

Alert | White Collar Defense & Investigations



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The New Nazaha Law: More Prosecution Prospects in Saudi Arabia’s Fight Against Corruption

Saudi Arabia’s Council of Ministers has enacted a stringent new law designed to tackle corruption among government employees. The Saudi Oversight and Anti-Corruption Authority (Nazaha) Law (the New Law), approved on 23 July 2024, mandates (amongst other penalties) the immediate dismissal of any government employee found guilty of corruption. The New Law was published in Umm Al-Qura, the Kingdom’s official gazette, on 9 August 2024 and will take effect on 7 November 2024.

The New Law establishes detailed procedures for prosecuting government employees who accumulate wealth that is “inconsistent” with their reported income. If a public official (a term with broad application in the Kingdom) amasses wealth they cannot explain, and if this wealth is connected to corruption, the burden of proof would fall on the employee to demonstrate the assets’ legitimacy. This requirement also extends to the employee’s immediate family members, including spouses, children, and parents.

This marks a significant departure from standard prosecution practices, and a potentially novel way around a prevailing challenge in holding corruption perpetrators to account. Convictions in corruption cases often stumble when prosecutors struggle to establish intent, or to discredit sham arrangements concocted to disguise illicit benefits. By reversing the burden of proof and requiring officials to prove the legitimacy of their funds, Nazaha could overcome these issues and increase their chances of success. It is unclear at this point what kind of proof would be sufficient or acceptable to Nazaha.

Increased Penalties and Powers

The New Law specifies that if the wealth of a public employee or someone in a comparable position increases in a manner that is disproportionate to their income or resources after taking office, and if investigations reveal evidence of corruption, the individual would be required to prove the legitimacy of the funds, whether they are in cash or kind. Failure to provide a legitimate source for the wealth would result in the case being referred to a Nazaha investigative unit, potentially leading to severe penalties and the recovery or confiscation of the assets involved.

Further, in cases where the accused absconds or dies before they are prosecuted, Nazaha, in coordination with all other relevant authorities, would collect evidence and pursue the recovery or confiscation of misappropriated funds. Nazaha would also work with the Ministry of Justice to enforce the ruling both domestically and internationally, using all powers at its disposal.

In a first for Nazaha, the New Law allows individuals accused of corruption to resolve their cases through a newly proposed settlement process if they make a formal request to do so. Nazaha has not yet released details of the settlement process, though it may release guidelines that would require confirmation by Royal Decree before taking effect.

An Expanded Remit for Investigations and Prosecution

The New Law expands Nazaha's powers, which include specialized units reporting directly to King Salman bin Abdulaziz Al Saud, covering areas such as criminal investigation, prosecution, integrity protection, transparency enhancement, anti-corruption measures, administrative oversight, and international cooperation.

In addition, the New Law expands the definition of corruption to encompass various offenses such as misuse of public funds, abuse of power, and bribery. It broadens Nazaha's authority to include monitoring administrative violations, handling complaints, conducting investigations, and prosecuting offenders. Nazaha is also responsible for recovering any assets derived from bribery and corruption offences, implementing precautionary measures, and safeguarding whistleblowers that report wrongdoing within their institutions. Nazaha aims to develop and update preventive measures and raise public awareness about the consequences and impact of corruption. Although the nature of these initiatives remains unknown, interaction between Nazaha and the public may be viewed as a positive step.

The New Law underscores Saudi Arabia's dedication to fostering a secure and attractive environment for investors, solidifying the Kingdom's status as a leading global investment destination, and meeting the objectives outlined in Vision 2030.

Practical Implications

Why is this important for companies operating in the Kingdom? In the last month, Nazaha has arrested 155 government officials on corruption charges. Its officials also conducted 924 inspection raids throughout June 2024. As a result of these operations, Nazaha brought several criminal and administrative cases, leading to investigations involving 382 officials from various government departments. From 2021 to 2023, the authority has arrested approximately 5,000 individuals in connection with corruption cases, which demonstrates its strict stance against financial and administrative corruption in the Kingdom and asserts that it does not show leniency for individuals in positions of power.

This New Law indicates that Saudi Arabia is likely to continue prioritising anti-corruption efforts in the coming years, which may lead to an increase in the number of Nazaha investigations. Companies operating in the Kingdom should consider reviewing their internal controls and practices to ensure they sufficiently protect their business from corruption risk, particularly policies and procedures regarding gifts and hospitality, facilitation payments to intermediaries, and third-party relationships and payments. Companies should also consider providing comprehensive training to their employees on anti-bribery related regulations and internal policies.

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