

Dubai's new "super regulator"

Dubai recently introduced a new super regulator, the Dubai Economic Security Centre (DESC), which is intended to maintain the Emirate's position as a global financial and economic hub, to protect investors and deal with issues such as fraud, bribery, money laundering and terrorist financing.

What is the DESC?

The DESC has been set up under Dubai Law No. 4 of 2016 (the law) and is a new government agency.

Its objectives include:

- maintaining Dubai's position as a global financial and economic hub
- supporting Dubai's financial stability and protecting its economy
- protecting Dubai's investments from crimes that may harm its economy
- ensuring the application of the best international practices
- enhancing the confidence of investors and financial institutions operating in Dubai.

Our understanding from speaking with the relevant authorities, is that the DESC is not yet operational. No timeline has been provided for the commencement of operations by the DESC.

Dealing with misconduct

The role of the DESC is to tackle corruption, fraud, bribery, embezzlement, crimes against public funds, forgery, money laundering and the financing of terrorism or illegal organisations. However, the Law does not provide operational detail on how the DESC will fulfil this role in practice.

The UAE Central Bank's Anti-Money Laundering Suspicious Cases Unit has overall jurisdiction in relation to anti-money laundering (AML) and counter terrorist financing (CTF), so it will be interesting to see how the DESC will be integrated into the regulatory and law enforcement scheme in place in Dubai and the UAE.

The DESC is also responsible for monitoring the following:

- the trade in precious metals, commodities and listed and unlisted securities
- charitable donations
- the transit of cash and other assets through Dubai's points of entry
- analysing economic risks.

Extra-territorial reach

The DESC is responsible for cooperating with international organisations on investigations into acts carried out abroad which affect the economic security of Dubai. This appears to mainly concern international money laundering and terrorist financing activities. However, it could also include other acts committed abroad, such as certain tax evasion crimes which are not currently unlawful in the UAE. If the proceeds of income tax evasion make their way to Dubai, this could negatively affect the Emirate's reputation and, therefore, its economic security.

What you need to know

- The DESC's mandate includes AML and CTF.
- The Law imposes a duty on everyone to cooperate with the DESC and provide information.
- The DESC has rulemaking powers which include those relating to sanctions compliance and administrative penalties.
- The Law protects informants (and whistleblowers).

The scope of the DESC's mandate

The DESC has jurisdiction over specified bodies and entities, but not individuals.

These are:

- local government bodies
- bodies for which the Dubai government guarantees a minimal return
- bodies for which the Dubai government offers financial aid
- corporate entities
- charitable foundations
- any party that is subjected to the DESC's mandate by resolution of the president of the Dubai Executive Council.

What you need to know

- The DESC has jurisdiction in the emirate of Dubai and its free zones, including the DIFC.
- Individuals are not currently subject to the DESC's mandate.
- The DESC appears to be mainly a reporting and referral authority.

The DESC's main powers

Suspend trading on exchanges

The DESC may, in the event of exceptional circumstances, temporarily suspend:

- trading on Dubai exchanges
- trading in any financial instrument
- any rule related to the exchange
- any transaction on an exchange.

The DESC has the general power to suspend "rules or regulations that are related to financial markets." This loosely drafted provision means the DESC can suspend DFSA and NASDAQ Dubai rules. This also means that, at least in theory, the DESC may suspend rules made by a

Federal regulator such as SCA, which are applicable to all UAE exchanges, and not only those located in Dubai.

Given that both the Securities and Commodities Authority (SCA) and the Dubai Financial Services Authority (DFSA) have similar powers in relation to the exchanges that they license and supervise, we expect the DESC to exercise the above powers in coordination with other regulators.

Take preventative measures and freeze of assets

The Law grants appointed DESC staff the status of "Judicial Officers". This allows them to "prove breaches" of the Law and to draft the necessary reports. Most importantly, they may request the assistance of the Dubai police or any other relevant party¹. Any obstruction of the DESC's functions could trigger legal action². This means that technically these preventative measures could include on-site inspections or dawn raids.

Finally, the Law allows the DESC to request the freezing of assets.

What the DESC can do

- Suspend trading on Dubai exchanges in coordination with the relevant regulators and under exceptional circumstance.
- Request assistance from the Dubai police, possibly allowing it to carry out on site inspections.
- Require the production of information, including information that is confidential and privileged.
- Take preventative measures and request the freezing of assets.
- Provide protection for informants/whistleblowers.
- Impose administrative penalties. However, these have yet to be set out.

Gathering information

The Law imposes a duty on all persons to cooperate fully with the DESC and to respond to its requests for

¹ See article 22 of the Law.

² See article 23(b) of the Law.

information³. However, the Law does provide protection for whistleblowers.

Penalties

The DESC can impose penalties of between AED10,000 and AED500,000⁴ on anyone who violates the Law.

Whistleblower protection

The Law sets out a protection scheme for informants.

This includes:

- the necessary protection at his place of residence
- the non-disclosure of his identity and whereabouts
- protection from discrimination at his workplace.

Informants are also exempt from all liability for the disclosure of confidential information in relation to matters which may affect the emirate's economic security. This is regardless whether the information pertains to the informant's employer or to a client. However, whistleblower protection falls away if the disclosed information is false. We note here that the Arabic term used for "false" is actually intended to include disclosures that are knowingly false, and not simply untrue.

Rulemaking powers

The DESC has a general rulemaking power, in addition to making rules regarding terrorist organisations and imposing administrative penalties.

The Law expressly grants the DESC rulemaking power to set out:

- the "necessary rules and procedures relating to the prohibition of dealing with terrorist individuals and organisations, or any other related person"⁵
- the administrative and financial penalties for breaches of the Law.

However, it remains unclear which terror lists the DESC would rely on. It might be safe to assume that, at a minimum, these would be the recently introduced UAE list

of designated terrorist organisations and groups. We note the Law does not refer to the United Nations sanctions lists. The DESC also has general rulemaking power for the implementation of the Law⁶. This is essential for a regulator's ability to create its own comprehensive regulatory framework.

The implications for the Dubai International Finance Centre

The DESC's jurisdiction extends to Dubai's free zones, including the DIFC.

DIFC firms are already required to comply with best international practices in the financial markets so it is not clear at this stage what role the DESC would take and how it would interact with the DFSA's role as the regulator and standard setter for financial services and AML in the DIFC.

For example, the DIFC already has a dual regulatory regime for AML, with oversight by the DFSA under DIFC law, and the UAE Central Bank under Federal criminal legislation. It now appears as if the DESC could add a third layer of oversight.

Additionally regulatory overlap would also appear to be created by the DESC's monitoring role in relation to "listed and unlisted securities", including the suspension of trading. We will have to wait and see what role DESC takes in monitoring the trade in securities, both in the DIFC and in Dubai generally.

The Law, and its potential future implementing regulations, could impose an additional regulatory burden for entities carrying out their activities in the DIFC.

However, we would expect that the DFSA and DESC would cooperate on matters involving securities and AML and we would not be surprised to see a Memorandum of Understanding signed between these regulatory bodies in due course to facilitate their interactions, and reduce any potential for over-regulation.

³ See article 23(a) of the Law.

⁴ See article 23(b) of the Law.

⁵ See article 7(8) of the Law.

⁶ See article 24 of the Law.

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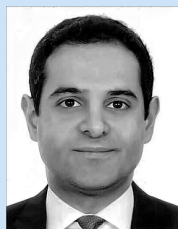
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