

UNITED ARAB EMIRATES

VICTIMS OF CORRUPTION: DAMAGE REPARATION AND LEGAL STANDING

INTERNATIONAL DATABASE 2022

SOURCE: ANONYMOUS

VICTIMS OF CORRUPTION WORKING GROUP

UNCA CIVIL
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Scope

There are a number of different aspects to the legal framework in the UAE. Criminal law is implemented at the federal level, meaning it applies to all Emirates and free zones (including the Dubai International Financial Centre (“**DIFC**”) and the Abu Dhabi Global Market (“**ADGM**”). The federal civil regime is also applicable to all Emirates. However, the DIFC and ADGM have established their own non-criminal regulatory frameworks, regulators (that are capable of taking enforcement action for breaches of regulations and principles) and common law courts. In DIFC and ADGM civil cases, these laws and institutions take precedence over their federal equivalents. For the avoidance of doubt, this report relates to criminal and civil law at the federal level and does not include details of the bespoke civil regimes within the free zones.

We have not sought to cover every possible offence or type of proceedings that could be relevant but to answer the specific questions asked, offering explanations and notable case examples.

This report covers the position in respect of the federal laws of the UAE. Please interpret any references to the UAE as being made in that context.

1. Legal Standing

1.1 Legal standing for civil society organisations and/or citizens in corruption-related cases

Overview

In the UAE, proceedings are generally either criminal or civil in nature. In addition, administrative proceedings (through which applicants with sufficient standing may challenge certain decisions or actions taken by government bodies) may be classed as constitutional as well as civil. Proceedings may also be brought by regulators against those whose activities fall within their perimeter or remit. Such proceedings can be civil or criminal in nature.

The activities of civil society organisations (“**CSOs**”) are heavily curtailed in the UAE, and they do not have standing to bring either criminal or civil corruption-related cases before the relevant courts.

Individuals are unable to file criminal corruption-related cases themselves, as the UAE Public Prosecution (the “**UPP**”) has exclusive jurisdiction to do so. However, individuals are capable of filing cases in the civil courts and, in certain circumstances, civil claims in the criminal courts.

Conduct amounting to corruption and bribery can trigger a number of criminal offences which would typically be prosecuted by the UPP. Additionally, in certain circumstances, the UPP may deploy civil law remedies when seeking to recover the proceeds of such conduct. As noted above, proceedings may also be brought in appropriate circumstances by relevant regulatory authorities, including the Emirates Securities and Commodities Authority and the Central Bank of the UAE (“**CBUAE**”). Corruption, bribery and related conduct may also form a basis for civil claims.

Criminal proceedings

In the UAE, the UPP has exclusive jurisdiction to prosecute criminal cases under Article 7 of Federal Law No. 35/1992 concerning the Criminal Procedures Code (the “**Criminal Procedures Code**”).

Criminal offences in the UAE fall into three categories:

- (A) felonies;
- (B) misdemeanours; and
- (C) infractions.

There are a number of potential criminal sanctions available in the criminal courts following a successful criminal prosecution. These include:

- (A) fines;
- (B) diyat (financial compensation paid to the victim or heirs of a victim in

the cases of murder, bodily harm or property damage); and

(C) custodial or death penalties (for individuals).

The law in the UAE does not have a single statute dedicated to anti-corruption. Instead, the legal framework is made up of a number of legislative instruments relating to offences synonymous with corruption. These include:

(A) Federal Decree No.(31) of 2021 Promulgating the Crimes and Penalties Law (the “Penal Code”)

(1) This decree repeals Federal Decree No.(3) of 1987 (the equivalent of the current Penal Code) and contains the main provisions criminalising bribery in the UAE.

(2) The bribery provisions contained in the Penal Code apply to any:

(a) private individual¹;

(b) public servant;

(c) person assigned to a public service;

(d) foreign public servant; or

(e) employee of an international organisation. who, directly or indirectly, requests, accepts, takes or promises an unentitled gift, privilege or grant, for himself or in favour of another person, entity or establishment, in return for performing or not performing an act that falls within his job duties or for violating his job duties.²

(3) Individuals that accept bribes as defined in (2) can also incur liability if:

(a) they do not intend to violate their job duties;³ or

¹ Article 278, Penal Code.

² Article 279, Penal Code.

³ Article 275, Penal Code.

(b) they promise to perform or not perform an act which they either wrongly believe or claim to be among their job duties.⁴

(4) In addition, the Penal Code criminalises:

(a) the solicitation of any of the activities described in (2) and (3) above by any person;⁵

(b) requesting, accepting or taking promises or gifts to use real or alleged influence to obtain (or attempt to obtain) an undue advantage from a public department, authority or entity;⁶and

(c) promising, offering or giving a person described in (2) above an undue gift, benefit or grant either directly or indirectly in order for such person to commit or omit an act falling within his job duties against the obligations of his office.

(5) Individuals convicted of any of the offences described in (2), (3) and (4) above may receive:

(a) a temporary prison sentence; and

(b) a fine, not less than 5,000 Dirhams, equivalent to what has been demanded, offered or accepted.⁷

(B) Federal Decree No.(11) of 2008 concerning Human Resources in the Federal Government (the “HR Law”)

(1) The HR Law applies to federal government employees and public servants and prohibits their acceptance and distribution of gifts other than in specified circumstances.⁸In addition, the HR Law prohibits officials from accepting, taking, presenting or requesting

⁴ Article 276, Penal Code.

⁵ Article 278, Penal Code

⁶ Article 281, Penal Code.

⁷ Article 283, Penal Code.

⁸ Articles 70(1) and 70(2), HR Law.

bribes, which are defined (solely for the purposes of this decree) as *“the presentation of any financial sum, certain service, or any other item with material or moral value to any public official in order to corrupt the course of work”*.⁹

(2) In the event an official breaches these provisions, the Federal Governmental Human Resources Authority may:

- (a) issue a written notice or written warning;
- (b) deduct amounts from the official's salary; or
- (c) demote or dismiss the official;

(C) Federal Decree No.(20) of 2018 concerning Anti-Money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organisations

(1) This piece of legislation does not tackle bribery directly, however the acceptance or making of bribes could constitute money laundering, terrorist financing or the financing of illegal organisations depending upon the source of the funds used and/or their final destination. These latter activities are all, incidentally, other forms of corruption.

(2) It was amended by Federal Decree Law No.(1) of 2020 and complements the regime tackling terrorist financing established by Federal Decree Law No.(7) of 2014 concerning the Combating of Terrorism Crimes.

In summary, individuals do not have standing to bring corruption-related cases before criminal courts within the UAE. Diyat (which is paid either to the harmed individual or their remaining family) cannot be awarded as a penalty in criminal corruption cases, meaning victims of corruption are unable to obtain compensation through criminal proceedings. Victims can, however, file individual civil claims with the criminal court where their civil rights have also been infringed by the relevant actions being prosecuted. Please see paragraph

⁹ Articles 70(3) and 70(4), HR Law.

2.16 below for further details.

Private prosecutions

The concept of private prosecution is not recognised under UAE law as the UPP has sole jurisdiction to pursue criminal cases.

Civil proceedings

In broad terms, civil proceedings in the UAE can be brought by individuals that have suffered either a breach of a contractual right or damage whilst under a duty of care owed to them by another and, in either case, have suffered loss as a result. The principles of both contractual and tortious liability are found within Federal Law No.(5) of 1985 on the Civil Transactions Law of the United Arab Emirates State (the “**Civil Code**”).

Civil claims serve a different purpose to criminal proceedings, their primary aim being to seek recovery of, or compensation for, losses. They are not intended by the courts to be punitive in nature. Consistent with that, damages are the principal remedy sought in civil proceedings. Other remedies include rescission of contract, injunctions, specific performance of the contract or obligation, and recovery of assets.

With regards to the contract, the Civil Code embraces the concepts of privity and freedom of contract, noting that “[t]rue meaning is the basis of words’ provided the relevant wording does not contradict a mandatory provision of law.¹⁰ According to the Dubai Court of Cassation, contractual liability is established “*in the presence of three factors: a fault which occurs when one of the contracting parties does not carry out the obligations stipulated in the contract or if there is a delay in performing the same; a proven damage; and the presence of causation between the fault and the damages*”.¹¹ Civil proceedings can therefore be brought by an affected contractual party in the event a corrupt practice breaches a contractual provision and causes quantifiable loss.

Tortious liability, on the other hand, is incurred where a person causes or

¹⁰ Articles 258(2) and 31, Civil Code.

¹¹ Dubai Court of Cassation, petition no. 41 of 2007.

perpetrates either loss or damage to another as they are subsequently “*bound to repair the prejudice*”.¹² While corruption-related cases are unlikely to arise from instances of negligence, a claimant is entitled to claim loss of profits and consequential losses where they can prove the existence of a malicious or deliberate element (which befits the nature of corrupt practices). Instances of corruption can therefore incur tortious liability, providing the grounds for individuals to bring civil proceedings.

Although individuals do not have legal standing to file criminal actions (meaning they cannot bring criminal bribery cases under the Penal Code), the Criminal Procedures Code provides that “[w]herever sustained a direct personal prejudice from the crime is entitled to claim from the accused his civil rights...at any stage of [the criminal] trial up to the close of the oral pleadings”.¹³ This, therefore, provides that individuals are capable of filing civil bribery and corruption petitions in the criminal courts prior to judgment. Importantly, the wording “*sustained a direct personal prejudice from the crime*” demonstrates that CSOs are not permitted to bring a civil case to the criminal court on a victim’s behalf.

In the event the criminal court determines that a civil case will require a special investigation which could delay the criminal case’s settlement, it will refer the civil action to a suitable civil court¹⁴ Furthermore, an individual that has brought a civil claim before the criminal courts may abandon this claim at any stage and instead file a separate civil claim before the civil court.

Administrative proceedings

Under Federal Law No.(11) of 1992 on the Civil Procedures Law (the “**Civil Procedures Code**”), administrative actions can be brought before the civil courts as a check on public authority decision-making.¹⁵ It is important to note that such actions concern whether decisions of public authorities were correctly made and implemented according to the applicable law rather than providing a basis

¹² Articles 283 and 282, Civil Code.

¹³ Article 22, Criminal Procedures Code

¹⁴ Article 26, Criminal Procedures Code.

¹⁵ Article 30(2)(b), Civil Procedure Rules.

for challenging the merits of such decisions. Consistent with that, administrative litigation does not provide a route to an appeal against a decision, and the courts do not substitute their own decision for that of the original decision maker. They can, however, direct that the decision be cancelled provided 60 days have not lapsed since the original decision's publication date.¹⁶ Based on our review, we believe administrative proceedings provide limited routes of direct recourse for victims of corruption.

1.2 Type of Cases

We refer to those matters set out in the section above.

1.3 Legal basis under which citizens have legal standing

We refer to those matters set out in section 1.1.

1.4 Citizens and/or civil society's intervention in corruption cases in other capacities (e.g. third party contributors, expert input, etc)

As noted above, the individual affected by a crime subject to criminal proceedings may intervene "at any stage of a trial up to the close of the oral pleadings", to issue a civil claim in the criminal courts.¹⁷ Furthermore, individual third-parties may raise administrative actions to contest decisions issued by governmental bodies.

However, in the context of both civil and criminal appeals, only those involved in the original litigation may appeal a court judgment.

1.5 State's entitlement to represent the citizens collectively in corruption cases and whether its intervention excludes direct intervention by citizens

As set out above, in the UAE, the UPP prosecutes criminal offences in the name of the state and not on behalf of individual victims. The principal role of individuals in criminal corruption cases, including individuals who may be victims, is to act as witnesses. This can be on a voluntary or compelled basis.

¹⁶ Article 84 bis(1), Civil Procedure Rules.

¹⁷ Article 22, Criminal Procedure Code.

1.6 Legal standing of any foreign government or foreign-based non-governmental institution to bring corruption cases on behalf of this country's citizens

We are not aware of an instance where a foreign State or non-State institution has intervened on the behalf of the citizens of another country in corruption cases pursued in the UAE.

2. Cases

2.1 Existence of corruption-related cases brought to Court by civil society organisations, journalists or citizens.

There are no corruption-related cases brought to Court by civil society organisations, journalists, or citizens.

3. Collective Damage

3.1 Legal instruments that enable claiming reparation, compensation, or restoration of collective damages in any field (environmental damages, human rights, corruption, among others)

We are not aware of any legislative instruments in the UAE that provide for collective redress in the UAE.

3.2 Procedures for advancing class-actions.

We are not aware of any legislative instruments in the UAE that permit or provide for class action lawsuits or related procedure. Claimants are instead expected to file individual claims.

4. The Role of the victims of corruption

4.1 Definition of victims of corruption or common definition used by the courts in this country

The United Nations Convention against Corruption (the “Convention”) (which was signed by the UAE in 2005 and ratified in 2006) does not seek to define victims of corruption but sets out guidelines for States to adhere to when adopting their individual approaches. The overriding description is that any approach taken should be as “broad and inclusive” as possible, whilst “recognizing that individuals, entities and States can be considered victims of corruption”.¹⁸ Many States seek to rely on existing definitions and provisions on victims of crime and compensation for damages enshrined in national law.

The Convention noted three common legislative approaches to defining victims of corruption, either:

- (A) defining in criminal law who is a ‘victim’ of crime and what rights a victim is entitled to;
- (B) whilst not explicitly referring to a ‘victim’, establishing the right of an ‘injured’/‘harmed’/‘aggrieved’ person to seek compensation; and
- (C) providing the possibility to seek compensation through civil provisions or through tort law.

There is currently no specific definition of ‘victims of corruption’ under UAE law. However, it is possible for individuals that have suffered from corrupt practices to seek compensation through civil proceedings. Consequently, they can be informally classified as victims in this sense.

4. 2 Cases that recognize the role of victims

¹⁸ [unodc.org](https://www.unodc.org) - Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation - working group - 4 Aug 2016.

(A) Criminal proceedings

In general, the role of a victim of corruption in criminal proceedings (where identifiable) would be as a witness for the UPP.

(B) Civil proceedings

As noted above, those who have suffered damage as a result of the actions of others may bring civil claims to recover those losses. The role of a victim in these proceedings is as a claimant, whose witness evidence would be crucial for the case.

4.3 Corruption-related court cases (criminal, civil, administrative) that awarded compensation to individuals or to identifiable or non-identifiable groups of victims to repair the damage caused by the corruption offense

There are no corruption-related court cases that awarded compensation.

4.4 Innovative or effective mechanisms that can be considered good practice regarding the recognition and compensation of victims in corruption-related cases

We are not aware of any mechanisms outside the legislative instruments discussed above that are capable of recognising and providing compensation to victims of corruption in the UAE.

5. Available Information

5.1 Information published by enforcement authorities (including control agencies) about corruption enforcement actions

We are not aware of any publicly available registry or database that specifically records corruption enforcement action in the UAE.

5.2 Feasible access to information on ongoing or concluded cases

The legal portal of the Ministry of Justice contains the majority of federal laws passed since 1971, as well as a repository of rulings from the Emirati courts. However, the list of rulings is limited, with the most recent from 2018.

5.3 Ways for citizens or civil society organisations to gather information on whether corruption cases are being investigated or trialed.

Citizens can gather information from a variety of avenues:

(A) National or international media outlets report on high profile investigations or trials. For example, the placing of the UAE on the Financial Action Task Force list of jurisdictions subject to increased monitoring in March 2022 and the Abu Dhabi Criminal Court’s recent conviction of 79 people for fraud and money laundering have both been widely reported in national, regional and international press.¹⁹

(B) Industry press sources, such as Global Investigations Review (“GIR”)²⁰ (which provides news and analysis relating to government agency and internal corporate investigations including anti-bribery and corruption, financial services misconduct, competition, fraud, money laundering, sanctions violations, tax avoidance and evasion), and M-Lex²¹ (which provides regulatory risk news and analysis including relating to financial crime).

(C) Tracking updates provided on websites and/or social media accounts of key non governmental organisations in this area (though updates may include jurisdictions other than the UAE), such as:

(1) Spotlight on Corruption²²

¹⁹ [Financial crime watchdog adds UAE to 'grey' money laundering watch list | Reuters: Abu Dhabi: 79 people convicted of fraud, money laundering \(gulfbusiness.com\)](#)

²⁰ [Global Investigations Review](#) (some content is accessible only on a paid-for subscription basis).

²¹ [MLex Market Insight](#) (most content is available only on a paid-for subscription basis).

²² See updates on cases here: [Spotlight on Corruption, Cases](#).

(2) Global Witness,²³

(3) Good Law Project;²⁴ and

(4) Transparency International.²⁵

(D) Individuals can also make specific requests for information from various government agencies through the Official Portal of the UAE Government. The relevant government entity must respond to any request within 15 working days and set reasonable fees for providing the requested information.²⁶

6. Supplementary information

6.1 Main identified barriers that prevent CSOs, citizens, and journalists from standing as victims of corruption cases.

As explained above, criminal enforcement action in respect of alleged corruption is usually pursued by public enforcement authorities that act on behalf of the state rather than individual victims. This is generally considered the most appropriate means for addressing instances of alleged corruption, particularly given that such prosecutions can be complex and resource intensive and might require identification and consideration of numerous wide-ranging documents or witness evidence sources, expert evidence including forensic accounting, and liaison between multiple enforcement agencies both nationally and internationally. There is scope for victims of corruption to be provided with redress through (civil) compensation awards; however, there are challenges in practice that could limit the numbers of awards made, especially in cases involving widespread cross-border corruption where loss may be difficult to identify, quantify and evidence.

The civil courts provide an important route for redress for victims and those who have suffered damage or loss as a result of corrupt practices, provided such

²³ [Global Witness. Investigations and advocacy for climate justice & civic freedoms.](#)

²⁴ [Good Law Project, News Archive.](#) For example, [Good Law Project, We're in Court tomorrow.](#)

²⁵ [Transparency.org - Home.](#)

²⁶ Guide to Access Government Information.

individuals are identifiable and the losses suffered are quantifiable and can be evidenced. As such, the challenges identified in the context of compensation awards are likely also to limit the circumstances in which successful claims for damages caused by corruption may be brought.

Though it does not serve as a route through which compensation for victims may be sought, administrative litigation allows citizens to hold the Government to account for its decision-making. It can be used to challenge decisions not to pursue investigations into alleged corruption as well as those that have allegedly been influenced by corruption.

It is difficult, however, to fully assess the effect of these avenues for redress and their respective success rates as there is only limited public information concerning corruption cases in the UAE.

6.2 Other aspects, issues, provisions, or practices linked to the role, recognition, and compensation of victims of corruption.

We have covered a broad range of topics in this report, and we believe it is not necessary to discuss further specific issues in relation to this topic.