



Middle East Legislative Insight: Saudi Arabia Anti-Bribery Law

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Analysis

Saudi Arabia's Anti-Bribery Law is significant in application to thrust the development vision of the crown named as Vision 2030. The law was enacted by Saudi Arabia Royal Decree No. M36/1412 on the Approval of the Law Combatting Bribery (Saudi Arabia Cabinet Decision No. 175/1412 Approving the Anti-Bribery Law). The first anti-bribery law was enacted in 1962 under Saudi Arabia Royal Decree No. 15/1382 just before the General Civil Servants' Law (Saudi Arabia Royal Decree No. 49/1397) was issued, which incriminated bribery and abuse of position in the public sector.

Background

Saudi Arabia Royal Decree No. M36/1412 (Saudi Arabia Cabinet Decision No. 175/1412) was enacted by the Kingdom of Saudi Arabia against corruption after being a signatory to the United Nations Convention Against Corruption (UNCAC), which is appreciable. The zero-tolerance approach that has surfaced over the past year has the potential to significantly improve the integrity of Saudi Arabia's business market, but lingering concerns surround residual corruption with certain businesses continuing to question the feasibility and longevity of trading in the Kingdom. Saudi Arabia Royal Decree No. M36/1412 (Saudi Arabia Cabinet Decision No. 175/1412) was enacted with the aim of improving the anti-corruption mechanism in the Kingdom.

Implications of Saudi Arabia Royal Decree No. M36/1412 (Saudi Arabia Cabinet Decision No. 175/1412)

Public corruption is to be brought to an end to ensure investment security in the Kingdom. The National Anti-Corruption Commission revealed that in 2013 it had detected 306 cases of corruption by investigating 400 public projects, of which 30 were referred to the Bureau of Investigation and Public Prosecution for investigation, while the remaining were related to the attention of the relevant ministries and government bodies. Saudi Arabia Royal Decree No. M36/1412 (Saudi Arabia Cabinet Decision No. 175/1412) has made significant changes to the administrative setups in tackling corruption.

Main provisions of Saudi Arabia Royal Decree No. M36/1412 (Saudi Arabia Cabinet Decision No. 175/1412)

Punishment of public officials

Article 1 of Saudi Arabia Royal Decree No. M36/1412 (Article 1 of Saudi Arabia Cabinet Decision No. 175/1412) states that every public employee who promises to perform a duty by themselves or through others in return for a gift or promise is said to have accepted bribe according to the law. Saudi Arabia Royal Decree No. M36/1412 (Saudi Arabia Cabinet Decision No. 175/1412) imposes a punishment of no more than ten years or a fine up to SAR 1 million. Here, the intention of the employee does not matter, and the offence will be deemed to be committed.

Influence through request, mediation and recommendation

Article 4 of Saudi Arabia Royal Decree No. M36/1412 (Article 4 of Saudi Arabia Cabinet Decision No. 175/1412) states that a person who violates their duties either by doing or abstaining from doing due to mediation, request or recommendation will be punished by no more than three years of imprisonment and fined no more than SAR 100,000, or both.

Scope of the term briber

Article 5 of Saudi Arabia Royal Decree No. M36/1412 (Article 5 of Saudi Arabia Cabinet Decision No. 175/1412) states that every public employee who requires for themselves or others, accepts or acquires an offer to use a real or alleged authority to obtain from any public authority labour, order, decision, commitment, authorization, import agreement, job, service or any kind of advantage will be considered a briber.

Article 6 of Saudi Arabia Royal Decree No. M36/1412 (Article 6 of Saudi Arabia Cabinet Decision No. 175/1412) states that a public official who is to follow up a transaction in any government department due to bribe and to whom none of the terms in this law applies will be punished by no more than two years of imprisonment and fined by no more than SAR 50,000, or both. Here, the person who promises to provide the benefits will be punished under Article 4 of Saudi Arabia Royal Decree No. M36/1412 (Article 4 of Saudi Arabia Cabinet Decision No. 175/1412). Article 12 of Saudi Arabia Royal Decree No. M36/1412 (Article 12 of Saudi Arabia Cabinet Decision No. 175/1412) also states that every advantage or interest obtained by the bribed, whichever the type, name of that advantage, or interest (either corporeal or incorporeal) will be considered a form of promise or offer in inflecting the law.

Gifts and hospitality

No exemptions are provided for gifts and hospitality in Saudi Arabia Royal Decree No. M36/1412 (Saudi Arabia Cabinet Decision No. 175/1412). Any benefit or privilege obtained by the bribee, regardless of its type or designation, whether material or otherwise, will be considered a (prohibited) gift or promise.

This matter was somewhat elucidated with the passing of the rules on gifts to officials. Pursuant to these rules, an official may accept gifts given at visits and official occasions or at receptions of official guests, in accordance with custom and the courtesy protocols of such visits and occasions, though they cannot be cash and must be conventional in the context in which it is given. Crucially, businesses must be cognisant that generally, when reviewing the appropriateness of a gift, the authorities will consider a number of contextual factors, including the proximity of the gift-giving to any relevant business deal, common

courtesy practices of the firm in question, proportionality of the gift to conventional customs, and the appropriateness of the benefit given.

Persons coming under Saudi Arabia Royal Decree No. M36/1412 (Saudi Arabia Cabinet Decision No. 175/1412)

Article 8 of Saudi Arabia Royal Decree No. M36/1412 (Article 8 of Saudi Arabia Cabinet Decision No. 175/1412) states the persons that come under the scope of the law. Though Saudi Arabia Royal Decree No. M36/1412 (Saudi Arabia Cabinet Decision No. 175/1412) is intended on public officials, the scope of the law is broad and can extend to investors and directors of joint-stock companies. Saudi Arabia Royal Decree No. M36/1412 (Saudi Arabia Cabinet Decision No. 175/1412) also includes those persons working under government contracts and members of the judiciary. The persons to which the provisions apply are summarised by Saudi Arabia Royal Decree No. M36/1412 (Saudi Arabia Cabinet Decision No. 175/1412) as follows:

- everyone who works for the government or any institution, either body or body corporate, and either permanently or temporarily;
- the arbitrator or the expert hired by the government or any committee that has judicial authority;
- everyone hired by any government institution or any other administrative authority to perform a given duty;
- everyone who works for private companies or establishments that execute administrating or operating, maintenance or exercise of public service of any public institution or work for joint stock companies or companies of shares held by the government and companies and establishments that exercise banking; and
- managers and members of the administrative board of private and public companies or those working under government contracts.

Incrimination and consequences

Article 10 of Saudi Arabia Royal Decree No. M36/1412 (Article 10 of Saudi Arabia Cabinet Decision No. 175/1412) states that the briber, the mediator and any participant in any of the crimes mentioned in the law will be punished by penalties of the article of incrimination. Here, everyone who agrees motivates or helps in committing the crime intentionally will be considered a participant in the crime once it is committed on the basis of the agreement, motivation or help.

Saudi Arabia Royal Decree No. M36/1412 (Saudi Arabia Cabinet Decision No. 175/1412) clearly indicates that any act can be considered corrupt, regardless of its legitimacy, whether it is a positive act or an omission, whether it has been done in the absence of a prior agreement, and even where it involves using the influence attached to a public office to gain benefit, rather than the performance of a relevant duty.

As a consequence of the said incrimination, Article 13 of Saudi Arabia Royal Decree No. M36/1412 (Article 13 of Saudi Arabia Cabinet Decision No. 175/1412) states that termination, deprivation of holding a public post, and deprivation of holding what is considered a public post can be imposed by the Kingdom as punishment. However, the Council of Ministers may reconsider punishments five years ahead of completing the punishment, as states in Article 14 of Saudi Arabia Royal Decree No. M36/1412 (Article 14 of Saudi Arabia Cabinet Decision No. 175/1412).

Article 19 of Saudi Arabia Royal Decree No. M36/1412 (Article 19 of Saudi Arabia Cabinet Decision No. 175/1412) is also significant since the authority assigned to judge in criminal cases may inflict a fine no more than ten times as much as the bribe if its manager or any worker is convicted of committing any crime mentioned in the law. The Council of Ministers may reconsider the deprivation penalty, mentioned in Article 19 of Saudi Arabia Royal Decree No. M36/1412 (Article 19 of Saudi Arabia Cabinet Decision No. 175/1412), after at least five years of issuing the verdict. Article 20 of Saudi Arabia Royal Decree No. M36/1412 (Article 20 of Saudi Arabia Cabinet Decision No. 175/1412) states that if a person or company is denied the terms of Article 19 of Saudi Arabia Royal Decree No. M36/1412 (Article 19 of Saudi Arabia Cabinet Decision No. 175/1412) and is provided with an enhanced punishment the matter should be forwarded by the department to the ministry who will adjudicate the matter.

All verdicts in bribe crimes are issued by the Ministry of Interior, as provided in Article 21 of Saudi Arabia Royal Decree No. M36/1412 (Article 20 of Saudi Arabia Cabinet Decision No. 175/1412).

Whistle-blower

Saudi Arabia has taken proactive steps to promote whistle-blower and ensure their security.

Article 16 of Saudi Arabia Royal Decree No. M36/1412 (Article 16 of Saudi Arabia Cabinet Decision No. 175/1412) provides that the briber and mediator are exempt from prime and consequent punishment if they inform the authorities before discovering the crime.

Article 17 of Saudi Arabia Royal Decree No. M36/1412 (Article 17 of Saudi Arabia Cabinet Decision No. 175/1412) provides for rewards for information substantiating an offence. Any person who is not a briber, or an accomplice, and who provides incriminating information substantiating any offence set out in Saudi Arabia Royal Decree No. M36/1412 (Saudi Arabia Cabinet Decision No. 175/1412) will receive a reward not less than SAR 5,000 or up to half of the money confiscated. The reward can also be increased according to the seriousness of the crime exposed.

Repeat offenders

Article 18 of Saudi Arabia Royal Decree No. M36/1412 (Article 18 of Saudi Arabia Cabinet Decision No. 175/1412) states that a repeater is one who was convicted of one of the crimes mentioned under the law and was proved to have committed another crime before completing the earlier punishment.

Saudi Arabia Royal Decree No. M36/1412 (Saudi Arabia Cabinet Decision No. 175/1412) prescribes that a repeat offender may be sentenced to higher than the maximum punishment determined, but no more than twice as much mentioned.

Enforcement body

The National Anti-Corruption Commission (NACC) was established under Saudi Arabia Council of Ministers Resolution No. 165 /1432. The NACC is tasked with addressing all forms of corruption in Saudi Arabia and reports directly to the King. Other Saudi agencies, including the Commission for Investigation and Prosecution and the General Auditing Bureau, also play important roles in implementing anti-corruption rules.

The Supreme Anti-Corruption Committee (SACC) is another Saudi enforcement body, established under Saudi Arabia Royal Decree No. A38/1439. This committee consists of the presidents of the Commission for Investigation and Prosecution, the General Auditing Bureau, the NACC, and State Security, as well as the Attorney General, and is headed by the Crown Prince. The SACC has been formed to:

- identify offences and persons or entities involved in public corruption; and
- take all necessary and precautionary measures with regard to fighting corruption including by conducting investigations, issuing arrest warrants, imposing travel bans, and tracking and freezing accounts, funds and assets.

The SACC is not bound by existing laws and regulations in conducting its activities.

Specialised anti-corruption units within the Public Prosecution Department

As an additional measure, the Saudi government announced as recently as March 2018 that it had established new specialised anti-corruption units within the Public Prosecution. Cases prosecuted by these units would be carried out under the direct oversight of the Attorney General, once again demonstrating the paramount importance of corruption-related cases. Though it is unclear when the dedicated units will become operational, in creating this new advanced capacity the Saudi government has improved its ability to investigate and prosecute corrupt activity and, in so doing, will add an extra deterrent against illicit practices.

Measures to tackle corruption

The NACC has undertaken several measures to tackle corruption in the public sector (such as pressing for greater transparency in all dealings of Saudi government agencies). The body has also complained that the lack of proper coordination with the different government agencies is hindering its progress. The NACC is only authorized to refer its investigations to other competent Saudi agencies and to the King directly, as per Article 3(3) of Saudi Arabia Council of Ministers Resolution No. 165 /1432.

However, in 2016, the NACC's coordination with different government agencies strengthened. The NACC succeeded in investigating the employment contract of a minister's son with a Saudi ministry and announced the outcome of its investigation publicly. Having gained greater experience, the NACC has also begun conducting more investigations and taking quicker action against different aspects of corruption. This has led to efforts to improve performance.

The formation of the Supreme Committee is indicative of the greater strategic importance of anti-graft efforts to the country's wider reform programme. Chaired by the Crown Prince and comprised of high-ranking officials from various sectors of governance, including security, finance and existing anti-corruption bodies, the Committee acts as a mechanism that will immediately elevate corruption instances to the remit of the highest echelons of government. In so doing, the Kingdom is sending a strong message that it will no longer turn a blind eye to practices that compromise its financial system or rule of law.

The new Supreme Committee will have vastly advanced investigative and prosecutorial powers, including the capacity to issue arrest warrants and order interim measures such as issuing travel bans and asset freezing orders. This is a critical limitation of the existing National Anti-Corruption Commission, more commonly known as Nazaha, which was established in 2012 and has limited capacity, despite its function as the primary recipient of reports of corrupt activity. The new committee will not replace Nazaha, which will continue to target the protection of national integrity, investigate instances of graft in government contracts and refer any incidents to the relevant authorities and public prosecution as and when necessary.

By coordinating the activities of both the Supreme Committee and Nazaha, the efficiency of existing measures will be boosted by covering a wider scope of prosecutorial powers, increased authority with which to pursue perpetrators, and greater scrutiny through public awareness.

New amendments

The Shoura (Consultative) Council has approved draft amendments to the Kingdom's laws to combat bribery. The amendments are aimed at protecting public utilities from corruption by all means. The new changes focus on protecting public institutions from corruption and upholding standards of integrity and transparency, according to the Council. The draft law, consisting of 23 articles, is aimed at combating bribe so as to consolidate the concept of inviolability of job and protect it from violations by

applying the most severe penalties, including material and moral punitive measures. This also targets protecting the interests of the state and the national economy by bringing the employee under the scope of Saudi Arabia Royal Decree No. M36/1412 (Saudi Arabia Cabinet Decision No. 175/1412), while ensuring the criteria for honesty and transparency.

The draft law also seeks to emphasize the provisions of the United Nations Convention against corruption, which is the only legally binding universal anti-corruption instrument. The convention was ratified by the Kingdom. Another objective of the amended law is to enhance the efficiency of administrative bodies and activating economic and social development programs.

The council also approved amendments in some articles of the draft Commercial Maritime Law after listening to a report presented by the committee of transport, communications and information technology. The Shoura session was held in the presence of Minister of the State and Member of the Cabinet for Shoura Affairs Muhammad Abu Saq.

Conclusion

Corruption has become a significant bane for all countries across the globe, whether developed, developing or underdeveloped. Its causes are many and are inter-related with various circumstances, mainly economic, political and social. Measures to fight corruption have been implemented at the international level through multiple agreements such as the United National Convention Against Corruption (UNCAC) and the establishment of a Corruption Perception Index (CPI). A higher ranking among the index has become a necessity for attracting the confidence of investors. The Saudi Arabian government, through its laws, has stated the importance it gives to fighting corruption, and to that end it has made many plans to diagnose the problem. The government also continues to work in coordination with all the concerned government authorities and social sectors to ensure that, through co-operation with each other, they will free the country of corruption.

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Notes

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