عدا الأحوال التي يقرر فيها هذا المرسوم بقانون عقوبة الإعدام أو السجن المؤبد، فيجوز النزول بعقوبة الإعدام إلى السجن المؤبد، والنزول بعقوبة السجن المؤبد إلى السجن المؤقت الذي لا تقل مدته عن عشر سنوات.

مادة (٤٢)

تطبق فيما لم يرد به نص في هذا المرسوم بقانون الأحكام الواردة بقانون العقوبات وقانون الإجراءات الجزائية.

مادة (٤٣)

لا يخل تطبيق العقوبات المقررة بمقتضى هذا المرسوم بقانون بآية عقوبات أشد ينص عليها قانون العقوبات أو أي قانون آخر.

مادة (٤٤)

تحكم المحكمة بإبعاد الأجنبي من الدولة بعد تنفيذ العقوبة المحكوم بها عليه في إحدى الجرائم المنصوص عليها في هذا المرسوم بقانون.

مادة (٤٥)

ينشر هذا المرسوم بقانون في الجريدة الرسمية ، ويعمل به من تاريخ نشره.

زايد بن سلطان آل نهيان  
رئيس دولة الإمارات العربية المتحدة

صدر عنا في قصر الرئاسة بأبوظبي:  
بتاريخ: ١١ جمادى الآخر ١٤٢٥ هـ  
للموافق: ٢٨ / يوليو / ٢٠٠٤ م.



Constitutional Provisions

**Decree By Federal Law No. 1 of 2004**  
**On**  
**Combating Terrorism Offences**

We, Zayed Bin Sultan Al Nahyan President of The State of the United Arab Emirates;

Recognizing The Constitution,

Noting The Federal Law No. 1 of 1972 concerning Competence of the Ministries and Powers of the Ministers and amendments thereof,

Federal Law No. 10 of 1973 concerning the Federal Supreme Court and amendments thereof,

Federal Law No. 11 of 1976 concerning Firearms, Ammunitions and Explosives and amendments thereof,

Federal Law No. 10 of 1980 concerning The Central Bank, Monetary Regulation, Organization of Banking Profession and amendments thereof,

Federal Law No. 3 of 1987 concerning The Penal Code,

Federal law No. 35 of 1992 concerning the Code of Criminal Procedure,

Federal Law No. 4 of 2002 concerning Incriminating Money Laundering,

According to what was presented by the Minister of Justice, Islamic Affairs & Auqaf and the Minster of Interior and approval of the Council of Ministers.

It is hereby enacted as follows:

**Article 1**

In the application of provisions of this Decree by law, the following words and expressions shall have the meanings given against each, unless the context otherwise requires:-



Unofficial Translation

The State:	United Arab Emirates;
The Government:	Federal Government and Governments of The Emirates;
Public Domain:	Immoveable and moveable property in the possession of the State, public legal persons or that assigned to a public benefit;
Public Utilities:	Projects established by the Government or supervises administration and the services and activities furnished with intention to achieve any purpose of the public benefits to serve the public;
Traditional weapons:	Firearms, Ammunitions and Explosives provided in the Law concerning Firearms, Ammunitions and Explosives;
Non-Traditional Weapons:	Nuclear, Chemical and Biological;
Property:	Assets whatsoever their nature is, material or immaterial, moveable or immoveable including national currency, foreign currencies, negotiable and commercial instruments, securities, documents, instruments proving acquisition of assets or any right related thereof;
Proceeds:	Property gained from or related to, directly or indirectly, of commission of any of the offences provided in this Law;
Freezing:	Suspension of accounts or balances and provisional prohibition of movement,



Unlawful Transference

	transference, substitution or disposition of property;
Seizure:	Judicial prohibition on movement, transference or substitution of property and prevention of its administration, disposition or seizure of the same;
Forfeiture:	Expropriation of property in the interest of the public treasury by a judgement;
Financial institutions:	Banks, finance companies, exchange establishments, financial cash brokers or any other financial institution licensed by the Central Bank whether publicly possessed or privately to carry on business within the State;
Other Financial, Commercial and Economic institutions:	Establishments licensed and monitored by authorities other than the Central Bank such as insurance establishments and securities markets;
Legal Person	Any public or private legal persons whereas the legislator deemed as a legal entity except for the governmental departments, its official administrations, public corporations and establishments.

**Article 2**

In the application of provisions of this Decree by Law, terrorism shall mean every act or omission, the offender commits himself to execute a criminal design, individually or collectively, with intention to cause terror between people or terrifying them, if the same causes breach of the public order or endangering the safety and security of the society or injuring persons or exposing their lives, liberties, security to



Classification: Confidential

danger, including Kings, Heads of States and Governments, Ministers and members of their families or any representative or official of a State or an international organization of an intergovernmental character and members of their families forming part of their household entitled pursuant to international law to protection or causes damage to environment, any of the public, private utilities or domain, occupying, seizing the same or exposing any of the natural resources to danger.

### **Article (3)**

Whoever establishes, sets up, organizes or runs a society, body, organization, center, group or gang, or leads or commands the same intending to commit any of the terrorism acts provided in this law, shall be punished with death or imprisonment for life.

And shall dissolve the said societies, bodies, organizations or centres and close their premises.

And at all cases shall forfeit the property, luggage, weapons, articles, documents, papers and others used in the commission of the offence or prepared for use thereof or to be found in the premises assigned to the meeting of the members of these societies, bodies, organizations, centres, groups or gangs.

And shall forfeit the property derived from the offence or apparently included within the property of the convict if it is proved that this property is in fact a resource assigned to finance the said societies, bodies, organizations, centres, groups or gangs.

### **Article 4**

Whoever furnishes societies, bodies, organizations, centres, groups or gangs laid down in the preceding Article with any property, traditional, non-traditional weapons, other materials endangering the lives of the people or their property, aids, genuine or forged documents, means of communication, any other articles, information or advice which may help them to achieving their objectives, which he knows thereof, shall be punished with life or provisional imprisonment.

And whoever furnishes heads, managers or members of any societies, bodies, organizations, centres, groups or gangs with residence,



Classification: Confidential

harbour or premises to meet at or any other facilities which he knows of the objectives aiming at, shall be punished with the same punishment.

And at all cases, shall forfeit the property or articles subject of the offence.

Furthermore, shall forfeit the proceeds of the offence or property equivalent to its value if the proceeds had been transferred, substituted, in whole or in part or mixed with other property gained from legal sources.

#### **Article 5**

Whoever joins any societies, bodies, organizations, centres, groups or gangs provided in Article (3) of this Decree by Law or participates in any manner, knowing the objectives thereof, shall be punished with life or provisional imprisonment.

And the punishment shall be for life or provisional imprisonment for a term not less than ten years if the offender gets military or security training conducted by any of the said societies, bodies, organizations, centres, groups or gangs or he is a member of the armed forces, police, security or customs.

#### **Article 6**

Whoever coerces or induces any person to participate or to join any of the societies, bodies, organizations, centres, groups or gangs laid down in Article (3) of this Decree by Law or prevents him from disjoining the same shall be punished for life or provisional imprisonment for a term not less than ten years.

And shall be punished with death if the act of the offender causes death.

#### **Article 7**

Whoever trains a person or more on use of traditional, non-traditional weapons, means of telecommunication, electronics or any other means of communication or instructs him any in military arts or fighting techniques whatever they are, with intention to turn to for executing of terrorist act, shall be punished with life or provisional imprisonment.



Unofficial Translation

### **Article 8**

Whoever by words or in writing or any other means circulates, any of the acts or objectives provided in this Decree by Law, shall be punished with imprisonment for a term not exceeding five years.

And whoever possesses personally or by way of mediation or acquires any documents, publications or tapes whatever their kind containing recommendation or circulation of a terrorist act if they are prepared for distribution or briefing others thereof and whoever possesses or acquires any means of printing, taping or publicity used or prepared for use, even temporarily, for printing, taping or broadcasting any of the aforementioned shall be punished with the same punishment.

And at all cases shall forfeit property or articles subject of the offence and instruments of its commission.

### **Article 9**

Whoever seeks after or communicates with a foreign State, society, body, organization, centre, group or gang having its centre abroad or with any one who works for interest thereof, to perform any terrorist act within the State or abroad against its property, establishments, employees, diplomats or citizens, or participates in committing any of the same, shall be punished with imprisonment for life.

And the punishment shall be with death if the offence subject of seeking after or communication is committed.

### **Article 10**

Whoever collaborates or joins forces, armed militias, society, body, organisation, group or terrorist gang whatever its nomination is, form or objectives having its centre abroad, taking terrorism or military training as means to achieving their objectives even if their acts are not directed against the State, shall be punished with life or provisional imprisonment.

And whomever being found within the State after commission of any of the acts provided in the preceding paragraph or committed any



Official translation

of them abroad against the State or jeopardising its interests, shall be punished with the same punishment.

And the punishment shall be for life or provisional imprisonment for a term not less than ten years if the offender gets military or security training thereof.

And the punishment shall be imprisonment for life if the offender participates in any of terrorist acts thereof.

#### **Article 11**

Whoever enters premises of any Diplomatic or Consular Missions, international bodies or organizations within the State forcibly or resisting the competent authorities in order to committing a terrorist act, shall be punished with life or provisional imprisonment.

And if the commission of the act was coupled with a circumstance to using weapon or committed by more than one person, the punishment shall be imprisonment for life.

If the act committed causes death, the punishment shall be with death.

#### **Article 12**

Whoever gains, provides, collects, carries or transfers property, directly or indirectly, with intention to be used or knows they are going to be used, in whole or in part, to financing any of terrorist acts provided in this Decree by Law within the State or abroad, whether the said act occurred or non occurred, shall be punished with life or provisional imprisonment.

And shall forfeit the property or possession subject of the offence and proceeds thereof or property equivalent to their value, if transferred or substituted in whole or in part or mixed with other property, gained from legal sources.



Formal Translation

### **Article 13**

Whoever carries, transfers, deposits property on the account of another person, or conceals or disguises its nature, essence of its source or its place as well whoever possesses property or deal with, directly or indirectly, with intention to be used or knows they are going to be used, in whole or in part, to financing any terrorist acts provided in this Law, within the State or abroad, whether the said act occurred or non occurred, shall be punished with Life or provisional imprisonment.

And shall forfeit the property or possession subject of the offence and proceeds thereof or property equivalent to their value, if transferred or substituted in whole or in part or mixed with other property, gained from legal sources.

### **Article 14**

Whoever manufactures, prepares, furnishes, imports, obtains, possesses or gets non-traditional weapons, or parts used in their manufacturing, or preparing, furnishing or carrying, or attempts to carry them through mail, any public or private means of transport or any other means intending to be used to committing of any terrorist acts provided in this law, shall be punished with life or provisional imprisonment.

And the punishment shall be imprisonment for life if the offender misappropriates, steals any of those weapons or obtains them by any means of fraud or cheating, or personating, dishonestly wears in government official or international garb or uses a forged document in order to obtaining its possession thereof.

And the punishment shall be death or imprisonment for life if the offender threatens to using those weapons for murder, causing serious injuries against persons or destruction of public or private domain or utilities, with intention to influence the public authorities within the State, another State or an international organization in discharging their duties or to obtaining benefit or privilege of any kind.

If the act committed causes death, the punishment shall be with death.



Financial Translation

### **Article 15**

Whoever unlawfully seizes by any way any air, land or water conveyance for transport, intending to committing a terrorist act, shall be punished with imprisonment for life.

And the punishment shall be imprisonment for life, if the said act causes injury or hurt to any person on board the conveyance or outside it, or if the offender uses force or violence to deter the public authorities from discharging their duties to recover the conveyance from his control.

And the punishment shall be with death if the act of the offender causes death of a person on board or outside the conveyance.

### **Article 16**

Whoever inflicts damage or intentionally exposes to danger or inactivates any air, land or water conveyance for transport or any air, land or water navigation establishments or obstructs their services intending to committing a terrorist act shall be punished with imprisonment for life.

And the punishment shall be imprisonment for life, if the said act causes injury or hurt to any person on board the conveyance or establishment or out side thereof.

And the punishment shall be with death if the act of the offender causes death of a person on board the conveyance or establishment or out side thereof.

And shall be punished with fine equivalent to the double value of the articles damaged.

### **Article 17**

Whoever detains a person contrary to the cases authorized by the law or regulations, keeps or confines him as a hostage, threatens to continue his keeping or confining, intending to committing a terrorist act to influence the public authorities within the State, another State or an international organization in discharging their duties or to obtaining benefit or privilege of any kind shall be punished with life or provisional imprisonment.

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Unofficial Translation

And the punishment shall be imprisonment for life if the victim is one of the Kings, Heads of States and Governments, Ministers and members of their families or any representative or official of a State or an international organization of an intergovernmental character and members of their families forming part of their household entitled pursuant to international law to protection, or if the offender, in committing the offences, personating, dishonestly wears in government official or international garb or produces a forged document or if the act causes injury or hurt or he deters the public authorities personnel from discharging their duties to release the hostage or the detained.

And if the act committed causes death, the punishment shall be with death.

#### **Article 18**

Whoever assaults any one who is in charge of the execution of provisions of this Decree by Law in the lawful discharge of his duties, in consequence thereof, or offers resistance by using force, violence or threatening to use the same, shall be punished with provisional imprisonment.

And if assault or resistance causes permanent infirmity or if the offender was carrying a weapon, kidnaps or detains any one who is in charge of the execution of provisions of this Decree by law or spouses or any ascendants or descendants thereof, shall be punished with imprisonment for life.

And if assault, resistance, kidnapping or detention causes death, the punishment shall be with death.

#### **Article 19**

Whoever uses explosives or non-traditional weapons in committing any of the offences provided in first paragraphs of Articles (15), (16) and (17) of this Decree by Law, shall be punished with death.



Unofficial Translation

### **Article 20**

Whoever abets commission of any of the offences provided in this Decree by Law shall be punished with imprisonment for a term not exceeding ten years where the abetment causes no consequences thereof.

### **Article 21**

Whoever participates in a criminal conspiracy intending to committing any of the offences provided in this law or taking it as means to attain the objective intended of the conspiracy shall be punished with a provisional imprisonment.

And whoever abets conspiracy or is concerned in running its movement shall be punished with imprisonment for life.

And any of the offenders who takes the initiation to communicate to the conspiracy to the authorities and the accessories before the commission of any of the offences provided in this Article shall be pardoned.

### **Article 22**

Whoever invites another to join a conspiracy intending to commit any of the offences provided in this Decree by Law, if his invitation is rejected, shall be punished with imprisonment for a term not exceeding five years.

### **Article 23**

Whoever knows of a design to committing any of the offences provided in this law and does not communicate to the competent authorities, shall be punished with imprisonment for a term not exceeding five years.

And may be pardoned, if who omits to communicate is a spouse of the offender or one of his ascendants or descendants.

### **Article 24**

Whoever being one of the offenders takes the initiation to communicate what he knows to the judicial or administrative authorities before the commission of the offence, shall be pardoned.



Official Translation

And may pardon or mitigate, if the communication was made after the commission of the offence and the offender enables the competent authorities during the investigation to arrest the other offenders or the offenders of another offence similar in kind and seriousness.

### **Article 25**

Without prejudice to any severe punishment provided in any other law, every legal person whose representatives, managers or agents commit or contribute in the commission of any of the offences provided in this Decree by Law, if committed in his name or for his account, shall be punished with fine not less than one hundred thousand AED and not exceeding five hundred thousand AED.

And shall dissolve the legal person together with closure of premises where it carries activities alongside forfeit the property and articles subject of the offence or with additional fine equivalent to its value in case its seizure is impracticable and that is without prejudice to the rights of bona fide third party.

As well shall forfeit the proceeds of the offence or property equivalent to its value if it is transferred or substituted, in whole or in part or mixed with other property gained from legal sources.

### **Article 26**

In the application of provisions of this Decree by Law, it does not follow the determination of the responsibility of a legal person to dropping of criminal liability of natural persons, principal offenders or partners, for the same facts the offence is based on.

### **Article 27**

Whoever commits in execution of a terrorist objective any of the offences provided in the first paragraph of Articles (190), (290), Article (296), first and second paragraphs of Article (339) and Article (348), Penal Code shall be punished with a provisional imprisonment for a term not exceeding five years.

And whoever commits in execution of a terrorist objective any of the offences provided in first paragraph of Article (189), second



Unofficial Translation

paragraph of Articles (190) and (193), Article (195), first paragraph of Article (196), Articles (202) and (301), first paragraph of Article (297), Articles (301), (302), (304), (336), (337) and (338), Penal Code shall be punished with life or provisional imprisonment.

And whoever commits in execution of a terrorist objective any of the offences provided in first paragraph of Article (193), second paragraph of Article (196), (290) and Article (299), Penal code shall be punished with imprisonment for life.

And whoever commits in execution of a terrorist objective the offence provided in Article (332), Penal Code shall be punished with death.

### **Article 28**

Without prejudice to provisions of second Chapter of second Section of first book of the Penal Code, provisions of this Decree by Law shall apply to any offence provided in thereof, committed abroad:

- a. against a citizen of the State ;
- b. against the public domain abroad including embassies, diplomatic or consulate premises affiliated thereto;
- c. intending to cause the State to act or omit thereof;
- d. on board conveyance for transport registered in the State or under its flag.

Provisions of this Decree by law shall apply to whoever being found within the territory of the State after the commission abroad any of the offences provided and laid down in any of international conventions in force, the State is a member thereof, in case he is not extradited.

### **Article 29**

The Federal Supreme Court shall be exclusively competent to decide on the offences provided in this Decree by law together with to look into the grievances laid down in Article (33) of this Decree by Law.

### **Article 30**

The Attorney General or whom he authorizes, the Advocates General, to order directly to be briefed or to obtain any data or



(Official Translation)

information regarding the accounts, deposits, trusts, locks, transferences or property movements whereas the Public Prosecution for sufficient evidence to believe that having relation with financing or committing any of the offences provided in this Decree by Law, and to reveal the reality required in regard of such briefing or obtainment of data or information from the Central Bank or any other financial, commercial or other economic establishment.

### **Article 31**

Pursuant to an order of the Attorney General any property, balances, accounts, possession or proceeds suspected to be used in financing or committing any of the offences provided in this Decree by Law, shall be frozen or seized, until the completion of the investigations conducted thereof.

### **Article 32**

Without prejudice to Article (31) of this Decree by Law, the Governor of the Central Bank or his deputy may order the freezing or seizure of property, balances or accounts suspected to be used in financing or committing any of the offences provided in this Decree by law or the resulting proceeds thereof, deposited on the banks and other financial establishments and shall inform the Attorney General thereupon within seven days from the issuance of the order and the Attorney General has the right to quash the order issued by the Governor or sustains the same.

### **Article 33**

A person against whom a decision of the Attorney General was issued pursuant to provisions of Articles (31) and (32) of this Decree by Law may aggrieve against, before the competent court and if his grievance is denied he is entitled to aggrieve again whenever expiry of three months from the date of the denial his grievance.

The grievance shall be in a form of a report deposited with the competent court and the trial judge shall fix a day for disposal after summoning the aggrieved and the concerned, and the Public Prosecution shall submit a memorandum commenting on the grievance. The court shall determine in the grievance within a period not



Unofficial Translation

exceeding fourteen days from the date of the report and shall deliver its decision, either quashing the decision issued by the Attorney General, amending or denying thereof.

#### **Article 34**

The competent court shall seize the property, possession or proceeds until the end of the trial.

At all cases, orders relating to seizure or freezing of property at the financial establishments shall be not be executed save through the Central Bank.

#### **Article 35**

With the exception of provisions of the Code of Criminal Procedure, the order of provisional detention issued by the Public Prosecution for a term of fourteen days in respect of offences, where provisions of this Decree by Law are applied thereof, after the examination of the accused, may be extended to similar terms where the interest of the investigation so requires, provided that it shall not exceed six months and the said term shall not be extended save by an order of the competent court.

#### **Article 36**

A committee to be called "The National Committee for Combating Terrorism" shall be established in accordance with this Decree by Law, a decision toward its establishment shall be made by the Council of Ministers and composed of a representative of the following bodies based on its nomination:

- Foreign Ministry.
- Ministry of Interior.
- Ministry of Justice, Islamic Affairs & Auqaf
- State Security Authority.
- Ministry of Defence.
- Central Bank.
- Customs Federal Corporation.
- Any other entity joined by a decision of the Council of Ministers.



Unofficial Translation

And the Council of Ministers shall issue a decision determining the Chairmanship of the Committee, functioning regulation, meetings, decision-making machinery and any other matters required to discharge its functions.

### **Article 37**

Competence of the Committee shall be specified as follows:

- Coordination between the competent bodies at the State in all matters relating to combating terrorism.
- Exchange of information relating to any operation in connection with any of the offences provided in this Decree by Law with the competent authorities at the State.
- Suggestion of legislations, regulations and procedures relating to combating terrorism.
- Follow up and enforcement of Security Council resolutions on combating terrorism and other international related resolutions in coordination with concerned bodies at the State.
- Prepare the State's reports to be submitted to the Counter-Terrorism Committee of the Security Council and responding to inquiries thereof and other concerned competent bodies in coordination with the competent bodies at the State.
- Exchange of information relating to combating terrorism with the similar entities at other States, United Nations Organization, and other international and regional organizations in coordination with the competent bodies at the State.
- Any other matters relating to the combating terrorism remitted by the Council of Ministers.

### **Article 38**

All competent bodies in applying provisions of this Decree by Law shall keep the information obtained in the execution of its provisions confidential, and not to reveal its confidentiality except to the extent necessary for use thereof, in respect of inquiry or investigation in the offences provided in this law.

And whoever functioning at any of those bodies, reveals to any person any procedure of the notifications procedures, inquiry or



Unofficial Translation

inspection taken in relation with the said offences or the data relating to it, shall be punished with provisional imprisonment for a term not exceeding five years.

#### **Article 39**

Central Bank, financial establishments, and the other Financial, commercial and economic establishments, as well as boards of directors, personnel and lawfully authorized representatives shall not be prosecuted or litigated against for any liability which may result from the execution of the orders and decisions of freezing of accounts or seizure of property at these bodies or in case of non observance of any restriction imposed for the securing the confidentiality of information in the execution of provisions of this Decree by law, unless such procedures had been taken with bad faith.

#### **Article 40**

With the exception of provisions of second paragraph of Articles (20) and (315) of the Code of Criminal Procedure, a criminal case neither shall be expired nor the sentence imposed be dropped by prescription in respect of the offences provided in this Decree by Law.

#### **Article 41**

Provisions of Articles (97) and (98), Penal Code upon conviction of any of the offences provided in this Decree by Law shall not be applied, save the cases whereas the law prescribes death sentence or imprisonment for life, death sentence may be commuted to imprisonment for life, and the sentence of imprisonment for life may be commuted to a provisional imprisonment for a term not less than ten years.

#### **Article 42**

Whereas no provision is provided in this Decree by Law, provisions of the Penal Code and the Code of Criminal Procedure shall be applied.



Low Official Translation

**Article 43**

Infliction of punishment provided in this Decree by law shall not prejudice any sever punishment provided in the penal Code or any other law.

**Article 44**

The court shall deport the alien after the execution of the sentence imposed, in any of the offences provided in this Decree by Law.

**Article 45**

This Decree by Law shall be published in the official Gazette, and shall become effective from the date on which it is published.

Zayed Bin Sulatn Al Nahyan  
President of the State of the United Arab Emirates

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Issued by us at the Presidential Court in Abu Dhabi  
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