دولة الإمارات العربية المتحدة
وزارة العدل
قطاع الفتوى والتشريع وقضايا الدولة

الاصدارات القانونية
الاصدار رقم (11)
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المراسيم بقوانين اتحادية

- مرسوم بقانون اتحادي رقم (26) لسنة 2021، بتعديل بعض احكام المرسوم بقانون اتحادي رقم (20) لسنة 2018، بشأن مواجهة جرائم غسل الأموال ومكافحة تمويل الارهاب وتمويل التنظيمات غير الشرعية. 9

Decrees of federal laws

- Federal Decree law No. (26) of 2021 To amend certain provisions of Federal Decree-law No. (20) of 2018, on anti-money laundering and combating the financing of terrorism and financing of illegal organisations 23

النسخة العربية المعتمدة تم نشرها بعدد الجريدة الرسمية
رقم (712) بتاريخ 26 سبتمبر 2021

The approver Arabic versions haes been published official gazette no (712) dated 26 September 2021

Federal Decree-law No. (26) of 2021

To amend certain provisions of Federal Decree-law No. (20) of 2018 ON ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM AND FINANCING OF ILLEGAL ORGANISATIONS

We, Khalifa Bin Zayed Al Nahyan, President of the United Arab Emirates,

Having perused the Constitution,

- Federal Law no. (1) of 1972 on Competencies of the Ministries and Powers of the Ministers and its amendments,
- Federal Law no. (3) of 1987 issuing the Penal Code and its amendments,
- Federal Law no. (35) of 1992 issuing the Penal Procedures Code and its amendments,
- Federal Law no. (14) of 1995 on fighting narcotics and psychotropic substances and its amendments,
- Federal Law no. (4) of 2000 on the Emirates Securities and Commodities Authority and Market and its amendments,
- Federal Law no. (8) of 2004 on the Financial Free Zones,
- Federal Law (13) of 2004 on the Supervision of Import/Export and Transit of Rough Diamonds and its amendments,
- Federal Law no. (1) of 2006 on the Electronic Commerce and Transactions,
- Federal Law no. (39) of 2006 on the International Judicial Cooperation on Criminal Matters,

- Federal Law no. (51) of 2006 Combating Crimes of Human Trafficking and its amendments,

- Federal Law no. (6) of 2007 on the establishment of the Insurance Authority and the regulation of itsoperations and its amendments,

- Federal Law no. (2) of 2008 on the National Societies and Associations of Public Welfare and its amendment,

- Federal Law no. (6) of 2010 on the Credit Information, and its amendment,

- Federal Law no. (5) of 2012 on the Prevention of Information Technology Crimes and its amendments,

- Federal Decree-Law no. (5) of 2013 on weapons, ammunitions, explosives and military equipment, and its amendment,

- Federal Law no. (7) of 2014 on Combating Terrorism Offences,

- Federal Law no. (2) of 2015 on Commercial Companies and its amendments,

- Federal Law no. (11) of 2015 on the supervision of trading and stamping of precious metals and stones,

- Federal Law no. (7) of 2017 on Tax Procedures,

- Federal Decree-Law no. (7) of 2017 on Excise Tax,
- Federal Decree-Law no. (8) of 2017 on the Value Added Tax,

- Federal Decree-Law no. (14) of 2018 regarding the 'Central Bank and the Organization of Financial Institutions and Activities, and its amendment,

- Federal Decree-law No. (20) of 2018, on anti-money laundering and combating the financing of terrorism and financing of illegal organizations

- And based on the proposal made by the Minister of Finance and the approval of the Cabinet,

Have promulgated the following Decree-Law:

Clause (1)

To replace the wording of the articles no. (1), (2), (6), (9), (12), (13), (14), (15), (17), (19), (22), (23), (25), (26), (28), and (29) of the aforementioned Federal Decree-Law No. (20) of 2018, to be as follows:

Article (1)

In application of the provisions of the present Decree-Law, the following terms and expressions shall have the following meanings assigned to them unless the context requires otherwise:

State: United Arab Emirates

Ministry: Ministry of Finance

Minister: Minister of Finance

Central Bank: Central Bank of the UAE

Governor: Governor of Central Bank

Committee: National Committee for Combating Money Laundering and the Financing of Terrorism and Illegal Organizations

Unit: Financial Intelligence Unit

Supervisory Authority: Federal and local authorities which are entrusted by legislation to supervise financial institutions, designated non-financial businesses professions, Virtual Asset Service Providers and non-profit organizations or the competent authority in charge of approving the pursuit of an activity or a profession in case a supervisory authority is not assigned by legislations.

Law-enforcement Authorities: Federal and local authorities which are entrusted under applicable legislation to combat, search, investigate and collect evidences on the crimes including AML/CFT crimes and financing illegal organizations.

Competent Authorities: The competent government authorities in the State entrusted with the implementation of any provision of this Decree Law.

Predicate Offence: Any act constituting a felony or misdemeanor under the applicable laws of the State whether this act is committed inside or outside the State when such act is punishable in both countries.

Money Laundering: Any of the acts mentioned in Clause (1) of Article (2) of the present Decree-Law.

Financing of Terrorism: Any of the acts mentioned in Articles (29, 30) of Federal Law no. (7) of 2014.

Illegal Organizations: Organizations whose establishment is criminalized or which exercise a criminalized activity.

Financing Illegal Organizations: Any physical or legal action aiming at providing funding to an illegal organization, or any of its activities or its members.

Crime: Money laundering crime and related predicate offences, or financing of terrorism or illegal organizations.

Funds: Assets, whatever the method of acquisition, type and form, tangible or intangible, movable or immovable, electronic, digital or encrypted, including local and foreign currencies, legal documents and instruments of whatever form, including electronic or digital form that proves ownership of such assets, shares or related rights and economic resources that are assets of any kind, including natural resources, as well as bank credits, cheaques, payment orders, shares, securities, bonds, bills of exchange, letters of credit, and any interest, profits or other incomes derived or resulting from these assets, and can be used to obtain any financing or goods or services.

Virtual Assets: A digital representation of the value that can be digitally traded or transferred, and can be used for payment or investment purposes, and otherwise, as specified in the Executive Regulation of this Decree-Law.

Proceeds: Funds generated directly or indirectly from the commitment of any felony or misdemeanor including profits, privileges, and economic interests, or any similar funds converted wholly or partly into other funds.

Means: Any means used or intended to be used to commit a felony or misdemeanor.

Suspicious Transactions: Transactions related to funds for which there are reasonable grounds to believe that they are earned from any felony or misdemeanor or related to the financing of terrorism or of illegal organizations, whether committed or attempted.

Freezing or seizure: Temporary attachment over the moving, conversion, transfer, replacement or disposition of funds in any form, by an order issued by a competent authority.

Confiscation: Permanent expropriation of private funds or proceeds or instrumentalities by a ruling issued by a competent court.

Financial Institutions: Anyone who conducts one or several of the financial activities or transactions defined in the Executive Regulation of the present Decree Law for the account of /or on behalf of a client.

Designated Nonfinancial Businesses and Professions: Anyone who conducts one or several of the commercial or professional activities defined in the Executive Regulation of this Decree Law.

Non-Profit Organizations: Any organized group, of a continuing nature set for a temporary or permanent time period, comprising natural or legal persons or not for profit legal arrangements for the purpose of collecting, receiving or disbursing funds for charitable, religious, cultural, educational, social, communal or any other charitable activities.

Legal Arrangement: A relationship established by means of a contract between two or more parties, including but not limited to trust funds or other similar arrangements.

Client: Any person involved in or attempts to carry out any of the activities specified in the Executive Regulations of this Decree Law with one of the financial institutions or designated nonfinancial businesses and professions or Virtual Asset Service Providers

Beneficial Owner: The natural person who owns or exercises effective ultimate control over the client or the natural person on whose behalf a transaction is being conducted or, the natural person who exercises effective ultimate control over a legal person or legal arrangement, whether directly or through a chain of ownership, control or other indirect means.

Virtual asset service providers: Any natural or legal person, who practices any activity of commercial business, conducts one or more of the activities of virtual assets specified in the Executive Regulation of this Decree-Law, or the operations related thereto for the benefit or on behalf of another natural or legal person.

Transaction: All disposal or use of Funds or proceeds including for example: deposits, withdrawals, transfer, sale, purchase, lending, swap, mortgage, and donation.

Registrar: The entity in charge of supervising the register of commercial names for all types of establishments registered in the State.

Customer Due Diligence (CDD): The process of identifying or verifying the information of a Client or Beneficial owner, whether a natural, legal person or a legal arrangement, the nature of its activity, the purpose of the business relationship, the ownership structure, control over it for the purpose of this Decree-Law and its Executive Regulation.

Controlled Delivery: The process by which a competent authority allows the entering or transferring of illegal or suspicious funds or crime revenues to and from the State for the purpose of investigating a crime or identifying the identity of its perpetrators.

Undercover Operation: The process of search and investigation conducted by one of the judicial impoundment officer by impersonating or playing a disguised or false role in order to obtain evidence or information related to the Crime.

Article (2)

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

   a- Transferring or moving proceeds or conducting any transaction with the aim of concealing or disguising their illegal source.

   b- Concealing or disguising the true nature, source or location of the proceeds as well as the method involving their disposition, movement, ownership of or rights with respect to said proceeds.

   c- Acquiring, possessing or using proceeds upon receipt
   d- Assisting the perpetrator of the predicate offense to escape punishment
2. The crime of Money Laundering is considered as an independent crime. The punishment of the perpetrator for the predicate offence shall not prevent his punishment for the crime of Money Laundering

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

Article (6):

1. Without prejudice to the provisions of Article (5) of this Decree-Law, no criminal proceedings shall be instituted against the perpetrator of money laundering, financing terrorism, or financing of illegal organizations in accordance with the provisions of this Decree-Law except by the public prosecutor or his delegate
2. The Public prosecutor or his delegate and the competent court as the case may be shall issue a decision to take the necessary procedures to protect the intelligence information and the means and methods of obtaining such information or instruct the competent authorities to protect the witnesses, or the undisclosed sources, the accused or other parties involved in the case if there is a serious threat to their safety.

Article (9):

Central Bank of the UAE shall establish an independent "Financial Intelligence Unit" to which suspicious transaction reports, information on all financial institutions and designated nonfinancial businesses and professions Virtual Asset Service Providers shall be sent exclusively for consideration, analysis, and referral to the competent authorities, either automatically or upon request. The Financial Intelligence Unit shall have competence over the following:

2. Requesting financial institutions and designated nonfinancial businesses and professions, Virtual Assets Service Providers and the competent authorities to submit any information or further documentation related to received reports and information and other information deemed necessary for Financial Intelligence Unit to perform its duties on schedule and in the form determined by the Unit.

3. Exchanging information with its counterparts in other countries, with respect to Suspicious Transactions Reports or any other information to which the Financial Intelligence Unit has exclusive access or is the exclusive recipient, whether directly or indirectly, according to international agreements to which the State is a party or bilateral agreements signed by the Financial Intelligence Unit with its counterparts governing bilateral cooperation or conditional upon reciprocity. the financial intelligence unit may communicate to its counterparts its findings derived from the use of the information provided by its counterparts and the results of the analysis conducted based on this information. Such information shall be used only for the purposes of combating the crime and shall not be disclosed to third parties without the Financial Intelligence Unit's permission.

4. Establishing a database or a special register to record all available information and to implement data privacy and data security procedures to protect this information including procedures for handling, archiving transferring and accessing the data, and make sure that access to its premises, its database and its technology systems is restricted.

5. Any other competencies to be specified in the Executive Regulation attached to the present Decree-Law.

Article (12):
The Committee shall have the following competences:

1. Preparing and developing a national strategy to combat crime and proposing related regulations, policiesand procedures in coordination with the competent authorities, and monitoring their implementation.

2. Determining and assessing the risks of the crime on the national level.

3. Coordinating with the relevant authorities and referring to related international sources of information in order to identify high-risk countries in addition to the countries that their combat systems in relation to money laundering and financing of terrorism are weak. Moreover, to identify the necessary countermeasures to be taken and other measures commensurate with the degree of risk, and instructing the supervisory authorities to ensure the adherence to the required due diligence procedures by financial institutions, designated nonfinancial businesses and professions, virtual asset service providers and non-profit organizations which are under their supervision in order to implement the said measures.

4. Facilitating the exchange of information and coordination among the various bodies represented therein.

5. Collecting and analyzing statistics and other information provided by the Competent Authorities to assess the effectiveness of their Regulations on combating Money laundering, Terrorism financing and financing of illegal organizations.
6. Representing the State in international forums related to AML/CTF.

7. Proposing the Regulation covering the work of the Committee, and submitting it to the Minister for approval.

8. Any other matters referred to the Committee by Competent Authorities in the State.

Article (13):
The Supervisory Authorities shall, each within the scope of its competence, carry out supervision, monitoring and follow up to ensure compliance with the provisions provided for in the present Decree-Law and its executive regulation, regulatory decisions in addition to any other related decisions and shall have in particular, the following competences

1. Conduct a risk assessment on the likelihood of the perpetration of a Crime within the financial institutions, designated nonfinancial businesses and professions, and activities of virtual assets and activities of virtual asset service providers and non-profit organizations
2. Conduct Control and audit inspections over financial institutions, designated nonfinancial businesses and professions, virtual assets service providers and non-profit organizations, both remotely and on site.

3. Issue the decisions related to the administrative penalties in accordance with the provisions of this Decree-Law and its Executive Regulation, the grievance mechanism, and keep statistics of measures taken and penalties imposed.

4. Any other competencies stipulated in the Executive Regulation of the present Decree-Law

Article (14):

1. Without prejudice to any more severe administrative penalty provided by any other legislation, the Supervisory authority shall impose the following administrative penalties on the financial institutions, designated nonfinancial businesses and professions, and virtual assets service providers and non-profit organizations in case they violate the present Decree-Law and its Executive Regulation or regulatory decisions in addition to any other related decisions:

   a) Warning

   b) Administrative fine of no less than AED 50,000 (fifty thousand dirham) and no more than AED 5,000,000 (five million dirham) for each violation.

   c) Banning the violator from working in the sector related to the violation for the period determined by thesupervisory authority.

   d) Constraining the powers of the Board members, supervisory or executive management members, managers or owners who are proven to be responsible of the violation including the appointment of temporary supervisor.

   e) Arresting Managers, board members and supervisory and executive management members who are proven to be responsible of the violation for a period to be determined by the Supervisory Authority or request their removal.

   f) Arrest or restrict the activity or the profession for a period to be determined by the supervisory authority

   g) Cancel the License.

2. Except for paragraph (g) of Clause (1) of this Article, The Supervisory Authority may upon imposing the administrative penalties, request regular reports on the measures taken to correct the violation.

3. In any case, the Supervisory Authority shall publish the administrative penalties through various means of publication.

Article (15):

The Financial institutions and designated nonfinancial businesses and professions in addition to the virtual assets service providers shall, upon suspicion or if they have reasonable grounds to suspect a transaction or funds representing all or some proceeds, or suspicion of their relationship to the Crime or that they will be used regardless of their value, to inform the Unit without delay, directly and provide the Unit with a detailed report including all the data and information available regarding that transaction and the parties involved, and to provide any additional information required by the Unit, with no right to object under the confidentiality provisions.
However, Lawyers, notaries, other legal professionals and independent legal auditors shall be exempted from this provision if the information related to these operations have been obtained subject to professional confidentiality

The Executive Regulation of the present Decree-Law shall determine the rules, controls and cases of the obligation to report suspicious transactions

Article (17):

All authorities shall abide by the confidentiality of the information obtained in relation to suspicious transaction or the crimes provided for in this Decree-Law, and such information may not be disclosed except to the extent necessary for use in investigations, prosecutions or cases in violation of the provisions of this Decree-Law.

Article (19):

1. Competent Authorities shall give priority to requests for international cooperation related to countering money laundering and combating terrorism financing and ensure prompt handling of those requests and take efficient measures to ensure the confidentiality of the information received
2. In application of the present Decree-Law, the request for international cooperation shall not be rejected based on any of the following grounds:

    a. That the crime involves tax and financial affairs

    b. That the crime is political or related to politics.

    c. That the confidentiality provisions apply to financial institutions and designated nonfinancial businesses and professions without prejudice to the legislations applicable in the State.

d. That the request is connected to a crime under investigation or judicial prosecution in the UAE unless the request will impede on the investigation or prosecution.

e. Any other cases mentioned in the Executive Regulation hereof.

3. The rules, controls and procedures governing international cooperation are contained in the Executive Regulation of this Decree-Law

Article (22):

1. Any person who commits or attempts to commit any of the acts set forth in Clause (1) of Article 2 of this Decree-Law shall be sentenced to imprisonment for a period not exceeding ten years and to a fine of no less than (100,000) AED one hundred thousand and not exceeding (5,000,000) AED five Million or either one of these two penalties.

2. A temporary imprisonment and a fine of no less than AED 300,000 (three hundred thousand dirham) and no more than AED 10,000,000 (ten million dirham) shall be applied if the perpetrator of a money laundering crime commits any of the following acts:

   a) If he abuses his influence or the power granted to him by his profession or professional activities
   b) If the crime is committed through a non-profit organization
   c) If the crime is committed through an organized crime group
   d) In case of Recidivism

3. An attempt to commit a money laundering offense shall be punishable by the full penalty prescribed for it
4. A life imprisonment sanction or temporary imprisonment of no less than (10) ten years and penalty of no less than AED 300,000 (three hundred thousand dirham) and no more than AED 10,000,000 (ten million dirham) is applied to anyone who uses Proceeds for terrorist financing.
5. A temporary imprisonment sanction and a penalty of no less than AED 300,000 (three hundred thousand dirham) and no more than AED 10,000,000 (ten million dirham) shall be applicable to anyone who uses the Proceeds in financing illegal organizations.

6. The Court may at the request of the Attorney General, his delegate, or on its own

initiative commute or exempt from the sentence imposed on the offenders if they provide the judicial or administrative authorities with information relating to any of the offenses punishable in this article, when this leads to the disclosure, prosecution, arrest the perpetrators or seizure its proceeds.

Article (23):

1. A penalty of no less than AED 500,000 (five hundred thousand) and no more than AED 50,000,000 (fifty million dirham) shall apply to any legal person whose representatives or managers or agents commit for its account or its name any of the crimes mentioned in this Decree-Law
2. If the legal person is convicted with terrorism financing crime or financing illegal organizations, the court will order its dissolution and closure of its offices where its activity is performed.
3. Should a legal person is convicted of any of the crimes stipulated in Clause (1) of Article (2) or Article (8) of this Decree-Law, the court may prevent him from practicing his activity for a specified period, or cancel the license, restriction or registration to practice activity.
4. Upon issuance of the indictment, the court shall order the publishing of a summary of the judgment by the appropriate means at the expense of condemned party

Article (25):

Imprisonment for no less than one year and a penalty of no less than AED 100,000 (one hundred thousand dirham) and no more than AED 500,000 (five hundred thousand dirham) or any of these two sanctions shall applyto anyone who notifies or warns a person or reveals any transaction under review in relation to suspicious transactions or being investigated by the Competent Authorities or to investigate them or any information related to a violation of the provisions of Article (17) of this Decree-Law

Article (26):

1. The court shall, once the perpetration of the crime is verified, confiscate the following:
    a) Funds subject matter of the crime, proceeds and instrumentalities.
    b) Any funds owned by the perpetrator with an equivalent value to the funds, Proceeds and instrumentalities mentioned inparagraph (a) of this clause if it fails to confiscate those funds

If it is not possible to rule for the confiscation of funds, proceeds or instrumentalities due to their failure to seize them or because they are related to the rights of bona fide third parties, the court shall pass a fine equivalent to its value at the time of the crime.

2. The confiscation shall be imposed irrespective of whether the funds, Proceeds, or Instrumentalities are owned by or in possession of the perpetrator or a third party without prejudice to the rights of third party acting in good faith

3. The fact that the offender is unknown, lack of his criminal responsibility, or the criminal case for a crime punishable under the provisions of this Decree-Law is elapsed does not preclude the competent court from ruling on its own or at the request of the Public Prosecution, as the case may be, to confiscate the seized funds, proceeds and instrumentalities if it is proven that they are related to the same.
4. Without prejudice to the rights of bona fide third parties, any contract or act where the parties, or any one ofthem or otherwise are aware that such contract or act aims at impacting the ability of the competent authoritiesto enforce the seizure, freezing or the execution of the confiscation order, shall be void

Article (28):

Imprisonment of no less than a year and no more than (7) seven years, or a fine of no less than AED 50,000 (fifty thousand dirham) and no more than AED 5,000,000 (five million dirham) shall be applied to any person who violates the instruction issued by the Competent authorityin the State for the implementation of the directives of UN Security Council under Chapter (7) of UN Convention for the Suppression of the Financing of Terrorism and Proliferation of Weapons of Mass Destruction and other related decisions

Article (29):

1. If any foreigner is convicted of a money laundering crime or any felonies mentioned in this Decree-Law, andis given a sanction restricting his freedom, he must be deported from the UAE

2. Without prejudice to Clause (1) of this article, if any foreign person is convicted for other criminal offences provided hereunder this Decree-Law, and is given a sentence restricting his freedom, the court may decide to deport him from the UAE or order him to be deported instead of imposing a sanction restricting his freedom

3. The criminal case shall not be subject to the statute of limitations for money laundering or financing terrorismor illegal organizations crimes. The sanctions shall not lapse with time or with the lapse of any related civil legal cases due to statute of limitations

4. This Decree Law shall not prejudice the provisions of refereed Federal Law (7) of 2014

5. The Financing of illegal organizations is considered a crime if its purpose is to undermine the internal securityof the State or its vital interests thereof and terrorism financing crime and the offense punishable in Article (28) of this Decree-Law are considered as crimes intended to undermine the internal and external security of the State

Clause (2)

New articles bearing the numbers (16) bis, (25) bis, and (26) bis shall be added to the aforementioned Federal Decree-Law No. (20) of 2018, as follows:

Article (16) bis:

1. Any natural or legal person may not engage in the activities of virtual assets service providers or any of the financial activities without a license, registration or registration, as the case may be, from the competent supervisory authorities.
2. For the purposes of this Decree-Law, the Executive Regulations shall regulate the obligations of virtual assets service providers.

Article (25) bis:

Imprisonment for no less than (3) three months and a penalty of no less than AED 50,000 (fifty thousand dirham) or any of these two sanctions shall applyto whoever possesses, conceals or performs any operation of funds when there is sufficient evidence or presumption of the illegality of its source.

Upon conviction, the court shall rule for confiscation in accordance with the provisions of Article 26 of this Decree-Law.

Article (26) bis:

Imprisonment for no less than six months and a penalty of no less than AED 200,000 (two hundred thousand dirham) and no more than AED 5,000,000 (five million dirham) or any of these two sanctions shall applyto anyone who violates the provisions of Article (16) bis of this Decree-Law

Clause (3)

Any provision that violates or conflicts with the provisions of this Decree-Law shall be revoked

Clause (4)

The present Decree-Law shall be published in the Official Gazette to be entered into effect on the day following thedate of publication
The original decree-law is signed by H.H. Sheikh:

Khalifa Bin Zayed Al Nahyan
President of the United Arab Emirates
Issued by us in the Presidential Palace in Abu Dhabi:
Dated: 2021/9/13