Cabinet Resolution No. 38 of 2014 Concerning the Executive Regulation of the Federal Law No. 4 of 2002 Concerning Anti Money Laundering and Combating Terrorism Financing

The Cabinet,

After reviewing the Constitution;

Federal Law No. 1 of 1972 concerning the jurisdiction of the ministries and the powers of the ministers, as amended;

Federal Law No. 4 of 2002 concerning anti money laundering and combating terrorism financing, as amended; and

Upon the proposal made by the Minister of Finance, as approved by the Cabinet,

Has resolved the following:

Article 1 Definitions

In the application of the provision of this Resolution, the following words and expression shall have the meaning set out opposite to each of them, unless the context requires otherwise:

State: The United Arab Emirates.

Law: The Federal Law No. 4 of 2002 concerning anti money laundering and anti terrorism financing; as amended.

Regulation: The Executive Regulation of the Law.

Minister: The Minister of Finance.

Central Bank: The Central Bank of the United Arab Emirates.

Authority: The Securities and Commodities Authority.

Governor: The Governor of the Central Bank.

Committee: The National Anti Money Laundering and Combating Terrorism Financing Committee.

Money: Such assets of any kind whatsoever, whether material or not, fixed or movable including the national currency and foreign currencies, instruments or bonds confirming the title to such assets or any right related thereto of any form whatsoever, including digital or electronic form.

Money Laundering: Any of the acts as provided in Article 2 of the Law.

Terrorism Financing: To provide, raise or procure to provide or transfer Money by any means, whether directly or indirectly, to any society, body, organization, center, group, gang or any persons governed by the provisions of Federal Law No. 7 of 2014 concerning the control of terrorist crimes, whether such money are from lawful or unlawful sources and whether it is used, in full or in part, in any Terrorist Act, and whether the terrorist act occurred or not.

Funding Unlawful Organizations: Any physical act or legal act purported to provide money to any unlawful
organization or to any of its activities or members.

Returns: Any money arising directly or indirectly from committing any felony or misdemeanor.

Suspected Transactions: Such transactions in connection with money where there are good reason to suspect that they are derived from any felony or misdemeanor or connected with terrorism financing or funding unlawful organizations, whether performed or attempted.

Freezing or Seizure: Such temporary prohibition of the carriage, transfer, disposition, movement or exchange of money under an order by the competent authority.

Confiscation: To finally deprive a person from his money under a court order.

Means: Anything used or purported to be used in any manner to commit any felony or misdemeanor.

Financial Institutions: Any bank, financing or exchange company, financial broker or any other institution licensed by the Central Bank or the Authority, whether publicly or privately held.

Other Financial, Commercial and Economic Establishments: Such establishments licensed and controlled by entities other than the Central Bank or the Authority, including non financial activities and professions such as real estate brokers, jewelry and precious metals and stones traders, lawyers, legal consultants, private notaries public and accountants.

Unit: The Financial Information Unit for money laundering and suspected events, created at the Central Bank under the Law.

Client: Any natural or corporate person that the financial institutions and the other financial, commercial and economic establishments deal with, such as opening an account in the name of such person or providing a service to him.

Control Authorities: Such federal and local authorities that the various laws and regulations assign them to supervise and licence financial institutions and the other financial, commercial and economic establishments.

Law Enforcing Authorities: The federal and local authorities assigned under their applicable laws to fight, search, enquire and investigate all crimes, including the crimes of money laundering, terrorism financing and funding unlawful organizations.

Negotiable Financial Instruments to Bearer: Such cash instruments, whether in the form of a document to bearer such as travel cheques or cheques, promissory notes and payment orders.

Politically Exposed Foreigners: Such natural persons assigned, now or in the past, with prominent jobs in a foreign country, such as presidents, prime ministers, senior politicians, senior government officers, judicial or military officers, senior executive officers of state held companies, senior officers of political parties and such persons assigned or have been assigned prominent jobs at international organizations.

Real Beneficiary: Such natural person in actual control of the client or performs transactions on his behalf, including the person that actually controls a corporate person or legal arrangement.

Article 2 Money Laundering Crime
1. A person shall be considered to have committed a money laundering crime if such person is aware that the money is derived from a felony or misdemeanor, and willfully commits any of the following act:
   A. To transfer, move, deposit, keep, invest, exchange or manage the returns for the purpose of concealing or watering their unlawful source;
   B. To conceal or water the real source, location, method of disposition, movement, ancillary rights or title to the returns;
   C. To acquire, hold or use the returns.
2. The money laundering crime is considered as an independent crime and the punishment for the original crime shall not prevent from being punished for the money laundering crime.
3. It is not conditional that the original crime is convicted to prove the unlawful source of the returns. Original crimes include such acts committed in another country, which constitute a crime in such state and would constitute an original crime if committed in the State.

Article 3 Liability of the Financial Institutions and the Other Financial, Commercial and Economic Establishments
The financial institutions and the other financial, commercial and economic establishments shall:

A. Execute the provisions of the Law, this Regulation any regulations or instructions issued by the Central Bank or any control authority, and any rules concerned with money laundering, terrorism financing and funding unlawful organizations in the State.

B. Lay such regulations and procedures as required to apply the provisions of the Law and this Regulation in accordance with the nature of their activities.

Article 4

Financial Institutions and the other financial, commercial and economic establishments shall:

A. Lay a special system to identify the clients and their legal positions and the real beneficiaries and any amendment thereto.

B. Take such care and precaution procedures continuously, fill such forms as approved by the Control Authorities and confirm that a copy of all the following documents, information and statements is kept:

a. In respect of a natural person:
   a. The name as shown in the identity card or the passport, the nationality, place of residence and original domicile and the name and address of the employer.
   b. A photo copy of valid identity card or the passport, confirming the legal position of the expatriate working in the State and obtaining the approval of the senior management if the client or real beneficiary is a politically exposed foreigner or a member of his family or an associated person.

b. In respect of a corporate person:
   a. The legal status, name, domicile, aspects of activity, address, legal representative, instrument authorizing such representative, and the names and addresses of the partners and shareholders each holding 5% of the share capital and taking the procedures as provided in Clause 1 of this Article if the Client or real beneficiary is a politically exposed foreigner or a member of his family or an associated person.
   b. A copy of the Article of Association, a valid commercial or professional license approved by the Ministry of Economy, or local licensing authorities, free zones authorities, Ministry of Labor or Ministry of Social Affairs in case of associations permitted to open bank accounts, as the case may be.

Article 5

Financial institutions and other financial, commercial and economic establishments shall:

1. Not to deal with fictitious banks in any manner whatsoever, whether by opening bank accounts or accepting money or deposits from them.

2. Not to open bank accounts in false, pseudo or fictitious names or by numbers without the names of their holders.

3. To confirm the source of wealth of politically exposed foreigners and their families and associated persons and to provide continuous check on their transactions.

4. To update all information and data in connection with the identity of the clients regularly and periodically.

Article 6

Financial institutions and other financial, commercial and economic establishments shall keep records, files, documents, papers, communications and forms as determined by the Committee, the Central Bank and Control Authorities, for at least 5 (five) years from the date of closing the account for clients holding accounts with such establishments, or from the date of complete inspection by the Control Authorities, or from the date of completing the investigation or issuing a final judgment by the competent judicial entities, as the case may be.

Article 7

Financial institutions and other financial, commercial and economic establishments shall notify the Unit about the transactions suspected to involve money laundering, terrorism financing or funding unlawful organizations on the suspected transaction report form prepared by the Committee.

Article 8

Financial institutions and other financial, commercial and economic establishments shall appoint a controller in accordance with such conditions as determined by the Central Bank and the Control Authority, and shall enable such controller to operate quite independently to undertake the following functions:
1. To control money laundering, terrorism financing and funding unlawful organizations.
2. To inspect records, to receive, examine and consider suspected transactions and to take the resolution to notify the Unit or to keep them on file, stating the reasons quite secretly.
3. To review such regulations and procedures concerning anti money laundering, combating terrorism financing and funding unlawful organizations, the scope of compliance by the establishment therewith and to propose as required to be updated and developed, to prepare biannual reports thereon to be provided to the senior management and to send a photocopy thereof to the Unit, together with the notes and resolutions of the senior management.
4. To lay and execute personnel training and qualification programmes and plans for those employed by the establishment in connection with money laundering, terrorism financing and funding unlawful organizations and the method to be confronted in coordination with the unit.
5. To cooperate with the Unit and to provide it with the required statements and to enable its personnel to review such records and documents as required to exercise its powers.

Article 9

Financial institutions and other financial, commercial and economic establishments shall prepare such programmes and workshops for training, building capabilities and qualifying the controllers and other personnel in anti money laundering and combating terrorism financing and funding unlawful organizations.

Article 10

The procedures as provided in Article 4 of this Regulation shall apply to such branches and companies operating outside the State, which belong to the financial institutions and other financial, commercial and economic establishments. If the states where such branches and subsidiary companies do not apply or used to apply less procedures.

Article 11 National Anti Money Laundering and Combating Terrorism Financing Committee

The Minister shall issue such a Resolution forming the Committee to be chaired by the Governor, identifying the names of its members based on nominations by the entities as determined by the Law and such other entities as added by the Chairman of the Committee.

Article 12

1. The Committee shall elect from its members a Vice Chairman at its first meeting.
2. The Committee shall meet on invitation by its Chairman, at least once every three months or as necessary.
3. The meeting of the Committee shall be valid if the absolute majority of the members are present, provided that the Chairman or the Vice Chairman.
4. The Committee shall issue its resolutions by two thirds of the votes of the entities represented at the meeting of the Committee.
5. The members of the Committee may not take part of the meetings of the Committee through visual electronic means.
6. If a member of the Committee is absent for three successive meetings without such excuse acceptable to the Committee, the Chairman shall refer his recommendations to the Minister to take the required procedures.
7. The Committee may invite to its meetings such expert and qualified persons as the Committee may deem appropriate, without having the right to vote at its meetings.

Article 13

The Committee may form from its members subcommittees to consider any issue within its powers, and may seek the assistance of such expert and qualified persons as the Committee may deem appropriate.

Article 14

1. The Committee may apply the risk based methodology upon identifying and assessing the risks of money laundering, terrorism financing and funding unlawful organizations at the national level.
2. The Committee shall propose national policies to address money laundering, combating terrorism financing and funding unlawful organizations, taking into consideration such risks as identified.
3. The Control Authority shall, in coordination with the Unit, handle the risks as determined by the Committee.

Article 15
The Unit shall provide technical and administrative support to the Committee, and the Head of the Unit shall act as the Secretary of the Committee.

Article 16 Powers of the Unit

The Unit shall have the following duties and responsibilities:

1. To receive reports from financial institutions and other financial, commercial and economic establishments in connection with suspected transactions related to money laundering, terrorism financing and funding unlawful organizations, and to study, analyze, enter and save them in the database of the Unit.

2. To demand additional information on the reports on suspected transactions in connection with money laundering, terrorism financing and funding unlawful organizations from all financial institutions and other financial, commercial and economic establishments and from the law enforcing authorities, as required.

3. To demand such information, data or reports from any non profit society or corporation in case of suspected money laundering, terrorism financing or funding unlawful organizations, or the receipt of reports or information on such societies or corporation, as required.

4. To cooperate and coordinate with the Central Bank and control authorities to confirm that the financial institutions and other financial, commercial and economic establishments are compliant with the procedures concerning anti money laundering, combating terrorism financing and funding unlawful organizations.

5. To cooperate with judicial authorities and law enforcing authorities in connection with the transactions of money laundering, terrorism financing and funding unlawful organizations, to report to the competent Public Prosecution on the results of examination and inspection and every violation of the Law and this Regulation and to provide adequate statements to take the required procedures in respect thereof.

6. To periodically coordinate with the Committee, the Central Bank and the Control Authorities to lay suspected transaction report forms used by financial institutions and other financial, commercial and economic establishments and to amend such forms.

7. To create a database or special record where everything in connection with the events as received by the Unit in connection with money laundering, terrorism financing and funding unlawful organizations and to update it periodically and to lay such rules and conditions as required to keep such events confidential and not to disclose them without written permission from the officer in charge of the Unit or his substitute in the event of his absence.

8. To propose the bylaws of the Unit and to approve it by the Chairman of the Committee.

9. To give technical opinion in connection with suspected transaction reports.

10. To exchange information in connection with suspected transactions with similar units in other countries and international organizations, entities and authorities, in accordance with the international agreements that the State is party thereto or that grant equal treatment. Such information shall not be used other than for the purposes of anti money laundering, anti terrorism financing or to prevent funding unlawful organizations.

11. To prepare and make training and qualification courses and programmes for the personnel employed by the Unit and any other entity, including the provision of technical assistance thereto, whether inside the State or aboard.

12. To prepare such studies, researches and statistics in connection with money laundering, terrorism financing and funding unlawful organizations, and to follow up any studies, researches or statistics at the local and international levels.

Article 17 Powers of the Control Authorities

The Control Authority shall, in coordination with the Unit, have the powers to:

1. Lay such rules, regulations, forms and procedures related to preventing money laundering, combating terrorism financing and funding unlawful organizations, to be applied by the financial institutions and the other financial, commercial and economic establishments to identify the clients and real beneficiaries and their legal positions, to keep records and to report suspected transactions.

2. To lay such procedures and conditions as required to verify that the Financial Institutions and the other financial, commercial and economic establishments under the control of such authorities are compliant with the provisions of the Law and this Regulation and any other special laws for anti money laundering, combating terrorism financing or funding unlawful organizations in the State.

3. To organize awareness programmes and campaigns in connection with the anti money laundering, combating terrorism financing or funding unlawful organizations, each according to its powers.
Article 18 Freezing Money
1. The Central Bank may order to freeze suspected money in connection with money laundering, terrorism financing or funding unlawful organizations for no later than 7 (seven) working days and may notify the competent Public Prosecution thereof.
2. The financial institution shall, on demand by the Unit, notify the holder of the frozen money of the freezing order and demand such holder to provide the financial institutions with the required documents to prove that the source of such money is lawful. Upon the expiry of such freezing period as provided in Clause 1 of this Article and no reservation against the money is received from the competent Public Prosecution or the precautionary attachment of such money by the competent court, the Central Bank shall issue a resolution to cancel the freezing order.

Article 19 Procedures for Freezing and Seizing Money
1. The Unit shall study and analyze suspected transactions upon receipt thereof from the financial institutions and the other financial, commercial and economic establishments, and if the Unit finds that there is a transaction involving money derived from suspected sources made in a financial institutions, the Unit shall refer a recommendation to the Governor to freeze such money.
2. The Unit shall notify the competent Public Prosecution if a freezing order is issued.
3. The Unit shall coordinate with the relevant Control Authority and the law enforcing authorities in connection with money related to the suspected transaction reports received from the other financial, commercial and economic establishments, to take such procedures as the Unit may deem appropriate.
4. The Unit shall notify the relevant financial institutions and other financial, commercial and economic establishments in connection with the procedures taken about the suspected transactions.

Article 20 Law Enforcing Authorities
1. The law enforcing authorities shall complete such forms prepared by the Unit upon demanding such information entered in the database of the Unit or such information about the financial information units in the other countries in connection with the suspected transaction reports.
2. The law enforcing authorities shall obtain a permission from the competent judicial authority when the former are desirous to obtain from the Financial Institutions such details of the accounts or transfers by a person accused of committing any of the crimes as provided in the Law.

Article 21 Disclosure System
The competent customs shall apply the disclosure system issued by the Central Bank in connection with any currencies, negotiable financial instruments to bearer, precious metals or precious stones.

Article 22 Confidential Information
Those employed by all the entities governed by the provisions of the Law may not disclose any information in connection with suspected transactions about money laundering, terrorism financing or funding unlawful organizations and to keep such information confidential, only to the extent as necessary to be used in investigations, claims or cases in connection with the violation of the provisions of the Law. At all events, the client may not be contacted directly or indirectly in connection with the procedures taken against the client without a written request from the relevant control authority.

Article 23
It may not be protested by the non disclosure of the secrets of the profession upon providing or requesting such statements and information in accordance with the provisions of the Law, this Regulation and the Resolutions issued in execution thereof.

Article 24
Any provision in conflict or difference with the provision of this Resolution is hereby repealed.

Article 25
This Resolution shall come into force from the date of issuance hereof and shall be published in the Official Gazette.
Signed
Mohammed Bin Rashid Al Maktoum

Prime Minister
Issued by us on 12 Muharram 1436 Hijri,
Corresponding to 5 November 2014.